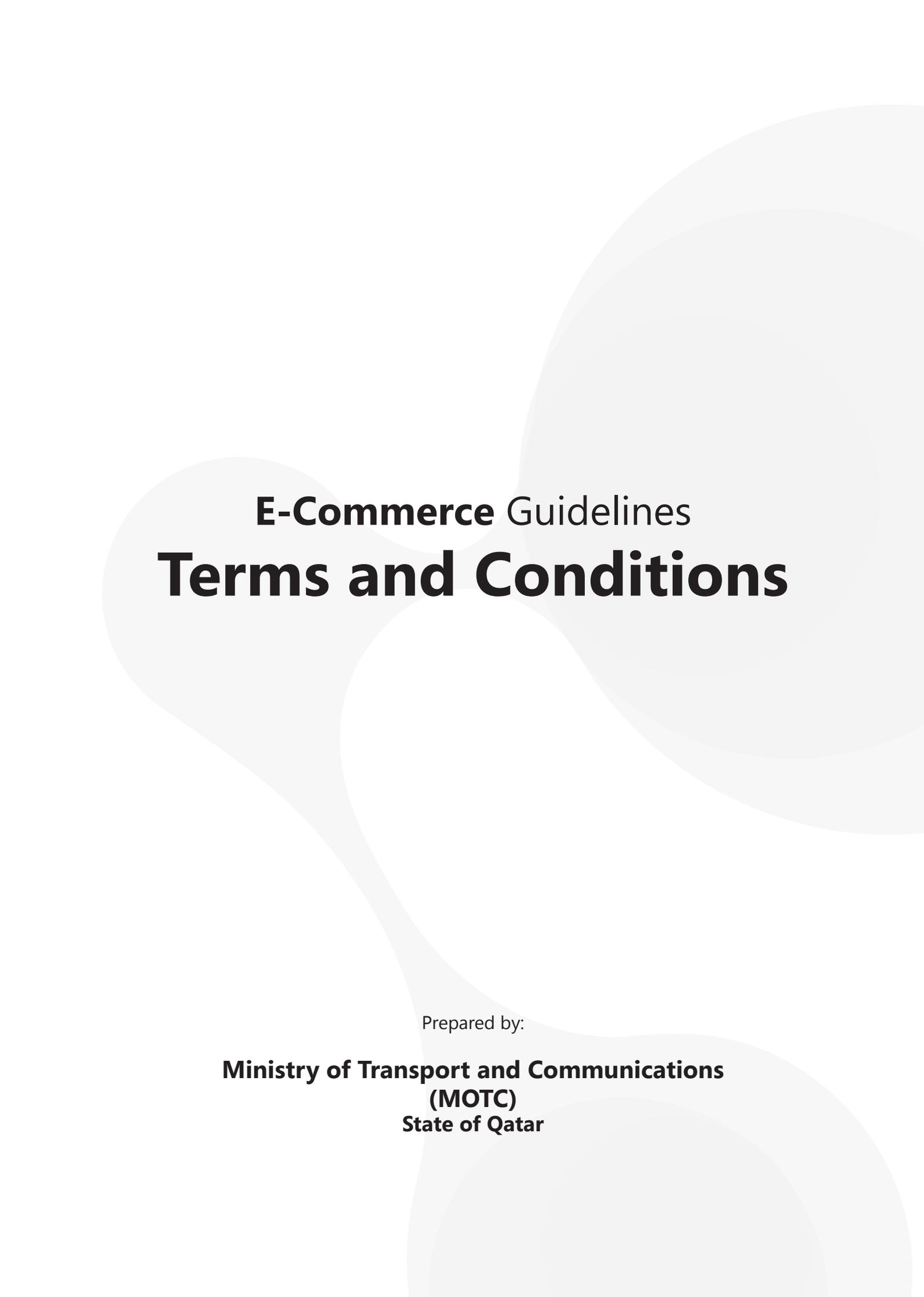




## e-Commerce Guidelines

# Terms & Conditions





# **E-Commerce** Guidelines **Terms and Conditions**

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State of Qatar**

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## **About the Document**

This document contains recommended terms and conditions for e-commerce websites in Qatar. The primary objective is to ensure that e-commerce businesses and websites are governed by balanced terms and conditions that take the concerns of both merchants and consumers into consideration in order to foster the confidence of both merchants and consumers in e-commerce transactions. These guidelines should be used as a framework when creating a commercial website for primarily B2C relationships.

# Table of Contents

<b>I. Introduction</b> .....	5
<b>II. Presentation of the Different Documents</b> .....	7
<b>III. Identification</b> .....	9
<b>IV. Website Use Terms</b> .....	11
1. Application.....	12
2. Available Access to Our Website.....	12
3. Intellectual Property.....	12
4. Reliance on Information .....	13
5. Acceptable Use .....	13
6. Forums – Community - Comments.....	14
7. Suspension or Termination of Use.....	14
8. Advertising and Sponsorship .....	15
9. Links with Other Websites .....	15
10. Your Liability.....	15
11. Our Liability .....	16
12. Information About You .....	16
13. Contractual Transactions.....	16
14. Changes to These Terms .....	16
15. Applicable Law and Jurisdiction .....	17
<b>V. Terms and Conditions</b> .....	18
A. Introduction.....	19
B. Suggested Clauses.....	19
1. Applicability.....	19
2. Offering.....	19
3. Ordering .....	21
4. Customer Requirements.....	22
5. Password and Security .....	22
6. Price.....	23
7. Payment Methods .....	24
8. Recurring Subscriptions .....	25

9. Warranties .....	25
10. Delivery .....	27
11. Inspection at Delivery .....	28
12. Right to Withdraw .....	29
13. Refund Ppolicy .....	30
14. Intellectual Property .....	31
15. Liability for Products or Services.....	31
16. Exceptional Circumstances.....	32
17. Changes to Our Services.....	32
18. Changes to the Terms and Conditions .....	33
19. Communications .....	34
20. Complaints .....	34
21. Various.....	34
22. Applicable Law and Disputes .....	34
<b>VI. Privacy Policy .....</b>	<b>36</b>
A. Introduction.....	37
B. Model Privacy Policy .....	37
1. What We Process .....	37
2. Why We Process Personal Data.....	38
3. To whom We Send Personal Data .....	38
4. Where We Process Personal Data .....	39
5. How We Process Personal Data .....	39
6. Your Rights .....	40
7. Cookies .....	41
<b>VII. Appendix 1: List of Sources.....</b>	<b>42</b>

# I. Introduction

In the framework of the National e-Commerce Roadmap to further develop the e-Commerce market in Qatar and e-Commerce Guideline is developed in order to optimize the e-Commerce customer journey, to ensure transparency, accessibility, fairness in the websites of local merchants, create a safe environment for online transactions, and encourage standard and structured terms and conditions among the local merchants.

Since the aim of this guideline is to foster the trust of consumers and the merchants/service providers, it is important to find a balance between the interests of the consumers and of the merchants or service providers. The guidance will focus on the issues that are considered important concerns from the point of view of the consumers, whereas on the other hand the risks of merchants and service providers are protected where these should be protected. The guidance will help merchants to remain within the requirements of the Law, and to avoid complaints from consumers and competitors, and thus, to avoid fines.

In searching the balance between the rights involved, we have taken the OECD Recommendation "Consumer Protection in e-commerce" 2016 and the United Nations Guidelines for consumer protection, UNCTAD, 2016, into consideration.

The guideline and the recommended terms and conditions should not be seen as a replacement for consumer protection legislation.

We have made every effort to avoid inconsistencies with existing national, regional or sectoral legislation. If nevertheless there is any inconsistency, the mandatory law has precedence over the guidelines. Furthermore, the legal requirements may evolve over time, and it is possible that not all legal requirements in the framework of e-commerce are or will remain reflected in the guidelines. By all means, the guideline will be frequently updated in order to take new legislation, new issues and concerns, and technological or market evolutions into consideration.

This guideline is intended to be applied by merchants and service providers in a B2C context. The guideline is not intended to apply specifically in a C2C context, where consumers occasionally operate as sellers without being considered a merchant, trader or professional service provider, e.g. in the case of the sale of a second-hand good, or peer networks or services of the sharing economy. According to article 1 of the Trading Regulation Law, the trading regulations apply to all business conducted by any person, even if the person is not a trader.

This guideline has been developed for traders located in Qatar dealing with both Qatar consumers and consumers residing in foreign countries. It is not specifically developed for business located in the Qatar Financial Centre that are often internationally inspired and often have their own terms and disputes arrangements.

As a general principle, all information that may be useful for a consumer in order to decide on a transaction, and all information that may have an impact on his rights and obligations, should be clear, easy to find, and easy to understand. This implies that separate documents should enable the consumer to find the relevant information without much trouble and fast. Finding relevant information in a timely manner is a prerequisite for a smooth experience as a shopper on the internet.

## **II. Presentation of the Different Documents**

In this guideline, we will present the following documents, which will all be presented on the website with separate links:

- **Identification** ("about us" or "contact") : this document contains the information about the trader;
- **Website Use Terms**: this document contains the rules about the visit to the website and the use of the website;
- **Terms and Conditions**: this document contains the rules governing transactions, such as the sale of goods or the provision of services;
- **Privacy Policy**: this document contains the rules, rights and obligations, regarding the collection and use of the personal data of the consumer.

A commercial website (web shop) may contain other separate pages with specific terms and conditions, with their own link, such as "Delivery", "Payment", in particular if these sections contain several options and detailed rules that would otherwise make the Terms and Conditions document too voluminous.

# **III. Identification**

A web page containing the information about the trader can be accessed from the home page and any other page through a link labelled "about us", "contact" or a similar link.

Traders must identify themselves on the internet, and consumers must have confidence that they are dealing with a company that acts in a transparent manner, that they can contact immediately if necessary. The Law (art. 51 and 52 of the E-commerce and Transactions Law) requires the trader to provide certain mandatory information (similarly as the OECD Recommendation and other legal instruments).

**This information can be presented as following:**

*"Name.qa is a website operated by Name Ltd.,*

*a company created under the Law of Qatar, and registered in the ..... register under number ....., with principal place of business at (city, street, .....), Qatar, postbox .....*

*licensed to operate the business of ..... under license nr. .... issued by the organization ..... of (city, address), that acts as a supervising authority;*

*acting under the code of conduct of ..... which is available [here](#);*

*(hereafter the terms "we", "us", or "our" refer to this company).*

*You can contact us:*

*- by telephone: .....*

*- by e-mail: ....."*

Note: in case of a regulated profession, which requires a license or authorization, the required information must also contain the details of the professional organization with which the service provider is registered, as well as its professional title and the country where it was granted; furthermore, the trader must refer to the applicable professional rules or legal rules and the ways to access them online or otherwise.

# **IV. Website Use Terms**

## 1. Application

The Website Use Terms must apply automatically when the user visits the Websites and makes use of it. No explicit consent of the user is necessary.

*"These Website Use Terms govern your visit to, and your use of, the Name.qa website in general.*

*By using our website, you are deemed to accept these terms and conditions. If you cannot accept any of these terms and conditions, you are not entitled to use our website."*

## 2. Available Access to Our Website

A website must not necessarily be available at all times, even though users can be frustrated if the website is down for a particular reason.

### Proposed Clause:

*"Access to and the use of our website is allowed on a temporary basis. We reserve the right to withdraw or amend our service on our website without notice. We will not be liable if our website is not available at any time, for any reason.*

*Some parts of our website are only available to registered users.*

*From time to time, our website will not be available due to planned updates, maintenance operations or the introduction of new services. We will try to limit such operations to (the hours between 10 PM and 5AM) and we will issue a warning for any planned maintenance (...) days upfront.*

*In case of urgent maintenance, we will have the right to restrict the availability of our website without warning."*

Certain websites, however, should be continuously available for long periods of time, and possibly at night. Warranties and/or exceptions can be included in the terms in that case. This is e.g. the case for websites providing information services, streaming services that provide music or movies or sports, services that provide continuous services, e.g. for online gaming, financial transactions, bookings etc.

## 3. Intellectual Property

### Suggested Clause:

*"The content of the Name.qa website is protected by copyright, trademarks and service marks, database rights and other intellectual property rights. We are the owner or licensee of such rights.*

*You may print or reproduce reasonable parts of the content for the purpose of your own personal, non-commercial use, provided that you keep and display all copyright notices and proprietary notices.*

*You may not otherwise reproduce, copy, modify or distribute nor use for any commercial purposes, any of the materials, information or other content displayed on the Name.qa website without our explicit prior written permission.*

*You may not reproduce an unreasonably large volume of the content of our website without our explicit prior written permission, nor manually, nor using automatic means. Framing and embedding such content will be regarded as reproduction."*

A website is largely accessible to the public and thus the displayed content can be copied (directly or indirectly, by framing or embedding). For certain types of websites this risk is more important than for other. The automatic "scraping" of large blocks of information, e.g. with robots, can be forbidden in the terms.

#### 4 Reliance on Information

Some information on the website should necessarily be correct, such as information directly related to the products or services manufactured or sold by the merchant. This is important pre-contractual information that may influence the decision of the consumer to buy a product or service. However, websites may contain other kinds of information, even written by third parties. The merchant cannot always assume liability for such kind of information.

##### Suggested Clause:

*"Except insofar we are required by Law to provide correct information, or except insofar you, as a consumer, may reasonably expect to receive correct information about our goods and services, any information, commentary and other materials posted on our website are not intended as accurate, complete and up-to-date advice on which you should rely as a sole source of information, and we disclaim all liability in that respect to the extent permitted by law."*

#### 5. Acceptable Use

Visitors of the website must abstain from harmful actions that may damage the website or the reputation of the merchant, or even of third parties. In order to have a claim against a visitor who does not act in an acceptable manner, it is preferable to emphasize these requirements in the Website Use Terms.

##### Suggested Clause:

*"You may visit and use the Name.qa website only in accordance with the principles of acceptable and lawful use and for acceptable and lawful purposes.*

*This means that it is not allowed to use the Name.qa website:*

- in any way that infringes any applicable local, national or international law or regulation;*
- in any way that is unlawful or fraudulent, or for any unlawful or fraudulent purpose, or creating an unlawful or fraudulent effect;*
- for the purpose of harming or attempting to harm minors in any way;*
- for gaining unauthorized access to computer systems;*
- in order to interfere with any other person's use or enjoyment of the Name.qa website;*
- in order to interfere, or gain unauthorized access to, networks or websites or equipment linked to the Name.qa website, or owned by any third party;*
- to transmit, or to procure the sending or uploading of any unlawful, unsolicited or unauthorized advertising or promotional material, or any other form of such solicitation or marketing (e.g. spam, junk mail, chain letters, pyramid systems);*
- to deliberately transmit, upload or otherwise diffuse information that is discriminating, false, libelous, obscene or insulting;*
- to try to re-transmit, send or upload or otherwise diffuse any information that is not allowed according to these terms, after it has been refused or removed by us;*

- to transmit any data or material containing viruses, Trojan horses, worms, time-bombs, spyware, adware, malware or any other harmful code designed to adversely affect computer software or hardware;
- to impersonate another person than yourself

*Some of the above mentioned actions can be regarded as criminal offences."*

## **6. Forums – Community - Comments**

This type of clause is especially provided for websites that contain communities of users on their web pages, such as forums where users can start discussions or give their opinion on certain matters. It can also be useful for websites that provide a possibility for users to give comments on articles, or reviews of certain shops, services, restaurants etc.

*"The Name.qa website includes a number of community pages and user forums, and other space allowing the users to interact via message boards, forums or comment boxes.*

*The opinions and views expressed by persons posting on our community pages do not represent the views of Name Ltd.*

*You will ensure that your comments on any person, group of persons, organizations goods, or services, will not violate any right of any third party, including any right of personal integrity and any right of intellectual property, and that your comments will not contain unlawful, libelous, abusive or obscene material, or any material that is otherwise offending against the generally accepted legal, ethical and moral principles applicable in Qatar.*

*We do not control or moderate the content that is placed on such pages. However we reserve the right to monitor and review and/or edit posted content, and we reserve the right to refuse to post certain materials, or to remove or edit such materials, without warning or notification, based upon a complaint of third persons or authorities, or based upon our concerns following our own reviews. We may especially refuse, edit or remove content that we determine in our sole discretion as illegal, offensive, libelous, defamatory, obscene or otherwise unacceptable taking into consideration our legal, ethical and moral standards, as well as the accepted commercial practices."*

Please note that some forms of false news and some infringements against the social values of the State of Qatar, including the publishing of news or pictures or video recordings related to the sanctity of the private life and family life of individuals (even if they are correct) can be sanctioned on the basis of the Cybercrime prevention Law no 14 of 2014 and the Personal Data Protection Law No 13 of 2013.

## **7. Suspension or Termination of Use**

A warned person should not be frustrated if his use of the Website would be suspended or terminated when he infringes the rules...

*"We have the right to determine in our discretion whether there has been a breach of our terms and conditions through your use of our website. When we believe that such breach has occurred, we may take any action that we believe is appropriate, including an immediate temporary suspension of the use of our website or a permanent termination of such use, through disabling your password or otherwise.*

*Furthermore, in such case we have the right to remove or refuse any posting or material uploaded by you on our website, and in case of criminal offences or other unlawful actions we will have the right to inform the law enforcement authorities if we feel that such is necessary, and we may co-operate with such authorities by disclosing your identity to them.*

*Upon a legitimate request of the competent public authorities, or a complaint of third parties that seems legitimate at first sight, we will have the right, and possibly even an obligation, to undertake any of the above-indicated actions.*

*The actions mentioned herein will not limit any other possible actions under Qatar Law, including legal proceedings and/or claims for damage compensation or indemnification."*

## **8. Advertising and Sponsorship**

### **Suggested Clause:**

*"Our website may contain advertising or sponsorship through links or banners. The content of advertisements is not submitted to us prior to the publication. Only the advertisers must ensure that any advertising complies with the legal, ethical or sectoral requirements. We are not responsible for any content of such advertisements."*

## **9. Links with Other Websites**

### **Suggested Clause:**

*"Our website may include links to other websites or material. We do not warrant that such links are continuously operational. We are not responsible for any linked websites or linked material, which is beyond our control.*

*Other websites are permitted to link to our homepage, provided that this is done in a manner that is fair and legal, in accordance with the principles set out in our acceptable use policy (see above) and without damaging our reputation, and without implying or suggesting any association, approval or endorsement from us.*

*The framing of a part of our website, or a deep link into our website, is only permitted after our prior written agreement."*

## **10. Your Liability**

Because liability is a serious matter, it is appropriate to stipulate a clear warning.

*"You will be held responsible for all losses, costs and expenses incurred by us, including attorney's expenses, all damages, indemnities or fines awarded against us by any court or other competent authority, and all sums paid by us as a result of any settlement agreed by us, arising out or in connection with:*

- Any claim by any third party or authority that the use of the Name.qa website by you is defamatory, offensive or abusive, or of an obscene nature, or is illegal, or in breach of an applicable code of practice;*
- Any claim by any third party that the use of the Name.qa website by you infringes that third party's copyright or other intellectual property rights of whatever nature."*

## **11. Our Liability**

It is important to frame and, where possible, to limit the liability of the trader.

*"As stated above in these Website Use Terms, we do not accept liability for the unavailability of the website, nor for actions or statements of third parties on our website.*

*The information displayed on our website is provided without any guarantees, conditions or warranties as to its accuracy, except for information about our own goods or services, insofar you, as a consumer, may reasonably assume that such information is correct.*

*Except as otherwise provided, we hereby expressly exclude any liability for any direct, indirect or consequential loss or damage incurred by you in connection with the use, the inability to use, or the results of the use of our website, any information or materials displayed or incorporated in it, and any websites linked to it. Thus, we exclude, amongst other, the liability for loss of data, loss of business, loss of opportunities as well as moral damage.*

*However, we do not exclude any liability that would arise from fraudulent representation by us or an employee of our company, if that would occur.*

*We try insofar this is reasonably possible, to avoid the occurrence of malware on our website or that is transferred making misuse of our website; however, we are only able to apply the normal precautions against such malware and we cannot guarantee the absence of such malware."*

## **12. Information About You**

In this clause, referral is made to the Privacy Policy which is thus indirectly included in these Terms.

*"We process information about you, including information about your visits to our website, in accordance with our Privacy Policy, found here.*

*Using our website, you consent to such processing of data and you warrant that all data provided by you is accurate."*

## **13. Contractual Transactions**

In this clause, referral is made to the Terms and Conditions of commercial nature (for sales and/or services). Thus, these terms are indirectly included in these Website Use Terms.

*"Any contracts for the supply of goods or services that are formed through our website, are governed by our Terms and Conditions, found here."*

## **14. Changes to These Terms**

Changes to the Terms must be automatically applicable to the users. That is why this clause will inform them about the possible occurrence of such changes.

*"We are entitled to revise these Website Use Terms at any time.*

*We ask you to check these pages from time to time to take notice of any changes. You are deemed to have read and accepted the modified Website Use Terms."*

## 15. Applicable Law and Jurisdiction

It is important to centralize all claims and disputes regarding the use of the website in one court, and to apply a legal system that is known by the local merchant and his legal counsel. This will avoid fragmented decisions about the application of the clauses and will also avoid fragmented costs for proceedings in different jurisdictions.

*"[The Court of Qatar] will have [exclusive] jurisdiction over any claim arising from, or related to, the use of our website, although we retain the right to bring proceedings against you for breach of these conditions in your country of residence or any other relevant country that provides a legal ground for jurisdiction.*

*These Terms of Use and any dispute or claim arising out of or in connection with them, shall be governed by and interpreted in accordance with the Laws of the State of Qatar."*

The indicated jurisdiction can be defined as exclusive or not. If it is exclusive, and if the clause is considered valid vis a vis consumers in other countries, no other court will have jurisdiction (except if other possibilities are mentioned as in the example above). If it is not defined as exclusive, other courts may also have jurisdiction based on the Law or treaties with other countries. The validity of such clause vis a vis consumers can be subject to treaties with other countries or organisations such as the GCC or bilateral treaties with certain countries.

Regarding the local consumers, a clause that would impose a strict and exclusive jurisdiction of the Court of Qatar will protect the local consumers because one centralized court would at a high level warrant the application of the different laws protecting the consumers, and the precedents of this Court would form a constant case law. The risk of fragmented and/or diverse case law throughout smaller courts or even foreign courts would thus be eliminated.

# **V. Terms and Conditions**

## A. Introduction

As stated above, the commercial terms and conditions must be clear and well-structured thus enabling consumers to find within a reasonably short period of time all relevant information on their questions regarding the legal and contractual framework of their purchase. Furthermore, the clauses should establish a balance between the concerns of merchants and the concerns of consumers. Clauses leading to arbitrary behavior, unfair behavior without sanctions and complete erosion of risks and liability, should be avoided if consumer trust in e-commerce transactions must be boosted.

## B. Suggested Clauses

### 1. Applicability

It is important to be certain that the commercial Terms and Conditions apply to any transaction (purchase of goods or service).

*"These Terms and Conditions (the "Terms") govern the contractual relationship between Name.qa and you. They govern our offering of products and services, your ordering, the delivery, the provided warranties and all services that are related thereto.*

*Information about us and our contact address can be found here.*

*By registering on our website, and by placing an order from your virtual shopping basket, you will be asked to confirm in the checkbox that you accept these terms and conditions, and thus you will be deemed to have accepted these terms and conditions if you place your order. If you do not agree with any of these terms and conditions, you must not order from us.*

*[You declare that there are no purchase terms and conditions from your side applicable.]<sup>1</sup>*

*The use of our website is furthermore governed by our Website Use Terms that are available here.*

*Furthermore, our Privacy Policy will apply which can be found here.*

*The headings of these terms and conditions are for your convenience only and do not limit or otherwise affect these terms. "*

Some goods or services can be intended for consumers or for professionals alike. If the terms and conditions are only intended vis a vis consumers, and the merchant or service provider wants to apply less flexible terms and conditions in a B2B context (e.g. without granting a right to withdraw from the contract), the notion of a "consumer" can be defined, e.g.:

*"These Terms and Conditions are only applicable to consumers, being physical persons who order goods or services only for non-professional purposes".*

### 2. Offering

The following clause clarifies the meaning and the consequences of offering products or services online, and the modalities of the presentation of the products or services.

*"The products or services, and their displayed price, are not considered as binding offers from our side. Your order is an offer to buy from us, and only our confirmation of the order by e-mail will constitute a binding contract.*

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<sup>1</sup>This is more relevant in a B2B context

*All the products that are advertised or included in our catalogue are available while our stock or the stock of our suppliers lasts. Not all the displayed products are in stock. We cannot guarantee that each product is immediately available for purchase. Only our confirmation notice based upon your order will indicate the availability and the timing for delivery. If for any reason beyond our reasonable control, we are unable to supply a certain product, we will not be held liable and we will ensure that you will not be charged for that product.*

*In case of unavailable product, we may offer a substitute product. You will be informed in advance in that case, and the product will only be supplied if you agree.*

*We try to display the images of our products as accurately as possible, however we cannot guarantee that certain images would give an unclear or distorted image of the shape or colour of the products.*

*The depictions and descriptions of our products and services are only valid for a limited period of time. If you decide later to purchase a product or service, you should re-examine the description.*

*In case we have erroneously displayed the incorrect price of a product, we will not have an obligation to deliver it to you at the indicated price, provided that we notify this in our order confirmation or at the latest before the dispatch of the product. Our order confirmation will not be regarded as binding if the price was clearly erroneous. You will then have an opportunity to buy the product at the correctly proposed price. If you would refuse to buy the product at the corrected price, we will all payments that you have done at the time of your order."*

It is important to indicate that the displayed goods and prices are not binding, and that only the confirmation of an order is binding agreement. Thus, the merchant is not bound by errors in pricing or unavailable products where these are erroneously displayed on the website. The consumer can only claim a binding agreement insofar this is confirmed by the merchant.

However, even an order confirmation may contain an erroneous price if the order confirmation is done automatically. In such case, it would be acceptable that the supplier can notify the error before the dispatch of the product. Evidently, such corrections may not be used as a commercial technique in order to lure consumers into an agreement. Therefore, an error should clearly be regarded as an error, meaning that the difference between the displayed price and the normal price must be obvious, and not a small margin.

The offering of **services and subscriptions** may change over time (e.g. for streaming services, when certain channels refuse a licence at a certain point in time). We refer to a "changes" clause further below that should deal with this problem. On the other hand, services / subscriptions are not always available, and that should be covered as well.

*"The availability of the subscription services may depend on a variety of factors including delays or cancellations of certain events or games, the application of national or foreign laws or regulations, court orders, decisions made by content providing channels, technical problems or delays, rescheduling or cancelling of programs. If your access to the subscription services is materially interrupted or suspended, or otherwise temporarily unavailable, we may at our discretion provide you with certain credits, however we will not have an obligation to do so. If a long-term unavailability affects your use of the services, we will in good faith negotiate in order to find an acceptable and reasonable solution."*

### 3. Ordering

The requirements and the process of the ordering of products or services should be set out clearly.

*"You must register before being able to order products or services<sup>2</sup>.*

*The ordering process follows different steps through the pages of the virtual shopping basket. At every step, you will be able to return to the former step of the process in order to correct any errors or to modify your requirements.*

*Before your final order at checkout, we will present you an overview of the product or service purchased by you, and the complete purchase price, including taxes and costs of delivery.*

*Your order and our confirmation will be stored in our database and these files will serve as a proof of the transaction.*

*Your order is an offer to purchase a product or service from us.*

*We will send you an order confirmation by e-mail, including the goods or services purchased, the all-inclusive price and as the case may be any restrictions or reserves. Only our confirmation will constitute a binding purchase contract<sup>3</sup>.*

*You are responsible for the submission of correct information in your order, such as your billing information, the delivery address, and other useful information in relation to the delivery.*

*We reserve the right to refuse the sale of products or services to any person or any geographic region for any reason at any time. This can be decided on a case by case basis. Furthermore, we reserve the right to limit the volume of products or services that we offer for one purchaser, one household or for one order, and such decision may be based on orders by the same account, the same credit card or the same billing or shipping address. We reserve the right to prohibit or limit sales to dealers or resellers.*

*We reserve the right to discontinue any product or service at any time.*

*You have a right to modify or cancel your order before it is shipped by us. We will acknowledge whether or not the good(s) have been shipped. After shipment, you will be able to us your right to withdraw during .... days as from ..... (in accordance with clause 12 further below)<sup>4</sup>.*

*In case you have paid for a product that we are unable to supply or that we decline to supply because of any of the above mentioned reasons, we will fully refund the prepaid price immediately as stated in our refund clause (see further below).*

*You are able to download our terms and conditions in pdf format. The different versions over time are stored here and can be downloaded with an indication of their validity period.*

*You agree that the digital logs that we keep with digital files evidencing your and our transactions and messages, will constitute proof of your and our transactions."*

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<sup>2</sup>Some websites provide a possibility to order goods or services even without a registration as a member.

<sup>3</sup>It is possible to send an automated e-mail first that only acknowledges the receipt of the order, stating that the merchant will check the availability of the product and the correct price and will confirm as soon as possible the order after such check. By all means, these messages must be clear in what they mean, and what they are confirming or not (yet) confirming.

<sup>4</sup>See also further below in relation to the right to withdraw from an ordered service.

Article 56,2 of the E-commerce and Transactions Law 2010 specifies that a contract with a consumer is made when the merchant's confirmation of the order reaches the consumer. Articles 25 to 27 of this Law warrant that such e-mails can quite easily be used as evidence of these transactions.

#### **4. Customer Requirements**

This clause contains some general requirements for customers/consumers.

*"Notwithstanding any other requirements stated in our terms and conditions, you must fulfil the general requirements of this clause.*

*You must be over eighteen years of age in order to be able to register and to purchase products or services. If we discover that you are not eighteen years of age, we have the right to cancel any order made by you and to delete your record as a registered person.*

*You warrant that the details provided by you at the time of your registration or any other time, are correct and complete.*

*You may not purchase and/or use our products for any illegal purpose or in any illegal manner."*

A specific clause for subscription services (e.g. streaming services, such as streaming sports broadcasts, movies, games):

*"Each subscription account is an account for a single user, and you will not allow any third person to access or use the subscription services by way of your account. As a subscriber, you may access and use the services via up to three (3) registered devices. Simultaneous access to an account on more than one device is however prohibited. "*

*"The use of the subscription services is restricted to private, personal and residential use only. You shall not use the services for any commercial purpose, and shall not distribute the services, nor display the services to any group of people outside of a private residence or household, especially not in hotels, bars, restaurants, clubs, theatres or other public areas. Any infringement on these restrictions may be regarded as an infringement on intellectual property rights of us or of our licensors."*

#### **5. Password and Security**

The merchant must be certain that he is dealing with a consumer who is the person that he claims to be, and who will be bound by any transaction that is done using the account. Without a presumption of this kind, orders could be cancelled by consumers claiming that unauthorized persons have misused the consumer's account.

*"When you register at the Name.qa website, you will create an identification code for login and a password. We urge you to use a password that is sufficiently original and that is not obviously linked to your person so that it can be guessed by third persons.*

*Every action and transaction, including any order, that is done using this login and password will be deemed to have been done by you, and you will be held responsible for such action.*

*Thus, it is essential that you keep the login identification and password confidential and that you will not disclose it to anyone, nor share it with other persons. If you allow certain other persons, such as family members, to access our website through your internet connection using your login identification and password, you must ensure that such persons are aware of the terms and conditions, and that they comply with these terms and conditions.*

*If you believe that your password is no longer confidential nor secure, you must notify us immediately by contacting our customer services (see further ...), and we will enable you to change the password or to take other steps.*

*If we have reason to believe that there is likely a breach of security, or misuse of our website, or that your password is being misused in any way, we may require you to change your password, and we may suspend your account if the password has not been changed. We will not be liable for any losses arising out of any unauthorized access to, or use of our services or purchases through your account."*

## 6. Price

The price is the decisive criterion for a consumer to make his choice to purchase a certain product or service. The legal frame of pricing must thus be well organised.

*"The indicated price of a product that is displayed on our website or catalogue does not include the delivery charges nor the taxes that are eventually due, which will depend on the place of delivery and the delivery method that you choose. The final price, including the applicable charges and taxes, will be indicated and added during the checkout of the virtual shopping basket, immediately before the order.*

*The prices of our products or services are subject to change without notice. We do not guarantee that indicated prices will remain applicable during a certain period of time.*

*If the indicated price must be regarded as an error, we may act as stated in clause 2.*

*All our prices are stated in Qatari Riyal (QAR).*

*Any promotions and discounts will be valid only during the indicated period and in accordance with the Law. "*

Regarding the price of long-term services or subscriptions, e.g. for streaming services, it would be incorrect to change the price during a contract with a fixed term, if the consumer would be bound to an arbitrary price increase. However, this may be allowed, if the consumer has a possibility to terminate the service or the subscription when he does not agree with the increase of the price, and in case of prepayment, he should receive a refund in proportion with the remaining period of his subscription (pro rata).

The possibility of price changes is often included in a more general clause concerning changes to the agreement or to the service. In order to avoid double clauses, the pricing clause may refer to the clause concerning changes in general (see clause 17).

Discounts and promotions in physical shops are governed by the Trading Regulation Law 2006 (art. 132 and following) and Ministerial Order nr. 5 of 1984. These rules however do not apply to online sales. Art. 53 e-Commerce and Transactions Law will apply (discounts, premiums or gifts must be clearly presented and the conditions that must be fulfilled for any discounts, premiums or gifts must not be misleading or deceptive, must be presented clearly and unambiguously and easily be accessible).

It must be clear that the consumer is liable to pay for specific costs:

*"You are solely responsible for any and all charges for Internet access, data usage, mobile charges and/or any other charges incurred for the access to, and use of, our services."*

## 7. Payment Methods

It is possible to include the allowed payment methods in the terms and conditions. If the trader prefers to have a separate page with an explanation of the payment methods, he can provide a separate link on his website, and in that case, the terms and conditions simply refer to that web page.

*"Payment will be done in the currency Qatari Riyals (QAR).*

*We accept the following payment methods, subject to changes from time to time:*

- credit card (Visa, American Express, Mastercard)*
- debit card*
- PayPal*
- prepayment via online transfer*
- cash payment on delivery (COD).*

*The chosen payment method will be indicated by the consumer during the ordering process at the checkout of the virtual shopping basket.*

*Payment information, such as credit/debit card details, will be sent encrypted using the SSL technology."*

Regarding the use of credit cards, a distinction can be made between immediate debit of a card, or a guarantee with the card as a security, whereas payment follows later (e.g. often used in hotels).

The merchant may provide specific provisions regarding security against the risk of hacking or capturing financial information. However, many websites limit their warranty in this field to the use of SSL/ encryption for secure messaging and payments.

For recurrent services and subscriptions:

*"If you purchase a subscription that is subject to automatic renewal you irrevocably and unconditionally authorise us to continue the collection of each renewal payment by means of the selected payment method until you change the payment method or until you cancel the renewal of the subscription in accordance with these terms and conditions."*

*"If any payment is not done in full, we reserve the right to suspend access to the services until the outstanding payment is received by us."*

When third party service providers intervene in the payment activity, this clause can be helpful:

*"If you choose a payment option that involves a third party payment service provider, such as a credit card issuer or other service provider whose services are available through our website, the terms and conditions or schemes of that payment service provider will apply to your payments and to your purchase, insofar this is indicated by the payment service provider. We do not offer more rights, remedies or warranties than those provided by the payment service provider and you are advised to read their terms and conditions carefully. We are not liable for actions or negligence of payment service providers."*

Credit card issuers and other payment service providers have their own terms and conditions that may contain rules regarding payback, cashback, security etc. that may contain specific warranties and conditions.

## 8. Recurring Subscriptions

### Suggested clause:

*“The term of your subscription commences on the date and time of the purchase, which is the date of the activation of the service, and the subscription services will terminate upon expiry of the validity period of the subscription if you cancel the renewal of the subscription by e-mail or registered mail, with a notice of at least one month before the expiry date. However, your subscription will automatically renew for an identical validity period, and will continue to be renewed automatically thereafter, unless cancelled by you with a notice of at least one month before the renewal date.”*

According to the example clause, the subscription will automatically continue when the consumer does not act otherwise. As an alternative, the clause may state that the subscription will only be continued (or renewed) in case the consumer actively agrees to such renewal. In this case, however, forgetful consumers may cause continuous administration problems.

## 9. Warranties

There is no doubt that one of the most important concerns for consumers is the possibility to obtain a remedy in case they buy defective or non-conform products. This is an absolute requirement for consumer confidence in sales over the internet. We present balanced clauses that take the interests of the traders and the consumers into consideration.

*“We warrant that the products purchased from our website will be free from defects in material and functioning, are undamaged, and are free from any other non-conformity to the description and the specifications of the products for a period of [six months] from the date of shipping, under the conditions set out in this clause.*

*You must inspect the delivered products at the time of delivery or as soon as possible thereafter, and you must notify us about any apparent defects or non-conformity within 3 days after the delivery of the products, by e-mail or registered mail to our customer services as indicated in our identification page.*

*Defects or non-conformities that are not apparent at the time of a reasonable inspection and that become apparent during the warranty period must be notified to us within 5 days after the discovery of the defect or the non-conformity.*

*Our warranty does not cover:*

- Visible defects or non-conformities which were not notified by you at the time of delivery or within 3 days thereafter;*
- Defects caused by an incorrect use or manipulation of the product, contrary to the requirements of the use manual, incorrect maintenance or insufficient care, as stated in the instructions or as is generally required for similar products;*
- Defects that are caused by designs, requirements or specifications submitted by you at the time of the order.*

*When any valid claim based on any defect or non-conformity in the products is correctly notified to us, we shall be entitled to repair or replace the products (or the defective part thereof) free of charge, or, we may decide, at our sole discretion, to refund to you the price of the goods, but we shall have no further liability to you. We will try our best efforts to return a repaired or replaced product to you within (15) days as from the day of your claim<sup>5</sup>.*

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<sup>5</sup>Article 12 of the Consumer Protection Law 2008 requires a commitment regarding the date of the return of the product. If so wanted, it can be specified that full refund with return of the product will not be accepted for minor quality issues.

*In case you are entitled to benefit from any warranty as given by the manufacturer, importer or distributor of the product or a part of it, given to us or to you directly, you will only have a direct claim against the manufacturer or his importer, distributor or other representative for Qatar if you are entitled to such a direct claim; in case you have a claim against us, our liability will be limited in accordance with the manufacturer's or importer's or distributor's warranty, exclusions and conditions.*

*We do not warrant that sold products or services are fit for a particular purpose of the consumer.*

*Except as explicitly provided in this clause or any other clause of these terms and conditions, all warranties, conditions or remedies provided by the applicable Law are excluded, to the fullest extent that is permitted by Law."*

The terms and conditions may specify further conditions for the return or repair of the products, e.g. that these would be brought (or dispatched) to an after sales service centre, whether or not at the consumer's cost. It is best practice to ensure that the consumer would not have to pay any costs in order to obtain a satisfying remedy. On the other hand, the trader may require that the product will be returned with its packaging and all accessories, at least when the defect occurs shortly after the delivery (this requirement may be considered incorrect for longer warranties).

In the clause above, it is stated that no further liability will be accepted, e.g. a frustration cost, moral damage, etc. In case a product causes damage, e.g. a battery causing an explosion, clause 15 will apply. The present clause only covers the defect of a product as such.

The cause of a defect can be questionable. Was a defect of a product inherent to the product or was it caused by an accident or incorrect use by the consumer? The more time has elapsed since the delivery, the more likely will the defect have been caused by the consumer. For certain products, the terms and conditions may formulate presumptions in that respect. The duration of a warranty may also depend on the type of product. The lifecycle that the consumer may expect is different for a smartphone, a washing machine, or a car.

Damage caused during the shipment of a product should be covered by the trader. The trader may claim any damage (or loss, theft) from the shipping company, and insurance policies may cover these circumstances. It would not be good practice to shift these risks to the consumer.

In many cases, the products will be accompanied by a warranty of the manufacturer or importer. The merchant may refer to such warranty and disclaim his own responsibility, if the manufacturer's warranty can really be applied by the consumer vis a vis the manufacturer or distributor directly.

Regarding the **remedies** (repair, replacement or return of the product with refund, or allowing the consumer to keep a product with a limited refund), the terms and conditions may stipulate that the trader may choose which remedy that he will provide as a satisfying solution, or it can be stated that the consumer may choose at his discretion. In case of return of the product with refund of the price, the terms and conditions may state that the refund will be diminished with a reasonable amount covering the time that a product could have been used effectively (partial use compensation). This is more important for products with a longer warranty period.

The warranties for **services** can be similar<sup>6</sup>; as soon as a particular service is performed, the consumer can be required to inspect and explicitly or implicitly accept the result of the service, or to raise a claim within a limited period of time. The warranty can then be re-performed or refunded if the service provider gives such a warranty. Implicit acceptance may be presumed when the service is performed, the consumer raises no complaint or claim, makes use of the service and pays the bill (in case of payment after delivery).

The legal rules regarding defective products are provided in articles 458 to 465 of the Qatar Civil Code.

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<sup>6</sup>This is also governed by article 11 of the Consumer Protection Law 2008.

According to article 461 Civil Code, the seller may by contract increase, restrict or abolish the legal warranty. However, such a clause would be void in defects are intentionally and fraudulently concealed. An action on a warranty shall prescribe after a period of one year has elapsed from the date of delivery of the goods sold, even if the purchaser discovers the defect after the expiration of this period, unless the seller agrees to be bound by the warranty for a longer period.(art. 462 Civil Code).

Furthermore, the principle that defective goods result in repairs, replacement or return is also included in articles 5 and 6 of the Consumer Protection Law 2008. According to article 3 of said Law, the consumer shall be entitled to fair compensation for any property or financial damages as a result of the purchase or use of goods and services, and an agreement contrary to this principle shall be deemed null and void. Whereas the modalities of remedies can be governed by the terms and conditions, the principle of fair compensation should always subsist.

Sometimes, specific warranties can be given for marketing reasons, in view of certain sensitivities of categories of consumers. E.g. warranties regarding sustainable production of goods, or sustainable accommodation in hotels, or other eco-related, health-related or ethical warranties.

In relation to the sale of second-hand goods or auctioned goods, the warranties are usually less stringent, since the price may be lower than for new products and the consumer accepts a certain risk of deterioration.

## 10. Delivery

The issues relating to delivery are crucial for a smooth shopping experience of consumers and smooth delivery is one of the crucial factors for the development of e-commerce. The liability risks of merchants delivering too late or erroneously, must be balanced with the need of consumers to feel themselves comfortable enough in this respect, to order online. The possibility to track the journey of their ordered parcel online can be comforting for consumers; this tracking possibility is usually provided by the shipping company.

*"We will ship and deliver the purchased products to the delivery address that you have specified when you completed the order.*

*[We do not provide international shipping][to the following countries: ...]. / [We only ship to the following countries: ...]*

*The lead times for the delivery are indicated here. These times are approximate only. In case delivery does not take place within the indicated timeframe, you must contact our consumer service and we will try to find out.*

*We will be liable, and you are entitled to terminate the contract and obtain a full refund, if delivery does not take place within 30 calendar days after your order, unless we have agreed on a longer lead time.*

*For larger objects, please check the measurements of the product and the packaging if indicated, and check whether it will fit in an elevator, door, path or any other space. You will be responsible for such verifications.*

*(in case of delivery to a physical address :) We are entitled to hand over the package to any person available at the destination address who signs the delivery note and who declares, by signing, being authorised to take the delivery. We will not be liable if such person has not been authorized by you to accept the delivery.*

*If no person is present or willing to receipt the delivery, we will ..... (please provide the applicable option, such as delivery to a collection point of the shipping company).*

*The goods are at your risk once they are in your possession or in the possession of someone nominated by you. "*

It is possible to create a separate web page for the terms of the delivery, with a separate link on the homepage, especially if there are many options regarding destination countries, the expected times of delivery and shipment modes. That would make finding this information easier for the consumer and may reduce the volume of the terms and conditions.

The lead times for delivery can be indicated as indicative only, and not binding. The trader can specify that he will not be liable for longer lead times. However, it must be clear that this is an important aspect of competition between traders on the market, and it must be clear that a consumer cannot be forced to wait forever on his delivery.

Article 58 of the E-commerce and transactions Law states:

“Unless the service provider and the consumer agree on another period for delivery or contract performance, the consumer may terminate the contract with a service provider where delivery or other performance of the contract is delayed for a period exceeding thirty (30) days and shall be entitled to a refund to any payments made by him/her under the contract for the products, services or other contract performance affected by this delay.

A consumer shall have no obligation to pay for any goods, products or services that were not ordered by him/her nor pay for the cost of returning such goods including any goods or products delivered to the consumer by the service provider by mistake.

A service provider shall have an obligation to notify the consumer of any delay or other difficulties experienced by it that have substantial effect on the contract performance.”

Although it seems reasonable that the law requires a delivery at least within 30 days, there could be situations where difficulties might arise, e.g. where products are not in stock and must be ordered by the merchant. In that case, it is necessary to state a more flexible delivery period. The law accepts contractual arrangements of this kind.

Products that are damaged or lost during transportation should fall under the liability of the merchant, who should ensure that he is covered by a claim against the transporter or by a reliable insurance company. However, the merchant should examine the terms and conditions of transportation organizations, which may limit their liability considerably (e.g. the terms and conditions of Q-Post).

In B2B situations, the applicable INCO terms will indicate who takes the risk for the loss of goods, or damages, and at which point during the shipment (e.g. ex works (EXW), FOB...).

## **11. Inspection at Delivery**

### **Suggested clause:**

*“You are advised to inspect immediately the products at the time of delivery, and if that is not possible, at least as soon as is practicable.*

*If you would discover a defect or non-conformity for which you believe that we are accountable, you must notify us within .... days, failing which you will be deemed to have accepted the sold goods.”*

This provision was already mentioned under the warranty clause (see above). It might be convenient to draft it under a separate heading, because it contains an important warning for the consumer, that may seem a bit ‘lost’ if it is included under the heading ‘warranty’.

This clause is in line with article 458 of the Qatar Civil Code.

## 12. Right to Withdraw

We suggest the following clause that gives the consumer a right to withdraw from the contract. The rights granted to the consumer are more protective for him than the legal rights (see below). A right to withdraw from the contract without a particular reason or justification is very important to boost consumer confidence in e-commerce transactions. The fact that the consumer cannot really have a "look and feel" of the product that he orders on the basis of a two-dimensional picture on a website sets him in a weak position vis a vis the seller. This handicap may be balanced via a realistic right to withdraw from the contract. The right to withdraw from the contract is different from the right to cancel the contract before shipment (as stated in clause 3) which acts more as a "cool-off" right for impulsive purchases. When the cool-off right is used, the goods must not be returned and the refund by the trader can be different.

*"After the shipment of the product and/or after the delivery of the product, you are entitled to cancel the purchase without a particular reason during fourteen (14) days, upon notification to us by e-mail or by registered mail.*

*You will return the product to us within 5 days after your notification that you want to withdraw, in its original package, and you will have to pay the return cost plus, if applicable, any taxes that will be due in case of import.*

*We do not accept the return of goods that are damaged or incomplete, with missing or damaged pieces, consumables, accessories or documentation.*

*If the conditions for withdrawal and return of the goods are fulfilled, we will refund the purchase price in accordance with our refund policy as stated further below.*

*The right to withdraw can only be applied to the entire order, including any free gifts that were part of the order, and cannot be applied to limited products of the order, unless we agree explicitly. This is especially true for products that could be purchased with certain advantages when they were purchased together.*

*The right to withdraw is not applicable to:*

- goods that are made according to your specifications or that are personalized according to your wishes;*
- books, magazines, computer games, music, software, tapes, CDs or DVDs or any other carrier with digital content, if the sealed package of such goods has been opened;*
- downloaded or mailed electronic files with digital content;*
- perishable goods which can deteriorate or expire rapidly;*
- the supply of sealed goods which are not suitable for return due to health protection or hygiene reasons and were unsealed after delivery;*
- the supply of goods which are, after delivery, according to their nature, inseparably mixed with other items."*

In case of a contract for the recurrent delivery of goods, it can be stated that the right to withdraw applies only after the first delivery. On the other hand, if multiple goods are ordered that are delivered separately, or in separate lots or parts, the terms and conditions can specify that the right to withdraw can be exercised until (14) days have passed since the last delivery.

A similar clause can be provided regarding the delivery of services, where the right to withdraw can be applied as long as the service has not been performed (entirely or partially), and within (...) days after the confirmation of the order, and where exclusions apply for:

- the provision of accommodation, transport of goods, car rental services, catering or services related to leisure activities if the contract provides for a specific date or period of performance;*
- the provision of a service where the service has already been performed or started.*

**Note:**

Article 57 of the E-commerce and Transactions Law states:

“Unless the parties agree otherwise, the consumer shall have, where contracts have been concluded by electronic communications, the right to rescind or terminate the contract within three (3) days from the date of entering into the contract as long as the service provider does not fully implement the contract in a manner that serves the purpose of the contract during that time and the consumer does not use the goods or products which he/she receives nor receive any benefit or value from them. ”

The legal requirements are thus less than what we suggest in this guideline. This is a short period during which the consumer can withdraw from the contract. The three days start as from the moment of the conclusion of the contract, not as from the receipt of the good. Thus, the rule does not provide an opportunity to withdraw from the contract when the consumer is disappointed as he receives a product that he could not ‘see or feel’ before. It is merely a cool-off period for impulsive purchases. This is a useful protection, but not the best consumer protection.

It is a better practice in view of consumer confidence, to regard the right to withdraw as a possibility to withdraw from the contract after receipt of the good, in order to balance the rights of a consumer who has only seen a two-dimensional picture of a product on a website without actually having a possibility to review the product itself. The right of withdrawal should restore this imbalance. The possibility to return a good that was a mistake, even if it is not defect, is regarded as an important safeguard for consumers in order to boost consumer confidence in e-commerce.

Several web shops in Qatar have applied this principle in order to provide the consumers with a better protection and to compete with consumer-friendly or international websites...

In order to streamline or facilitate the process of the right to withdraw, the merchant may post a model form for the right to withdraw on his website that may ensure that all relevant data are filled in by the consumer.

### **13. Refund Policy**

The refund policy contains a summary of the refund options that may occur in relation to situations governed by different clauses (defect products, right to withdraw).

*“If you are entitled to a refund, we will refund you according to the following principles:*

- *(a) in case of returned products, after a correct use of the right to withdraw (clause 12): we will refund the purchase price within ... days after the receipt of intact and complete products, minus any specific delivery costs if you required special delivery and minus import taxes if we must pay these.*
- *(b) in case of defective or otherwise non conform products that cannot be repaired nor replaced within the warranty period: under similar conditions as in (a); in case of use during a certain period of time: possibly minus a use compensation;*
- *(c) in case of products that are damaged or lost during transportation to your destination address: full refund;*
- *(d) in case of a termination of a service contract due to changes imposed by us: refund of a pre-paid price in proportion to the period of non-use (pro rata).*

*Any refund for products or services that have been purchased under promotions, will result in a refund of the promotional price only.”*

## 14. Intellectual Property

The following clause will protect the intellectual property related to the products and services. In the Website Use Terms, we have included a clause that protects the intellectual property related to the content of the website as such.

*"You are not permitted to reproduce, duplicate, copy, capture, sell, resell, or commercially exploit any portion of our goods or services, without our prior written permission.*

*You are not permitted to remove any copyright notice or trademark.*

*Purchased software may include End User License Agreement or other types of licenses that contain conditions and limitations of use; you must verify such terms when you install and use the software. "*

### More specific for streaming services:

*"You shall not, and shall not enable others, directly or indirectly, to:*

- Download, reproduce, capture, distribute, modify, display, perform, publish, create derivative works from, offer for sale or in general use otherwise than as provided in these terms and conditions any content that is obtained through the subscription services;*
- Circumvent, remove, alter, deactivate any of the content protections in the subscription services; use any robot, spider, scraper or other automated means to access, extract or keep the content of the services; decompile, reverse engineer, or disassemble any software or other digital products accessible via the services, nor manipulate any services or the content thereof.*

*We reserve the right to forthwith terminate, suspend or restrict access to the subscription services if you infringe on these provisions and engage in any of the mentioned acts or in illegal or fraudulent use of the services."*

## 15. Liability for Products or Services

The following clause will govern the situation where the consumer or a third party suffers damage caused by a purchased product or service. This does not include damage caused by the website as such (e.g. because of erroneous information on the website that causes damage, or transferred malware), which is governed by the Website Use Terms. The issue of damage caused by products is also different from the warranty for defective products or services, as described above under nr. 9. The warranty governs the frustration of not being able to use a product or services and thus the right to repair, replace or return it. It is focused on the usefulness of the product or service in itself. The current liability clause, however, focuses on additional damage caused by a product or service, e.g. physical damage caused by an exploding battery of a purchased product or damage caused to a child by a toy that was unfit. A possible clause is the following:

*"We will never be liable for any damage caused by our products or services other than personal damage to your health or your personal belongings, as well as that of your household; we will never be liable for any moral or commercial damage, nor for loss of opportunities.*

*In case of liability for products causing damage, we will not be liable if you can file a claim against the manufacturer or importer of the product directly, If we would be held liable notwithstanding our disclaimer we will only be liable up to the maximum liability assumed by the manufacturer or importer, and all disclaimers and exclusions expressed by the manufacturer or importer will apply to us as if these were formulated by us.*

*In case our product contains a defect that creates a danger or risk to the health or safety of consumers, we will respect the legal framework for product recalls<sup>7</sup>, and we will inform the market about the risks as the Law requires. If you would have purchased such product, we ask you to follow the instructions for the return or repair of such product.*

*We will not be liable for damage caused by an incorrect use or maintenance of a product, by an infringement on the conditions for purchase or any instructions, warnings, age restrictions, or modifications to a product that were not approved by us."*

Moral damage or loss of opportunities are unpredictable. Suppose that a woman buys a wedding dress and that it cannot be used on the wedding day because of a defect. Suppose that a person buys a video camera in particular to film a honeymoon dream travel, but it doesn't work because of a defect. Would it be fair to exclude the moral damage that the consumer may suffer? Not from the subjective point of view of the consumer, but probably from the point of view of the merchant for whom the financial consequences may be out of proportion if these are compared to the purchase price. The fairness of such limitations of liability must be regarded in view of the particular business (some business include certain risks by nature), as well as the attitude of insurance companies in relation to the risks.

Article 3 of the Consumer Protection Law states: The consumer shall be entitled to fair compensation for any property or financial damages sustained by him as a result of the purchase or use of commodities and services. Any agreement contrary to the aforesaid shall be deemed null and void. The Terms and Conditions may thus govern some modalities concerning this liability, but cannot totally exclude a fair compensation. The 'red line' between what is allowed and what is not allowed will have to be decided by case law.

Some possible additional clauses for **streaming services**:

*"All content transmitted or made available through our services is the sole responsibility of the person from which the content originates. We do not control any third party content that is contained in the services and we do not assume any liability for the program scheduling, delivery, performance, accuracy, reliability, integrity, legality, or ethical acceptability of any third party content.*

*We are entitled, but not obligated, to block or to remove any content which may be in our sole opinion defamatory, offensive, indecent, illegal or infringing on intellectual property rights, or otherwise harmful."*

## **16. Exceptional Circumstances**

According to article 171,2 of the Qatar Civil Code, no party is considered liable if it cannot execute its obligation or if the execution has become so burdensome that he risks a major loss, due to an exceptional event that could not be anticipated. E.g. in case of natural disaster or political circumstances caused by foreign authorities, increases of certain foreign taxes etc.

*"We will not be liable if we cannot execute our obligation, or if the execution would be so burdensome or expensive that we would risk a major loss, due to an exceptional event that we could not reasonably anticipate. In such circumstance we will assess whether we can perform a delayed obligation, when the circumstances would allow us to perform in a reasonable manner."*

## **17. Changes to Our Services**

Changes to the products offerings are covered in the terms and conditions above; the impact of such changes is less important since it concerns case by case purchases where the consumer

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<sup>7</sup>See article 14 Consumer Protection Law 2008.

is supposed to review each purchase before placing his order. Changes to long-term service or subscription contracts are different, because the service provider and the consumer are bound by a contract of a fixed term, and the conditions of such services should normally not be modified unilaterally. However, in a one-to-many relationship it is often necessary to implement changes that must necessarily have an impact on all consumers. E.g. when a streaming service must cancel certain channels because licensing costs have become too expensive, or channels decide not to give a licence any longer. When a change has a possible negative impact, the consumer should be enabled to terminate the subscription and to receive a refund of the prepaid price in proportion to the time period that he cannot use the subscription (pro rata temporis). If the subscription is paid monthly, there is no need for a refund; then, monthly payments are no longer due.

*"We reserve the right to revise, alter or change the subscription services from time to time including pricing models, payment options, our offerings, channels ... Any changes to our services will apply no earlier than thirty (30) days after e-mail notification to you. If you do not agree with the proposed change, you are entitled to cancel your subscription by e-mail to our customer service or by registered mail within fifteen (15) days after our e-mail notification. You will then be entitled to a refund of any prepaid price pro rata the time period that you cannot use the services."*

## **18. Changes to the Terms and Conditions**

E-commerce is a business that is constantly in evolution. Thus, it is important that a merchant or service provider has sufficient flexibility to adapt the terms and conditions. Since his relationship with his customers is a one-to-many relationship, he can obviously not negotiate the terms and conditions with every customer separately, and he must modify the terms and conditions unilaterally. A general clause is the following:

*"We are entitled to update and modify these terms and conditions from time to time. The fact that the terms and conditions have been updated will be notified to you by e-mail or via an announcement on our website.*

*The new terms and conditions apply to any purchases after the date of application thereof.*

*You are encouraged to review the terms and conditions before every subsequent purchase and by indicating that you have read the terms and conditions before placing your order, you are deemed to have accepted these terms and conditions that are currently applicable.*

*You can always download a version of our terms and conditions.*

*In case of discussions about the applicable version of terms and conditions in a particular point in time, the applicable version that we keep in our database as valid at a particular point in time."*

The situation may be more complex in case of subscriptions or ongoing services during a fixed contract term, e.g. for 1 or 2 years. Above (nrs. 6 and 17) we have already explained about a modification of the price of ongoing services or other important changes of the services during a service contract for a fixed period of time (e.g. a subscription to listen to streaming music with monthly payment). In such case, the consumer should keep the existing price until the end of the subscription or should be able to terminate the subscription if he does not agree with the price increase or any other important change. The same problem may occur when other terms or conditions would be modified that may have a negative impact on the position of the consumer. The former clause may have an addition stating:

*"If you do not agree with the modification of the terms and conditions and if the modification has really a negative impact on your use of the services, you may terminate the current contract and in case of prepaid services, you will receive a refund in proportion with (pro rata) the period of time that you could not use the services."*

## **19. Communications**

### **Model Clause:**

*"You may contact us using the telephone number, e-mail address, PO Box or address presented here.*

*We may contact you at the telephone number, e-mail address or address indicated by you at the time of your registration.*

*We have the right to send you commercial communications by e-mail if you have given specific consent for such use of your data. You will be able to withdraw your consent and to opt out of such communications as is stated in our Privacy Policy."*

## **20. Complaints**

This clause provides a possibility for internal handling of consumer complaints. If internal handling does not result in an acceptable solution, the resulting complaint or dispute can be submitted to the competent authority, the court or, if available, arbitration centers.

*"In case of complaint, we urge you to contact our customer service first at ..... (e-mail, telephone). Customer service is available on business days during the business hours (...), and in the following languages: ..... We will review your complaint in good faith and will try to find an acceptable solution if your complaint seems justified.*

## **21. Various**

### **Various clauses can be inserted, such as:**

*"If any clause of these terms and conditions is deemed unenforceable or will become unenforceable due to new legislation, it will be deemed null and void, and you and us will be deemed to accept a clause that is valid and is as close as possible to the content of the unenforceable clause."*

*"You are not entitled to transfer any rights, any obligation, or any subscription to a third party without our prior written consent".*

## **22. Applicable Law and Disputes**

It is important for merchants in Qatar operating in an international context, that they can ensure that Qatar Law applies and that court cases are centralised in one specific court, in Qatar.

An exclusive court will guarantee that the applicable terms and conditions and the applicable rules are uniformly applied, and that fragmentation due to different interpretations by different jurisdictions is avoided. This is important for the legal security of a trader.

Furthermore, a trader should avoid being sued in different courts, e.g. in different states of the GCC. A fragmentation of jurisdiction is costly and confusing.

Therefore, it is preferable to include provisions in the terms and conditions that guarantee the exclusive jurisdiction of the Court of Qatar and the application of the Law of the State of Qatar.

Within the GCC, the existing or future treaties may specify whether such a choice is valid or not. Bilateral agreements with other countries may also contain similar rules.

**Suggested Clause:**

*"Our contractual relationship, and the validity, interpretation and execution of these Terms and Conditions is governed by the Law of Qatar.*

*[The Court of Qatar] will have [exclusive] jurisdiction regarding disputes based on our contractual relationship. "*

From the point of view of boosting consumer confidence, it is important that a consumer may file a claim in court, in an arbitration centre, or via a similar ADR-mechanism that is not expensive, neutral and may decide within a short period of time. As these transactions may concern low values from financial point of view, there should be a proportion between the costs and difficulties involved in starting a procedure and the financial value that is at stake.

The Arbitration Law of 2017 may in time lead to arbitration procedures, but such is currently not yet implemented for e-commerce disputes.

# **VI. Privacy Policy**

## A. Introduction

The model Privacy Policy presented here below, is entirely drafted as model clauses. Comments are provided in footnotes.

## B. Model Privacy Policy

This privacy policy ("Privacy Policy") governs the processing of your personal data as part of your use of the Website Name.qa (the "Website") and its associated services (hereinafter together referred to as "Services"). This processing is undertaken by Name Ltd. ("we", "us", "our") in compliance with the Law No. 13 of 2016 Promulgating the Protection of the Privacy of Personal Data Law.

By using the Website and Services, you acknowledge that you have read this Privacy Policy carefully and that you agree with it without reservation. We reserve the right to modify, change or amend the Privacy Policy at our own discretion and from time to time. Such modification, change or amendment shall be communicated via the Website.

Please note that as part of the Website and/or Services, especially those provided via the Website, we may use so-called cookies. Cookies are small text files that are stored on a device's hard drive and contain certain information and sometimes personal data. For more information on the way we uses cookies, refer to the section on cookies below.

### 1. What We Process

1.1 When using the Website and Services, you consent to the collection of personal data pertaining to you. Such personal data include:

When using the Website: [ADD]<sup>8</sup>

When using our Services: [ADD]<sup>9</sup>

When contacting us (via the Website, e-mail, telephone, social media channels, etc.): [ADD]<sup>10</sup>

1.2. In principle, we obtain the above mentioned personal data directly from you. If, however, you choose to register via a social media account (e.g. Facebook or Google Plus), these data will be collected from your social media profile. We advise that you consult the privacy policy of your social media service provider to ascertain what data is processed by your social media service provider when you use the social media login feature. We will not send any of the personal data you provide via the Website to social media service providers unless you consent to it.

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<sup>8</sup>For Example:

- technical information associated with the device you use, such as your IP address, browser type, geographical location and operating system;
- information concerning your browsing behavior, such as how long you visit, what links you click on, what pages you visit and how many times you visit a page.

<sup>9</sup>For example:

- your contact details and basic identity such as your name, e-mail address and country of residence;
- device-specific details which may be used to identify you;
- physical characteristics such as [...];
- health related details such as [...];
- behavioral details such as [...].

<sup>10</sup>For example:

- the basic identity information you provide us with, such as name, e-mail address, postal address, telephone number, the company you work for, your function.;

## **2. Why We Process Personal Data.**

- 2.1 We may process your personal data to provide you in a personalized and efficient way with the information, products and services that you request, either via the Website, e-mail, telephone or social media channels.
- 2.2 We may process your personal data for direct marketing purposes, i.e. to be able to provide you with targeted communications, promotions, offerings and other advertisements from us or our selected partners. Note, however, that we will obtain your prior consent before doing so<sup>11</sup>. You will have the right to opt out of e-mail communications, using the link that is provided within the marketing e-mail.
- 2.3 We may process your personal data to perform statistical analyses so that we may improve our Website and/or Services, or to develop new products and/or services.
- 2.4 We may transfer your personal data to the financial institution or payment service provider to allow your financial institution and the payment service provider to comply with their legal obligations.
- 2.5 We may process your personal data for informing any third party in the context of a possible merger with, acquisition from/by or demerger by that third party, even if that third party is located outside Qatar.
- 2.6 If and when your registration with or use of our Website and/or Services can be considered (a) a violation of the terms or the intellectual property rights or any other right of a third party, (b) a threat to the security or integrity of the Services, (c) a danger to the Website and/or Services or any of our or our subcontractors' underlying systems due to viruses, Trojan horses, spyware, malware or any other form of malicious code, or (d) in any way hateful, obscene, discriminating, racist, slanderous, spiteful, hurtful or in some other way inappropriate or illegal, we may process your personal data for the preservation of the legitimate interest of us, our partners or a third party.
- 2.7 Your personal data may be transferred to the police or the judicial authorities as evidence or if there are justified suspicions of an unlawful act or crime committed by you through your registration with or use of the Website and/or Services.

## **3. To Whom We Send Personal Data**

- 3.1 We do not send your personal data in an identifiable manner to any third party if this is not required to provide the Services to you, without your consent to do so.
- 3.2 We may rely on third party processors to provide you the Services. We will ensure that third party processors are only allowed to process your personal data on behalf of us upon instruction of us. We warrant that all third party processors are selected with due care and are trained to be aware of the safety and integrity of your personal data.

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- the content of your communication and the technical details of the communication itself (with whom you correspond at our end, date and time, etc.);
  - your preferences regarding receiving our e-mail communications, such as newsletters, promotions, advertisements, etc., if you have chosen to receive such communications and you have indicated your preferences in your settings.
  - publicly available information of your profile on social media channels;
  - any other personal data you choose to provide to us.

<sup>11</sup>This is required pursuant to Qatar data protection legislation.

- 3.3 We may send anonymized and/or aggregated data to other organizations that may use those data for improving products and services as well as tailor the marketing, displaying and selling of those goods and services.

#### 4. Where We Process Personal Data

- 4.1 We may transfer your personal data to organizations outside of Qatar. Should such transfer take place, we will ensure that there are appropriate safeguards in place to ensure the safety and integrity of your personal data as well as all rights with respect to personal data you might enjoy under applicable mandatory law<sup>12</sup>.

#### 5. How We Process Personal Data

- 5.1 We will process your personal data in a lawful, fair and transparent manner. We will do our utmost best to keep the personal data accurate and up to date.
- 5.2 For processing your personal data under the conditions outlined in this Privacy Policy, we obtain your consent as a result of you using our Website and/or Services. We may also process your personal data for the preservation of the legitimate interests of us, our selected partners or a third party.
- 5.3 We warrant that, in case the processing includes personal data of a special nature such as the racial origin, children, health condition, physical conditions, psychological condition, religious beliefs, spousal relation, and/or criminal crimes, we have obtained the permission from the competent department within the Ministry of Transport and Communication as per the measures and controls decreed by the Minister of Transport and Communication<sup>13</sup>.
- 5.4 We do our utmost best to process only those personal data which are necessary to achieve the purposes listed in this Privacy Policy. Your personal data are only processed for as long as needed to achieve the purposes listed in this Privacy Policy or up until such time where you withdraw your consent for processing them<sup>14</sup>. Note that withdrawal of consent may imply that you can no longer use the whole or part of the Website and/or Services. We will delete your personal data if you delete/close your profile, unless a legal or regulatory obligation or a judicial or administrative order prevents us to do so<sup>15</sup>.
- 5.5 We will take the appropriate technical and organizational measures to keep your personal data safe from unauthorized access or theft as well as accidental loss, tampering or destruction. Access by our personnel or personnel of our third party processors will only be on a need-to-know basis and subject to strict confidentiality obligations. You understand, however, that safety and security are only best efforts obligations, which can never be guaranteed. In order to keep your personal data secure, we comply with the privacy policies established by the competent department within the Ministry of Transport and Communication.

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<sup>12</sup>Qatar data protection legislation states that the controller shall not take any measures that limit the cross border personal data flow. However, as a matter of transparency and good practice, companies are encouraged to include a list of countries whom the data is sent to.

<sup>13</sup>This is required pursuant to Qatar data protection legislation.

<sup>14</sup>As a matter of good practice, you should determine how long you will keep personal data, or you should explain in plain language the criteria used to determine the storage period.

<sup>15</sup>Delete if the user cannot create an account via the website.

## 6. Your Rights

- 6.1 You have the right to request access to, as well as a copy of, all personal data processed by us pertaining to you. Subsequent requests for access addressed to us that are manifestly submitted for causing nuisance or harm to us, will not be dealt with. Please note that the provision of any copies may be subject to the payment of a reasonable administrative fee.
- 6.2 You have the right to ask that any personal data pertaining to you that are inaccurate, are corrected free of charge. [In any case, you can correct a large part of these data yourself via your profile or account settings.] If a request for correction is submitted, such request shall be accompanied of proof of the flawed nature of the data for which correction is asked.
- 6.3 You have the right to withdraw your earlier given consent for processing your personal data. Specifically for direct marketing e-mails that we send to you with commercial information and offers, you will have a possibility to opt out (refuse) to receive such further e-mails by following a link that is provided within the e-mail.

You have the right to request that personal data pertaining to you be deleted if they are no longer required in light of the purposes outlined in article 2 or if you withdraw your consent for processing them. However, you need to keep in mind that a request for deletion will be evaluated by us against legal or regulatory obligations or administrative or judicial orders which may contradict such deletion.

- 6.4 You have the right to oppose the processing of personal data if you are able to prove that there are serious and justified reasons connected with your particular circumstances that warrant such opposition. However, if the intended processing qualifies as direct marketing, you have the right to oppose such processing free of charge and without justification.
- 6.5 If you wish to submit a request to exercise one or more of the rights listed above, you can send an e-mail to [add e-mail address here, or perhaps some other contact method]. Such request should clearly state which right you wish to exercise and the reasons for it if such is required. It should also be dated and signed, and accompanied by a digitally scanned copy of your valid identity card proving your identity. We will promptly inform you of having received this request. If the request proves valid, we shall honor it as soon as reasonably possible and at the latest thirty (30) days after having received the request. If you are not satisfied with the outcome provided by us, you may file a complaint with the competent department within the Ministry of Transport and Communication.

## 7. Cookies

7.1 You can avoid cookies being placed by configuring your browser as such. Guidelines as to how to do this can be found here:

- Internet Explorer :  
<http://windows.microsoft.com/en-gb/windows7/Block-enable-or-allow-cookies>
- Microsoft Edge:  
<http://windows.microsoft.com/en-gb/windows-10/edge-privacy-faq>
- Chrome:  
<https://support.google.com/chrome/answer/95647?hl=en>
- Firefox:  
<https://support.mozilla.org/en-US/kb/enable-and-disable-cookies-website-preferences>
- Safari:  
[https://support.apple.com/kb/PH19214?viewlocale=en\\_US&locale=nl\\_BE](https://support.apple.com/kb/PH19214?viewlocale=en_US&locale=nl_BE)

However, not allowing cookies when visiting the Website may cause certain or all features of the Website to stop working properly.

7.2 When you visit our Website , we place a number of cookies:

Name	Placement	Purpose	Storage Period
_ga _gat	By Google Analytics	With Google Analytics, we monitor the behavior of visitors in order to improve user experience with the insight that this provides. Specific information on what each of these cookies do and how long they remain on your computer, can be found <a href="#">here</a> .	Max. 2 years
etc.	etc.	etc.	etc.

7.3 You may at all times withdraw your consent with our use of cookies. To exercise this right, it suffices to delete the cookies which have been placed on your device. To do so, you are kindly asked to refer to the appropriate instructions of your browser manufacturer, as listed above.

# **VII. Appendix 1: List of Sources**

- OECD Recommendation “Consumer Protection in E-commerce” 2016
- United Nations Guidelines for Consumer Protection, UNCTAD, 2016
- BEUC, European Consumer Organization, A European Model Contract for e-Commerce Business to consumer sales, 2011
- European Commission’s Public consultation on contract rules for online purchases of digital content and tangible goods, BEUC response, 2015
- EU Directive on Unfair terms in consumer contracts 93/13
- EU Consumer rights directive 2011/83
- EU E-commerce directive 2000/31
- EU Consumer sales directive 99/44 (and current revision)
- EU Data protection directives and Regulation.

**State of Qatar Legislation:**

- E-commerce and Transactions Law no 16 of 2010
- Consumer Protection Law no 8 of 2008
- Personal data privacy law no 13 of 2016
- Cybercrime Law no 14 of 2014
- Arbitration Law no 2 of 2017
- Civil Code promulgated 2004
- Trading Regulation Law no 27 of 2006.

