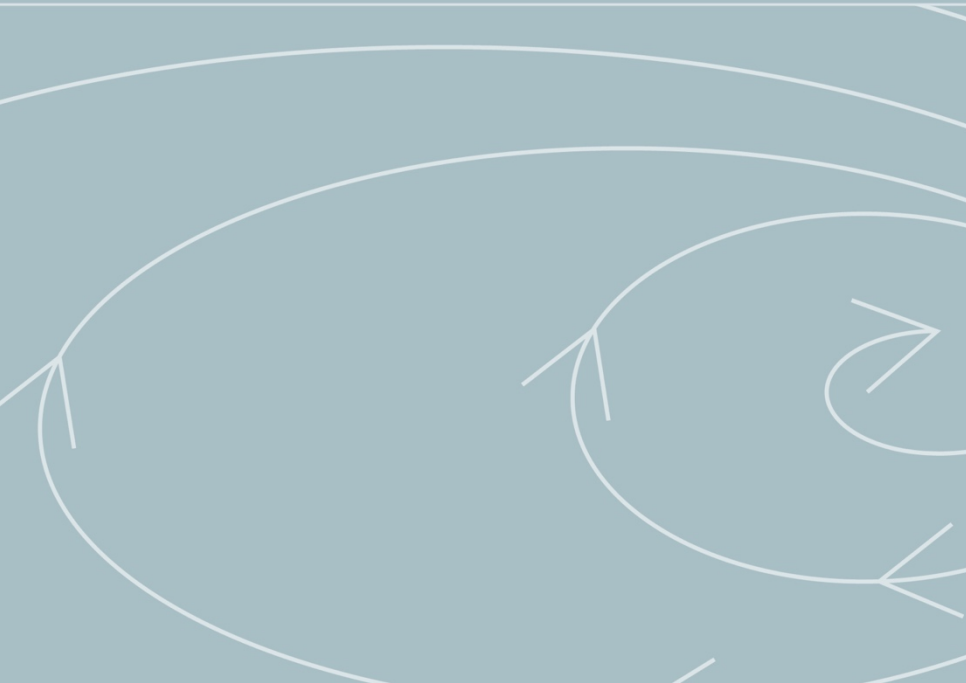


TERMS & CONDITIONS OF SALE

Goods & Services



1 Interpretation.

1.1 The following definitions and rules of interpretation apply in these Conditions.

1.2 Definitions:

Ancillary Services:	means any services and/or support requested by the Customer from RS Aqua in relation to any activities not directly related to the sale of Goods and/or Services, including but not limited to: repairs, servicing, data analysis, system investigation, optimisation etc.
Business Day:	a day other than a Saturday, Sunday or public holiday in England, when banks in London are open for business.
Control:	has the meaning given in section 1124 of the Corporation Tax Act 2010, and the expression change of Control shall be construed accordingly.
Commencement Date:	has the meaning given in clause 2.2 and as set out on the Sales Order Acknowledgement.
Conditions:	these terms and conditions as amended from time to time in accordance with clause 16.8.
Contract:	the contract between RS Aqua and the Customer for the supply of Goods and/or Services in accordance with these Conditions and the Order and including any schedules to these Conditions.
Currency:	means the currency in which RS Aqua is to be paid as set out on the Sales Order Acknowledgement
Customer:	the person or firm who purchases the Goods and/or Services from RS Aqua as set out on the Quotation and corresponding Sales Order Acknowledgement.
Deliverables:	the deliverables set out in the Sales Order Acknowledgement produced by RS Aqua for the Customer including any Software.
Delivery Date:	means as set out on the Sales Order Acknowledgement (delivery dates are estimates only and not of the essence of the Contract).
Delivery Location:	has the meaning given in clause 4.2.
Force Majeure Event:	has the meaning given to it in clause 15.
Goods Specification:	any specification for the Goods, including any relevant plans or drawings, that is confirmed in writing by RS Aqua in the Sales Order Acknowledgement.
Goods:	the goods (or any part of them) set out in the Sales Order Acknowledgement forming part of the Deliverables.
Intellectual Property Rights:	patents, utility models, rights to inventions, copyright and neighbouring and related rights, moral rights, trade marks and service marks, business names and domain names, rights in get-

	up and trade dress, goodwill and the right to sue for passing off or unfair competition, rights in designs, rights in computer software, database rights, rights to use, and protect the confidentiality of, confidential information (including know-how and trade secrets), and all other intellectual property rights, in each case whether registered or unregistered and including all applications and rights to apply for and be granted, renewals or extensions of, and rights to claim priority from, such rights and all similar or equivalent rights or forms of protection which subsist or will subsist now or in the future in any part of the world.
Order or Order Form:	the Customer's order for the supply of Goods and/or Services, as set out in the Customer's written acceptance of RS Aqua's Quotation, or Sales Order Acknowledgement issued by RS Aqua, as the case may be.
Order Reference Number:	means RS Aqua's internal reference number on the Sales Order Acknowledgement.
Quotation:	RS Aqua's written quotation for Goods and Services to the Customer.
RS Aqua Materials:	has the meaning given in clause 8.1.8.
RS Aqua:	R.S. AQUA LIMITED , incorporated and registered in England and Wales with company number 01661817 whose registered office is at Abbey House Hickleys Court, South Street, Farnham, Surrey, England, GU9 7QQ.
Sales Order Acknowledgement:	RS Aqua's written sales order acknowledgement for Goods and Services to the Customer.
Service Specification:	the description or specification for the Services provided in writing by RS Aqua to the Customer in the Sales Order Acknowledgement.
Services:	the services, including: (a) the Ancillary Services; and (b) the Deliverables, to be supplied by RS Aqua to the Customer as set out in the Service Specification.
Shipping Terms:	the relevant shipping terms under which Goods are to be sent to the Customer in accordance with the appropriate Incoterms 2020 specified in writing by RS Aqua to the Customer in the Sales Order Acknowledgement.
Software:	any software which forms part of the Deliverables, and which is all licensed or sub-licensed by RS Aqua to the Customer under the Software Licence Terms.
Software Licence Terms:	any software provided by RS Aqua as part of the deliverables is licensed / sub-licensed to the Customer strictly on the following basis:

	<p>a. The Software is provided “as is” and “as available” and has not been developed and/or configured specifically for the Customer.</p> <p>b. The licence granted is a non-exclusive, non-transferrable limited licence to use the Software (in executable form only) for the duration of the provision of the Services or limited to the duration for which the Customer continues to pay the licence fees and shall terminate automatically upon expiry of either.</p> <p>c. The only warranty given is that the Software will comply with functionality advised from time to time by RS Aqua in its published specification provided that it is run on hardware that meets the minimum specifications advised from time to time by RS Aqua. The Customer is responsible for ensuring that its hardware and software infrastructure (including telemetry requirements) is kept up to date, at its own cost, to meet the operating conditions for the Software.</p> <p>d. Unless otherwise agreed, licence fees shall be payable annually in advance.</p> <p>e. The Software licence fees are due in full, on receipt of the Software regardless of use. Failure to pay licence fees shall result in the immediate termination of the licence to use the software without further need for notice.</p> <p>f. The Customer is not permitted to copy the Software or operate it on behalf of any third party or modify it or reverse engineer it, save as permitted by law.</p> <p>g. The Customer shall keep RS Aqua and its licensors indemnified in respect of any breach of these licence conditions.</p> <p>h. The Customer accepts all responsibility for how it uses, or chooses to act on the results of its use of, the Software.</p>
VAT:	value added tax or any equivalent tax chargeable in the UK or elsewhere.

- 1.3 Clause, Schedule and paragraph headings shall not affect the interpretation of these Conditions.
- 1.4 A **person** includes a natural person, corporate or unincorporated body (whether or not having separate legal personality) and that person's legal and personal representatives, successors and permitted assigns.
- 1.5 Any Schedules form part of these Conditions and shall have effect as if set out in full in the body of these Conditions and any reference to these Conditions includes the schedules.

- 1.6 A reference to a **company** shall include any company, corporation or other body corporate, wherever and however incorporated or established.
- 1.7 Unless the context otherwise requires, words in the singular shall include the plural and in the plural shall include the singular.
- 1.8 Unless the context otherwise requires, a reference to one gender shall include a reference to the other genders.
- 1.9 A reference to a statute or statutory provision is a reference to it as amended, extended or re-enacted from time to time.
- 1.10 A reference to a statute or statutory provision shall include all subordinate legislation made from time to time under that statute or statutory provision.
- 1.11 A reference to **writing** or **written** includes email.
- 1.12 Any obligation on a party not to do something includes an obligation not to allow that thing to be done.
- 1.13 A reference to these Conditions or to any other agreement or document referred to in these Conditions is a reference to these Conditions or such other agreement or document as varied or novated (in each case, other than in breach of the provisions of these Conditions) from time to time.
- 1.14 References to clauses and Schedules are to the clauses and Schedules of these Conditions and references to paragraphs are to paragraphs of the relevant Schedule.
- 1.15 Any words following the terms **including, include, in particular, for example** or any similar expression shall be construed as illustrative and shall not limit the sense of the words, description, definition, phrase or term preceding those terms.

2 Basis of contract.

- 2.1 The Order constitutes an offer by the Customer to purchase Goods or Services in accordance with these Conditions.
- 2.2 The Order shall only be deemed to be accepted when RS Aqua issues written acceptance of the Order / Sales Order Acknowledgement at which point and on which date the Contract shall come into existence (**Commencement Date**).
 - 2.2.1 Once an Order has been accepted by RS Aqua as set out in clause 2.2 above, the Customer shall not be permitted to make any amendments to the Order without RS Aqua's written agreement; and
 - 2.2.2 If the Customer wishes to cancel an Order it can only do so with RS Aqua's written agreement and subject to paying: (1) all RS Aqua's associated costs incurred in such cancellation; which shall include and not be limited to (2) any re-stocking fees; and in each case a 15% administration charge (of the costs incurred) shall be added to any costs payable.

- 2.3 Any samples, drawings, descriptive matter or advertising issued by RS Aqua and any descriptions of the Goods or illustrations or descriptions of the Services contained in RS Aqua's catalogues or brochures are issued or published for the sole purpose of giving an approximate idea of the Services and/or Goods described in them. They shall not form part of the Contract nor have any contractual force.
- 2.4 These Conditions apply to the Contract to the exclusion of any other terms that the Customer seeks to impose or incorporate, or which are implied by law, trade custom, practice or course of dealing.
- 2.5 Any Quotation given by RS Aqua shall not constitute an offer, and is only valid for a period of one calendar month from its date of issue, unless superseded by a quote validity term defined on the Quotation.
- 2.6 All of these Conditions shall apply to the supply of both Goods and Services except where application to one or the other is specified.
- 3 Goods.**
- 3.1 The Goods are described in the Goods Specification.
- 3.2 To the extent that the Goods are to be manufactured in accordance with a Goods Specification supplied by the Customer, the Customer shall indemnify RS Aqua against all liabilities, costs, expenses, damages and losses (including any direct, indirect or consequential losses, loss of profit, loss of reputation and all interest, penalties and legal costs (calculated on a full indemnity basis) and all other professional costs and expenses) suffered or incurred by RS Aqua arising out of or in connection with any claim made against RS Aqua for actual or alleged infringement of a third party's intellectual property rights arising out of or in connection with RS Aqua's use of the Goods Specification. This clause 3.2 shall survive termination of the Contract.
- 3.3 RS Aqua reserves the right to amend the Goods Specification if required by any applicable statutory or regulatory requirement, and RS Aqua shall notify the Customer in any such event.
- 4 Delivery of Goods.**
- 4.1 RS Aqua shall ensure that:
- 4.1.1 each delivery of the Goods is accompanied by a delivery note which shows the date of the Order, the Order Reference Number, the type and quantity of the Goods (including the code number of the Goods, where applicable), special storage instructions (if any) and, if the Order is being delivered by instalments, the outstanding balance of Goods remaining to be delivered; and
- 4.1.2 it states clearly on the delivery note any requirement for the Customer to return any packaging material to RS Aqua. The Customer shall make any such packaging materials available for collection at such times as RS Aqua shall reasonably request. Returns of packaging materials shall be at RS Aqua's expense.
- 4.2 In accordance with the Sales Order Acknowledgement:
- 4.2.1 RS Aqua shall deliver the Goods to the location set out in the Sales Order Acknowledgement or such other location as the parties may agree in writing (Delivery Location) at any time after RS Aqua notifies the Customer that the Goods are ready. Delivery of the Goods shall be completed upon transfer of the risk to the Customer in accordance with the Shipping Terms; or
- 4.2.2 The Customer shall collect the Goods from RS Aqua's premises as notified by RS Aqua or such other location as may be agreed in writing with the Customer (Delivery Location) within three Business Days of RS Aqua notifying the Customer that the Goods are ready. Delivery of the Goods shall be completed upon transfer of the risk to the Customer in accordance with the Shipping Terms.
- 4.3 Any dates quoted for delivery of the Goods are approximate only, and the time of delivery is not of the essence. RS Aqua shall not be liable for any delay in delivery of the Goods that is caused by: a Force Majeure Event; or delay by any courier; or as a result of any intervention, inspection, seizure or holding by any customs authority; or the Customer's failure to provide RS Aqua with adequate delivery instructions or any other instructions that are relevant to the supply of the Goods.
- 4.4 If RS Aqua fails to deliver the Goods, its liability shall be limited to refunding any payment made by the Customer in respect of those Goods. RS Aqua shall have no liability for any failure to deliver the Goods to the extent that such failure is caused by a Force Majeure Event or the Customer's failure to provide RS Aqua with adequate delivery instructions for the Goods or any relevant instruction related to the supply of the Goods.
- 4.5 If the Customer fails to take or accept delivery of the Goods (as set out in clause 4.2.1) within three Business Days of RS Aqua first attempting to deliver the Goods, then except where such failure or delay is caused by a Force Majeure Event or by RS Aqua's failure to comply with its obligations under the Contract in respect of the Goods:
- 4.5.1 delivery of the Goods shall be deemed to have been completed at 9.00 am on the third Business Day following the day on which RS Aqua first attempted to deliver the Goods; and
- 4.5.2 RS Aqua shall store the Goods until delivery takes place, and charge the Customer for all related costs and expenses (including insurance).
- 4.6 If ten Business Days after the day on which RS Aqua notified the Customer that the Goods were ready for delivery the Customer has not taken or accepted delivery of them, RS Aqua may: (a) resell or otherwise dispose of part or all of the Goods and, after deducting reasonable storage and selling costs, account to the Customer for any excess over the price of the

Goods or charge the Customer for any shortfall below the price of the Goods; or (b) re-stock the Goods with RS Aqua's supplier and charge the Customer in relation to all costs associated with such re-stocking.

- 4.7 If RS Aqua delivers up to and including 5% more or less than the quantity of Goods ordered the Customer may not reject them, but on receipt of notice from the Customer that the wrong quantity of Goods was delivered, RS Aqua shall make a pro rata adjustment to the invoice for the Goods.
- 4.8 RS Aqua may deliver the Goods by instalments, which shall be invoiced and paid for separately. Each instalment shall constitute a separate contract. Any delay in delivery or defect in an instalment shall not entitle the Customer to cancel any other instalment.
- 4.9 Unless otherwise agreed in the Shipping Terms, RS Aqua shall have no liability to the Customer for any damage to or loss of the Goods whilst in transit to the Customer. Any damage to the Goods must be reported to RS Aqua and the courier in writing by the Customer within three days of delivery.
- 4.10 In the event of non-delivery of the Goods, this must be reported to RS Aqua and the courier in writing by the Customer within fourteen days of the date of advice of despatch.

5 Quality of Goods.

5.1 RS Aqua warrants that on delivery, and for a period equivalent to the duration of any OEM warranty available to RS Aqua in respect of such Goods, from the date of delivery (warranty period), the Goods (which shall under no circumstances include any consumables) shall:

- 5.1.1 conform in all material respects with their description and any applicable Goods Specification;
- 5.1.2 be free from material defects in design, material and workmanship; and
- 5.1.3 be of satisfactory quality (within the meaning of the Sale of Goods Act 1979).

5.2 Subject to clause 5.3, RS Aqua shall, at its option, repair or replace the defective Goods, or refund the price of the defective Goods in full if:

- 5.2.1 the Customer gives notice in writing during the warranty period within a reasonable time of discovery that some or all of the Goods do not comply with the warranty set out in clause 5.1;
- 5.2.2 RS Aqua is given a reasonable opportunity of examining such Goods; and
- 5.2.3 the Customer (if asked to do so by RS Aqua) returns such Goods to RS Aqua's place of business, or at RS Aqua's option to the manufacturer, at the Customer's cost.

5.3 RS Aqua shall not be liable for the Goods' failure to comply with the warranty in clause 5.1 if:

- 5.3.1 the Customer makes any further use of such Goods after giving a notice in accordance with clause 5.2;
- 5.3.2 the defect arises because the Customer failed to follow RS Aqua's (and/or the manufacturer's) oral or written instructions as to the storage, installation, commissioning, use or maintenance of the Goods or (if there are none) good trade practice;
- 5.3.3 the defect arises as a result of RS Aqua following any drawing, design or Goods Specification supplied by the Customer;
- 5.3.4 the Customer (directly or indirectly via any third party) alters or repairs or has altered or repaired such Goods without the written consent of RS Aqua;
- 5.3.5 the defect arises as a result of fair wear and tear, wilful damage, negligence, or abnormal working conditions; or
- 5.3.6 the Goods differ from their description or the Goods Specification as a result of changes made to ensure they comply with applicable statutory or regulatory standards.

5.4 Except as provided in this clause 5, RS Aqua shall have no liability to the Customer in respect of the Goods' failure to comply with the warranty set out in clause 5.1.

5.5 The terms of these Conditions shall apply to any repaired or replacement Goods supplied by RS Aqua and there shall be no extension to the original warranty period set out in clause 5.1.

6 Title and risk.

6.1 The risk in the Goods shall pass to the Customer on completion of delivery in accordance with the Shipping Terms.

6.2 Title to the Goods shall not pass to the Customer until RS Aqua receives payment in full (in cash or cleared funds) for the Goods and any other goods that RS Aqua has supplied to the Customer in respect of which payment has become due, in which case title to the Goods shall pass at the time of payment of all such sums; and

6.3 Until title to the Goods has passed to the Customer, the Customer shall:

- 6.3.1 store the Goods separately from all other goods held by the Customer so that they remain readily identifiable as RS Aqua's property;
- 6.3.2 not remove, deface or obscure any identifying mark or packaging on or relating to the Goods;
- 6.3.3 maintain the Goods in satisfactory condition and keep them insured against all risks for their full price on RS Aqua's behalf from the date of delivery;
- 6.3.4 notify RS Aqua immediately if it becomes subject to any of the events listed in clause 13.2.3 to clause 13.2.13; and
- 6.3.5 give RS Aqua such information as RS Aqua may reasonably require from time to time relating to:

- 6.3.5.1 the Goods; and
- 6.3.5.2 the ongoing financial position of the Customer.
- 6.4 At any time before title to the Goods passes to the Customer, RS Aqua may require the Customer to deliver up all Goods in its possession that have not been resold, or irrevocably incorporated into another product and if the Customer fails to do so promptly, enter any premises of the Customer or of any third party where the Goods are stored in order to recover them.
- 7 Supply of Services.**
- 7.1 RS Aqua shall supply the Services to the Customer in accordance with the Service Specification in all material respects.
- 7.2 RS Aqua shall use reasonable commercial endeavours to meet any performance dates for the Services specified in the Sales Order Acknowledgement, but any such dates shall be estimates only and time shall not be of the essence for the performance of the Services.
- 7.3 RS Aqua reserves the right to amend the Service Specification if necessary to comply with any applicable law or regulatory requirement, or if the amendment will not materially affect the nature or quality of the Services, and RS Aqua shall notify the Customer in any such event.
- 7.4 RS Aqua warrants to the Customer that the Services will be provided using reasonable care and skill.
- 7.5 **Non-warranty repairs:** Are ONLY accepted by RS Aqua on the following conditions:
 - 7.5.1 RS Aqua accepts no liability for the condition of any items sent to it or their condition whilst in RS Aqua's possession.
 - 7.5.2 Any items sent to RS Aqua are solely at the Customer's risk and cost of carriage and return. Items returned for repair should be sent carriage paid and clearly labelled with the Customer's name and address. Clear written instructions must be sent detailing the work required. RS Aqua is under no obligation to accept any items for repair but will consider any such items on a case by case basis.
 - 7.5.3 All effort in inspecting and reviewing any repair items will be chargeable on a time and materials basis, as will any disposal costs for items which are deemed to be beyond economic repair.
- 7.6 All Ancillary Services are carried out on a time and materials basis, normal working hours are: 09:00 hours to 17:00 hours (on Business Days only), any work carried out outside of these hours will incur additional charges. Any parts used will be charged at their standard list price.
- 8 Customer's obligations.**
- 8.1 The Customer shall:
 - 8.1.1 ensure that the terms of the Order and any information it provides in the Service Specification and the Goods Specification are complete and accurate;
 - 8.1.2 co-operate with RS Aqua in all matters relating to the Services;
 - 8.1.3 provide RS Aqua, its employees, agents, consultants and subcontractors, with access to the Customer's premises, office accommodation and other facilities as reasonably required by RS Aqua to provide the Services;
 - 8.1.4 provide RS Aqua with such information and materials as RS Aqua may reasonably require in order to supply the Services, and ensure that such information is complete and accurate in all material respects;
 - 8.1.5 prepare the Customer's premises for the supply of the Services;
 - 8.1.6 obtain and maintain all necessary licences, permissions and consents which may be required for the Services before the date on which the Services are to start;
 - 8.1.7 comply with all applicable laws, including health and safety laws;
 - 8.1.8 keep all materials, equipment, documents and other property of RS Aqua (RS Aqua Materials) at the Customer's premises in safe custody at its own risk, maintain RS Aqua Materials in good condition until returned to RS Aqua, and not dispose of or use RS Aqua Materials other than in accordance with RS Aqua's written instructions or authorisation; and
 - 8.1.9 comply with the Software Licence Terms in respect of any Software that is provided to it as part of the Deliverables; and
 - 8.1.10 comply with any additional obligations as set out in the Service Specification and the Goods Specification.
- 8.2 If RS Aqua's performance of any of its obligations under the Contract is prevented or delayed by any act or omission by the Customer or failure by the Customer to perform any relevant obligation (Customer Default):
 - 8.2.1 without limiting or affecting any other right or remedy available to it, RS Aqua shall have the right to suspend performance of the Services until the Customer remedies the Customer Default, and to rely on the Customer Default to relieve it from the performance of any of its obligations in each case to the extent the Customer Default prevents or delays RS Aqua's performance of any of its obligations;
 - 8.2.2 RS Aqua shall not be liable for any costs or losses sustained or incurred by the Customer arising directly or indirectly from RS Aqua's failure or delay to perform any of its obligations as set out in this clause 8.2; and

- 8.2.3 the Customer shall reimburse RS Aqua on written demand for any costs or losses sustained or incurred by RS Aqua arising directly or indirectly from the Customer Default.
- 9 Charges and payment.**
- 9.1 The price for Goods:
- 9.1.1 shall be the price set out in the Sales Order Acknowledgement or, if no price is quoted, the price set out in RS Aqua's published price list as at the date of delivery; and
- 9.1.2 shall be exclusive of all costs and charges of packaging, insurance, transport of the Goods, which shall be invoiced to the Customer.
- 9.2 The charges for Services shall be calculated on a time and materials basis:
- 9.2.1 the charges shall be calculated in accordance with RS Aqua's appropriate hourly/daily fee rates, as set out in its current price list at the date of the Contract;
- 9.2.2 RS Aqua's daily fee rates for each individual person are calculated on the basis of an eight-hour day from 09:00 hrs to 17:00 hrs worked on Business Days;
- 9.2.3 RS Aqua shall be entitled to charge an overtime rate of 200% of the daily fee rate on a pro rata basis for each part day or for any time worked by individuals whom it engages on the Services outside the hours referred to in clause 9.2.2; and
- 9.2.4 RS Aqua shall be entitled to charge the Customer for any expenses reasonably incurred by the individuals whom RS Aqua engages in connection with the Services including travelling expenses, hotel costs, subsistence and any associated expenses, and for the cost of services provided by third parties and required by RS Aqua for the performance of the Services, and for the cost of any materials on a "cost plus" basis.
- 9.3 RS Aqua reserves the right to:
- 9.3.1 increase the charges for the Services on a compounded annual basis with effect from each anniversary of the Commencement Date and the first such increase shall take effect on the first anniversary of the Commencement Date provided that RS Aqua has given the Customer not less than 3 months' written notice of each such increase;
- 9.3.2 increase the price of the Goods, by giving notice to the Customer at any time before delivery, to reflect any increase in the cost of the Goods to RS Aqua that is due to:
- 9.3.2.1 any factor beyond the control of RS Aqua (including foreign exchange fluctuations, increases in taxes and duties, and increases in labour, materials and other manufacturing costs);
- 9.3.2.2 any request by the Customer to change the delivery date(s), quantities or types of Goods ordered, or the Goods Specification; or Delivery Location; or
- 9.3.2.3 any delay caused by any instructions of the Customer in respect of the Goods or failure of the Customer to give RS Aqua adequate or accurate information or instructions in respect of the Goods.
- 9.3.3 charge for any expenses and/or disbursements (including but not limited to: insurance charges; delivery charges; handling charges; storage charges; travel, accommodation and subsistence expenses for personnel required to make site visits) incurred in the provision of the Goods and/or Services which are not specifically included in the Sales Order Acknowledgement, on a "cost plus" basis, plus applicable VAT.
- 9.4 In respect of Goods, RS Aqua shall invoice the Customer on or at any time after completion of delivery, unless the Sales Order Acknowledgement specifies pre-payment is required, then a pro-forma invoice will be issued to the Customer. In respect of Services, RS Aqua shall invoice the Customer monthly in arrears.
- 9.5 The Customer shall pay each invoice submitted by RS Aqua as specified in the Sales Order Acknowledgement, and in any event:
- 9.5.1 within 30 days of the date of the invoice; and
- 9.5.2 in full and in cleared funds to a bank account nominated in writing by RS Aqua, and
- time for payment shall be of the essence of the Contract.
- 9.6 All amounts payable by the Customer under the Contract are exclusive of amounts in respect of value added tax chargeable from time to time (VAT). Where any taxable supply for VAT purposes is made under the Contract by RS Aqua to the Customer, the Customer shall, on receipt of a valid VAT invoice from RS Aqua, pay to RS Aqua such additional amounts in respect of VAT as are chargeable on the supply of the Services or Goods at the same time as payment is due for the supply of the Services or Goods.
- 9.7 If the Customer fails to make a payment due to RS Aqua under the Contract by the due date, then, without limiting RS Aqua's remedies under clause 13 (Termination), the Customer shall pay interest on the overdue sum from the due date until payment of the overdue sum, whether before or after judgment. Interest under this clause 9.7 will accrue each day at 4% a year above the Bank of England's base rate from time to time, but at 4% a year for any period when that base rate is below 0%.
- 9.8 All amounts due under the Contract shall be paid in full without any set-off, counterclaim, deduction or withholding (other than any deduction or withholding of tax as required by law).
- 10 Intellectual property rights.**

- 10.1 All Intellectual Property Rights in or arising out of or in connection with the Services (other than Intellectual Property Rights in any materials provided by the Customer) shall be owned by RS Aqua or its licensors.
- 10.2 Subject to the Customer meeting its payment obligations to RS Aqua, RS Aqua grants to the Customer, or shall procure the direct grant to the Customer of, a fully paid-up, worldwide, non-exclusive, royalty-free licence during the term of the Contract to use the Deliverables (excluding materials provided by the Customer) for the purpose of receiving and using the Services and the Deliverables in its business.
- 10.3 The Customer shall not sub-license, assign or otherwise transfer the rights granted by clause 10.2.
- 10.4 The Customer grants RS Aqua a fully paid-up, non-exclusive, royalty-free non-transferable licence to copy and modify any materials provided by the Customer to RS Aqua for the term of the Contract for the purpose of providing the Services to the Customer.
- 11 Confidentiality.**
- 11.1 Each party undertakes that it shall not at any time during this Contract, and for a period of two years after termination or expiry of this Contract, disclose to any person any confidential information concerning the business, affairs, customers, clients or suppliers of the other party or of any member of the group of companies to which the other party belongs, except as permitted by clause 11.2.
- 11.2 Each party may disclose the other party's confidential information:
- 11.2.1 to its employees, officers, representatives or advisers who need to know such information for the purposes of exercising the party's rights or carrying out its obligations under or in connection with this Contract. Each party shall ensure that its employees, officers, representatives or advisers to whom it discloses the other party's confidential information comply with this clause 11; and
- 11.2.2 as may be required by law, a court of competent jurisdiction or any governmental or regulatory authority.
- 11.3 Neither party shall use the other party's confidential information for any purpose other than to exercise its rights and perform its obligations under or in connection with this Contract.
- 12 Limitation of liability: THE CUSTOMER'S ATTENTION IS PARTICULARLY DRAWN TO THIS CLAUSE.**
- 12.1 The restrictions on liability in this clause 12 apply to every liability arising under or in connection with this Contract including liability in contract, tort (including negligence), misrepresentation, restitution or otherwise.
- 12.2 Neither party may benefit from the limitations and exclusions set out in this clause in respect of any liability arising from its deliberate default.
- 12.3 Nothing in the Contract limits any liability which cannot legally be limited, including liability for:
- 12.3.1 death or personal injury caused by negligence;
- 12.3.2 fraud or fraudulent misrepresentation;
- 12.3.3 any matter in respect of which it would be unlawful for the parties to exclude or restrict liability.
- 12.3.4 breach of the terms implied by section 12 of the Sale of Goods Act 1979 or section 2 of the Supply of Goods and Services Act 1982 (title and quiet possession); and
- 12.3.5 defective products under the Consumer Protection Act 1987.
- 12.4 Subject to clause 12.3, RS Aqua's total liability to the Customer shall not exceed the total payment received by RS Aqua in respect of the Deliverables.
- 12.5 Subject to clause 12.3, RS Aqua shall not be liable under this Contract for any:
- 12.5.1 loss of profits;
- 12.5.2 loss of sales or business;
- 12.5.3 loss of agreements or contracts;
- 12.5.4 loss of anticipated savings;
- 12.5.5 loss of use or corruption of software, data or information;
- 12.5.6 loss of or damage to goodwill; and
- 12.5.7 indirect or consequential loss.
- 12.6 RS Aqua has given commitments as to compliance of the Goods and Services with relevant specifications in clause 5 and clause 7. In view of these commitments, the terms implied by sections 13 to 15 of the Sale of Goods Act 1979 and sections 3, 4 and 5 of the Supply of Goods and Services Act 1982 are, to the fullest extent permitted by law, excluded from the Contract.
- 12.7 This clause 12 shall survive termination of the Contract.
- 13 Termination.**
- 13.1 Without affecting any other right or remedy available to it, RS Aqua may terminate the Contract by giving the Customer not less than one month's written notice.
- 13.2 Without affecting any other right or remedy available to it, RS Aqua may terminate this Contract with immediate effect by giving written notice to the Customer if:
- 13.2.1 the Customer commits a material breach of any other term of this Contract which breach is irremediable or (if such breach is remediable) fails to remedy that breach within a period of seven days after being notified in writing to do so;

- 13.2.2 the Customer repeatedly breaches any of the terms of this Contract in such a manner as to reasonably justify the opinion that its conduct is inconsistent with it having the intention or ability to give effect to the terms of this Contract;
- 13.2.3 the Customer suspends, or threatens to suspend, payment of its debts or is unable to pay its debts as they fall due or admits inability to pay its debts or (being a company or limited liability partnership) is deemed unable to pay its debts within the meaning of section 123 of the Insolvency Act 1986 (IA 1986) as if the words "it is proved to the satisfaction of the court" did not appear in sections 123(1)(e) or 123(2) of the IA 1986 or (being a partnership) has any partner to whom any of the foregoing apply;
- 13.2.4 the Customer commences negotiations with all or any class of its creditors with a view to rescheduling any of its debts, or makes a proposal for or enters into any compromise or arrangement with its creditors other than (being a company) for the sole purpose of a scheme for a solvent amalgamation of the Customer with one or more other companies or the solvent reconstruction of the Customer;
- 13.2.5 the Customer applies to court for, or obtains, a moratorium under Part A1 of the Insolvency Act 1986;
- 13.2.6 a petition is filed, a notice is given, a resolution is passed, or an order is made, for or in connection with the winding up of the Customer (being a company, limited liability partnership or partnership) other than for the sole purpose of a scheme for a solvent amalgamation of the Customer with one or more other companies or the solvent reconstruction of the Customer;
- 13.2.7 an application is made to court, or an order is made, for the appointment of an administrator, or a notice of intention to appoint an administrator is given or an administrator is appointed, over the Customer (being a company);
- 13.2.8 the holder of a qualifying floating charge over the assets of the Customer (being a company) has become entitled to appoint or has appointed an administrative receiver;
- 13.2.9 a person becomes entitled to appoint a receiver over all or any of the assets of the Customer or a receiver is appointed over all or any of the assets of the Customer;
- 13.2.10 a creditor or encumbrancer of the Customer attaches or takes possession of, or a distress, execution, sequestration or other such process is levied or enforced on or sued against, the whole or any part of the Customer's assets and such attachment or process is not discharged within fourteen days;
- 13.2.11 any event occurs, or proceeding is taken, with respect to the Customer in any jurisdiction to which it is subject that has an effect equivalent or similar to any of the events mentioned in clause 13.2.3 to clause 13.2.10 (inclusive);
- 13.2.12 the Customer suspends or ceases, or threatens to suspend or cease, carrying on all or a substantial part of its business; or
- 13.2.13 the Customer's financial position deteriorates so far as to reasonably justify the opinion that its ability to give effect to the terms of this Contract is in jeopardy; or
- 13.3 Without affecting any other right or remedy available to it, RS Aqua may terminate the Contract with immediate effect by giving written notice to the Customer if:
- 13.3.1 the Customer fails to pay any amount due under this Contract on the due date for payment and remains in default not less than seven days after being notified in writing to make such payment; or
- 13.3.2 there is a change of control of the Customer (within the meaning of section 1124 of the Corporation Tax Act 2010).
- 13.4 Without affecting any other right or remedy available to it, RS Aqua may suspend the supply of Services or all further deliveries of Goods under the Contract or any other contract between the Customer and RS Aqua if the Customer fails to pay any amount due under the Contract on the due date for payment, the Customer becomes subject to any of the events listed in clause 13.2.3 to clause 13.2.13, or RS Aqua reasonably believes that the Customer is about to become subject to any of them.
- 13.5 For the purposes of clause 13.2.1, material breach means a breach (including an anticipatory breach) that is serious in the widest sense of having a serious effect on the benefit which RS Aqua would otherwise derive from:
- 13.5.1 a substantial portion of this Contract; or
- 13.5.2 any of the Customer's obligations set out in clauses 8 and 9,
- over the term of this Contract. In deciding whether any breach is material no regard shall be had to whether it occurs by some accident, mishap, mistake or misunderstanding.
- 14 Consequences of termination.**
- 14.1 On termination of the Contract:
- 14.1.1 the Customer shall immediately pay to RS Aqua all of RS Aqua's outstanding unpaid invoices and interest and, in respect of Services and Goods supplied but for which no invoice has been submitted, RS Aqua shall submit an invoice, which shall be payable by the Customer immediately on receipt;
- 14.1.2 the Customer shall return all of RS Aqua Materials and any Deliverables or Goods which have not been fully paid for. If the Customer fails to do so, then RS Aqua may enter the Customer's premises and take possession of them. Until

they have been returned, the Customer shall be solely responsible for their safe keeping and will not use them for any purpose not connected with this Contract.

14.2 Any provision of this Contract that expressly or by implication is intended to come into or continue in force on or after termination or expiry of this Contract shall remain in full force and effect.

14.3 Termination or expiry of this Contract shall not affect any rights, remedies, obligations or liabilities of the parties that have accrued up to the date of termination or expiry, including the right to claim damages in respect of any breach of the agreement which existed at or before the date of termination or expiry.

14.4 Except as expressly provided or excluded in this Contract, the rights and remedies provided under this Contract are in addition to, and not exclusive of, any rights or remedies provided by law.

15 **Force majeure.** Neither party shall be in breach of this Contract nor liable for delay in performing, or failure to perform, any of its obligations under this Contract (excluding payment of money), if such delay or failure results from events, circumstances or causes beyond its reasonable control. In such circumstances the affected party shall be entitled to a reasonable extension of the time for performing such obligations. If the period of delay or non-performance continues for four weeks, the party not affected may terminate this Contract by giving seven days' written notice to the affected party.

16 General

16.1 Assignment and other dealings.

16.1.1 RS Aqua may at any time assign, mortgage, charge, subcontract, delegate, declare a trust over or deal in any other manner with any or all of its rights and obligations under the Contract.

16.1.2 The Customer shall not assign, transfer, mortgage, charge, subcontract, delegate, declare a trust over or deal in any other manner with any of its rights and obligations under the Contract without the prior written consent of RS Aqua.

16.2 Notices.

16.2.1 Any notice or other communication given to a party under or in connection with this Contract shall be in writing and shall be:

16.2.1.1 delivered by hand or by pre-paid first-class post or other next working day delivery service at its registered office (if a company) or its principal place of business (in any other case); or

16.2.1.2 sent by email to the address specified in the Sales Order Acknowledgement.

16.2.2 Any notice or communication shall be deemed to have been received:

16.2.2.1 if delivered by hand, at the time the notice is left at the proper address;

16.2.2.2 if sent by pre-paid first class post or other next working day delivery service, at 9.00 am on the second Business Day after posting; or

16.2.2.3 if sent by email, at the time of transmission, or, if this time falls outside business hours in the place of receipt, where business hours resume. In this clause 16.2.2.3, business hours means 9.00am to 5.00pm Monday to Friday on a day that is not a public holiday in the place of receipt.

16.2.3 This clause does not apply to the service of any proceedings or other documents in any legal action or, where applicable, any arbitration or other method of dispute resolution.

16.3 **Severance.** If any provision or part-provision of this Contract is or becomes invalid, illegal or unenforceable, it shall be deemed deleted, but that shall not affect the validity and enforceability of the rest of this Contract. If any provision or part-provision of this Contract is deemed deleted under this clause, the parties shall negotiate in good faith to agree a replacement provision that, to the greatest extent possible, achieves the intended commercial result of the original provision.

16.4 **Waiver.** No failure or delay by a party to exercise any right or remedy provided under this Contract or by law shall constitute a waiver of that or any other right or remedy, nor shall it prevent or restrict the further exercise of that or any other right or remedy. No single or partial exercise of such right or remedy shall prevent or restrict the further exercise of that or any other right or remedy.

16.5 **No partnership or agency.** Nothing in this Contract is intended to, or shall be deemed to, establish any partnership or joint venture between any of the parties, constitute any party the agent of another party, or authorise any party to make or enter into any commitments for or on behalf of any other party. Each party confirms it is acting on its own behalf and not for the benefit of any other person.

16.6 Entire agreement.

16.6.1 This Contract constitutes the entire agreement between the parties and supersedes and extinguishes all previous agreements, promises, assurances, warranties, representations and understandings between them, whether written or oral, relating to its subject matter.

16.6.2 Each party acknowledges that in entering into this Contract it does not rely on, and shall have no remedies in respect of, any statement, representation, assurance or warranty (whether made innocently or negligently) that is not set out in this Contract. Each party agrees that it shall

have no claim for innocent or negligent misrepresentation or negligent misstatement based on any statement in this Contract.

16.6.3 At its own expense, each party shall, and shall use all reasonable endeavours to procure that any necessary third party shall, promptly execute and deliver such documents and perform such acts as may reasonably be required for the purpose of giving full effect to this Contract.

16.6.4 Nothing in this clause shall limit or exclude any liability for fraud.

16.7 Third party rights.

16.7.1 Unless it expressly states otherwise, this Contract does not give rise to any rights under the Contracts (Rights of Third Parties) Act 1999 to enforce any term of this Contract.

16.7.2 The rights of the parties to rescind or vary this Contract are not subject to the consent of any other person.

16.8 **Variation.** No variation of this Contract shall be effective unless it is in writing and signed by the parties (or their authorised representatives).

16.9 **Governing law.** This Contract and any dispute or claim (including non-contractual disputes or claims) arising out of or in connection with it or its subject matter or formation shall be governed by and construed in accordance with the laws of England.

16.10 **Jurisdiction.** Each party irrevocably agrees that the courts of England shall have exclusive jurisdiction to settle any dispute or claim (including non-contractual disputes or claims) arising out of or in connection with this Contract or its subject matter or formation.