

These Terms and Conditions apply to all Quotations and Contracts for the provision of Products and Services by AquaTitans Limited

1. Definitions

In these Terms and Conditions, unless the context otherwise requires:

“**Company**” means AquaTitans Limited, Company Number SC730487.

“**Company’s Address**” means 48 Grayshill Road, Westfield North, Cumbernauld, Glasgow, G68 9HQ.

“**Customer**” means any person, firm, company, partnership, competent authority or other business entity who agrees to obtain Products or Services from the Company under the Contract.

“**Customer Group**” means the Customer, its subcontractors and suppliers of any tier, and its and their employees, directors, representatives, agents, servants and invitees and any person employed, hired or engaged by any of them.

“**Contract**” means the agreement between the Company and the Customer for any form of business conducted by or with the Company which incorporates these Terms and Conditions, unless otherwise agreed in Writing.

“**Estimated Delivery Date**” means the date on which the Company estimates that the Products or Services will be delivered.

“**including**” means without limitation.

“**Losses**” or “**Claims**” includes all actions, causes of action, claims, demands, proceedings, damages, awards, payments, debts, losses, costs, expenses (including legal or professional expenses), penalties, fines, compensation or other liabilities, whether direct, indirect, consequential or otherwise including loss of profit, business, turnover or market share, and interest thereon.

“**Order**” means any written instruction issued by the Customer to the Company for the provision of Products or Services.

“**Party**” means each of the Company and the Customer and “**Parties**” shall be construed accordingly.

“**Price**” means the total charge made or to be made by the Company for the provision of Products or Services as further defined in the Contract.

“**Products**” means any goods, materials, equipment, machinery, products or articles of whatsoever nature, including sub-assemblies or components as the case may be, which the Company is to sell to the Customer, or provide Services in respect of, in accordance with the Contract.

“**Quotation**” means the Company’s quotation for the provision of Products or Services.

“**Services**” means any services or work provided by the Company to the Customer under the Contract including the provision of any consultancy, management or advisory services.

“**Terms and Conditions**” means the Terms and Conditions set out in this document and any other terms and conditions agreed pursuant to clause 2.

“**Writing**” means any form of written communication including electronic mail (“Email”) where the parties have agreed either expressly or by a course of dealing to communicate by Email and have provided each other with correct Email addresses accordingly, save that any Email shall take effect only when received by the recipient.

2. Application

2.1 All business conducted by the Company with the Customer, including all Contracts, Quotations, pre-contractual negotiations and all Orders, shall be subject to these Terms and Conditions to the exclusion of any and all other terms and conditions, including any standard or general terms and conditions referred to in, enclosed or otherwise annexed to any Order, acknowledgement or other communication from the Customer, except where the Company has notified the Customer of an additional terms to be incorporated or where the Parties have expressly identified or incorporated mutually agreed special conditions into an Order to modify, supplement or amend these Terms and Conditions (“Special Conditions”). Such Special Conditions shall apply equally with these Terms and Conditions but in the event of a conflict or any ambiguity between these Terms and Conditions and the Special Conditions, the Special Conditions shall prevail.

2.2 Any and all statements, warranties, representations, advice or recommendations made or given by the Company during negotiations prior to the conclusion of a Contract are not binding unless expressly incorporated into the Contract.

2.3 The headings in these Terms and Conditions are for convenience only and shall not affect their interpretation.

2.4 If any provision of these Terms and Conditions is held by any competent court, tribunal or authority to be invalid or unenforceable in whole or in part, the validity of the remainder of the provision and all other remaining provisions of these Terms and Conditions shall not be affected thereby.

3. Description of Contract

3.1 No Contract shall be formed until the Company confirms in Writing its acceptance of the Order from the Customer. The Company does not offer or give any guarantee of acceptance of any Order. Acceptance of each Order is at the Company’s discretion and is subject to availability of the relevant Products or Services.

3.2 The Company will provide Products or Services to the Customer and the Customer will pay the specified Price, in accordance with the Contract.

3.3 The Contract shall constitute the entire agreement between the Company and the Customer and shall supersede and extinguish all previous drafts, warranties, agreements, arrangements, statements, representations, references and understandings between the Company and the Customer, whether written or oral, relating to its subject matter.

4. Performance of Contract

4.1 Unless otherwise agreed in Writing, the place of performance of the Contract shall be the Company's Address. Products are supplied on an Ex-Works basis with delivery occurring at the Company's Address. Any onward transportation and freight arrangements are the responsibility of the Customer.

4.2 Where the Company agrees to provide Products or Services to the Customer, the Company will use all reasonable effort to provide the Products or Services by the Estimated Delivery Date. However, any dates specified by the Company for provision of the Products or Services are intended to be an estimate only and if no dates are so specified, delivery will be within a reasonable time.

4.3 Unless otherwise agreed, the Customer will accept delivery of the Products or Services within seven (7) days from receipt of notice in Writing from the Company to do so. If the Customer fails to accept delivery of the Products or Services within seven (7) days (or any other period agreed pursuant to this clause) from receipt of notice in Writing from the Company then, without prejudice to any other right or remedy available to the Company, the Company may:

- (i) issue its invoice in respect of the Products or Services as if they had been delivered;
- (ii) suspend other deliveries of the provision of Products or Services.

4.4 The Customer will notify the Company in Writing within 48 hours of delivery if there is a defect in the quality or condition of the Products or the performance of the Services. The Customer shall not be entitled to reject the Products or Services and shall be bound to pay the Price if such notification is not provided. It is the Customer's responsibility to return defective Products to the Company's Address for inspection. The Company shall, at its option, repair or replace the defective Products or refund the price of the defective part or component to the Customer.

4.5 The Products are at the risk of the Customer from the time of delivery and the Customer shall insure the Products against all loss or damage from the time of delivery of the Products at the Company's Address.

4.6 Notwithstanding clause 4.5, where the Company agrees to sell Products to the Customer, title in the Products shall not pass to the Customer until the Company has received payment of the Price in full (in cash or cleared funds), including any additional sums which become due from the Customer under the Contract. The Customer hereby agrees to and grants the Company a continuing security interest in any and all such Products together with all accessions, attachments, substitutions and amalgamations thereto, and any proceeds or products derived from the sale thereof. Without prejudice to any other rights and remedies available to the Company under the Contract or in law, in the event of any breach of Contract by the Customer, the Company shall have the full right and entitlement without further notice to the Customer to take possession of all or any part of the Products and to sell the same in a commercial manner in accordance with applicable law and to apply the proceeds of such sale against any Losses suffered by the Company. The Customer hereby agrees to do all that is necessary by law to give effect to such security.

5. Price

5.1 The Price for the provision of Products or Services shall be that agreed between the Parties and confirmed in Writing by the Company.

5.2 All prices quoted by the Company in its Quotations are valid for thirty (30) days only. The Company reserves the right to amend any typographical, clerical or other error or omission on any documentation containing pricing information issued by or on behalf of the Company, and the Company shall have no liability to the Customer for any such errors or omissions.

5.3 Unless otherwise specified, the Price for any Products or Services shall be exclusive of any travel, accommodation, subsistence or other out-of-pocket expenses of the Company's employees, servants or agents (which where applicable the Customer shall pay to the Company at cost plus 15%) and shall exclude any sales tax, value added tax, licence fees, duties, local taxes or additional costs of such nature, which shall remain the liability of the Customer.

5.4 Where applicable the Company is obliged to charge in addition to the Price any Value Added Tax at the prevailing rate in the United Kingdom.

6. Invoicing and Payment

6.1 The Company will issue to the Customer from time to time an invoice or invoices for the Price of any Products or Services, together with any additional costs and/or charges payable by the Customer under clause 5.

6.2 Unless otherwise agreed in Writing, payment of any invoice submitted by the Company to the Customer is due within fourteen (14) days of the date of the invoice and payment within this time shall be of the essence of the Contract.

6.3 If the Customer fails to make any payment of any invoice within due time then, without prejudice to any other right or remedy available to the Company, and without liability to the Customer, the Company shall be entitled to:

- (i) cancel the Contract;
- (ii) suspend further performance by the Company under the Contract;
- (iii) charge the Customer interest on any unpaid amount from the date payment is due to the date payment in full is made. Interest shall be calculated on a daily basis at the per annum rate of 8% above the Bank of England base rate. The Customer shall pay interest together with the overdue amount;
- (iv) charge a fixed sum for the cost of recovering the late payment as set by the Late Payment of Commercial Debts (Interest) Act 1998.
- (v) be reimbursed by the Customer for all Losses incurred by the Company in the collection of any overdue amount.

7. Warranties, Representations and Risk

7.1 Where the Company is the manufacturer of the Products, the Company warrants that the Products sold shall be free from defects in materials and/or workmanship for a period of twelve (12) months from the date of delivery of the Products to the Customer. Where the Company is not the manufacturer of the Products, the Company will endeavour, where applicable and upon the Customer's written request, to transfer to the Customer the benefit of any warranty or guarantee given to the Company.

7.2 The Company shall perform all Services with reasonable skill and care in accordance with these Terms and Conditions and all applicable laws.

7.3 Subject to clauses 7.1, and 7.2 unless otherwise expressly agreed by the Company and set out in Writing in the Contract, no warranties or representations are given or made by or on behalf of the Company as to the performance, availability, durability, use, storage, effectiveness, quality, suitability or fitness for any purpose of any Product sold or supplied hereunder, or for any Service provided hereunder, and any conditions or warranties implied or imposed by operation of law are hereby excluded.

7.4 Each Party agrees that it shall have no remedies in respect of any misrepresentation or warranty (whether made innocently or negligently) that is not expressly set out in the Contract. No Party shall have any claim for innocent or negligent misrepresentation or negligent misstatement based upon any statement in the Contract.

7.5 It is the Customer's responsibility and risk that any Order, specification, drawing or information provided to the Company by the Customer or any person for or on behalf of the Customer in connection with the Contract is true, complete and accurate in all respects.

7.6 The Company shall not be liable for a breach of any warranty or warranties, whether provided by the Contract, statute, the general law or otherwise, in respect of any Products sold or Equipment hired or any Service provided, unless the Customer gives written notice of the breach complained of within a reasonable time not to exceed thirty (30) days from the time the Customer discovers or ought to have discovered such breach and the Company is given a reasonable opportunity of remedying the breach.

7.7 The Company shall not be liable for any defect in the Products or Services arising from fair wear and tear, defects in design, defects in materials furnished or specified by the Customer or defects in manufacture where the method of manufacture was specified by the Customer, damage or negligence by any member of the Customer Group or by other persons not within the Company's reasonable control, abnormal working conditions, damage arising out of or in connection with a failure to follow the Company's instructions (if any, whether oral or in Writing), or misuse, alteration or repair of the Products or change in terms of Services without the prior approval in Writing of the Company.

7.8 Subject to the Customer complying with clause 7.6, if the Products do not conform with any warranty or warranties provided by the Contract, statute, the general law or otherwise, the Company shall at its option repair or replace such Products (or any defective part or parts) or refund the Price of the Products provided that (if the Company so requests) the Customer at its cost returns the defective Products or part(s) to the Company.

7.9 Notwithstanding clause 8.1, the Company's liability arising out of or in connection with the Services shall be limited to re-performing at its expense any Services that are deficient because of the Company's failure to perform the Services in accordance with the standard of performance specified in clause 7.2 and provided the Customer gives written notice of the breach complained of to the Company within a reasonable time not to exceed thirty (30) days from the time the Customer discovers or ought to have discovered such breach, but in any event within twelve (12) months from the date of performance of the Services concerned.

7.10 Provided that the Company complies with clauses 7.8 or 7.9 (as the case may be), it shall have no further liability for breach of any warranty or warranties, whether in contract or in tort, whatsoever and howsoever arising in respect of the Products sold or any Services provided.

8. Limitation of Liability and Indemnity

8.1 The Company's total liability arising under or in connection with the Contract including liability for all Claims of any kind and description, howsoever and whatsoever arising, whether arising from tort (including negligence), breach of contract, breach of (statutory) duty or otherwise shall not in the aggregate exceed the amount specified in the Contract or if no amount is specified shall not in the aggregate exceed the Price.

8.2 The Company shall not in any event be liable to the Customer whether as a result of breach of contract, warranty, guarantee, indemnity, tort (including negligence), strict liability or otherwise for any:

- (i) third party claims for financial loss or expense;
- (ii) loss of profit or anticipated profit;
- (iii) loss of revenue;

- (iv) business interruption or downtime costs;
- (v) loss of contract or business opportunity;
- (vi) claims of customers or other contractors of Customer; or
- (vii) whether or not included in (i) to (vi) above, any indirect, special, incidental or consequential loss or damage.

8.3 Unless otherwise agreed in Writing and subject to clause 8.4, the Customer shall fully indemnify and hold the Company harmless against any Losses or injury howsoever caused (including by negligence) to any member of the Customer Group arising out of or related to the Contract.

8.4 Nothing in these Terms and Conditions excludes or limits the Company's liability for:

- (i) death or personal injury caused by the Company's negligence;
- (ii) fraud or fraudulent misrepresentation; or
- (iii) anything which may not be lawfully limited or excluded.

8.5 The Company will not be liable for any Losses caused directly or indirectly by any delay in the provision of the Products or Services (even if caused by the negligence of the Company). Unless otherwise expressly agreed, the Customer shall not be entitled to cancel the Contract solely because of such delay.

9. Termination

9.1 The Company shall be entitled to terminate the Contract forthwith by notice in Writing to the Customer if:

- (i) the Customer commits an irremediable breach of the Contract, persistently repeats a remediable breach, or commits any remediable breach and fails to remedy it within seven (7) days of receipt of notice in Writing of the breach requiring remedy of the same; or
- (ii) the Customer makes any voluntary arrangement with its creditors or (being an individual or firm) becomes bankrupt or (being a company) becomes subject to an administration order or goes into liquidation (otherwise than for the purposes of solvent amalgamation or reconstruction); or
- (iii) an encumbrancer takes possession, or a receiver is appointed, of any of the property or assets of the Customer; or
- (iv) the Customer ceases or threatens to cease to carry on business.

9.2 In the event of termination by the Company pursuant to clause 9.1 above then, without prejudice to any other right or remedy available to the Company, the Company shall be entitled to cancel the Contract or suspend any further provision of Products or Services due under it without any liability to the Customer and, if the Products or Services have already been provided but not paid for, the price of the Products or Services shall become immediately due and payable notwithstanding any previous agreement or arrangement to the contrary and the Company shall be entitled to charge interest in accordance with clause 6.3.

9.3 The Customer shall be entitled to terminate the Contract by giving thirty (30) days written notice of termination to the Company. In the event of termination by the Customer pursuant to this clause, the Company shall invoice the Customer and the Customer shall immediately pay to the Company the full Price together with any additional costs and/or charges payable by the Customer including under clauses 4, 5 and 6.

10. Laws and Regulations

10.1 The Customer shall comply with all applicable laws, statutes, regulations and codes in force from time to time in relation to the Contract, including those relating to data and privacy and the ownership and use of the Products and Services, and health and safety requirements.

10.2 The Customer shall indemnify and hold the Company harmless for any and all Losses suffered by the Company attributable to a breach of this clause 10.

11. Resources

11.1 The Customer hereby agrees that, during the term of the Contract and for a period of twelve (12) months after expiry or termination howsoever caused, it will not solicit the Company's staff who are known by the Customer to have been employed or engaged in the performance of the Contract. For the purposes of this clause, 'solicit' means a direct or indirect attempt to induce such person to take an engagement with such party as an employee, director, subcontractor or independent contractor provided that this clause shall not apply to any engagement as a result of a general advertisement or recruitment campaign.

12. Confidentiality and Intellectual Property

12.1 All techniques, processes, inventions, trade secrets, equipment, drawings, designs, specifications, documents, proposals and information concerning the Products or Services or relating to the Company's business of which the Customer shall obtain knowledge or information (except to the extent that they are within or fall into the public domain other than by breach of the Contract) shall remain both during and after the completion of the business conducted under the Contract the absolute and exclusive property of the Company and the Customer shall keep confidential and retain the same with the utmost secrecy and shall procure that all members of the Customer Group shall abide by the terms of this provision as though it were binding upon

each of them and the Customer shall not, and shall procure that all members of the Customer Group shall not, use the same other than for the purpose of the Products or Services received, nor shall it cause or permit anything which may damage or endanger the intellectual property of the Company or allow or assist others to do so.

12.2 All Background IP is and shall remain the exclusive property of the Company. All Foreground IP shall vest in and be owned by the Company. The Company grants to the Customer a royalty-free, non-exclusive, irrevocable license to the foreground IP in order for the Customer to use, operate, repair, maintain, and complete all works relevant to the original purpose as defined in the Contract.

13. Waiver

13.1 No payment accepted by the Company and no neglect, delay or indulgence on the part of the Company in enforcing the Contract or any of the Terms and Conditions thereof shall operate as a waiver of the Company's rights thereunder, unless in each case the Company expressly so agrees in Writing.

14. Force Majeure

14.1 The Company shall not be liable to the Customer or be deemed to be in breach of the Contract by reason of any delay in performing or any failure to perform any of the Company's obligations if the delay or failure was due to any cause beyond the Company's reasonable control including:

- (i) act of God, storm, flood, tempest or other weather conditions, explosion, fire or accident, health pandemic or epidemic;
- (ii) war or threat of war, civil war, hostilities, sabotage, insurrection, riot or civil disturbance, or requisition;
- (iii) Governmental or local authority acts, restrictions, regulations, bye-laws, prohibitions or measures of any kind, including change in law or change in standards and/or regulations impacting the delivery of the Products or Services;
- (iv) import or export regulations or embargoes;
- (v) strikes, lock-outs or other industrial actions or trade disputes whether involving employees of the Company or of a third party;
- (vi) difficulties in obtaining raw materials, labour, fuel, parts, equipment, machinery or other essential supplies;
- (vii) delays caused by the Company's subcontractors or suppliers, but only to the extent that such delays are beyond the reasonable control of the Company;
- (viii) failure or breakdown in equipment or machinery from power failure or other external causes.

15. Cross Claims and Set Off

15.1 The Customer hereby waives any right to set-off under the Contract or otherwise and agrees to pay all sums due to Company regardless of any equity, set-off or cross claim on the part of the Customer against the Company.

16. Notices

16.1 Any notice required to be given by either Party under the Contract shall be delivered or sent by pre-paid first class recorded delivery addressed to the registered office of the Party to be served or to such other place as may be designated by a Party for the purpose of service and shall be deemed to have been served in the case of a notice delivered by hand, when delivered, or in the case of a letter forty-eight (48) hours after the time of posting.

17. Non-Assignment

17.1 The Customer shall not assign, transfer or sub-contract all or any part of the Contract or any benefit, interest, right or obligation under the Contract, without the prior agreement of the Company in Writing.

18. Governing Law and Jurisdiction

18.1 The Contract and all obligations relating to or arising out of the Contract shall be governed by and construed in accordance with the laws of Scotland.

18.2 The Parties hereby agree that any Claims, disputes, legal actions, suits or proceedings that either Party may have against the other arising out of or in connection with the Contract shall be subject to the exclusive jurisdiction of the Scottish Courts.

18.3 Should changes in applicable laws, rules and regulations, including any change in interpretation thereof by the courts or a legally constituted governmental or regulatory body or similar authority, made after the effective date of commencement of the Contract, result in an increase in the cost to the Company and/or a delay in the Company's time for performance of the Contract, the Price and/or the schedule for performance, as the case may be, shall be adjusted to the extent necessary to provide the Company with relief from such increase in cost and/or delay.