

STANDARD TERMS OF PURCHASE

PARTIES

Supplier: the person or firm from whom the Customer purchases the Goods and/or Services, as specified in the Order.

Customer: Suez Advanced Solutions UK Limited, trading as Aqua Enviro, (company number 05687775) whose registered office is at SUEZ House, Grenfell Road, Maidenhead Berkshire, SL6 1ES.

1. INTERPRETATION

1.1 In these Conditions and the Contract, the following definitions apply:

Business Day: a day (other than a Saturday, Sunday or public holiday in England) when banks in London are open for business.

Conditions: these terms and conditions as amended from time to time in accordance with clause 15.5.

Contract: the contract between the Supplier and Customer for the supply of the Goods and/or Services, incorporating the Order, these Conditions and any applicable Goods and/or Services Specification.

Customer Materials: has the meaning set out in clause 5.3(i).

Deliverables: all documents, products and materials developed by the Supplier or its agents, contractors and employees as part of or in relation to the Services in any form or media, including without limitation drawings, maps, plans, diagrams, designs, pictures, computer programs, data, specifications and reports (including drafts).

Goods: the goods (or any part of them) as specified in the Order.

Goods Specification: any specification for the Goods, including any related plans and drawings, that is agreed in writing by the Customer and the Supplier.

Intellectual Property Rights: patents, rights to inventions, copyright and related rights, trade marks, business names and domain names, rights in get-up, goodwill and the right to sue for passing off, rights in designs, database rights, rights to use, and protect the confidentiality of, confidential information (including know-how), 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: the Customer's order for the supply of Goods and/or Services, as set out in the Customer's purchase order form, or the Customer's written acceptance of the Supplier's quotation, or overleaf, as the case may be.

Services: the services, including without limitation any Deliverables, to be provided by the Supplier as specified in the Order and/or Service Specification.

Service Specification: any specification for the Services agreed in writing by the Customer and the Supplier.

1.2 In the Contract, the following rules of interpretation apply:

(a) 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;

(b) words in the singular shall include the plural and vice versa;

(c) a reference to a statute, statutory provision or any subordinate legislation made under a statute is to such statute, provision or subordinate legislation as amended or re-enacted from time to time whether before or after the date of the Contract and, in the case of a statute, includes any subordinate legislation made under that statute whether before or after the date of the Contract;

(d) a reference to writing or written includes faxes and e-mails from persons with sufficient authority to bind a party;

(e) where the words include(s), including or in particular are used in the Contract, they are deemed to have the words "without limitation" following them;

(f) any obligation in the Contract on a person not to do something includes an obligation not to agree or allow that thing to be done.

2. BASIS OF CONTRACT

2.1 The Order constitutes an offer by the Customer to purchase Goods and/or Services from the Supplier in accordance with these Conditions.

2.2 The Customer's offer shall be deemed to have been accepted and the Contract shall come into effect on the earlier of:

(a) both parties signing the Order; or

(b) any act by the Supplier consistent with fulfilling the terms of the Contract.

2.3 These Conditions apply to the Contract to the exclusion of any other terms that the Supplier seeks to impose or incorporate, or which are implied by trade, custom, practice or course of dealing.

2.4 All of these Conditions shall apply to the supply of both Goods and Services except where the application to one or the other is specified.

3. SUPPLY OF GOODS

3.1 The Supplier shall ensure that the Goods shall:

(a) correspond with their description and any applicable Goods Specification;

(b) be of satisfactory quality (within the meaning of the Sale of Goods Act 1979) and fit for any purpose held out by the Supplier or made known to the Supplier by the Customer, expressly or by implication, and in this respect the Customer relies on the Supplier's skill and judgment;

(c) be free from defects in design, materials and workmanship and remain so for 12 months after delivery; and

(d) comply with all applicable statutory and regulatory requirements relating to the manufacture, labelling, packaging, storage, handling and delivery of the Goods.

3.2 The Supplier shall ensure that at all times it has and maintains all the licences, permissions, authorisations, consents and permits that it needs to carry out its obligations under the Contract in respect of the Goods.

3.3 The Customer shall have the right to inspect and test the Goods at any time before delivery. If following such inspection or testing the Customer considers that the Goods do not conform or are unlikely to comply with the Supplier's undertakings at clause 3.1, the Customer shall inform the Supplier and the Supplier shall immediately take such remedial action as is necessary to ensure compliance.

3.4 Notwithstanding any such inspection or testing, the Supplier shall remain fully responsible for the Goods and any such inspection or testing shall not reduce or otherwise affect the Supplier's obligations under the Contract, and the Customer shall have the right to conduct further inspections and tests after the Supplier has carried out its remedial actions.

4. DELIVERY OF GOODS

4.1 The Supplier shall ensure that:

(a) the Goods are properly packed and secured in such manner as to enable them to reach their destination in good condition; and

(b) each delivery of the Goods is accompanied by a delivery note which shows the type and quantity of the Goods, special storage instructions (if any) and, if the Goods are being delivered by instalments, the outstanding balance of Goods remaining to be delivered.

4.2 The Supplier shall deliver the Goods:

(a) in accordance with the delivery terms set out in the Contract (if any), or otherwise as agreed or within 14 days of the date of the Contract;

(b) to the location designated by the Customer (**Delivery Location**);

- (c) during the Customer's normal hours of business on a Business Day, or as instructed by the Customer.
- 4.3 The Supplier shall not deliver the Goods in instalments without the Customer's prior written consent. Where it is agreed that the Goods are delivered by instalments, they may be invoiced and paid for separately. Failure by the Supplier to deliver any one instalment on time or at all or any defect in an instalment shall entitle the Customer to the remedies set out in clause 6.1.
- 4.4 Title and risk in the Goods shall pass to the Customer on completion of delivery.
- 5. SUPPLY OF SERVICES**
- 5.1 The Supplier shall from the agreed commencement date (if any), or otherwise from the date of the Contract, provide the Services to the Customer in accordance with the terms of the Contract, including any applicable Services Specification.
- 5.2 The Supplier shall meet any performance dates for the Services specified in the Order or Services Specification, or otherwise agreed by the parties.
- 5.3 In providing the Services, the Supplier shall:
- (a) co-operate with the Customer in all matters relating to the Services, and comply with all instructions of the Customer;
 - (b) perform the Services with the all due care, skill and diligence in accordance with best practice in the Supplier's industry, profession or trade;
 - (c) use personnel who are suitably skilled and experienced to perform tasks assigned to them;
 - (d) ensure that the Services and Deliverables will conform with all descriptions and specifications set out in the Service Specification (if any), and that the Deliverables shall be fit for any purpose expressly or impliedly made known to the Supplier by the Customer;
 - (e) provide all equipment, tools and vehicles and such other items as are required to provide the Services;
 - (f) use the best quality goods, materials, standards and techniques, and ensure that the Deliverables, and all goods and materials supplied and used in the Services or transferred to the Customer, will be free from defects in workmanship, installation and design;
 - (g) obtain and at all times maintain all necessary licences and consents, and comply with all applicable laws and regulations;
 - (h) observe all health and safety rules and regulations and any other security requirements that apply at any of the Customer's premises;
 - (i) hold all materials, equipment and tools, drawings, specifications and data supplied by the Customer to the Supplier (**Customer Materials**) in safe custody at its own risk, maintain the Customer Materials in good condition until returned to the Customer, and not dispose or use the Customer Materials other than in accordance with the Customer's written instructions or authorisation; and
 - (j) not do or omit to do anything which may cause the Customer to lose any licence, authority, consent or permission upon which it relies for the purposes of conducting its business.
- 6. CUSTOMER REMEDIES**
- 6.1 If the Supplier fails to deliver the Goods and/or perform the Services by the applicable date, the Customer shall, without limiting its other rights or remedies, have one or more of the following rights:
- (a) to terminate the Contract (or any part thereof) with immediate effect by giving written notice to the Supplier;
 - (b) to recover from the Supplier any costs incurred by the Customer in obtaining substitute goods and/or services from a third party;
 - (c) where the Customer has paid in advance for Services that have not been provided by the Supplier and/or Goods which have not been delivered by the Supplier, to have such sums refunded; and
 - (d) to claim damages for any additional costs, loss or expenses incurred by the Customer which are in any way attributable to the Supplier's failure to meet such dates.
- 6.2 If the Supplier has delivered Goods that do not comply with the undertakings set out in clause 3.1, then, without limiting its other rights or remedies, the Customer shall have one or more of the following rights, whether or not it has accepted the Goods:
- (a) to reject the Goods (in whole or in part) whether or not title has passed and to return them to the Supplier at the Supplier's own risk and expense;
 - (b) to terminate the Contract with immediate effect by giving written notice to the Supplier;
 - (c) to require the Supplier to repair or replace the rejected Goods, or to provide a full refund of the price of the rejected Goods;
 - (d) to recover from the Supplier any expenditure incurred by the Customer in obtaining substitute goods from a third party; and
 - (e) to claim damages for any additional costs, loss or expenses incurred by the Customer arising from the Supplier's failure to supply Goods in accordance with clause 3.1.
- 6.3 These Conditions shall extend to any substituted or remedial services and/or repaired or replacement goods supplied by the Supplier.
- 7. CUSTOMER'S OBLIGATIONS**
- The Customer shall:
- (a) ensure that (if submitted by the Customer) the Goods Specification and/or the Service Specification are complete and accurate in all material respects;
 - (b) co-operate with the Supplier in all matters relating to the Services;
 - (c) where necessary, provide the Supplier with reasonable access at reasonable times to the Customer's premises for the purpose of providing the Services; and
 - (d) provide such information as the Supplier may reasonably request for the provision of the Services.
- 8. CHARGES AND PAYMENT**
- 8.1 The Charges for the Goods:
- (a) shall be as specified in the Order, or if no charges are quoted, the price set out in the Supplier's published price list in force at the date of the Contract; and
 - (b) shall be inclusive of the costs of packaging, insurance and carriage of the Goods, unless otherwise agreed in writing. No extra charges shall be effective unless agreed in writing and signed by the Customer.
- 8.2 The charges for the Services shall be set out in the Order and/or Services Specification, and shall be the full and exclusive remuneration of the Supplier in respect of the performance of the Services. Unless otherwise agreed in writing by the Customer, the charges shall include every cost and expense of the Supplier directly or indirectly incurred in connection with the performance of the Services.
- 8.3 The Supplier shall invoice the Customer in accordance with the invoicing terms set out in the Order, or otherwise on completion of the delivery of the Goods or performance of the Services.
- 8.4 In consideration of the supply of Goods and/or Services by the Supplier, the Customer shall pay the invoiced amounts within 30 days of the date of a correctly rendered invoice to a bank account nominated in writing by the Supplier.
- 8.5 Where any taxable supply for VAT purposes is made under the Contract by the Supplier to the Customer, the Customer shall, on receipt of a valid VAT invoice from the Supplier, pay to the Supplier such additional amounts in respect of VAT as are chargeable on the supply of the Goods and/or Services at the same time as payment is due for the supply of the Goods and/or Services.
- 8.6 If a party fails to make any payment due to the other party under the Contract by the due date for payment, then the defaulting party shall pay interest on the overdue amount at the rate of 2% per annum above the Bank of England's base rate from time to time. Such interest shall accrue on a daily basis from the due date until the date of actual payment of the overdue amount, whether before or after judgment. The defaulting party shall pay the interest together with the overdue amount. This clause shall not apply to payments that the defaulting party disputes in good faith.

- 8.7 The Customer may at any time, without limiting any of its other rights or remedies, set off any liability of the Supplier to the Customer against any liability of the Customer to the Supplier, whether either liability is present or future, liquidated or unliquidated, and whether or not either liability arises under the Contract.
- 9. INTELLECTUAL PROPERTY RIGHTS**
- 9.1 In respect of the Goods and any goods that are transferred to the Customer as part of the Services under this Contract, including without limitation the Deliverables or any part of them, the Supplier warrants that it has full clear and unencumbered title to all such items, and that at the date of delivery of such items to the Customer, it will have full and unrestricted rights to sell and transfer all such items to the Customer.
- 9.2 The Supplier assigns to the Customer, with full title guarantee and free from all third party rights, all Intellectual Property Rights in the products of the Services, including for the avoidance of doubt the Deliverables.
- 9.3 The Supplier shall, promptly at the Customer's request, do (or procure to be done) all such further acts and things and the execution of all such other documents as the Customer may from time to time require for the purpose of securing for the Customer the full benefit of the Contract, including all right, title and interest in and to the Intellectual Property Rights assigned to the Customer in accordance with clause 9.2.
- 9.4 All Customer Materials are the exclusive property of the Customer.
- 10. INDEMNITY**
- 10.1 The Supplier shall keep the Customer indemnified against all liabilities, costs, expenses, damages and losses (including but not limited to any direct, indirect or consequential losses, loss of profit, loss of reputation and all interest, penalties and legal costs and all other professional costs and expenses) suffered incurred by the Customer as a result of or in connection with:
- (a) any claim made against the Customer for actual or alleged infringement of a third party's intellectual property rights arising out of, or in connection with, the manufacture, supply or use of the Goods, or receipt, use or supply of the Services, to the extent that the claim is attributable to the acts or omissions of the Supplier, its employees, agents or subcontractors;
 - (b) any claim made against the Customer by a third party for death, personal injury or damage to property arising out of, or in connection with, defects in Goods, to the extent that the defects in the Goods are attributable to the acts or omissions of the Supplier, its employees, agents or subcontractors; and
 - (c) any claim made against the Customer by a third party arising out of or in connection with the supply of the Goods or the Services, to the extent that such claim arises out of the breach, negligent performance or failure or delay in performance of the Contract by the Supplier, its employees, agents or subcontractors.
- 10.2 This clause 10 shall survive termination of the Contract.
- 11. CONFIDENTIALITY**
- 11.1 A party (**receiving party**) shall keep in strict confidence all technical or commercial know-how, specifications, inventions, processes or initiatives which are of a confidential nature and have been disclosed to the receiving party by the other party (**disclosing party**), its employees, agents or subcontractors, and any other confidential information concerning the disclosing party's business, its products and services which the receiving party may obtain. The receiving party shall only disclose such confidential information to those of its employees, agents and subcontractors who need to know it for the purpose of discharging the receiving party's obligations under the Contract, and shall ensure that such employees, agents and subcontractors comply with the obligations set out in this clause as though they were a party to the Contract. The receiving party may also disclose such of the disclosing party's confidential information as is required to be disclosed by law, any governmental or regulatory authority or by a court of competent jurisdiction.
- 11.2 This clause 11 shall survive termination of the Contract.
- 12. TERMINATION**
- 12.1 Without limiting its other rights or remedies, the Customer may terminate the Contract:
- (a) in respect of the supply of Services, by giving the Supplier 30 days' prior written notice; and
 - (b) in respect of the supply of Goods, in whole or in part at any time before delivery with immediate effect by giving written notice to the Supplier, whereupon the Supplier shall discontinue all work on the Contract. The Customer shall pay the Supplier fair and reasonable compensation for any work in progress on the Goods at the time of termination, but such compensation shall not include loss of anticipated profits or any consequential loss.
- 12.2 In any of the circumstances in these Conditions in which a party may terminate the Contract, where both Goods and Services are supplied, that party may terminate the Contract in respect of the Goods, or in respect of the Services, and the Contract shall continue in respect of the remaining supply.
- 12.3 Either party may terminate this Contract at any time on written notice to the other if the other:
- (a) is in material breach of any of the terms of this Contract and either that breach is incapable of remedy, or the other party fails to remedy that breach within 30 days after receiving written notice requiring it to remedy that breach; or
 - (b) is unable to pay its debts (within the meaning of section 123 of the Insolvency Act 1986), or becomes insolvent, or is subject to an order or a resolution for its liquidation, administration, winding-up or dissolution (otherwise than for the purposes of a solvent amalgamation or reconstruction), or has an administrative or other receiver, manager, trustee, liquidator, administrator or similar officer appointed over all or any substantial part of its assets, or enters into or proposes any composition or arrangement with its creditors generally, or is subject to any analogous event or proceeding in any applicable jurisdiction.
- 12.4 Termination of the Contract, however arising, shall not affect any of the parties' rights and remedies that have accrued as at termination.
- 12.5 Clauses which expressly or by implication survive termination of the Contract shall continue in full force and effect.
- 13. CONSEQUENCES OF TERMINATION**
- On termination of the Contract for any reason, the Supplier shall immediately deliver to the Customer all Deliverables whether or not then complete, and return all Customer Materials. If the Supplier fails to do so, then the Customer may enter the Supplier's premises and take possession of them. Until they have been returned or delivered, the Supplier shall be solely responsible for their safe keeping and will not use them for any purpose not connected with this Contract.
- 14. FORCE MAJEURE**
- No party shall be liable to the other for any delay or non-performance of its obligations under the Contract arising from any cause beyond its reasonable control including, without limitation, any of the following: act of God, governmental act, war, fire, flood, explosion or civil commotion (**Force Majeure Event**). If a Force Majeure Event prevents or delays the Supplier's performance of the Contract for more than 7 days, the Customer shall have the right to terminate the Contract with immediate effect on giving written notice to the Supplier.
- 15. GENERAL**
- 15.1 Assignment and other dealings.**
- (a) The Customer may at any time assign, transfer, mortgage, charge, subcontract or deal in any other manner with all or any of its rights or obligations under the Contract.
 - (b) The Supplier may not assign, transfer, mortgage, charge, subcontract, declare a trust over or deal in any other manner with all or any of its rights or obligations under the Contract without the prior written consent of the Customer.
- 15.2 **Notices.** Any notice required to be given pursuant to this Contract shall be in writing, and shall be sent to the other

party marked for the attention of the signatories of this Contract at the address set out for such party in this Contract. Notices may be sent by first-class mail or fax, provided that faxes are confirmed within 24 hours by first-class mailed confirmation of a copy. Correctly addressed notices sent by first-class mail shall be deemed to have been delivered 72 hours after posting and correctly directed faxes shall be deemed to have been received instantaneously on transmission, provided that they are confirmed as set out herein.

- 15.3 **Severability.** If any provision of the Contract is judged to be illegal or unenforceable, the continuation in full force and effect of the remainder of the provisions shall not be prejudiced.
- 15.4 **Waiver.** No forbearance or delay by either party in enforcing its rights shall prejudice or restrict the rights of that party, and no waiver of any such rights or of any breach of any contractual terms shall be deemed to be a waiver of any other right or of any later breach.
- 15.5 **Variation.** Except as set out in these Conditions, any amendment, waiver or variation of the Contract shall not be binding on the parties unless set out in writing, expressed to amend this Contract and signed by or on behalf of each of the parties.
- 15.6 **Third parties.** A person who is not a party to the Contract shall not have any rights to enforce its terms.
- 15.7 **Entire Agreement.** This Contract and the documents annexed to it or otherwise referred to herein contain the whole agreement between the parties relating to the subject matter hereof and supersede all prior agreements, arrangements and understandings between the parties relating to that subject matter.
- 15.8 **Governing law and jurisdiction.** The Contract and any dispute or claim arising out of or in connection with it shall be governed by and construed in accordance with English law and each party hereby submits to the exclusive jurisdiction of the English courts.