

The Customer's attention is particularly drawn to the provisions of clause 10.2.

1. INTERPRETATION

1.1 Definitions. In these General Conditions and, where applicable, the Special Conditions, the following definitions apply:

Business Day: a day other than a Saturday, Sunday or public holiday in Scotland when banks in Edinburgh are open for business.

Commencement Date: has the meaning set out in clause 2.2.

General Conditions: these terms and conditions as amended from time to time in accordance with clause 15.7.

Contract: the contract between Scottish Water (SW) and the Customer for the provision of Services in accordance with these General Conditions.

Customer: the person or firm who purchases the Services from SW.

Customer Default: has the meaning set out in clause 4.2.

Deliverables: has the meaning set out in clause 6.2.

Force Majeure Event: has the meaning given to it in clause 14.1.

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 Services, as set out in the Customer's purchase order form, or the Customer's acceptance of SW's quotation (evidenced either in writing, or by the Customer sending in samples for testing following receipt of a quote), or overleaf, as the case may be.

Sample Number: the sample reference number allocated by SW when accepting an Order.

Services: the services, including the Deliverables, supplied by SW to the Customer as set out in the Service Specification

Service Specification: the description or specification for the Services set out in the Order or otherwise provided in writing by SW to the Customer.

SW: means Scottish Water, whose principal office is at Castle House, 6 Castle Drive, Carnegie Campus, Dunfermline, KY11 8GG.

SW Materials: has the meaning set out in clause 4.1(h).

1.2 **Construction.** In these General Conditions, the following rules apply:

- (a) a **person** includes a natural person, corporate or unincorporated body (whether or not having separate legal personality);
- (b) a reference to a party includes its personal representatives, successors or permitted assigns;
- (c) a reference to a statute or statutory provision is a reference to such statute or statutory provision as amended or re-enacted. A reference to a statute or statutory provision includes any subordinate legislation made under that statute or statutory provision, as amended or re-enacted;
- (d) any phrase introduced by the terms **including, include, in particular** or any similar expression shall be construed as illustrative and shall not limit the sense of the words preceding those terms; and
- (e) a reference to **writing** or **written** includes faxes and e-mails.

2. BASIS OF CONTRACT

- 2.1 The Order constitutes an offer by the Customer to purchase Services in accordance with these General Conditions. The Customer is responsible for ensuring that the Order is complete and accurate.
- 2.2 The Order shall only be deemed to be accepted when SW issues a Sample Number or written acceptance of the Order at which point and on which date the Contract shall come into existence (**Commencement Date**).
- 2.3 The Order, if accepted by SW, shall be deemed to be an individual legally binding agreement between SW and the Customer to purchase the Services on the terms of the Contract.
- 2.4 The Contract constitutes the entire agreement between the parties. The Customer acknowledges that it has not relied on any statement, promise, representation, assurance or warranty made or given by or on behalf of SW which is not set out in the Contract.
- 2.5 Any samples, drawings, descriptive matter or advertising issued by SW and any illustrations or descriptions of the Services contained in SW's catalogues, brochures or website are issued or published for the sole purpose of giving an approximate idea of the Services described in them. They shall not form part of the Contract or have any contractual force.
- 2.6 These General 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 trade, custom, practice or course of dealing.

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- 2.7 These General Conditions shall be deemed, where appropriate to the Services, to incorporate the relevant Special Conditions attached. Where there is a conflict between the Special Conditions and these General Conditions, the Special Conditions shall prevail.
- 2.8 Any quotation given by SW shall not constitute an offer, and is only valid for the period specified in the quotation.

3. PROVISION OF SERVICES

- 3.1 SW shall provide the Services to the Customer in accordance with the Service Specification in all material respects. All specifications, descriptions, analysis, reports and catalogues relating to any of the Services are approximate only and SW shall not be liable for their accuracy.
- 3.2 SW shall use all reasonable endeavours to meet any performance dates for the Services specified in the Order, but any such dates shall be estimates only and time shall not be of the essence for the performance of the Services. SW will not be liable whatsoever for any loss or damage resulting from any delay in performance of the Services, howsoever caused.
- 3.3 SW shall have the right to make any changes to the Services which are necessary to comply with any applicable law or safety requirement, or which do not materially affect the nature or quality of the Services, and SW shall notify the Customer in any such event.

4. CUSTOMER'S OBLIGATIONS

- 4.1 The Customer shall:
- (a) ensure that the terms of the Order and (if submitted by the Customer) the Services Specification are complete and accurate;
 - (b) co-operate with SW in all matters relating to the Services;
 - (c) provide SW, its employees, agents, consultants and subcontractors, with access to the Customer's premises, office accommodation and other facilities as reasonably required by SW to provide the Services;
 - (d) provide SW with such information and materials as SW may reasonably require to provide the Services, and ensure that such information is accurate in all material respects;
 - (e) if applicable, prepare the Customer's premises for the supply of the Services and notify SW of any health and safety hazards which may exist or arise at the Customer's Premises or which may arise in connection with the performance of the Services and which may affect SW's employees and/or sub-contractors or any persons engaged by SW in the performance of the Services at the Customer's Premises. The Customer shall draw these hazards

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to the attention of SW, its employees and sub-contractors or any persons engaged by SW in the performance of the Services at the Customer's Premises and shall instruct such persons in connection with any necessary associated safety measures;

- (f) draw to the attention of SW, its employees and sub-contractors or any persons engaged by SW in the performance of the Services any potentially hazardous substances known or expected to be in samples submitted for analysis;
- (g) 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;
- (h) keep and maintain all materials, equipment, documents and other property of SW (**SW Materials**) at the Customer's premises in safe custody at its own risk, maintain SW Materials in good condition until returned to SW, and not dispose of or use SW Materials other than in accordance with SW's written instructions or authorisation.

4.2 If SW's performance of any of its obligations in respect of the Services is prevented or delayed by any act or omission by the Customer or failure by the Customer to perform any relevant obligation (**Customer Default**):

- (a) SW shall without limiting its other rights or remedies 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 to the extent the Customer Default prevents or delays SW's performance of any of its obligations;
- (b) SW shall not be liable for any costs or losses sustained or incurred by the Customer arising directly or indirectly from SW's failure or delay to perform any of its obligations as set out in this clause 4.2; and
- (c) the Customer shall reimburse SW on written demand for any costs or losses sustained or incurred by SW arising directly or indirectly from the Customer Default.

5. CHARGES AND PAYMENT

5.1 The price for Services shall be the price set out in the Order or, if no price is quoted, the price set out in SW's Scheme of Charges for laboratory services current at the time of acceptance of an Order.

5.2 SW shall be entitled, without prior written notice, to increase the charges stated to take account of:

- (a) any changes in specification made at the request of the Customer; or
- (b) any change in any relevant statutory or other binding regulations; or

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- (c) if, on analysis of any samples from the Customer, SW deems it reasonably necessary to take steps or precautions beyond its normal operating procedures to safeguard health and safety.

SW will advise the Customer in writing of any such increase in charges and the reason(s) therefor as soon as reasonably practicable.

- 5.3 SW shall invoice the Customer on a monthly basis in arrears, a minimum invoice value of £50 will apply. Any exception to this method of invoicing must be set out in the Order.

- 5.4 The Customer shall pay each invoice submitted by SW:

- (a) in pounds sterling within 30 days of the date of the invoice; and
- (b) in full and in cleared funds to a bank account nominated in writing by SW, and

time for payment shall be of the essence of the Contract.

- 5.5 If after the commencement of the provision of any Services, the Customer requests the early termination of the Contract, the Customer shall unless otherwise agreed in writing by SW (acting through a duly authorised manager) be liable to pay to SW by way of liquidated damages, the sum that otherwise would have been payable had the relevant Services been duly completed.

- 5.6 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 SW to the Customer, the Customer shall, on receipt of a valid VAT invoice from SW, pay to SW such additional amounts in respect of VAT as are chargeable on the supply of the Services at the same time as payment is due for the supply of the Services.

- 5.7 If the Customer fails to make any payment due to SW under the Contract by the due date for payment, then the Customer shall pay interest on the overdue amount at the rate of 4% per annum above The Bank of Scotland's base rate from time to time. Such interest shall accrue on a daily basis from the due date until actual payment of the overdue amount, whether before or after judgment. The Customer shall pay the interest together with the overdue amount.

- 5.8 The Customer shall pay all amounts due under the Contract in full without any set-off, counterclaim, deduction or withholding except as required by law. SW may, without limiting its other rights or remedies, set off any amount owing to it by the Customer against any amount payable by SW to the Customer.

6. INTELLECTUAL PROPERTY RIGHTS

- 6.1 All Intellectual Property Rights in the Deliverables and/or arising out of or in connection with the Services shall be owned by SW and shall be treated as confidential, shall not be copied or reproduced or disclosed to any third party without the prior written consent of SW and shall be returned to SW on demand.
- 6.2 The Intellectual Property Rights in all reports, calculations and other documents provided by SW in the performance of or in connection with the Services (the “**Deliverables**”) shall remain vested in SW. The Customer shall have a non-exclusive and non-transferable licence to use such Deliverables in the usual course of its business.
- 6.3 The Customer acknowledges that, in respect of any third party Intellectual Property Rights in the Services, the Customer's use of any such Intellectual Property Rights is conditional on SW obtaining a written licence from the relevant licensor on such terms as will entitle SW to license such rights to the Customer.
- 6.4 All SW Materials are the exclusive property of SW.

7. CONFIDENTIALITY

- 7.1 The Contract and the subject matter thereof, any samples or information supplied by the either party (the “Disclosing Party”) relating in any way to the Disclosing Party’s business, processes, research or property shall be used by the other party for the exclusive purpose of performing the Contract and be treated as and kept confidential by the recipient (the “Receiving Party”) who shall not use such for its own benefit or the benefit of any third party or disclose such or any details thereof for any purpose whatsoever (including advertisements, display or publication) without the Disclosing Party’s prior consent in writing. Notwithstanding the foregoing, the Receiving Party shall be entitled to make any disclosure required by law, or as a consequence of judicial order, or order by any court or tribunal with the authority to order disclosure or by any regulatory authority, in each case provided that at least five (5) Business Days’ notice shall be given to the Disclosing Party before disclosure is made. SW shall be entitled to make any disclosure of any confidential information relating to the Customer and/or the Contract, required by law or as a consequence of judicial order or order by any court or tribunal with the authority to order disclosure or by any regulatory authority.
- 7.2 SW may require to disclose information in compliance with the Freedom of Information (Scotland) Act 2002 or the Environmental Information (Scotland) Regulations 2004, (the decisions of SW in the interpretation thereof shall be final and conclusive in any dispute, difference or question arising in respect of disclosure under its terms), any other law, or, as a consequence of judicial order, or order by any court or tribunal with the authority to order disclosure.

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- 7.3 When disclosing such information it is recognised and agreed by both parties that SW is unable to impose any restriction upon the information that they provide. Such disclosure shall not be treated as a breach of the Contract.
- 7.4 The Customer acknowledges that SW:
- (a) is subject to the requirements of the Freedom of Information (Scotland) Act 2002 (“FOISA”) and the Environmental Information Regulations (Scotland) 2004 (“EIRS”);
 - (b) may be obliged under FOISA or the EIRS to disclose information without consulting with the Customer; and
 - (c) shall be responsible for determining at its absolute discretion if any information held by it is exempt from disclosure in accordance with the provisions of the FOISA or the EIRS and/or is to be disclosed in response to a request for information.

8. DATA PROTECTION

- 8.1 The Customer warrants to SW that it has obtained any necessary consent and provided any necessary notice to individuals whose Personal Data the Customer shares with SW for the purposes of the Contract. SW will act as a Controller and perform the Services in accordance with the applicable UK Data Protection Legislation. SW will process the Personal Data as reasonably required to provide the Services and for the business purposes of the Contract

9. DISPUTE RESOLUTION

- 9.1 Subject to clause 9.2, any dispute between the parties to the Contract that is not resolved may be referred in writing by either party to the director of the other party. If upon expiry of fifteen (15) Business Days following the date of the referral letter to a director, the dispute remains unresolved and provided the dispute does not involve a question or interpretation of the law, the dispute may be referred to any form of alternative dispute resolution that the parties to the Contract agree. The procedures and availability of appeal in connection with the chosen alternative dispute resolution shall be agreed by the parties to the Contract.
- 9.2 Either party to the Contract may initiate proceedings in a Sheriff court in Scotland or the Court of Session in Edinburgh (at the sole discretion of the party initiating the court action) in respect of a dispute in order to avoid damage to its business or reputation or to protect or preserve its legal rights or where the parties to the Contract have not considered alternative dispute resolution or where under clause 9.1 the parties cannot agree to a form of alternative dispute resolution
- 9.3 Pending resolution or determination of any matter in dispute, the parties to the Contract agree that the performance of the Agreement shall not be suspended, ceased or delayed

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and both parties shall comply fully with their obligations under the Contract at all times, unless otherwise agreed by both parties.

10. LIMITATION OF LIABILITY: THE CUSTOMER'S ATTENTION IS PARTICULARLY DRAWN TO THIS CLAUSE

- 10.1 Nothing in these General Conditions shall limit or exclude SW's liability for:
- (a) death or personal injury caused by its negligence, or the negligence of its employees, agents or subcontractors;
 - (b) fraud or fraudulent misrepresentation;
 - (c) breach of the terms implied by section 2 of the Supply of Goods and Services Act 1982 (title and quiet possession);
 - (d) breach of the terms implied by section 12 of the Sale of Goods Act 1979 (title and quiet possession).
- 10.2 Subject to clause 10.1:
- (a) SW's liability under any warranty is limited, at SW's sole discretion, to either the provision of replacement Services or return of the fees paid by the Customer;
 - (b) In particular, but without limitation, SW shall not be liable for the failure of any of the Services provided to be fit for any particular purpose for which they are required or to comply with any laws, rules or regulations as regards their use and makes no warranty, express or implied, regarding fitness for any purpose;
 - (c) SW shall under no circumstances whatever be liable to the Customer, whether in contract, delict (including negligence), breach of statutory duty, or otherwise, for any loss of profit, or any indirect or consequential loss arising under or in connection with the Contract; and
 - (d) SW's total liability arising under or in connection with the Contract, whether arising in contract, delict (including negligence) or restitution, or for breach of statutory duty or misrepresentation, or otherwise, shall in all circumstances be limited to (i) the price of the Services payable under the Order or (ii) £10,000 whichever is the higher.
- 10.3 The terms implied by sections 13 to 15 of the Sale of Goods Act 1979 and the terms implied by sections 3 to 5 of the Supply of Goods and Services Act 1982 are, to the fullest extent permitted by law, excluded from the Contract.
- 10.4 This clause 10 shall survive termination of the Contract.

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11. INDEMNITY

- 11.1 The Customer shall indemnify SW against any claim whatsoever by any third party arising out of the provision by SW of the Services to the Customer.

12. TERMINATION

- 12.1 The parties shall be entitled to terminate or suspend the Contract in whole or in part by giving one month's written notice to the other party.

- 12.2 Without limiting its other rights or remedies, either party may terminate the Contract with immediate effect by giving written notice to the other party if the other party commits a material breach of any term of the Contract and (if such a breach is remediable) fails to remedy that breach within 21 days of that party being notified in writing to do so;

- 12.3 Termination or expiry of the Contract (howsoever occasioned) shall not prejudice or affect the parties' liabilities including accrued liabilities or any right of action or remedy which shall have accrued or shall thereupon accrue to either party under these General Conditions or at law and nothing in the Contract shall prejudice the right of either party to recover any amount outstanding at such termination or expiry.

- 12.4 During the term of the Contract and for the period of six months after any termination of the Contract, the Customer will not, directly or indirectly, for itself or on behalf of any other person, partnership, company, corporation or other entity:

- (a) solicit or attempt to solicit, for the purpose of engaging in competition with SW, any person or entity who is or has been a customer of SW prior to the termination of the Contract ("SW Customer");
- (b) divert, entice, or otherwise take away from SW the business or patronage of a SW Customer, or attempt to do so; or
- (c) solicit or induce any SW Customer to terminate or reduce its relationship with SW.

- 12.5 Without limiting its other rights or remedies, SW may suspend provision of the Services pursuant to any Order between the Customer and SW if the Customer becomes subject to any of the events listed in clauses 12.1 (a) – 12.1 (j), or SW reasonably believes that the Customer is about to become subject to any of them, or if the Customer fails to pay any amount due under the Contract on the due date for payment.

13. INSOLVENCY

- 13.1 SW shall have the right forthwith to terminate the Contract by written notice to the Customer on the occurrence of any of the following insolvency events in respect of the Customer:

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- (a) the Customer is unable to pay its debts within the meaning of section 123 of the Insolvency Act 1986;
 - (b) the Customer, if a company, passes a resolution for winding-up or dissolution (otherwise than for the purposes of and followed by an amalgamation or reconstruction);
 - (c) the court makes an administration order or a winding-up order or the Customer enters into voluntary liquidation;
 - (d) at a meeting, the directors or members resolve to make an application for an administration order or any party gives or files notice of an intention to appoint an administrator;
 - (e) the Customer makes a composition or arrangement with its creditors including a voluntary arrangement under the Insolvency Act 1986;
 - (f) an administrator, administrative receiver, receiver, trustee, manager or provisional liquidator is appointed over the whole or any part of the Customer's business by a creditor or by the court, or possession is taken of any of its property under the terms of a floating charge;
 - (g) an application or petition is made for administration or liquidation;
 - (h) if the Customer is an individual or a firm (including a number of persons acting together in any capacity), the Customer becomes apparently insolvent within the meaning of Section 7 of the Bankruptcy (Scotland) Act 1985 or a petition is presented for the Customer's bankruptcy or the sequestration of his estate or a criminal bankruptcy order is made against the individual or a partner in a firm, or if the individual or partner in a firm makes any composition or arrangement with or for the benefit of creditors, or makes any conveyance or assignment for the benefit of creditors, or if an administrator or trustee is appointed to manage the individual's or the firm's affairs;
 - (i) if the Customer is an individual, if he shall die or be adjudged incapable of managing his affairs within the meaning of Part VII of the Mental Health Act (1983) or of Part V of the Mental Health (Scotland) Act 1984; or
 - (j) any event similar to those listed in 12.1 (a) – 12.1 (i) inclusive occurs.
- 13.2 Following termination of the Contract by SW for any reason set out in clause 12.1, the Customer shall indemnify and keep indemnified SW in full, from and against, all actions, claims, losses, liabilities, proceedings, demands, damages, costs and expenses, including reasonable legal fees/costs/expenses and all other expenditure or loss of opportunity or revenue whatsoever incurred by or as the case may be, made against, SW.
- 13.3 On termination of the Contract for any reason:
- (a) the Customer shall immediately pay to SW all of SW's outstanding unpaid invoices and interest and, in respect of Services supplied but for which no

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invoice has yet been submitted, SW shall submit an invoice, which shall be payable by the Customer immediately on receipt;

- (b) the Customer shall return all SW Materials and any Deliverables which have not been fully paid for. If the Customer fails to do so, then SW 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;
- (c) the accrued rights and remedies of the parties as at termination shall not be affected, including the right to claim damages in respect of any breach of the Contract which existed at or before the date of termination or expiry; and
- (d) clauses which expressly or by implication have effect after termination shall continue in full force and effect.

14. FORCE MAJEURE

14.1 For the purposes of this Contract, **Force Majeure Event** means an event beyond the reasonable control of SW including but not limited to strikes, lock-outs or other industrial disputes (whether involving the workforce of SW or any other party), failure of a utility service or transport network, act of God, war, riot, terrorism, civil commotion, malicious damage, compliance with any law or governmental order, rule, regulation or direction, accident, breakdown of plant or machinery, fire, flood, storm or default of suppliers or subcontractors.

14.2 SW shall not be liable to the Customer as a result of any delay or failure to perform its obligations under this Contract as a result of a Force Majeure Event.

14.3 If the Force Majeure Event prevents SW from providing any of the Services for more than 30 days, SW shall, without limiting its other rights or remedies, have the right to terminate this Contract immediately by giving written notice to the Customer.

15. GENERAL

Assignment and other dealings.

15.1 The Contract is personal to the Customer and the Customer may not assign, novate, sub-contract or otherwise dispose of the Contract without the consent of SW.

15.2 SW shall be permitted to assign, novate or sub-contract the Contract by serving written notice on the Customer.

15.3 Notices.

- (a) Any notice or other communication given to a party under or in connection with this Contract shall be in writing, addressed to that party at its registered office (if it is a company) or its principal place of business (in any other case) or such other address as that party may have specified to the other party in writing in accordance with this clause, and shall be delivered personally or sent by prepaid first-class post or other next working day delivery service, or by commercial courier, fax or e-mail.
- (b) A notice or other communication shall be deemed to have been received: if delivered personally, when left at the address referred to in clause 15.3(a); 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; if delivered by commercial courier, on the date and at the time that the courier's delivery receipt is signed; or, if sent by fax or e-mail, one Business Day after transmission provided an error message was not received by the sender of the fax or email.
- (c) The provisions of this clause shall not apply to the service of any proceedings or other documents in any legal action.

15.4 Severance.

- (a) If any provision or part-provision of the Contract is or becomes invalid, illegal or unenforceable, it shall be deemed modified to the minimum extent necessary to make it valid, legal and enforceable. If such modification is not possible, the relevant provision or part-provision shall be deemed deleted. Any modification to or deletion of a provision or part-provision under this clause shall not affect the validity and enforceability of the rest of the Contract.
- (b) If any provision or part-provision of this Contract is invalid, illegal or unenforceable, the parties shall negotiate in good faith to amend such provision so that, as amended, it is legal, valid and enforceable, and, to the greatest extent possible, achieves the intended commercial result of the original provision.

15.5 Waiver. A waiver of any right under the Contract or law is only effective if it is in writing and shall not be deemed to be a waiver of any subsequent breach or default. No failure or delay by a party in exercising any right or remedy under the Contract or by law shall constitute a waiver of that or any other right or remedy, nor prevent or restrict its 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.

15.6 No partnership or agency. Nothing in the Contract is intended to, or shall be deemed to, establish any partnership or joint venture between any of the parties, nor constitute either party the agent of another party for any purpose. Neither party shall have authority to act as agent for, or to bind, the other party in any way.

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- 15.7 **Variation.** Except as set out in these General Conditions, no variation of the Contract, including the introduction of any additional terms and conditions shall be effective unless it is agreed in writing and signed by SW.
- 15.8 **Governing law.** The Contract shall be governed by and construed in accordance with Scots Law and any disputes arising shall be subject to the exclusive jurisdiction of the Scottish Courts.

SPECIAL CONDITIONS - ANALYTICAL SERVICES

1. TERMS AND CONDITIONS

Analysis of samples will be carried out by SW on the following terms and conditions which shall incorporate the foregoing General Conditions.

2. ANALYSIS

- 2.1 Analysis of samples will be carried out using the standard working methods employed by SW in respect of its own samples and employing the same control.
- 2.2 If an analysis is required for legal proceedings SW must be so notified in writing in advance of carrying out the analysis. Any such analysis will be carried out in accordance with procedures established by SW for the analysis of formal samples for such work.
- 2.3 If there is no standard method for any particular analysis SW will use what it considers to be the best available method and will use reasonable care and skill in undertaking the analysis.
- 2.4 The Customer acknowledges and hereby accepts that SW is not a public analyst nor is it approved under statute as an analyst for the purpose of any legislation containing or referring to such expression.
- 2.5 The turnaround time for the analysis of samples will be set out in the Order. If a faster response time is required by the Customer, then the Customer must notify SW in writing in advance of SW carrying out the analysis. SW will be entitled to make an additional charge to the Customer for any agreed faster response time and such charge will be set out in the Order.
- 2.6 Unless otherwise agreed between the parties, used samples or any excess samples shall, at the discretion of SW, be disposed of in accordance with standard safe working practices.

3. CHARGES

- 3.1 Charges in respect of the analysis will be set out in the Order.
- 3.2 Advice from SW on the results of analysis or other consultancy services must be specifically requested by the Customer and separate charges agreed with SW in writing.
- 3.3 Any charges quoted by SW are for samples delivered to SW in appropriate sized batches unless the customer notifies SW that a collection and sampling service is required from SW. A charge (to be agreed) will be made for this service.

4. SAMPLES

- 4.1 Each sample for analysis by SW shall be provided by the Customer in such form and quantities as may be reasonably required by SW.
- 4.2 Each sample from the Customer shall be clearly identified in order to bring to SW's attention any known or suspected properties of the sample which may be dangerous or harmful or unusual and will comply with any relevant statutory requirements.
- 4.3 SW may supply bottles and preservatives where this is necessary to ensure the integrity of the analysis. If such a supply is required by the Customer, an additional charge may be made for the supply by SW and this will be set out in the Order.
- 4.4 Where SW is collecting any sample from a Customer and the sample is not available for collection at the specified time as agreed between the parties, SW reserves the right to charge the Customer the quoted price for the collection and analysis of the sample or £25 (or such other sum as SW may from time to time determine) whichever shall be the greater.

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- 4.5 The Customer shall supply to SW without charge all such relevant data and information (including without limitation such information as is required under the Control of Substances Hazardous to Health Regulations 2002) and give such reasonable assistance as may reasonably be requested by SW.
- 4.6 The Customer shall supply to SW a fully completed proforma sampling sheet as provided by SW. Any omissions in the data provided on these proforma sampling sheets may result in the analysis results being invalid but the customer will still be liable for the charges. SW will not accept responsibility for any data added to or altered on a proforma sampling sheet at the request of the Customer after submission of the samples to SW.
- 4.7 The Customer shall be responsible for the correctness and completeness of the information it provides and shall indemnify SW against any loss, costs or damage resulting from any error or omission in such information.
- 4.8 Risk and responsibility for the integrity and safekeeping of samples will remain with the Customer until SW accepts receipt of the samples.
- 4.9 SW reserves the right to refuse to accept any or all of the Customer's samples.

5. RESULTS

- 5.1 Results of analysis will be despatched in accordance with the timescales set out in the Order by first class post or email unless another method of delivery is requested by the Customer in the Order. SW reserves the right to make an additional charge if the Customer requires a method of delivery other than by first class post or email.
- 5.2 Confirmation tests of results can be undertaken at the Customer's written request provided the sample remains in a suitable condition. An additional charge will be made by SW for such tests as set out in the Order.
- 5.3 All results provided by SW to the Customer are provided for the sole use of the Customer. SW accepts no responsibility for any reliance that may be made on such results by any third parties unless the permission of SW is sought in writing for the provision of particular results to specified third parties and such permission is given by SW in writing in advance of the provision of any such results. Results may be shared internally within Scottish Water to relevant teams.

SPECIAL CONDITIONS - ENVIRONMENTAL CONSULTANCY

1. TERMS AND CONDITIONS

Environmental consultancy will be carried out on the following conditions, which shall incorporate the foregoing General Conditions.

2. CONSULTANCY

- 2.1 SW undertakes to carry out the consultancy work with reasonable skill care and diligence.
- 2.2 All reports provided by SW to the Customer are provided for the sole use of the Customer. SW accept no responsibility for any reliance that may be made on such reports by any third parties unless permission of SW is sought in writing for the provision of particular reports to specified third parties and such permission is given by SW in writing in advance of the provision of any such reports.
- 2.3 None of the provisions in the General Conditions and Special Conditions shall prevent SW or any members of its staff taking such steps as are reasonably necessary to comply with any rules, professional or ethical, enforceable by any relevant professional body of which SW or the employee may be a member.

3. CONFIDENTIALITY

- 3.1 Any confidential information concerning the Customer's business will not be disclosed by SW without the Customer's prior written consent except in extenuating circumstances where the information is requested by any regulatory body where a refusal of the information would render SW liable in civil or criminal proceedings.
- 3.2 Any information and advice whether written or oral of any nature given to the Customer by SW shall not be imparted by the Customer to any third party without the prior written consent of SW.

4. OFFICE SERVICES AND EXPENSES

- 4.1 The Customer shall reimburse SW in respect of all out of pocket expenses incurred in connection with the consultancy undertaken including travel and subsistence and any other necessary support services. SW's current rates for such expenses are available on request.
- 4.2 If SW considers it is necessary to carry out work on the Customer's premises the Customer will provide SW and its staff, free of charge, with suitable office accommodation with the use of telephone and secretariat services where available.

5. CALCULATION AND PAYMENT OF FEES

Consultancy will be charged on an hourly rate as agreed in writing between the parties according to time spent on the Customer's business in accordance with SW's current pricing policy in force from time to time, a copy of which policy is available on request.

SPECIAL CONDITIONS - HIRE OF EQUIPMENT

1. INTERPRETATION

- 1.1 The following definitions apply in these Special Conditions for Hire of Equipment, which shall incorporate the foregoing General Conditions.

Delivery: the transfer of physical possession of the Equipment to the Customer.

Deposit: the deposit amount set out in the Order.

Equipment: the items of equipment listed in the Order, all substitutions, replacements or renewals of such equipment and all related accessories, manuals and instructions provided for it.

Rental Payments: the payments made by or on behalf of the Customer for hire of the Equipment as set out in the Order.

Rental Period: the period of hire as set out in clause 3 of these Special Conditions for Hire of Equipment.

2. EQUIPMENT HIRE

- 2.1 SW shall hire the Equipment to the Customer subject to the following terms and conditions which incorporate the foregoing General Conditions.

- 2.2 SW shall not, other than in the exercise of its rights under these Special Conditions for Hire of Equipment or applicable law, interfere with the Customer's quiet possession of the Equipment.

3. RENTAL PERIOD

The Rental Period shall be as set out in the Order unless these Special Conditions for Hire of Equipment are terminated earlier in accordance with their terms.

4. RENTAL PAYMENTS AND DEPOSIT

- 4.1 The Customer shall pay the Rental Payments as set out in the Order.

- 4.2 The Deposit is a deposit against default by the Customer of payment of any Rental Payments or any loss of or damage caused to the Equipment. The Customer shall, on the date of these Special Conditions for Hire of Equipment, pay the Deposit to SW. If the Customer fails to make any Rental Payments in accordance with the Order, or causes any loss or damage to the Equipment (in whole or in part), SW shall be entitled to apply the Deposit against such default, loss or damage. The Customer shall pay to SW any sums deducted from the Deposit within ten (10) Business Days of a demand for the same. The Deposit (or balance thereof) shall be refundable within five (5) Business Days of the end of the Rental Period.

5. DELIVERY

- 5.1 Delivery of the Equipment shall be made by SW. SW shall use all reasonable endeavours to effect Delivery by the date and time agreed between the parties. Title and risk shall transfer in accordance with clause 6 of these Special Conditions for Hire of Equipment.
- 5.2 The Customer shall procure that a duly authorised representative of the Customer shall be present at the Delivery of the Equipment. Acceptance of Delivery by such representative shall constitute conclusive evidence that the Customer has examined the Equipment and has found it to be in good condition, complete and fit in every way for the purpose for which it is intended. If required by SW, the Customer's duly authorised representative shall sign a receipt confirming such acceptance.
- 5.3 To facilitate Delivery, the Customer shall at its sole expense provide all requisite materials, facilities, access and suitable working conditions to enable Delivery to be carried out safely and expeditiously.

6. TITLE, RISK AND INSURANCE

- 6.1 The Equipment shall at all times remain the property of SW, and the Customer shall have no right, title or interest in or to the Equipment (save the right to possession and use of the Equipment subject to the terms of these Special Conditions for Hire of Equipment).
- 6.2 The risk of loss, theft, damage or destruction of the Equipment shall pass to the Customer on Delivery. The Equipment shall remain at the sole risk of the Customer during the Rental Period and any further term during which the Equipment is in the possession, custody or control of the Customer (**Risk Period**) until such time as the Equipment is redelivered to SW. During the Rental Period and the Risk Period, the Customer shall, at its own expense, obtain and maintain the following insurances:
- (a) insurance of the Equipment to a value not less than its full replacement value comprehensively against all usual risks of loss, damage or destruction by fire, theft or accident, and such other risks as SW may from time to time nominate in writing;
 - (b) insurance for such amounts as a prudent owner or operator of the Equipment would insure for, or such amount as SW may from time to time reasonably require, to cover any third party or public liability risks of whatever nature and however arising in connection with the Equipment; and
 - (c) insurance against such other or further risks relating to the Equipment as may be required by law, together with such other insurance as SW may from time to time consider reasonably necessary and advise to the Customer.

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6.3 The Customer shall give immediate written notice to SW in the event of any loss, accident or damage to the Equipment arising out of or in connection with the Customer's possession or use of the Equipment.

7. CUSTOMER'S RESPONSIBILITIES

7.1 The Customer shall during the term of these Special Conditions for Hire of Equipment:

- (a) ensure that the Equipment is kept and operated in a suitable environment, used only for the purposes for which it is designed, and operated in a proper manner by trained competent staff in accordance with any operating instructions;
- (b) take such steps (including compliance with all safety and usage instructions provided by SW) as may be necessary to ensure, so far as is reasonably practicable, that the Equipment is at all times safe and without risk to health when it is being set, used, cleaned or maintained by a person at work;
- (c) maintain at its own expense the Equipment in good and substantial repair in order to keep it in as good an operating condition as it was on the commencement of the Rental Period (fair wear and tear only excepted) including replacement of worn, damaged and lost parts, and shall make good any damage to the Equipment;
- (d) make no alteration to the Equipment and shall not remove any existing component(s) from the Equipment without the prior written consent of SW unless the component(s) is/are replaced immediately (or if removed in the ordinary course of repair and maintenance as soon as practicable) by the same component or by one of a similar make and model or an improved/advanced version of it. Title and property in all substitutions, replacements, renewals made in or to the Equipment shall vest in SW immediately upon installation;
- (e) keep SW fully informed of all material matters relating to the Equipment;
- (f) not, without the prior written consent of SW, part with control of (including for the purposes of repair or maintenance), sell or offer for sale, underlet or lend the Equipment or allow the creation of any mortgage, charge, lien or other security interest in respect of it;
- (g) not do or permit to be done any act or thing which will or may jeopardise the right, title and/or interest of SW in the Equipment and, where the Equipment has become affixed to any land or building, the Customer must take all necessary steps to ensure that SW may enter such land or building and recover the Equipment both during the term of these Special Conditions for Hire of Equipment and for a reasonable period thereafter, including by procuring from any person having an interest in such land or building, a waiver in writing and in favour of SW of any rights such person may have or acquire in the Equipment and a right for SW to enter onto such land or building to remove the Equipment;

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- (h) not suffer or permit the Equipment to be confiscated, seized or taken out of its possession or control under any distress, execution or other legal process, but if the Equipment is so confiscated, seized or taken, the Customer shall notify SW and the Customer shall at its sole expense use its best endeavours to procure an immediate release of the Equipment and shall indemnify SW on demand against all losses, costs, charges, damages and expenses incurred as a result of such confiscation;
- (i) not use the Equipment for any unlawful purpose;
- (j) ensure that at all times the Equipment remains identifiable as being SW's property and wherever possible shall ensure that a visible sign to that effect is attached to the Equipment; and
- (k) deliver up the Equipment at the end of the Rental Period or on earlier termination of these Special Conditions for Hire of Equipment at such address as SW requires, or if necessary allow SW or its representatives access to the premises where the Equipment is located for the purpose of removing the Equipment.

7.2 The Customer acknowledges that SW shall not be responsible for any loss of or damage to the Equipment arising out of or in connection with any negligence, misuse, mishandling of the Equipment or otherwise caused by the Customer or its officers, employees, agents and contractors, and the Customer undertakes to indemnify SW on demand against the same, and against all losses, liabilities, claims, damages, costs or expenses of whatever nature otherwise arising out of or in connection with any failure by the Customer to comply with the terms of these Special Conditions for Hire of Equipment.

8. WARRANTY

- 8.1 SW warrants that the Equipment shall substantially conform to its specification (as made available by SW), be of satisfactory quality and fit for any purpose held out by SW. SW shall use all reasonable endeavours to remedy, free of charge, any material defect in the Equipment which manifests itself during the Rental Period provided that:
- (a) the Customer notifies SW of any defect in writing within ten (10) Business Days of the defect occurring;
 - (b) SW is permitted to make a full examination of the alleged defect;
 - (c) the defect did not materialise as a result of misuse, neglect, alteration, mishandling or unauthorised manipulation by any person other than SW's authorised personnel;
 - (d) the defect did not arise out of any information, design or any other assistance supplied or furnished by the Customer or on its behalf; and
 - (e) the defect is directly attributable to defective material, workmanship or design.

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- 8.2 If SW fails to remedy any material defect in the Equipment in accordance with clause 8.1, SW shall, at the Customer's request, accept the return of part or all of the Equipment and terminate this Agreement and refund any Rental Payments that relate to the period after the defect arose.

9. LIABILITY

- 9.1 Without prejudice to clause 10.1 of the General Conditions, SW's maximum aggregate liability for breach of these Special Conditions for Hire of Equipment (including any liability for the acts or omissions of its employees, agents and subcontractors), whether arising in contract, delict (including negligence), misrepresentation or otherwise, shall in no circumstances exceed the amount of Rental Payments made by the Customer.

- 9.2 These Special Conditions for Hire of Equipment, and the General Conditions set forth the full extent of SW's obligations and liabilities in respect of the Equipment and its hiring to the Customer. In particular, there are no conditions, warranties or other terms, express or implied, including as to quality, fitness for a particular purpose or any other kind whatsoever, that are binding on SW except as specifically stated in these Special Conditions for Hire of Equipment. Any condition, warranty or other term concerning the Equipment which might otherwise be implied into or incorporated within these Special Conditions for Hire of Equipment, whether by statute, common law or otherwise, is expressly excluded.

10. CONSEQUENCES OF TERMINATION

- 10.1 Upon termination of these Special Conditions for Hire of Equipment, however caused:
- (a) SW's consent to the Customer's possession of the Equipment shall terminate and SW may, by its authorised representatives, without notice and at the Customer's expense, retake possession of the Equipment and for this purpose may enter the premises at which the Equipment is located; and
 - (b) without prejudice to any other rights or remedies of the Customer, the Customer shall pay to SW on demand:
 - (i) all Rental Payments and other sums due but unpaid at the date of such demand together with any interest accrued pursuant to clause 5.8 of the General Terms;

any costs and expenses incurred by SW in recovering the Equipment and/or in collecting any sums due under these Special Conditions for Hire of Equipment (including any storage, insurance, repair, transport, legal and remarketing costs).