

## Terms and Conditions – Rivers and Stream

Water is a very dynamic environment and recommendations and guidance given is based on typical conditions. Extreme weather, flooding, drought and other environmental factors can drastically alter the way in that the system behaves and may mean that estimates regarding timespans can change quickly. For the purposes of distinguishing a waterbody the following criteria shall be used. Waterbodies will be defined at the discretion of Aquaserve Management Limited

The definition of lake or pond shall mean a body of water largely enclosed that forms a habitat separate from a river, stream or other online water course

For lakes and ponds the limit of audits are the lake, pond or defined waterbody and if present, the first 20 metres of both the recharge and discharge points

For rivers, the definition will be a lotic watercourse where water is free to traverse downstream. The contract shall be for each watercourse although where small, undefined tributaries are present these may, at the discretion of the company, be included as a part of the main water course.

### Aquaserve Management Limited DEFINITIONS

- In these conditions of sale: (a) The company/contractor means Aquaserve Management Limited. (b) The customer means any person contracting with the company for the supply of services. (c) These conditions may only be modified by a variation in writing signed on behalf of the company by a director. (d) Making a purchase will be taken as agreement to these conditions of sale. The definitions and rules of interpretation in this clause shall apply in these terms and conditions.
- Commencement Date means the date that Aquaserve Management Limited shall commence work as agreed between Aquaserve Management Limited and the client from time to time, but no later than 30 days from the date of the quotation, unless otherwise agreed in writing between Aquaserve Management Limited and the Client.
- Intellectual Property means the report, report format and scoring system, submitted by the contractor (whether before or after the making of the contract).
- Quotation means the written estimate provided by the contractor for the completion of the contract.
- Site means the location where the works are to be performed by the contractor.
- Specification means the table describing the works provided by the contractor below

1.A	Sluices, weirs & retaining structures	To check and audit sluices, weirs and/or retaining structure(s) for signs of undercutting damage or potential failure. This is based on a visual check and does <b>not</b> guarantee that the sluice, weir or other retaining structure is structurally sound.
1.B	Movement in structure	To check for sluices, weirs and/or retaining structures(s) have not moved from their original position nor moved out of shape. This is based on a visual check and does <b>not</b> guarantee that the sluices, weirs and/or retaining structures(s) are structurally sound.
1.C	Primary Recharge culvert face condition	To audit the face of the primary recharge structure (where present) for signs of damage, failure or other structural anomaly. This is based on a visual check and does <b>not</b> guarantee that the structures(s) are structurally sound.
1.D	Primary Recharge culvert face condition	To audit the face of ant additional recharge structure(s) (where present) for signs of damage, failure or other structural anomaly. This is based on a visual check and does <b>not</b> guarantee that the structures(s) are structurally sound.
1.E	Discharge culvert face condition	To audit the face of the discharge structure(s) (where present) for signs of damage, failure or other structural anomaly. This is based on a visual check and does <b>not</b> guarantee that the structures(s) are structurally sound.

1.F	Condition of bridges culverts and crossings	To audit bridges, culverts and other structure(s) (where present) for signs of damage, failure or other structural anomaly. This is based on a visual check and does <b>not</b> guarantee that the structures(s) are structurally sound. Audits under structures will only be undertaken when safe to do so by the consultant. This is decided at the consultant's discretion and the reasons for not accessing, if the structure is not audited, will be detailed in the report.
1.G	Primary recharge free and functioning	To audit the condition of the recharge area to ensure that water has free passage with no visible blockages.
1.H	Additional recharge(s) free and functioning	To audit the condition of additional recharge area(s), if present, to ensure that water has free passage with no visible blockages.
1.I	Discharge free and functioning	To visually audit for blockages by silt, debris, litter, organic content or other obstructions that could restrict the free passage of water through the discharge point(s)
1.J	Recharge apron condition	To visually audit the recharge apron (where present) to ensure that the structure is functioning and without obvious defects that could be caused by erosion, structural damage or other causes.
1.K	Discharge apron condition	To visually audit the discharge apron (where present) to ensure that the structure is functioning and without obvious defects that could be caused by erosion, structural damage or other causes.
1.L	Blockages restricting water flow	To visually audit the length of the water course to identify blockages causing restriction of the water flow
1.M	Blockages Causing Flooding	To visually audit the length of the water course to identify blockages causing or with the potential to cause flooding. Flooding will be defined as any retained water that would or is breaching the normal course of the river/stream etc
1.N	Water levels	To consider the water levels in context to the waterbody in relation to normal levels, time of year and recent weather to ruminant the possibility of unexpected water loss, gain or other inexplicable changes in levels
2.A	Guards clear and unobstructed	Visual examination to ensure that guards to recharge points, discharge points and service structure(s) are unblocked and free of debris and offer free passage of water.
2.B	Guards in good condition	Visual examination to ensure that guards to recharge points, discharge points and service structure(s) are in good condition, free of structural and/or mechanical defects and fully serviceable. Where access keys are provided the structure will be opened and closed to ensure it is in good working order.
2.C	Guards locked and secure	Visual examination to ensure that guards to recharge points, discharge points and service structure are secure and cannot be entered other than be authorised personnel with correct keys and/or tools. It is recommended that guards are kept locked at all times.
2.D	Masonry in good condition	Where present to ensure that the masonry structure(s) are in good condition and free from defects. To check for signs of damage caused by water, erosion, weathering or other damage. This is based on a visual examination and does not guarantee that the structure(s) are structurally sound
2.E	Concrete in good condition	Where present to ensure that the concrete structure(s) are in good condition and free from defects. To check for signs of damage caused by water, erosion, weathering or other damage and to report any exposed rebar or other metalwork. This is based on a visual examination and does not guarantee that the structure(s) are structurally sound

2.F	Pipework in good condition	Where present to ensure that the pipe(s) are in good condition and free from defects. To check for signs of damage caused by water, erosion, weathering or other damage and to report any damage or failure. This is based on a visual examination and does not guarantee that the structure(s) are structurally sound. The audit is based on looking at the visible sections of pipe and does not guarantee defects further up the pipe.
2.G	Water control apparatus working	This will only be included if instructed to do so by the client with consent from the Environment Agency and/or other lead flooding authority. Where we have been instructed to ensure that water control apparatus is functioning as expected in retaining and/or discharging water. We cannot be held responsible for any action required for the failure of the structure to close once opened or vice versa, nor any damage caused as a result of this action.
2.H	Water control apparatus secure	To ensure that any water control apparatus is secure and cannot be operated by unauthorised persons.
3.A	Silt accumulation at recharge	Audit of recharge area(s) to ascertain silt accumulations that are/may cause damage to banks or bed that could cause blockage, constriction or flood risk or adversely alter the course of the waterway
3.B	Silt accumulations at discharge	Audit of discharge area(s) to ascertain silt accumulations that are/may cause damage to banks or bed that could cause blockage, constriction or flood risk or adversely alter the course of the waterway
3.C	Silt accumulation along bed	Audit the entire course of the watercourse to look for silt accumulations that are/may cause damage to banks or bed that could cause blockage, constriction or flood risk or adversely alter the course of the waterway
3.D	Silt accumulations caused by blockages	Audit the entire course of the watercourse to look for blockages creating silt accumulations that are/may cause damage to banks or bed that could cause blockage, constriction or flood risk or adversely alter the course of the waterway
3.E	Silt accumulations at valves	Audit the entire course of the watercourse to look for silt accumulations that are/may cause damage or loss of function to non-return valves.
4.A	Erosion at recharge	Audit of area at main discharge point(s) to ascertain any damage to banks or bed that could cause blockage, constriction or flood risk.
4.B	Erosion at discharge	Audit of area at main discharge point(s) to ascertain any damage to banks or bed that could cause blockage, constriction or flood risk.
4.C	Erosion along the watercourse	To audit the length of the water course and identify erosion that could weaken banks and/or cause damage to infrastructure or lead to breaches and /or escape of water and report on the extent of this
4.D	Erosion caused by blockages	To audit the length of the water course and identify erosion of the banks caused by blockages of the water course and report on the extent of this. This will pertain to erosion that is beyond typical erosion seen over the general watercourse
4.E	Undercutting	Audit of bank to look for signs of undercutting that could pose a risk to users of the waterbody. Whilst all efforts are made to examine the entire waterbody for undercutting the nature of such erosion can make this difficult to identify.
4.F	Bank showing surface run-off	Audit of banks to look for signs of surface run off and/or erosion and to ascertain any damage or weakening of the banks
4.G	Banks at risk from collapse	To audit for weak or damage banks that are at risk of collapse
4.H	Banks that have collapsed	To audit the waterbody for banks that have collapsed or are collapsing.
5.A	Fallen trees	To audit the water course for fallen trees and report on any damage, loss of function of the water course and/or risk to persons entering the site

5.B	Dangerous Trees	To audit the water course for dangerous/damaged trees and report on any potential damage, loss of function of the watercourse and/or risk to person entering the site should the tree fall or move. Please note that the audit is based upon visual appraisal and the auditor is not a trained arboriculturist. Trees that look visually sound may have defects that are not visible and likewise, trees that look to be dangerous may, in fact, be structurally sound.
5.C	Encroaching trees	To audit for trees that are encroaching and/or growing in the main footprint of the water course that may lead and/or accelerate succession and to ascertain if this decreases functionality of the water course.
5.D	Encroaching bankside vegetation	To audit for terrestrial bankside vegetation such as shrubs, bramble, and other plants that are encroaching and/or growing in the main footprint of the water course that may lead to and/or accelerate succession and to ascertain if this decreases functionality of the water course.
5.E	Encroaching marginal vegetation	To audit for marginal aquatic vegetation such as shrubs, bramble, and other plants that are encroaching and/or growing in the main footprint of the waterbody that may lead to and/or accelerate succession and to ascertain if this decreases functionality of the waterbody.
5.F	Submerged weeds	To audit for submerged/emergent aquatic vegetation such as elodea Sp., callitriche Sp. and other aquatic weeds or plants that are encroaching and/or growing to such an extent that the functionality of the water course may be compromised.
6.A	Gates safe and secure	To ensure that gates, if present, offering entry and/or exit to the site are secured, latched and safe. Please advise at the time of ordering if the gate is supposed to A. Open. B. Closed C. Locked. Where gates are locked we will require custody of a key for the duration of the contract to permit access for audits.
6.B	Fence safe and secure	To ensure, that were present, fences are intact and providing a safe, secure barrier to the site. Audits will check for damage, vandalism and integrity of the fence.
6.C	Signage condition	That safety signs on display are present, intact, unobstructed and clearly legible. The integrity of signage will be based on signs present at the first site visit or signs added to the site during the audit contract.
6.D	Lifesaving apparatus	To audit lifesaving apparatus such as floatation rings and devices to ensure they are present and intact.
6.E	Pollution	Visual audit for any signs of pollutions such as oil, fuel and/or sewage entering the water course.
6.F	Fly tipping	To visually audit the water body and immediate area for incident of fly tipping and advise on extent of any fly tipping
6.E	Litter accumulations	To visually audit the water body and immediate area for accumulations of litter and report to the extent of this
6.F	Hazardous Litter	To visually audit the water body and immediate area for accumulations of hazardous litter such as used syringes, asbestos, oil and/or batteries and other such hazardous items and report to the extent of this
6.G	Path condition	To visually audit the path (if present) around the waterbody to signs of damage, erosion and any other hazards.
6.H	Invasive species	To visually audit the water body and immediate area for sign of non-native and/or invasive species and report on the extent of this.

1. Works means the work to be carried out by the contractor under the contract as set out in the specifications together with any other services which the contractor agrees to provide to the client.
2. Paragraph headings shall not affect the interpretation of these conditions.
3. Words in the singular shall include the plural and vice versa.

## **THE SCOPE OF THE WORK**

1. The client is responsible for obtaining any necessary planning permission for the works and for fulfilling statutory requirements.
2. These conditions shall be deemed to be incorporated into any contract between the client and the contractor and shall take precedence over any other terms and conditions (unless identified and agreed in writing by the client/contractor, and any deletion, substitution or amendment to these terms shall not take place unless agreed in writing by the contractor and the client.
3. Should any inconsistencies be found between the contract documents, these are to be highlighted and a revised price agreed prior to the commencement date. If any such inconsistency comes to light after the commencement date the contractor shall be entitled to be paid a reasonable sum for any extra work or cost thereby incurred
4. The client shall obtain all permissions, give all notices and pay all fees required under any Act of Parliament or any regulation or byelaw of any local authority or statutory undertaker having any jurisdiction with regard to the works and the client shall indemnify the contractor against any claim, proceedings, loss or expense resulting from the client's breach of this clause in whole or in part. The client must produce copies of all relevant approvals to the contractor prior to the commencement date. If not produced, work should not commence.

## **QUOTATION**

1. A quotation shall remain open for acceptance within thirty days of the date shown and thereafter lapses automatically.
2. Variations to the works as described will only be undertaken upon instructions given in writing by the client to the contractor. Oral instructions will not be instructed. It should be noted that site personnel have no authority to alter the contract in anyway. The price of any additional work, properly treated as a variation, will be based upon costs prevailing at the date of the instruction.

## **CONTRACT SUM**

1. The contractor shall provide the quotation in writing specifying the works to be carried out and a breakdown of the cost of the works.
2. If the client accepts the quotation in writing within the period stipulated in clause 15, the price contained in the quotation shall become the 'contract sum' except as expressly provided in these terms. A binding contract will come into existence when the client accepts the quotation in writing.
3. The client may issue to the contractor reasonable instructions to vary and modify the quality and quantity of the works. All instructions given by the client must be given in writing. The contractor is not under an obligation to carry out a verbal instruction until it is confirmed in writing, except in the case of an instruction being issued by the client in an emergency e.g. Health and safety matters. All instructions issued in an emergency shall be confirmed in writing within 3 days and the contractor shall be entitled to be paid for work properly carried out in accordance with any such instruction.
4. If the variation will alter the cost of carrying out the works, the contractor will provide a written quotation and cost breakdown for the cost of carrying out the variation and any effect it will have on the completion date. The client and the contractor will agree an adjustment to the contract sum in writing. If the client receives the amended quotation and wishes to proceed, the client shall confirm his instruction to proceed in writing, accepting the new quotation and the extended completion date.
5. Where any additional or substituted work is of a similar nature to the works, such works should be valued to the cost breakdown set out in the quotation. Otherwise such work shall be valued at fair rates and prices agreed prior to execution and any additional payment due to the contractor or any extension to the completion date shall be added to the contract sum and completion date respectively.

## **RIGHT TO CANCEL**

1. If this contract is made at a location which is not the usual place of business of the company, you may have rights to cancel the same under the Consumer Contracts etc. Regulations 2013. Provided you have been supplied with a notice as prescribed by such regulations (which, if applicable, should be attached to and is hereby incorporated in this contract document), such right to cancel will expire 14 days after receipt of the said notice any work completed in this period will be charged as per quotation.

## **PAYMENT**

1. The contractor shall be entitled to receive payments at the intervals stated in the quotation. If no payment interval is agreed the first payment shall be due within 30 days of the first agreed Audit date
2. Where monthly payment periods apply the first interim payment shall not become due until 30 days after the commencement date, thereafter payment shall become due 30 days after receipt by the client of the contractor's application.
3. The client shall pay to the contractor any Value Added Tax properly chargeable on the supply to the client of any goods and services under these terms. The client may at any time request appropriate evidence of the contractor's current VAT registration status. Should the contractor fail to provide evidence then the client may withhold amounts attributable to VAT on any outstanding payment.
4. Interest on all payments due from the client to the contractor shall accrue and be payable from the date when payment first becomes due on a daily basis until the date of actual payment at a rate equivalent to 4% over the base lending rate for the time being of Lloyds Bank plc and shall accrue at such rate after, as well as before, any judgment.

## **THE SITE**

1. Adequate access to the site must be made available by the client to the contractor to enable the work to be carried out in a regular and economic manner.
2. Where access through third party properties is required the contractor must ensure this is put in place prior to the visit of which 14 days' notice will be given. Where access was arranged and not given the contractor reserves the right to charge the full audit fee.
3. Where required the contractor must be given the custody of a key for the duration of the works to allow reasonable access. The contractors agree to keep the key safe and secure and that no copies will be made of the key. Where a key is not given, the client must ensure that access is available on the audit date(s)

## **DELAY/ DISRUPTION**

1. The contractor undertakes to use all reasonable endeavours to complete the works within a reasonable time. The contractor shall incur no liability however for any delays or non-performance arising from force majeure, adverse weather conditions, strikes, lock-outs, war or other hostilities or any active event beyond his reasonable control in whole or in part.

## **COMMENCEMENTS, COMPLETION, DELAY AND DISRUPTION**

1. The client shall give to the contractor and adequate access to allow the contractor to carry out and complete the works and the contractor shall commence the works on site on the commencement date.
2. If it becomes reasonably apparent to the contractor that the progress of the works is being delayed and/or the works will not be completed by the completion date, the contractor shall immediately notify the client in writing of the cause and duration of such delay.
3. The completion date will be extended by a fair and reasonable amount of time if the contractor: a) Has to spend extra time completing the Works because of variations made to the specification. b) The

works are delayed by any act or omission of the client. c) Cannot finish the works on time for reasons beyond his control such as excessively adverse weather conditions, and/or variable site conditions.

4. The contractor shall be entitled to claim any reasonable additional costs incurred as a result of the completion date being extended due to any events that may occur in clause 32 and such additional costs shall be added to the contract sum.
5. All warranties, conditions and other terms implied by statute or common law are, to the fullest extent permitted by law, excluded from the contract.
6. Nothing in these terms limits or excludes the liability of the contractor; (a) For death or personal injury resulting from negligence; or (b) For any damage or liability incurred by the client as a result of fraud or fraudulent misrepresentation by the contractor.
7. Subject to clauses 35 and 36, the contractor shall not be liable for: (a) loss of use; or (b) any special, indirect, consequential or pure economic loss, costs, damages, charges or expenses including loss of enjoyment and injury to feelings; or (c) loss of profits or business.
8. The contractor's total liability in contract, tort (including negligence or breach of statutory duty), misrepresentation, restitution or otherwise arising out of or in connection with the performance or contemplated performance of the contract shall be limited to the amount of monies actually received by the Contractor under the contract

#### **QUALITY OF ALL WORKMANSHIP**

1. Will be in accordance with recognised constructional and assessment practice reports provided will be suitable for their intended use.

#### **DISPUTES**

1. Any dispute, question or difference arising under or in connection with this contract shall in the first instance be submitted to adjudication in accordance with clause 41 and thereafter to the exclusive jurisdiction of the English Courts.
2. The client and the contractor shall have the right to have the dispute or difference referred to such person or persons as the parties may agree to appoint. The costs of the proceedings shall be borne by both parties or as otherwise agreed with the adjudicator

#### **DATA PROTECTION**

This section sets out how the company collects your personal data, how the company uses it and who the company shares it with. Under the Data Protection Act 1998 (the "Act"), your data controller is Aquaserve Management Limited.

1. Use of your personal data (a) By providing your personal data for the purposes of audits, quotations or enquiries, you also agree that this data can be used by the company. (b) You agree to your personal data being used by the company and by the companies we use to help us organise and administer your application and account so that we can send you updates and information by e-mail about the company: (c) marketing and promotional materials about goods and/or services on offer at the company.
2. Retention: We will hold your personal data on our systems for as long as is necessary to administer your account. If you cancel your contract as a client your details may remain on our customer database for the purposes of account administration and information required to be kept by law
3. Access to personal data: The Act gives you the right to access information held about you by the Company. Your right of access can be exercised in accordance with the Act. Any access request may be subject to a fee of £10 to meet our costs in providing you with details of the information we hold about you.



## **SEVERANCE**

1. Each of the provisions of these conditions is separate and distinct from the others and if any of them is held by competent authority to be invalid or unenforceable in whole or in part, the validity of the other provisions of these conditions and the remainder of the provision in question shall not be affected.

## **ASSIGNABILITY**

1. The Client shall not assign, delegate or otherwise deal with any of his rights and obligations under the contract without the prior written consent of the Contractor
2. The Contractor is entitled to assign its rights and conditions under the contract in whole or in part at any time.

## **RIGHTS OF THIRD PARTIES**

1. This contract is made for the benefit of the parties to it and (where applicable) their successors in title and permitted assigns and is not intended to benefit or be enforceable by anyone else pursuant to the Contracts (Rights of Third Parties) Act 1999 or analogous legislation.

## **ENTIRE AGREEMENT**

1. These terms, and any documents referred to herein, constitute the entire agreement between the parties and supersede any previous arrangement, understanding or agreement between them relating to the subject matter they cover.
2. The client acknowledges that, in entering into this contract, it has not relied on any statement, representation, assurance or warranty (whether made negligently or innocently) other than those expressly set out in this contract or in the documents referred to in it.
3. The client and the contractor agree that all liability for and remedies in respect of any representations other than those expressly set out in this contract or the documents referred to in it are excluded (except always that nothing in this clause or elsewhere in these terms shall seek to limit liability for fraudulent misrepresentation(s)).

## **GOVERNING LAW AND JURISDICTION**

1. This contract and any dispute or claim arising out of it or in connection with it or its subject matter shall be governed by and construed in accordance with the law of England and Wales. 35.2 The parties irrevocably agree that the courts of England and Wales shall have exclusive jurisdiction to settle any dispute or claim that arises out of or in connection with the contract.