



Terms & Condition of Sale

Metrology Services

Release 13/04/2022

1. Interpretation

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

1.1 Definitions:

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 12.6.1.
Contract	the contract between the Supplier and the Customer for the supply of Services in accordance with these Conditions.
Control	has the meaning given in section 1124 of the Corporation Tax Act 2010, and the expression change of control shall be construed accordingly.
Controller, processor, data subject, personal data, personal data breach, processing and appropriate technical measures	as defined in the Data Protection Legislation.
Customer	the person or firm who purchases Services from the Supplier.
Data Protection Legislation	the UK Data Protection Legislation and any other European Union legislation relating to personal data and all other legislation and regulatory requirements in force from time to time which apply to a party relating to the use of personal data (including, without limitation, the privacy of electronic communications).
Intellectual Property Rights	patents, utility models, rights to inventions, copyright and related rights, trade marks and service marks, business names and domain names, rights in get-up, goodwill and the right to sue for passing off or unfair competition, rights in designs, rights in computer software, database rights, rights to use, and protect the confidentiality of, confidential information (including know-how and trade secrets), and all other intellectual property rights, in each case whether registered or unregistered and including all applications and rights to apply for and be granted, renewals or extensions of, and rights to claim priority from, such rights and all similar or equivalent rights or forms of protection which subsist or will subsist now or in the future in any part of the world.



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Order	the Customer's order for Services as set out in the Customer's purchase order form as set out the Customer's written acceptance of the Supplier's Quotation.
Quotation	The quotation for the Goods and Services to be provided by the Supplier.
Services	The services, including the UKAS Calibration Laboratory & Verification Services, supplied by the Supplier to the Customer as set out in the Quotation.
Supplier	TORUS MEASUREMENT SYSTEMS LIMITED registered in England and Wales with company number 03761292.
UK Data Protection Legislation	all applicable data protection and privacy legislation in force from time to time in the UK including the General Data Protection Regulation ((EU) 2016/679); the Data Protection Act 2018; the Privacy and Electronic Communications Directive 2002/58/EC (as updated by Directive 2009/136/EC) and the Privacy and Electronic Communications Regulations 2003 (SI 2003/2426) as amended.
UKAS	means the United Kingdom Accreditation Services

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1.2 Interpretation:

- 1.2.1 A person includes a natural person, corporate or unincorporated body (whether or not having separate legal personality).
- 1.2.2 A reference to a party includes its personal representatives, successors and permitted assigns.
- 1.2.3 A reference to a statute or statutory provision is a reference to it as amended or re-enacted. A reference to a statute or statutory provision includes all subordinate legislation made under that statute or statutory provision.
- 1.2.4 Any words following the terms **including, include, in particular, for example** or any similar expression, shall be construed as illustrative and shall not limit the sense of the words, description, definition, phrase or term preceding those terms.
- 1.2.5 A reference to **writing** or **written** includes faxes and emails.

2. Basis of Contract

- 2.1 The Order constitutes an offer by the Customer to purchase Services in accordance with these Conditions.
- 2.2 The Order shall only be deemed to be accepted when the Supplier issues written acceptance of the Order at which point and on which date the Contract shall come into existence (**Commencement Date**).
- 2.3 Any samples, drawings, descriptive matter or advertising issued by the Supplier, and any descriptions or illustrations contained in the Supplier's catalogues or 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.
- 2.4 These Conditions apply to the Contract to the exclusion of any other terms that the Customer seeks to impose or incorporate, or which are implied by law, trade custom, practice or course of dealing.
- 2.5 Any Quotation given by the Supplier shall not constitute an offer and is only valid for a period of 60 Business Days from its date of issue.

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3. Supply of Services

- 3.1 The Supplier shall supply the Services to the Customer in accordance with the [Quotation](#) in all material respects.
- 3.2 The Supplier shall use all reasonable endeavours to meet any performance dates specified in the Quotation, but any such dates shall be estimates only and time shall not be of the essence for performance of the Services.
- 3.3 The Supplier reserves the right to amend the Services if necessary, to comply with any applicable law or regulatory requirement, or if the amendment will not materially affect the nature or quality of the Services, and the Supplier shall notify the Customer in any such event.
- 3.4 The Supplier warrants to the Customer that the Services will be provided using reasonable care and skill and all equipment used in providing the Services is fully maintained.
- 3.5 Where the Services are to be performed at the Supplier's premises, the Supplier shall keep all materials, equipment, documents, and other property of the Customer (**Customer Materials**) at the Supplier's premises in safe custody at its own risk, maintain the Customer Materials in good condition until returned to the Customer, and not dispose of or use the Customer Materials other than in accordance with the Customer's written instructions or authorisation.

4. Customer's Obligations

- 4.1 The Customer shall:
 - 4.1.1 comply with any additional obligations as set out in the Quotation.
 - 4.1.2 ensure that the terms of the Quotation, the Order and any information it provides to the Supplier are complete and accurate;
 - 4.1.3 co-operate with the Supplier in all matters relating to the Services;
 - 4.1.4 provide the Supplier with such information, equipment and materials as the Supplier may reasonably require in order to supply the Services, and ensure that such information is complete and accurate in all material respects;
 - 4.1.5 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;
comply with all applicable laws, including health and safety laws;
 - 4.1.6 where the Services are to be performed at the Customer's premises:
 - 4.1.6.1 provide the Supplier, its employees, agents, consultants and subcontractors, with access to the Customer's premises, office accommodation and other facilities as reasonably required by the Supplier;
 - 4.1.6.2 prepare the Customer's premises for the supply of the Services;
 - 4.1.6.3 undertake all heavy lifting and provide heavy lifting facilities to the Supplier's personnel at all times and at short notice.



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- 4.1.6.4 keep all materials, equipment, documents and other property of the Supplier (**Supplier Materials**) at the Customer's premises in safe custody at its own risk, maintain the Supplier Materials in good condition until returned to the Supplier, and not dispose of or use the Supplier Materials other than in accordance with the Supplier's written instructions or authorisation; and
 - 4.1.7 where the Services are to be performed at the Supplier's premises, deliver any Customer Materials to the Supplier's premises on such dates as specified in the Quotation.
- 4.2 If the Supplier's performance of any of its obligations under the Contract is prevented or delayed by any act or omission by the Customer or failure by the Customer to perform any relevant obligation (**Customer Default**):
 - 4.2.1 without limiting or affecting any other right or remedy available to it, the Supplier shall have the right to suspend performance of the Services until the Customer remedies the Customer Default, and to rely on the Customer Default to relieve it from the performance of any of its obligations in each case to the extent the Customer Default prevents or delays the Supplier's performance of any of its obligations;
 - 4.2.2 the Supplier shall not be liable for any costs or losses sustained or incurred by the Customer arising directly or indirectly from the Supplier's failure or delay to perform any of its obligations as set out in this clause 4.2; and
 - 4.2.3 the Customer shall reimburse the Supplier on written demand for any costs or losses sustained or incurred by the Supplier arising directly or indirectly from the Customer Default.

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5. Charges and Payment

5.1 The charges for the Services shall be calculated on a time and materials basis as set out in the Quotation:

The Supplier shall be entitled to charge the Customer for any expenses reasonably incurred by the individuals whom the Supplier engages in connection with the Services including travelling expenses, hotel costs, subsistence and any associated expenses, and for the cost of services provided by third parties and required by the Supplier for the performance of the Services, and for the cost of any materials.

5.2 The Supplier reserves the right to:

5.2.1 increase the price of the Services, by giving notice to the Customer at any time before provision of the Services, to reflect any increase in the cost to the Supplier that is due to:

5.2.1.1 any factor beyond the control of the Supplier (including foreign exchange fluctuations, increases in taxes and duties, and increases in labour, materials and other manufacturing costs);

5.2.1.2 any request by the Customer to change Services required; or

5.2.1.3 any delay caused by any instructions of the Customer in respect the Services or failure of the Customer to give the Supplier adequate or accurate information or instructions in respect of the Services.

5.2.2 issue the Customer with a cancellation charge of 50% of the charges set out in the Quotation, if upon arrival the Supplier identifies that the Customer's equipment is in a condition which will prevent satisfactory works completion.

5.2.3 issue the Customer with a cancellation charge of 50% of the charges set out in the Quotation if notification of a delay of onsite works is not provided in writing by the Customer in excess of 48 hours prior to work commencing.

5.3 Save as agreed by the Supplier in writing, the Supplier shall invoice the Customer on completion of the Services.

5.4 Save as agreed by the Supplier in writing, the Customer shall pay each invoice submitted by the Supplier:

5.4.1 within 30 days of the date of the invoice; and

5.4.2 in full and in cleared funds to a bank account nominated in writing by the Supplier.

5.5 Time for payment shall be of the essence of the Contract.

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 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 Services at the same time as payment is due for the supply of the Services.

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5.7 If the Customer fails to make a payment due to the Supplier under the Contract by the due date, then, without limiting the Supplier's remedies under Clause 9, the Customer shall pay interest on the overdue sum from the due date until payment of the overdue sum, whether before or after judgment. Interest under this Clause 5.7 will accrue each day at 4% a year above the Bank of England's base rate from time to time, but at 4% a year for any period when that base rate is below 0%.

5.8 All amounts due under the Contract shall be paid in full without any set-off, counterclaim, deduction or withholding (other than any deduction or withholding of tax as required by law).

6. Intellectual Property Rights

6.1 All Intellectual Property Rights in or arising out of or in connection with the Services (other than Intellectual Property Rights in any materials provided by the Customer) shall be owned by the Supplier.

6.2 The Customer grants the Supplier a fully paid-up, non-exclusive, royalty-free non-transferable licence to copy and modify any materials provided by the Customer to the Supplier for the term of the Contract for the purpose of providing the Services to the Customer.

7. Data Protection

7.1 Both parties will comply with all applicable requirements of the Data Protection Legislation. This clause 7 is in addition to, and does not relieve, remove, or replace, a party's obligations or rights under the Data Protection Legislation. In this clause **Applicable Laws** means (for so long as and to the extent that they apply to the Supplier) the law of the European Union, the law of any member state of the European Union and/or Domestic UK Law; and **Domestic UK Law** means the UK Data Protection Legislation and any other law that applies in the UK.

7.2 We will only use your personal information as set out in our Privacy policy, which can be found by following the attached link: [Privacy Policy | Torus Group \(torus-group.com\)](#)

8. Limitation of Liability

8.1 The Supplier has obtained insurance cover in respect of its own legal liability for individual claims not exceeding £5,000,000.00 per claim. The limits and exclusions in this clause reflect the insurance cover the Supplier has been able to arrange, and the Customer is responsible for making its own arrangements for the insurance of any excess loss.

8.2 The restrictions on liability in this Clause 8 apply to every liability arising under or in connection with the Contract including liability in contract, tort (including negligence), misrepresentation, restitution or otherwise.

8.3 Neither party may benefit from the limitations and exclusions set out in this clause in respect of any liability arising from its deliberate default.

8.4 Nothing in the Contract limits any liability which cannot legally be limited, including liability for:

8.4.1 death or personal injury caused by negligence;

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- 8.4.2 fraud or fraudulent misrepresentation; and
- 8.4.3 breach of the terms implied by section 2 of the Supply of Goods and Services Act 1982 (title and quiet possession).
- 8.5 Subject to clause 8.3, the Supplier's total liability to the Customer shall not exceed the total sums paid by the Customer under the Contract in respect of the Services actually supplied by the Supplier.
- 8.6 This clause 8.6 sets out specific heads of excluded loss:
 - 8.6.1 Subject to clause 8.3, the types of loss listed in clause 8.6.2 are wholly excluded by the parties.
 - 8.6.2 The following types of loss are wholly excluded:
 - 8.6.2.1 loss of profits;
 - 8.6.2.2 loss of sales or business;
 - 8.6.2.3 loss of agreements or contracts;
 - 8.6.2.4 loss of anticipated savings;
 - 8.6.2.5 loss of use or corruption of software, data or information;
 - 8.6.2.6 loss of or damage to goodwill; and
 - 8.6.2.7 indirect or consequential loss.
- 8.7 The Supplier has given commitments as to compliance of the Services with relevant specifications in Clause 3. In view of these commitments, the terms implied by sections 3, 4 and 5 of the Supply of Goods and Services Act 1982 are, to the fullest extent permitted by law, excluded from the Contract.
- 8.8 This clause 8 shall survive termination of the Contract.
- 9. Termination**
- 9.1 Without affecting any other right or remedy available to it, the Supplier is entitled to either:
 - 9.1.1 Terminate wholly or in part the Contract or any or every other Contract with the Customer; or;
 - 9.1.2 Suspend any further Services under the Contract or any or every such contract, in the following events:
 - 9.1.2.1 If any debt due and payable by the Customer to the Supplier is unpaid;
 - 9.1.2.2 the Customer's financial position deteriorates to such an extent that in the Supplier's opinion the Customer's capability to adequately fulfil its obligations under the Contract has been placed in jeopardy.
- 9.2 Without affecting any other right or remedy available to it, either party may terminate the Contract by providing 1 month's written notice for Services due to be completed on site at Torus Measurement Systems.

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- 9.3 Without affecting any other right or remedy available to it, either party may terminate the Contract with immediate effect by giving written notice to the other party if:
- 9.3.1 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 14 days of that party being notified in writing to do so;
 - 9.3.2 the other party takes any step or action in connection with its entering administration, provisional liquidation or any composition or arrangement with its creditors (other than in relation to a solvent restructuring), being wound up (whether voluntarily or by order of the court, unless for the purpose of a solvent restructuring), having a receiver appointed to any of its assets or ceasing to carry on business or, if the step or action is taken in another jurisdiction, in connection with any analogous procedure in the relevant jurisdiction; or
 - 9.3.3 the other party suspends, or threatens to suspend, or ceases or threatens to cease to carry on all or a substantial part of its business.
- 9.4 Without affecting any other right or remedy available to it, the Supplier may suspend the supply of Services under the Contract or any other contract between the Customer(or any member of its Group) and the Supplier if the Customer fails to pay any amount due under the Contract on the due date for payment, the Customer becomes subject to any of the events listed in clause 9.3.2 or **Error! Reference source not found.**3 or the Supplier reasonably believes that the Customer is about to become subject to any of them or there is a change of control in the Customer.

10. Consequences of Termination

- 10.1 On termination of the Contract:
- 10.1.1 the Customer shall immediately pay to the Supplier all of the Supplier's outstanding unpaid invoices and interest and, in respect of Services supplied but for which no invoice has been submitted, the Supplier shall submit an invoice, which shall be payable by the Customer immediately on receipt;
 - 10.1.2 where the Services have been supplied at the Customer's premises, the Customer shall return all of the Supplier Materials within 5 days. 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 the Contract.
 - 10.1.3 where the Services have been supplied at the Supplier's premises, the Customer shall collect all of the Customer Materials from the Supplier's premises within 5 days. Until they have been returned, the Supplier shall be solely responsible for their safe keeping and will not use them for any purpose not connected with the Contract.
- 10.2 Termination of the Contract shall not affect any rights, remedies, obligations or liabilities of the parties that have accrued up to the date of termination, including the right to claim damages in respect of any breach of the Contract which existed at or before the date of termination.
- 10.3 Any provision of the Contract that expressly or by implication is intended to come into or continue in force on or after termination of the Contract shall remain in full force and effect.

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11. Force majeure

Neither party shall be in breach of the Contract nor liable for delay in performing or failure to perform, any of its obligations under the Contract if such delay or failure result from events, circumstances or causes beyond its reasonable control (a **Force Majeure Event**) including, without limitation:

- 11.1.1 acts of God, flood, drought, earthquake or other natural disaster;
- 11.1.2 epidemic or pandemic;
- 11.1.3 terrorist attack, civil war, civil commotion or riots, war, threat of or preparation for war, armed conflict, imposition of sanctions, embargo, or breaking off of diplomatic relations;
- 11.1.4 nuclear, chemical or biological contamination or sonic boom;
- 11.1.5 any law or any action taken by a government or public authority, including without limitation imposing an export or import restriction, quota or prohibition, or failing to grant a necessary licence or consent;
- 11.1.6 collapse of buildings, fire, explosion or accident; and
- 11.1.7 any labour or trade dispute, strikes, industrial action or lockouts (other than with companies in the same group as the party relying on this clause);
- 11.1.8 non-performance by suppliers or subcontractors (other than by companies in the same group as the party relying on this clause); and
- 11.1.9 interruption or failure of utility service.

11.2 Provided it has complied with clause 17.3, if the Supplier is prevented, hindered or delayed in or from performing any of its obligations under this agreement by a Force Majeure Event it shall not be in breach of this agreement or otherwise liable for any such failure or delay in the performance of such obligations. The time for performance of such obligations shall be extended accordingly.

11.3 The Supplier shall:

- 11.3.1 as soon as reasonably practicable after the start of the Force Majeure Event notify the Customer in writing of the Force Majeure Event, the date on which it started, its likely or potential duration, and the effect of the Force Majeure Event on its ability to perform any of its obligations under the agreement; and
- 11.3.2 use all reasonable endeavours to mitigate the effect of the Force Majeure Event on the performance of its obligations.

12. General

12.1 **Assignment and other dealings.**



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

12.1.2 The Customer shall not assign, transfer, mortgage, charge, subcontract, delegate, declare a trust over or deal in any other manner with any of its rights and obligations under the Contract.

12.2 Confidentiality.

12.3 Each party undertakes that it shall not disclose to any person any confidential information concerning the business, affairs, customers, clients or suppliers of the other party, except as permitted by clause 12.4.

12.4 Each party may disclose the other party's confidential information:

12.4.1 to its employees, officers, representatives, subcontractors or advisers who need to know such information for the purposes of carrying out the party's obligations under the Contract. Each party shall ensure that its employees, officers, representatives, subcontractors or advisers to whom it discloses the other party's confidential information comply with this clause; and

12.4.2 as may be required by law, a court of competent jurisdiction or any governmental or regulatory authority.

12.5 Neither party shall use the other party's confidential information for any purpose other than to perform its obligations under the Contract.

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12.6 Entire agreement.

12.6.1 The Contract, and the documents referred in it, constitutes the entire agreement between the parties and supersedes and extinguishes all previous agreements, promises, assurances, warranties, representations and understandings between them, whether written or oral, relating to its subject matter.

12.6.2 Each party acknowledges that in entering into the Contract it does not rely on and shall have no remedies in respect of any statement, representation, assurance or warranty (whether made innocently or negligently) that is not set out in the Contract. Each party agrees that it shall have no claim for innocent or negligent misrepresentation [or negligent misrepresentation] based on any statement in the Contract.

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

12.7 **Variation.** Except as set out in these Conditions, no variation of the Contract shall be effective unless it is agreed in writing and signed by the parties (or their authorised representatives).

12.8 **Waiver.** A waiver of any right or remedy under the Contract or by law is only effective if given in writing and shall not be deemed a waiver of any subsequent right or remedy. A failure or delay by a party to exercise any right or remedy provided under the Contract or by law shall not constitute a waiver of that or any other right or remedy, nor shall it prevent or restrict any further exercise of that or any other right or remedy. No single or partial exercise of any right or remedy provided under the Contract or by law shall prevent or restrict the further exercise of that or any other right or remedy.

12.9 **Severance.** 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 **Error! Reference source not found.** shall not affect the validity and enforceability of the rest of the Contract.



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12.10 Notices.

12.10.1 Any notice given to a party under or in connection with the Contract shall be in writing and shall be:

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

12.10.1.2 sent by fax to its main fax number or sent by email to

12.10.2 Any notice shall be deemed to have been received:

12.10.2.1 if delivered by hand, on signature of a delivery receipt;

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

12.10.2.3 if sent by fax or email, at the time of transmission, or, if this time falls outside business hours in the place of receipt, when business hours resume. In this clause 1, business hours means 9.00am to 5.00pm Monday to Friday on a day that is not a public holiday in the place of receipt.

12.10.3 This clause 12.10 does not apply to the service of any proceedings or other documents in any legal action or, where applicable, any arbitration or other method of dispute resolution.

12.11 Third party rights.

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

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

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

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