

1. Interpretation

1.1. In these conditions:

“Completion” means the fulfilment of a Client’s Purchase Order by risual.

“Confidential Information” means data and any information (or copy or part thereof) relating to a party’s proprietary, legal, business or technical matters, including but not limited to Intellectual Property Rights, financial information, operational data, business plans, employee and asset details, lists of Clients and all associated Client details, marketing and product plans, software or information ascertainable by the inspection or analysis of samples, whether disclosed in writing, orally or by any other means to one party (“the Receiving Party”) by the other party (or by any third party on its behalf) (“the Disclosing Party”), before or after the date of the Commencement Date.

“Client” means the business or individual placing a Purchase Order with risual.

“Contract” means the Client’s Purchase Order and risual’s acceptance of it under clause 2 subject to these conditions.

“Consultancy Services” means project based professional services provided on a time and materials basis unless stated otherwise.

“Commencement Date” means the date (a) where an Order Confirmation is sent; (b) a Statement of Work is agreed and signed or (c) the date the Goods or Services are first delivered or supplied to the Client, whichever is the earlier.

“Cloud Solution Provider (CSP)” means where risual resells Microsoft licencing and software subscriptions related to Microsoft Office 365®, Azure® and Dynamics 365®.

“Cloud Solution Provider Billing” means the process of invoicing the Client for all risual supplied CSP subscription licences. Dependant on the licence type this will be in arrears or 12-months in advance.

“Cloud Solution Provider Payment” means the mandatory Client Direct Debit (DD) payment mechanism for all risual supplied Microsoft CSP subscription licences. risual

“Data Protection Legislation” means (i) the GDPR, the LED and any applicable national implementing Laws as amended from time to time (ii) the DPA 2018 (subject to Royal Assent) to the extent that it relates to processing of Personal Data and privacy; (iii) all applicable Law about the processing of Personal Data and privacy, the Electronic Communications Data Protection Directive 2002/58/EC, the Privacy and Electronic Communications (EC Directive) Regulations 2003 and all applicable laws and regulations relating to processing of Personal Data and privacy, including where applicable the guidance and codes of practice issued by the Information Commissioner.

“DPA” 2018 means Data Protection Act 2018.

“Delivery” means the date when the Goods or Services are delivered to the Client or if the Client refuses to take delivery of the Goods or Services then the date that risual informs the Client that the Goods or Services are ready for delivery.

“Developed IPR” has the meaning that all IPR in the Services, the Documentation or otherwise arising from or created, produced or developed by risual and the Workers (whether alone or jointly with others) under or in the course of the Contract wherever in the world enforceable, including without limitation all right, title and interest in and to the Services and Documentation.

“Documentation” means all materials or products produced by risual (however recorded) including designs, plans, instructions and descriptions, test results and training material to be supplied with the Services.

“Expenses” means any business-related costs incurred as part of the delivery of risual Consultancy or Managed Services. Typical Expense costs relate to travel, accommodation and sustenance.

“Force Majeure” means any circumstances beyond the reasonable control of risual, including, but not limited to, acts of God, riots, war or armed conflict, acts of terrorism, acts of government, local government or regulatory bodies, fire, flood or any disaster, strikes or industrial disputes, failure of a utility service or transport network, storm or adverse weather conditions, failure or default of suppliers or sub-contractors.

“Goods” means any hardware, Third Party Software and other goods supplied by risual to the Client.

“GDPR” means the General Data Protection Regulation (Regulations (EU) 2016/679).

“Fair Use Policy” means the limitation of usage relating to a Managed Services contract as described in the respective Service Level Agreement document agreed between the parties.

“Invoice Charge” means the total amount payable by the Client to risual for the supply of Goods and/or Services and excluding delivery and freight costs, VAT and other taxes which shall be added at the relevant charge and excluding any discretionary or additional fees entitled to be charged in accordance with these Conditions.

“Intellectual Property Rights (IPR)” means all right, title and interest in and to the Services (including any deliverables) and all copyright, patent, trademark, design rights (in each case whether registered or unregistered) and all documents, data, drawings, specifications, computer programs, source code, object code (Software), know how, network designs, notes, sketches, drawings, reports, improvements, modifications, scripts or other items relating thereto.

“Lender” means a risual recommended partner providing direct financial lending and or leasing services to a Client for the provision of hardware product, services and Goods.

“Pre-existing IPR” means all Intellectual Property Rights of risual existing prior to the Commencement Date or which arise or are developed otherwise than as a direct result of providing the Services to the Client.

“Managed Services” means contracted, annuity and service level based fixed term agreements for risual to provide support and management services.

“Microsoft Recognition Scheme” means any Microsoft funding or fees allocated to risual in relation to a specific Client and or set of deliverables. Microsoft Funding and fees include Client specific conditions and obligations. Mainly, in the absence of risual payment made directly by Microsoft the Client is liable to pay the fees directly, see clause 8.7.

“Project Start-up Document (PSD)” means a mandatory document where risual Consultancy Services are engaged providing all necessary detail to prepare and deliver the project.

“Project Closedown Document (PCD)” means a mandatory document when risual Consultancy Services are engaged providing all necessary detail for the Client to approve project deliverables.

“Purchase Order” means a Client’s request for the supply of the Goods or Services including the acceptance of a risual quotation, a Client’s instruction to proceed with the supply of Goods or Services or any other confirmation from the Client to proceed with a Purchase Order which is accepted by risual.

“Purchase Order Confirmation” means risual’s written acknowledgement of a Client’s Purchase Order and that risual Terms and Conditions are accepted by the Client and take precedence.

“Personal Data” means any information relating to an identified or identifiable natural person.

“Project Closedown Process” the process of system checking signed by risual at the completion of any project.

“risual” means risual Limited (Company registration no 05431646) whose registered office address is risual House, Parker Court, Staffordshire Technology Park, Stafford, ST18 0WP.

“risual Policies” means all Policies risual comply with available and updated regularly here, www.risual.com/policies.

“Software as a Service” (SaaS) means risual developed software solutions provided on a chargeable subscription SaaS basis. All risual SaaS solutions are protected by risual IPR and require a separate risual SaaS Subscription Agreement.

“Services” means the services supplied by risual to the Client under a Purchase Order or Statement of Work.

“Service Levels” means the levels of service defined in the risual Service SLA document.

“Standard Working Day” means a standard working day between Monday to Friday, (excluding any UK bank holidays) and between the hours of 09:00 to 17:30 allowing 1 hour for a lunch break.

“Statement of Work (SOW)” means a statement of work (if any) signed by the Parties under which risual shall provide Goods and/or Services to the Client.

“Test Execution Plan (TEP)” means a mandatory document where risual Services are engaged providing all necessary detail of tests completed successfully for the Client to approve.

“Third Party Software” means the software licensed to the Client by a third party and which comprises part of the Goods.

“Time and Materials (T&M)” means the default commercial and invoicing model where risual provides risual Consultancy and Managed Service day delivery.

“Workers” means an employee, agent, subcontractor or officer of risual or a person contracted and provided by risual to the Client.

“Working Days” a day when banks in the City of London are open for business.

1.2. Clause headings in these conditions are for reference only and do not affect its construction or interpretation; “including” and “includes” shall be understood to mean “includes without limitation”. Words importing one gender include the other gender and words importing the singular include the plural and vice versa. Words of a technical nature shall be construed in accordance with general terminology in the computer industry in England.

1.3. These conditions shall:

- (a) Apply to and be incorporated in the Contract; and
- (b) Prevail over any inconsistent terms or conditions including those contained in or referred to in the Client Order, confirmation of order, specification or implied by law, trade, custom, practice or course of dealing.

2. Delivery and acceptance

2.1. General:

- 2.1.1. Quotations are only valid in writing for the specified period. If unspecified the quotation shall be valid for 30 Working Days.
- 2.1.2. Purchase Orders constitute an offer by the Client to purchase the Goods/Services subject to these conditions. The Client must ensure that its Purchase Order is accurate. Purchase Orders are only binding when accepted by risual in a written Order Confirmation or, if earlier, risual commences the Services or supplies the Goods or otherwise notifies the Client that such Goods or Services are available for delivery (as applicable).
- 2.1.3. The Client must check the Order Confirmation and notify risual of any error immediately in writing otherwise the details stated in the Purchase Order Confirmation shall be deemed to form part of the Contract.
- 2.1.4. risual reserves the right with the Client consent to change Goods or Services where required to an alternative of equivalent functionality and performance.
- 2.1.5. All delivery dates or periods agreed or stated are approximate only. risual shall not be liable whatsoever for any loss or damage sustained by the Client as a result of risual's failure to deliver by such date. If the Client refuses delivery without risual's agreement, it must reimburse risual for any consequential expenses, loss or damages. Risk in any Goods and / or Services passes to the Client upon Delivery.
- 2.1.6. Delivery and invoicing (part invoice) by instalments may be made by risual as detailed at clause 3.3.
- 2.1.7. Where risual is required to stage the delivery of any Goods or Services over a period of more than 10 days the cancellation fee at clause 11 shall apply from the date of the first delivery up to and including the date of the final delivery.

2.2. Services:

- 2.2.1. The provision of risual Consultancy Services will be agreed and scheduled with the Client subject to 2.1.5 above.
- 2.2.2. risual Consultancy Services will be scheduled with the Client and once scheduled the cancellation fee at clause 11.2 shall apply to any cancellations or alterations requested by the Client.
- 2.2.3. risual Consultancy Services will be deemed to have been accepted by the Client once signed off using the Project Closedown Process.
- 2.2.4. The provision of risual Managed Services will be provided in line with the support contract start and end dates. These Services will be deemed accepted unless disputed by the Client in writing within 7 days of the date on which the event giving rise to the dispute took place.

2.3. Goods:

- 2.3.1. Title to any Goods or any part of the Goods will pass to the Client on receipt by risual of full payment (in cleared funds) in respect of the Invoice Charge and any other amounts

- due to risual by the Client on any account whatsoever. Risk in any Goods will pass to the Client upon Delivery and the Client must insure against all risks for the full reinstatement value of the Goods and store the Goods separately and must not modify or sell them. risual may sue for the Invoice Charge and any loss or damage to the Goods until such time as title has passed and reserves the right to enter the Client's premises and repossess the Goods in relation to a breach of this clause.
- 2.3.2. When the Client receives the Goods, it must inspect them for any defects or non-conformity and notify risual within five (5) working days from the Delivery of the Goods, after which the Client will be deemed to have accepted the Goods.
- 2.3.3. If risual agrees to install the Goods the Client shall in accordance with risual's instructions prepare its premises and IT equipment or networks prior to delivery of Goods or provision of any Services, including power and communications lines and shall assist risual to unpack and place the Goods on the premises and provide risual with reasonable access to the Goods and equipment.
- 2.3.4. Claims for non-delivery of Goods must be made in writing to risual within five (5) working days from the date of Invoice.
- 2.3.5. If the Client fails to take delivery of the Goods or fails to give risual adequate delivery instructions in its Purchase Order then, without prejudice to any other right or remedy available, risual may without liability to the Client: (i) store the Goods (at the Client risk and expense) until actual delivery and charge the Client for the reasonable costs thereof, including insurance costs; or (ii) terminate the Purchase Order forthwith and resell the Goods.
- 2.3.6. risual shall communicate a delivery date for any Goods in line with information provided by the risual third party supplier or vendor. If this date changes or is delayed due to supplier or vendor issues, then risual will not be held liable whatsoever.
- 3. Price and payment**
- 3.1. Price lists do not constitute an offer by risual to the Client.
- 3.2. Subject to any contrary provision in the Purchase Order or Statement of Work risual reserves the right with the Client consent to increase or vary a quoted price or the Invoice Charge in accordance with any increase or variance in its own costs including costs of materials, labour, services, transport or changes in exchange rates between the date of the Purchase Order and the Delivery and the Client agrees to pay such additional charges without dispute.
- 3.3. risual reserves the right to issue invoices based on:
- End of Week for risual Consultancy Services, default; or
 - End of Month for risual Consultancy Services, where applicable; or
 - End of Project for risual Consultancy Services, where applicable;
 - Twelve (12) months in advance for risual Managed Service contracts;
 - Date of shipment for risual Product supply.
 - Twelve (12) months in advance for risual Software as a Service (SaaS) subscriptions.
 - Monthly in arrears strictly by Direct Debit for Cloud Solution Provider (CSP) billing and or invoices.
- 3.4. Payment including cleared funds is due strictly within thirty (30) days from the date of invoice.
- 3.5. If payment is not received within thirty (30) days of the invoice being submitted risual reserves the right:
- to claim interest at the rate applicable at the time and commercial debt recovery costs in accordance with late payment legislation, including the Late Payment of Commercial Debts (Interest) Act 1998 as amended from time to time and;
 - suspend with immediate effect the delivery of further Goods, Services or Subscriptions.
- 3.6. Where any payment remains overdue for more than twenty (20) days risual reserves the right to cancel any unfulfilled portion of the Purchase Orders or Statement of Work without prejudice to any claim or right risual might otherwise have.
- 3.7. risual reserves the right to require payment of the Invoice Charge in stages at its discretion.
- 4. Working hours**
- 4.1. risual shall undertake the Services during Standard Working Days.
- 4.2. All Services provided by risual during the Standard Working Days shall be charged at risual's standard charging rate as outlined in the Purchase Order or Statement of Work. If no such rates are set out, then risual's standard charge out rates as set out in its current price list shall apply.
- 4.3. Any Consultancy Services agreed to be provided by risual outside of the Standard Working Days shall attract at a discretionary uplift on and in addition to risual's standard charging rate such uplift to be charged at a percentage of the standard charging rate. The current risual overtime rates are:
- Weekday 1.3 times standard/agreed rate
 - Saturday 1.5 times standard/agreed rate
 - Sunday 2.0 times standard/agreed rate
 - Bank Holiday 3.0 times standard/agreed rate
- 4.4. Where the Client has purchased Out of Hours (OOH) as part of a Managed Service contract then risual Working Hours are on a 24 hour as needs basis.
- 5. risual Consultancy Services (rCS)**
- 5.1. risual will take every care to arrange and agree consultancy dates with the Client. Once these dates are agreed and confirmed by risual the Client will be bound by the cancellation clause 11.2. Where risual has agreed a discounted Consulting rate for the purchase of volume Consulting days the following clause shall apply:
- 5.1.1. Volume consultancy days will be agreed based on the total number of days and the expected timeframe for delivery of the days. Unless otherwise agreed all volume, consultancy days must be used within twelve (12) months from the date of Purchase Order or Statement of Work.
- 5.1.2. Client unplanned project delays. A Client unplanned project delay incurs due to circumstances, events or Client decisions that will have a material, contractual, timescale or financial impact to the agreed project. The unplanned element is defined by the amount of time the Client became aware of the potential delay and the time

- taken to communicate this to risual, in this context the time period is set at forty-eight (48) hours. Delay notifications will only be accepted in writing (electronic mail) addressed to the risual Engagement Manager or Technical Lead. risual will take up to 24 hours to review the delay and any associated impact, change, cost or consequence.
- 5.1.3. Client planned project delays. A Client planned project delay incurs due to circumstances, events or Client decisions that will have a material, contractual, timescale or financial impact to the agreed project. The planned element is defined by the amount of time the Client became aware of the potential delay and the time taken to communicate this to risual, in this context the time period is set at ten (10) Working Days. Delay notifications will only be accepted in writing (electronic mail) addressed to the risual Engagement Manager or Technical Lead. risual will take up to 48 hours to review the delay and any associated impact, change, cost or consequence.
- 5.2. risual shall automatically invoice for any unused Consultancy days on the 12-month anniversary date from the original Purchase Order or Statement of Work.
- 5.3. In the instance where a Purchase Order or Statement of Work has not been issued by the Client or received the above clauses still apply from the date on which the first Consultancy day was delivered.
- 6. risual Managed Services (rMS)**
- 6.1. Where a Client has a Managed Services contract and has committed to renew the contract then it is required for risual to receive a Purchase Order one (1) month prior to the contract expiry date.
- 7. Intellectual Property Rights (IPR)**
- 7.1. All Pre-existing IPR will vest in and remain absolutely the property of risual and nothing in these conditions shall confer any rights on the Client in respect of such Pre-existing IPR.
- 7.2. The Client acknowledges and agrees that all Developed IPR in the Services, shall immediately upon creation or performance vest in and shall be and remain the sole and exclusive property of risual. The Client hereby irrevocably and unconditionally assigns to risual and shall ensure that the Client other officers, employees, agents and contractors assign to risual, all right, title and interest in and to the Developed IPR whether existing or future.
- 7.3. Without prejudice to clause 7.2 above, risual grants the Client a royalty free, fully paid up, worldwide, perpetual (i.e. for the duration of the related IPR), internally transferable, irrevocable, non-exclusive licence to such Pre-existing IPR and Developed IPR as is strictly necessary for the use of the Services and/or Documentation as contemplated under the Contract. Notwithstanding the foregoing and for the avoidance of doubt the Client shall only be entitled to transfer, transmit, distribute or disclose such Developed IPR and or Pre-existing IPR internally or to other companies in its group (as defined by the Companies Act 2006) and such IPR shall be treated as Confidential Information.
- 7.4. The terms and obligations imposed by this Clause 7 shall survive the expiry or termination of the Contract for any reason.
- 7.5. The Client agrees, at risual's request and expense, to take all such actions and execute all such documents as may in risual's reasonable opinion be necessary to give effect to the assignments and waivers described in Clause 7.3 and to enable risual to obtain, defend or enforce its rights in the IPR (including without limitation by procuring from the Workers and its other employees, agents and contractors all requisite assignments and waivers), and shall not do or fail to do (and shall use its best endeavours procure that to employees, workers, agents, officers or sub-contractors shall not do or fail to do) any act which would or might prejudice risual rights under this Clause 7.
- 8. Client obligations**
- 8.1. The Client shall:
- Co-operate with risual in all matters relating to the Services and appoint a project manager, who shall have the authority to contractually bind the Client on matters relating to the Services.
 - Provide in a timely manner such access to the Client's premises, equipment and data, and such office accommodation and other facilities, as is requested by risual.
 - Provide in a timely manner such information as risual may request, and ensure that such information is accurate in all material respects; and
 - Be responsible (at its own cost) for preparing the relevant premises for the supply of the Services.
 - Comply with any prerequisite obligations specified by risual in any Project Start up Document, Scope of Work or otherwise.
- 8.2. If risual's performance of its obligations under the Contract is prevented or delayed by any act or omission of the Client or the Client's agents, sub-contractors or employees, the Client shall in all circumstances be liable to pay to risual on demand all reasonable costs, charges or losses sustained or incurred by it (including, without limitation, any direct consequential losses, loss of profit and loss of reputation, loss or damage to property, injury to or death of any person and loss of opportunity to deploy resources elsewhere), subject to risual confirming such costs, charges and losses to the Client in writing.
- 8.3. If the Client wishes to change the scope of the Services, it shall submit details of the requested change to risual in writing.
- 8.4. If the Client requests a change to the scope or execution of the Services, risual shall, within a reasonable time, provide a written estimate to the Client of:
- the likely time required to implement the change;
 - any variations to risual's charges arising from the change;
 - the likely effect of the change on the Services or Scope of Works;
 - any other impact of the change on the terms of the Contract.
- 8.5. If the Client wishes risual to proceed with the change, risual has no obligation to do so unless and until the parties have agreed in writing on the necessary variations to its charges, the scope of works and any other relevant terms of the Contract to take account of the change.

- 8.6. If risual requests a change to the scope of the Services, the Client shall not unreasonably withhold or delay consent to it.
- 8.7. Where the Microsoft Recognition Scheme is applied then the Client agrees if Microsoft does not pay risual for compliant deliverables then the Client will raise a Purchase Order for the same value and pay risual directly.
- 9. Confidentiality**
- 9.1. Neither party may use or disclose the other party's Confidential Information or such information reasonably obvious to be confidential except solely in the performance of its own obligations or rights provided under these terms or as provided in clause 9.2.
- 9.2. Either party may disclose the Confidential Information of the other if:
- 9.2.1. required to do so by law or any regulatory authority provided that where lawful that party promptly notifies the disclosing party of such requirement and co-operates with the disclosing party regarding the manner scope or timing of such disclosure or any action that the disclosing party may take to challenge the validity of any such requirement; and
- 9.2.2. any other person whose duties reasonably require such disclosure for the performance of the Contract on the strict condition that each such person to whom such disclosure is made is informed of the obligation of confidentiality under these conditions and complies with those obligations as if they were bound by them.
- 9.3. risual is entitled to use the Client's name for any reasonable marketing purposes with the Client consent.
- 10. Non solicitation**
- 10.1. During the term of the Contract and for a period of (a) six (6) months after its expiry or termination or (b) if later, the last day of provision of the Services, that it will not without prior written consent directly or indirectly solicit or offer employment or engagement to any Worker who at the time of such action or during a period of twelve (12) months immediately preceding such action was directly involved in the provision of Services.
- 11. Cancellations**
- 11.1. Goods:**
- 11.1.1. No Purchase Order for Goods which has been acknowledged by risual may be cancelled by the Client except with the written agreement of risual and provided always that the Client indemnifies risual in full against all loss (including loss of profit), costs, damages, charges or expenses incurred by risual as a result of such cancellation.
- 11.2. Cancellation of risual Consultancy Services:**
- 11.2.1. If the Client wishes to cancel a Purchase Order or Statement of Work or any part of it for any reason on five (5) or less working days before the specified delivery date risual reserves the right to charge a cancellation fee at its discretion of 100% of the Invoice Charge.
- 11.2.2. If the Client wishes to cancel a Purchase Order or Statement of Work or any part of it for any reason less than ten (10) working days and no more than five (5) working days before the specified delivery date risual reserves the right to charge a cancellation fee at its discretion of 50% of the Invoice Charge.
- 11.2.3. If the Client wishes to cancel the Purchase Order or Statement of Work or any part of it for any reason on ten (10) or more working days in advance of the specified delivery date then risual reserves the right to charge the Client for any loss and expense incurred by risual as a result of such cancellation.
- 11.2.4. A Purchase Order or Statement of Work will only be deemed to be cancelled where risual receives written notice of such cancellation detailing those parts of the Purchase Order to be cancelled and this must be sent to risual's registered office address.
- 11.2.5. The parties agree that the cancellation fees stated in this clause 11.2 are a genuine estimate of the losses that risual will incur in the event of a cancellation by the Client.
- 11.3. Cancellation of risual Managed Services:**
- 11.3.1. If the Client wishes to cancel a Contract for Managed Services or any part of it for any reason risual will require a minimum of three (3) months' notice. The three (3) months' notice period will be charged at the full contract value.
- 11.3.2. A Purchase Order for Managed Services will only be deemed to be cancelled where risual receives written notice of such cancellation detailing those parts of the Purchase Order to be cancelled and this must be sent to risual's registered office address.
- 11.3.3. Notwithstanding the Client cancellation of the Managed Services and clause 11.3.1. above any amounts due by the Client to risual under the Contract for Managed Services shall remain payable for the entire duration of the term as set out in the Contract. If a Client has paid for Managed Services in advance no refunds shall be given where a Contract for Managed Services is terminated part way through the fixed term set out in the Contract.
- 12. Warranties**
- 12.1. Goods and Services:**
- 12.1.1. The Services included in the supply or provision of Goods or Services will be provided with reasonable care and skill.
- 12.1.2. Unless otherwise agreed in writing the Goods are sold with the benefit of the manufacturer's warranty only (where available) and the Client's only remedy for breach of that warranty is as stipulated in the relevant manufacturer's terms and conditions.
- 12.1.3. The warranties set out in this clause 12 are in place of all other express or implied warranty including any implied warranties of satisfactory quality and fitness for a particular purpose. risual does not warrant that the Goods or Services will meet the Client's requirements or that the operation of the Goods will be uninterrupted or error free. No oral or written communications by or on behalf of risual shall create a warranty or in any way increase the scope of the warranties given by risual.
- 12.1.4. The warranties given under this clause 12 do not apply to Goods or any part thereof which have:
- (a) been modified, altered, tampered or repaired in any way while in the Client's possession custody or control other than in the ordinary course of installation effected in accordance with the installation manual; or
- (b) been operated other than in accordance with the recommendations of risual or the manufacturer not been maintained or used in accordance with the manufacturers guidelines or good industry practice.
- 12.2. Services:**
- 12.2.1. Where risual Consultancy Services are engaged, delivered and accepted risual will warranty the Consultancy Services provided for a period of fourteen (14) days post Client acceptance. This relates specifically to deliverables within the Purchase Order, Statement of Work or Project Start-up Document only.
- 13. Returns**
- 13.1. Goods:**
- 13.1.1. risual retains the right at its sole discretion whether to accept the return of any defective Goods or whether to repair any Goods or issue a credit note in respect thereof.
- 13.1.2. If risual agrees to accept returned Goods such Goods must be complete, unused and in resalable condition along with the original packaging manuals and accessories unless otherwise agreed.
- 13.1.3. Where risual agrees to accept Goods returned as a condition of the manufacturer's warranty the Client must request a Returns Code from risual and this must be marked clearly on the returned Goods.
- 13.1.4. The Client shall be responsible for all cost's incidental to the return of the Goods including insurance and carriage and such returned Goods shall remain the risk of the Client during transit. risual does not accept liability for any Goods lost or damaged during transit. The Client shall be responsible for proving safe delivery.
- 13.1.5. On receipt of the returned Goods risual shall test the Goods against the stated fault if any. If no fault is located and the Goods are in full working order it shall be returned to the Client at the Client's expense.
- 13.1.6. Returned Goods found to be defective which are consequently replaced by risual shall become the absolute property of risual.
- 13.1.7. risual shall have no liability to accept the return of Goods (or to otherwise repair or alter a credit note in respect thereof) where Goods have been made use of following notification to risual that such Goods are defective.
- 14. Freedom of Information (FOI)**
- 14.1. These conditions are entirely without prejudice to the obligations of the Client under the provisions of the Freedom of Information Act 2000 (including any subordinate legislation made under such Act and any Codes of Practice and/or Guidance issued by the Information Commissioner or any relevant Government Department) ("the Act") and any disclosure of Confidential Information by the Client pursuant to an obligation under the Act shall not be a breach of these conditions.
- 15. Limitation of liability – risual**
- 15.1. The following provisions set out the entire financial liability of risual (including without limitation any liability for the acts or omissions of its employees, agents and sub-contractors) to the Client in respect of:
- 15.1.1. Any breach of the Contract howsoever arising;
- 15.1.2. Any use made by the Client of the Services, the Goods, the Documentation or any part of them; and
- 15.1.3. Any representation, misrepresentation (whether innocent or negligent), statement or tortious act or omission (including without limitation negligence) arising under or in connection with this Agreement.
- 15.2. All warranties, conditions and other terms implied by statute or common law are, to the fullest extent permitted by law, excluded from the Contract.
- 15.3. Nothing in these conditions excludes the liability of risual:
- (a) for death or personal injury caused by risual's negligence;
- (b) for fraud or fraudulent misrepresentation;
- (c) for any other matter for which it would be illegal to try to exclude liability for.
- 15.4. Subject to conditions 11.2 and 11.3
- (a) Neither risual or the Client shall in any circumstances be liable, whether in tort (including without limitation for negligence or breach of statutory duty howsoever arising), contract, misrepresentation (whether innocent or negligent) or otherwise for:
- (i) loss of business; or
- (ii) depletion of goodwill or similar losses; or
- (iii) loss of anticipated savings; or
- (iv) loss of goods; or
- (v) loss of contract; or
- (vi) loss of use; or
- (vii) loss or corruption of data of information; or
- (viii) any special or pure economic loss, costs, damages, charges or expenses.
- (b) risual's total liability in contract, tort (including without limitation negligence or breach of statutory duty howsoever arising), misrepresentation (whether innocent or negligent), restitution or otherwise, arising in connection with the performance or contemplated performance of the Contract shall be limited to:
- (i) the price actually paid by the Client for the Services in any one (1) year; or
- (ii) £50,000
- Whichever is the lesser.
- 16. Limitation of liability – Client**
- 16.1. The Client liability in contract (but not in respect of any indemnities), tort (including without limitation negligence or breach of statutory duty howsoever arising), misrepresentation, restitution or otherwise arising in connection with the Contract shall be limited to:
- (a) £50,000; or
- (b) the total Invoice Charge in respect of the Contract plus VAT

whichever is the lesser.

17. Data Protection Legislation

17.1. In circumstances where risual obtains, uses or is required to disclose Personal Data about the Client in order that risual may discharge the Services agreed between the parties and for other related purposes including updating and enhancing client records, analysis for management purposes an statutory returns, crime prevention and legal compliance then risual agrees to comply with the requirements of the Data Protection Legislation in its entirety including but not limited to technical and organisational security measures, confidentiality, access requests and breach notification. The Client has the right under Data Protection Legislation, to the data risual will hold.

18. Termination

- 18.1. risual may terminate the Contract immediately by serving the other party with a written notice if:
- 18.1.1. the Client commits any material breach of these conditions which if capable of remedy is not remedied within twenty-one (21) days of risual providing the other with a written notice specifying the breach and requiring its immediate remedy; or
 - 18.1.2. a resolution is passed or a petition presented or an order made for winding up of the Client (except for the purpose of a bona fide reconstruction or amalgamation) or if an application is made for the appointment of an administrator or the Client becomes subject to an administration order or a receiver or administrative receiver is appointed over its property or assets, or it becomes insolvent or would be taken as insolvent under Section 123 of the Insolvency Act 1986 or is dissolved or otherwise threatens or ceases to carry on business.
 - 18.1.3. risual reasonably believes the Client is about to experience any of the events above.
- 18.2. risual may terminate the Contract immediately by serving the Client with a written notice if the Client fails to pay any invoice as defined in clause 3.6.
- 18.3. On termination of the Contract for any reason each party shall return or delete any of the other party's Confidential Information and provide the other party with a written notice certifying compliance with sub-clause 9.2.
- 18.4. Where the Client has subscribed to risual Managed Services then notwithstanding termination of the whole Contract, the Client shall be liable to pay the charges for the entire term set out in the Contract and clause 11.3 shall apply accordingly.

19. Discrimination

19.1. Both Parties shall not unlawfully discriminate within the meaning and scope of the provisions of the Sex Discrimination Act 1975, the Race Relations Act 1976, the Disability Discrimination Act 1995, the Employment Equality (Religion or Belief) Regulations 2003, the Employment Equality (Sexual Orientation) Regulations 2003 or any statutory modification or re-enactment thereof or any other Law relating to discrimination in employment.

20. Force Majeure

- 20.1. risual will not be in breach of these conditions or otherwise liable to the Client for any delay in the performance or any non-performance of any obligations under the Contract (and time for performance will be extended accordingly) if and to the extent that the delay or non-performance is owing to Force Majeure.
- 20.2. If a Force Majeure event prevents a Party from performing its obligations under this Contract for more than thirty (30) consecutive days, the other Party may terminate this Contract with immediate effect by written notice.

21. Compliance with relevant requirements

- 21.1. risual and the Client shall:
- 21.1.1. comply with all applicable laws, regulations, codes and sanctions relating to anti-bribery and anti-corruption including but not limited to the Bribery Act 2010 (Relevant Requirements);
 - 21.1.2. not engage in any activity, practice or conduct which would constitute an offence under sections 1, 2 or 6 of the Bribery Act 2010 if such activity, practice or conduct had been carried out in the UK;
 - 21.1.3. have and shall maintain in place throughout the term of the Contract its own policies and procedures, including but not limited to adequate procedures under the Bribery Act 2010, to ensure compliance with the relevant requirements will enforce them where appropriate;
 - 21.1.4. provide such supporting evidence of compliance as risual may reasonably request.
- 21.2. Breach of this clause 21 shall be deemed a material breach.
- 21.3. For the purpose of this clause 21, the meaning of adequate procedures and foreign public official and whether a person is associated with another person shall be determined in accordance with section 7(2) of the Bribery Act 2010 (and any guidance issued under section 9 of that Act), sections 6 (5) and 6 (6) of that Act and section 8 of that Act respectively.

22. General

- 22.1. These Conditions set out the entire agreement and understanding between the parties in connection with its subject matter. In particular, the Client acknowledges that these conditions supersedes any previous agreement between the parties and represents the entire understanding between the parties and the Client acknowledges and agrees that it has not entered into the Contract in reliance upon any representations, agreement, statements, replies to specific enquires made or alleged to have been made by risual at any time provided that nothing in these conditions shall affect the liability of either party in respect of any misrepresentation warranty or condition that it makes fraudulently.
- 22.2. These Conditions may not be amended modified varied or supplemented except by written agreement signed by or on behalf of both parties.
- 22.3. Failure by either party to exercise or enforce any rights or the giving of any forbearance delay or indulgence will not be construed as a waiver of its rights under the Contract or otherwise.
- 22.4. If any part of these conditions shall be found to be unlawful, void or voidable it shall be severed from the Contract and shall not affect the validity or enforceability of the remainder of these conditions.

- 22.5. Each party shall ensure that in the performance of its obligations under the Contract it will always comply with the Data Protection Legislation.
- 22.6. These conditions insofar as they have not been performed at or can take effect after shall remain in full force and effect notwithstanding Termination.
- 22.7. Notices under these conditions shall be in writing and delivered personally or sent by first class pre-paid recorded delivery to the other party's registered office address or such other address as a party may from time to time specify. Notices sent in accordance with this clause 22.7 shall be deemed to be delivered forty-eight (48) hours (excluding Saturdays, Sundays and public holidays) after posting.
- 22.8. Nothing in these conditions shall confer on any third party any right or benefit under the provisions of the Contracts (Rights of Third Parties) Act 1999.
- 22.9. These conditions shall be interpreted and operated in accordance with the Law of England and the parties submit themselves to the jurisdiction of the English Courts.

23. Expenses

- 23.1. The risual expense policy for charging the Client for costs incurred during the delivery of either Consultancy or Managed Services is based on the following:
- (a) Inclusive day rate incorporating a fixed and capped fee; or
 - (b) A capped expense fee separate to the day rate for 50% of the total amount of delivery days quoted, invoiced only when delivery occurs on Client site.