

1. Definitions

Acknowledgement means RINA Consulting’s written acknowledgement of Client’s Order, confirming supply of the Services subject to these terms and conditions.

Client means the party to whom the Proposal is addressed.

Contract means the written agreement between RINA Consulting and Client for the supply of Services which incorporates in order of precedence: the Acknowledgment (if applicable), these terms and conditions, the Proposal and the Order (excluding any terms and conditions contained therein).

Contract Price means the total price of the Services.

Deliverable(s) means any products, reports, results, designs or other items to be provided to Client resulting from the Services.

RINA Consulting means the supplier of the Services: RINA Consulting Limited whose registered address is Cleeve Road, Leatherhead, Surrey, KT22 7SA, England.

RINA Consulting Employees means employees, consultants and subcontractors of RINA Consulting.

IPR means all patents, trademarks, trade/business names, copyright, rights in designs, database rights, software rights, trade secrets, rights in know-how and confidential information and all intellectual property rights (whether or not registered), together with rights to apply for any of these globally.

Order means Client’s purchase order, Proposal acceptance, request to proceed or other communication requesting the supply of Services.

Proposal means RINA Consulting’s written quotation or tender inviting Client to place an Order.

Services means any services to be supplied by RINA Consulting under the Contract.

2. The Contract

2.1 Any Order, whether or not in response to a Proposal, shall be deemed an offer subject to RINA Consulting’s acceptance by means of an Acknowledgement. In the event RINA Consulting commences Services in advance of sending an Acknowledgement, such Services shall be governed by these terms and conditions.

2.2 Notwithstanding clause 2.1, if Client unconditionally accepts RINA Consulting’s unedited Proposal, the signed Proposal/unconditional acceptance and these terms and conditions shall form the entire Contract, no Acknowledgement being necessary.

2.3 Any Contract between the parties shall be on the basis of these terms and conditions notwithstanding any conflicting terms and conditions sought to be applied by Client, which RINA Consulting hereby rejects. These terms and conditions prevail over any terms implied by custom, practice or otherwise supplied.

2.4 RINA Consulting shall provide Services and Client shall pay the Contract Price in respect of the Services.

2.5 Unless otherwise noted herein, this Contract may only be amended, modified or waived by written agreement of the parties. Any additional work performed shall be governed by these terms and conditions.

3. Price

3.1 The Contract Price and all other amounts payable under this Contract are exclusive of VAT, sales tax and all other duties and taxes, which shall be payable in addition by Client.

3.2 Upon notice to Client, RINA Consulting may vary the Contract Price if following the date of its Proposal there is any change in applicable rates of exchange or taxes.

3.3 If withholding taxes are imposed by any authority in respect of payments due, Client shall deduct and pay such withholding taxes on a timely basis (unless RINA Consulting has previously provided Client with evidence satisfactory to the applicable authority that tax is not applicable to such payments). If withholding taxes are deducted, Client shall pay a grossed up amount to RINA Consulting such that the net amount, after such deduction is equal to the amount that RINA Consulting would have received from Client had withholding not been applicable.

4. Payment

4.1 RINA Consulting shall invoice Client in accordance with the payment plan set out in its Proposal or, if none, monthly. Payment of invoices shall be made by Client in full, without deduction or set off, within 30 days of the date of invoice, in the currency invoiced. RINA Consulting may require an upfront payment or irrevocable letter of credit, and shall not be obliged to commence the Services until this is received.

4.2 In the event of late payment(s), RINA Consulting shall be entitled to:
 (i) charge interest at the rate of 8% per annum calculated on a daily basis until payment is received in clear funds, and recover any administrative costs;
 (ii) suspend further Services with no liability to Client as a result of such suspension. Client shall be liable to pay RINA Consulting’s costs of such suspension.

5. Delivery and Title

5.1 RINA Consulting shall endeavour to achieve any agreed dates for performance or delivery, but all such dates are estimates only and RINA Consulting shall have no liability to Client in the event of failure to achieve such dates.

5.2 Unless stated otherwise in the Proposal, the Contract Price is based on Services carried out within RINA Consulting’s usual business hours and on RINA Consulting’s premises.

5.3 RINA Consulting may vary or cancel the Contract if RINA Consulting is unable to proceed as anticipated through unavailability of equipment, personnel or other reason.

5.4 Unless Client provides RINA Consulting with notice within 7 days of receipt of a Deliverable, Client shall be deemed to have accepted the Deliverable.

5.5 Notwithstanding delivery, title in any Deliverables shall not pass to Client until payment of the Contract Price has been received by RINA Consulting together with all other sums which are or become due from Client.

6. Warranty

6.1 Services shall be provided by such RINA Consulting Employees as RINA Consulting considers suitable to undertake the work. RINA Consulting warrants that Services shall be undertaken using reasonable skill and care and any Deliverables generated as a result shall be free from material errors or omissions, subject to:

- (i) Quality and accuracy of the information and/or materials provided by Client;
- (ii) Correct installation and maintenance in respect of any design Deliverable;
- (iii) If materials provided by Client for analysis are in a damaged state it cannot be guaranteed that the Services provided shall achieve a fully accurate diagnosis or end result. However, RINA Consulting shall use reasonable endeavours to produce as accurate a diagnosis as the evidence permits;
- (iv) Electromagnetic Compatibility (EMC) Services rely upon the conditions at the time of any measurement surveys undertaken. RINA Consulting therefore cannot guarantee EMC for all possible operational conditions. If an EMC issue is apparent, RINA Consulting may suggest how a mitigation or remedy might be successful to reduce risks to as low as reasonably practicable but cannot guarantee successful mitigation or remedy. If specialist screening is required, Client is advised to employ a specialist contractor to validate and/or undertake such remedial measures;
- (v) For distribution of newsletters, updates or similar information, RINA Consulting shall take reasonable care to ensure the information contained is accurate. However, RINA Consulting relies on third party sources and therefore, does not warrant or represent that such information is complete or free from errors or inaccuracies.

6.2 RINA Consulting’s liability is limited to the provision of Services of the same nature as those originally provided to correct errors or omissions, subject to notice being given by Client within 3 months from completion of Services.

7. Liability

7.1 **Save as stated in clause 6.1, to the extent permissible at law, all warranties, conditions, guarantees or representations as to satisfactory quality, performance, merchantability, fitness for a particular purpose or otherwise, whether express or implied by statute or otherwise, oral or in writing are hereby excluded.**

7.2 **RINA Consulting shall in no circumstances be liable for: (i) any indirect, special or consequential loss; (ii) loss of profits; (iii) loss of business; (iv) loss of product; (v) loss of use; (vi) loss of contract; (vii) loss of goodwill; (viii) punitive and/or exemplary damages; even if such loss was or should have been in RINA Consulting’s contemplation upon entering the Contract.**

7.3 **Notwithstanding anything else contained herein, RINA Consulting does not exclude any liability for (a) death or personal injury resulting from its negligence; or (b) fraudulent misrepresentation.**

7.4 **RINA Consulting’s liability, whether in breach of contract or in tort (including without limitation negligence) shall not exceed in the aggregate 120% of the Contract Price.**

7.5 **Client is advised to insure against any losses excluded or limited by clause 7.**

7.6 **RINA Consulting shall not be liable for any claim or court proceedings which are brought against it more than 12 months after the event which is the subject of those proceedings.**

8. IPR and Licence

8.1 All IPR in any Deliverables and other items produced as a result of Services shall be the exclusive property of RINA Consulting. RINA Consulting grants Client a non-exclusive, non-transferable, non-sublicensable, personal licence to use the Deliverables for its internal business purposes as anticipated by the Proposal only.

8.2 Any software provided to Client under the Contract shall, subject to the rights of third parties, remain the property of RINA Consulting and use thereof by Client shall be subject to the terms of RINA Consulting’s applicable software licence and any third party software licence.

8.3 If the Services include any modelling, simulation or software modelling, all Deliverables and other items produced as a result of Services shall be the exclusive property of RINA Consulting. Any software used by RINA Consulting, shall be for RINA Consulting Employees use only and shall remain RINA Consulting’s exclusive property.

9. Client Obligations

9.1 Client shall provide RINA Consulting with access, free of charge, to its personnel, premises, transport, accommodation, office facilities, suitable storage space for RINA Consulting’s equipment, documentation, data, information and any other material as set out in the Proposal or otherwise upon the reasonable request of RINA Consulting.

- 9.2 RINA Consulting shall not be liable in respect of any damage to Client provided material which occurs as a result of the proper performance of the Contract by RINA Consulting.
- 9.3 Following completion of the Services under the Contract, or upon RINA Consulting's request, all Client provided materials and equipment shall be collected from RINA Consulting within a period of 2 months. If not collected, RINA Consulting shall be entitled to give Client 1 month's written notice after which RINA Consulting shall have the right to dispose of the materials and equipment by sale or otherwise. Client shall be liable to RINA Consulting for all reasonable storage and disposal costs (less the sum of the proceeds from any sales made).
- 9.4 Where meetings are requested by RINA Consulting, Client shall make the correct people (with decision-making authority) available to attend on a timely basis.
- 9.5 Where RINA Consulting requests accurate information and this is not provided in a timely manner by Client, RINA Consulting may make assumptions based on its own knowledge. Any assumptions shall be documented and where appropriate agreed with Client. RINA Consulting shall not be held liable for any delay or error caused by relying upon an assumption.
- 9.6 Client undertakes to provide a suitable and safe working environment for RINA Consulting Employees. RINA Consulting Employees shall observe Client's reasonable site regulations, as notified to RINA Consulting.
- 9.7 Client shall obtain all export/import licences, visas or other consents required, or where required to be applied for in RINA Consulting's name, Client shall provide assistance where required. Any delay or denial of such consents shall be subject to clause 11.
- 9.8 Client shall indemnify RINA Consulting from any and all claims and losses, including but not limited to claims made by a third party, which arise as a result of the wilful, reckless or negligent act or omission of Client or its employees, agents or subcontractors or as a result of any breach by Client or its employees, agents or subcontractors of any of its obligations under the Contract.
- 9.9 Client warrants that no bribes (as defined under the Bribery Act 2010 and similar legislation including but not limited to the US Foreign Corrupt Practices Act, the UK Anti-Terrorism, Crime and Security Act 2001 and legislation implementing the OECD Convention on Combating Bribery of Foreign Public Officials in International Business Transactions and the United Nations Convention Against Corruption) have been or shall be offered to, paid to or received from any party or third party in connection with this Contract. Client warrants that no other offences have been or shall be committed in connection with this Contract. Client warrants that it has proper procedures and policies in place in compliance with the Bribery Act 2010 and similar legislation.
- 10. Term and Termination**
- 10.1 The Contract is valid until completion of the Services.
- 10.2 Without prejudice to any other right or remedy, either party may terminate the Contract and any associated licences immediately upon giving notice, if the other party:
- commits a breach of the Contract, that is capable of remedy, and fails to remedy the breach within 30 days of receipt of notice requesting remedy;
 - commits a material breach of the Contract, which cannot be remedied;
 - is repeatedly in breach of the Contract provided notice has been given of the breaches;
 - commits any act or omission which contravenes any relevant laws;
 - is the subject of a bankruptcy order, becomes insolvent, makes any arrangement or composition with or assignment for the benefit of creditors, goes into either voluntary (otherwise than for reconstruction or amalgamation) or compulsory liquidation, has a receiver or administrator appointed over its assets or any similar event.
- In any event of termination, all sums due to RINA Consulting shall be payable immediately (including but not limited to Services performed up to the date of termination and any costs incurred or committed to). Any termination or expiry of this Contract shall not affect the accrued rights or liabilities of either party nor shall it affect any provision hereof which is intended to continue in force on or after such termination.
- 11. Force Majeure**
- RINA Consulting shall not be liable to Client for failure to perform any of its obligations under the Contract to the extent that such failure is a result of circumstances beyond its reasonable control. Should such circumstances continue for more than 21 days, RINA Consulting may terminate the Contract.
- 12. Confidentiality**
- Each party shall keep strictly confidential all information disclosed or otherwise discovered regarding the other and its products, software, know-how, the Deliverables and the Services except any part of such disclosed information or data which (i) is in or comes into the public domain without breach of this Contract; (ii) the party under obligation can show (a) was in its possession or known to it prior to receipt from the other party; (b) was independently developed by or for it without use of such information; (c) was obtained by it or made available from a source other than the disclosing party without breach of any confidentiality obligations; or (d) is disclosed by it with the prior written approval of the disclosing party.
- 13. Assignment and Subcontracting**
- Client shall not assign, subcontract or otherwise transfer any right or obligation of the Contract whether in whole or in part, without the consent in writing of RINA Consulting.
- 14. Non-Solicitation**
- While this Contract is in force and for a period of 12 months after completion or termination, Client shall not, directly or indirectly, seek to employ or otherwise engage the services of any RINA Consulting Employees, who have been involved in the Contract or performance of the Services.
- 15. Entire Agreement**
- Except for any applicable valid licence agreements between the parties, the Contract contains the whole agreement between the parties and supersedes any previous agreements, communications and representations. No oral representations made by RINA Consulting or RINA Consulting Employees are binding. Neither party has relied upon any representation or collateral warranty which is not set out in the Contract. All other terms and conditions are expressly excluded except those prohibited by statute.
- 16. Waiver**
- No waiver of any breach of any provision of the Contract shall be held to be a waiver of any other or subsequent breach and the failure of a party to enforce any provision shall not be a waiver of any right subsequently to enforce any other provision.
- 17. Severability**
- If any of the words or provisions of this Contract is deemed invalid, illegal or unenforceable for any reason, then the Contract shall be read as if the relevant words or provisions are, to the extent required, deleted and the validity of the remaining provisions shall not be affected.
- 18. Notices**
- Any notice required to be given by either party under this Contract shall be deemed to have been given if in writing and sent by post to the other party's registered address or any other formally notified address of the other party. Notices shall be deemed served 48 hours after posting.
- Any other communication required in writing may be by post, email or fax.
- 19. Rights of Third Parties**
- No person who is not a party to the Contract shall have any rights under the Contracts (Rights of Third Parties) Act 1999 or otherwise to enforce any term of the Contract.
- 20. Governing Law and Jurisdiction**
- The Contract shall be governed, construed and shall take effect in accordance with the laws of England and Wales, and all disputes arising shall be subject to the exclusive jurisdiction of the Courts of England and Wales to which Client and RINA Consulting irrevocably submit.
- 21. Earthing Clauses**
- In the event Services include electrical earthing solutions, the following supplementary clauses apply:
- 21.1 The general design practices, procedures and calculations that are not specific to Client's site and the raw soil resistivity data obtained from any site measurements shall become the property of RINA Consulting.
- 21.2 In giving advice and/or making recommendations to Client in connection with business strategy, purchasing, tender preparation, tender evaluation and/or engineering methods, RINA Consulting does no more than suggest steps Client might sensibly take and shall not be liable for any damage or loss suffered by Client in reliance upon any such advice.
- 21.3 Client accepts full responsibility for the consequences of pre-arranged and agreed disconnection of electricity supply for the purposes of carrying out the Services in respect of the Contract and shall indemnify RINA Consulting against all claims and losses in relation to injury or damage (whether to person or property) or death occasioned by any such disconnection.
- 21.4 Unless otherwise agreed in writing, Client shall obtain any required consents for RINA Consulting to access third party land. RINA Consulting shall not be liable for any failure to obtain such consents. Client shall indemnify RINA Consulting from all claims and losses in relation to RINA Consulting's access to and presence on third party land. In addition, Client shall indemnify RINA Consulting from all claims and losses in relation to any outbreak or spread of disease, including but not limited to Foot and Mouth disease.