

RISQS TERMS FOR THE PROVISION OF AUDITS TO SUPPLIER MEMBERS

These terms and conditions (“**Terms**”) set out the basis on which Rail Safety and Standards Board Limited (Company No. 04655675) (“**RSSB**”) shall provide audit services to supplier members of RISQS.

Formation of contract

These Terms together with pricing information are available on the RISQS website. Payment for an Audit by a supplier member of RISQS will be deemed to constitute acceptance of these Terms, and shall give rise to a contract between that supplier member and RSSB on the basis of these Terms (the “**Contract**”).

1 Definitions

“**Audit**” means an audit of the Supplier Member’s management systems with the intention of making the results available to Buyer Members through the RISQS Portal;

“**Audit Fee**” means the fee payable by the Supplier Member in respect of an Audit, calculated in accordance with the audit pricing information on the RISQS Website as updated from time to time;

“**Auditor**” means an auditor assigned by RSSB to carry out an Audit;

“**Buyer Member**” means a buyer registered under RISQS that is entitled to access the details of supplier members of RISQS made available through the RISQS Portal;

“**Major Non-Conformity**” means a finding of a major non-conformity by the Auditor, indicating a failing against a whole requirement or part of a requirement that carries significant risk to personnel, the environment or clients;

“**Minor Non-Conformity**” means a finding of a minor non-conformity by the Auditor, indicating a failing against a part of a requirement that does not carry significant risk to personnel, the environment or clients;

“**Nominated Service Provider**” means an organisation or person appointed to provide any aspect of RISQS on behalf of RSSB, including any Auditor;

“**RISQS**” means the Railway Industry Supplier Qualification Scheme;

“**RISQS Portal**” means the online portal through which RSSB makes data relating to the Supplier Member (and other supplier members of RISQS) accessible to Buyer Members;

“**RISQS Website**” means the online system accessible via www.risqs.org.

“**Supplier Member**” means the supplier member of RISQS that is a party to the Contract.

2 Requirement for Audit

- 2.1 The nature and location of the work the Supplier Member advises RSSB that they intend to carry out will dictate whether an Audit is required. Details of work classifications that trigger an Audit are available on the RISQS Website in the RICCL section.
- 2.2 In addition, any work that will be carried out “on or near the line” and thereby require Sentinel Sponsorship will trigger a separate Sentinel audit. Similarly, any Supplier Members that plan for the protection of staff interfacing with the operational railway will require a separate Safe Work Planning audit.

3 Audit

RSSB may appoint Nominated Service Providers to carry out any activities relating to an Audit and accordingly any of RSSB’s obligations under the Contract may be carried out by a Nominated Service Provider on its behalf.

3.1 Audit booking

3.1.1 RSSB shall notify the Supplier Member where an Audit is required and will suggest three possible audit dates. The Supplier Member must agree one of these dates or an alternative date acceptable to RSSB. Where such notification relates to the annual renewal of a previous audit, it will be given approximately four months in advance of expiry of the previous Audit.

3.1.2 Subject to the Supplier Member’s reasonable cooperation, RSSB shall facilitate the provisional booking of each Audit.

3.1.3 It is the Supplier Member’s responsibility to ensure:

- (i) that any required Audit is booked sufficiently far in advance to enable the necessary arrangements to be put place in advance of the Audit, including payment in accordance with clause 3.2.1 below; and
- (ii) that, where an Audit relates to the annual renewal of a previous Audit, it is completed at least 10 days in advance of the expiry date of the previous Audit to allow sufficient time for the preparation, quality control and publishing of the audit report before the previous Audit expires.

3.2 Payment of Audit Fees

3.2.1 Following provisional booking of an Audit, RSSB will provide the Supplier Member with an invoice for the Audit Fee. It is the Supplier Member’s responsibility to ensure the Audit Fee is paid at least 8 weeks before the audit date. If the Supplier Member fails to do so, RSSB reserves the right to reallocate the assigned auditor and cancel the scheduled audit. While RSSB will use reasonable efforts to re-book the Audit as soon as practicable, it remains the Supplier Member’s responsibility to ensure any renewal Audits are completed before the expiry of the previous Audit in accordance with clause 3.1.3 above.

3.3 Audit day

3.3.1 Each Audit will be carried out at the Supplier Member's premises and the Supplier Member shall ensure suitable staff and resources are made available to enable the performance of the Audit on the agreed audit date. Should the Auditor believe that the audit venue is unsuitable or unsafe he/she will advise the Supplier Member and give an opportunity for this to be rectified. Failure to do so within a reasonable time (still allowing enough time for the Audit to be carried out on the same date) will cause the Audit to be cancelled and the Audit Fee forfeited. The Audit will then need to be re-booked by the Supplier Member.

3.3.2 The Supplier Member undertakes to promptly and honestly answer all questions raised by the Auditor and to provide access to such of its business and management systems and supporting evidence as may be requested.

3.4 Post-Audit completion

3.4.1 On completion of the Audit, the Auditor may at its discretion give the Supplier Member an indication of the results of the Audit. Any such results will not be final and will be subject to the completion of the relevant quality control processes.

3.4.2 Where a Minor Non-Conformity is indicated to the Supplier Member in accordance with clause 3.4.1, if the Supplier Member is able to provide satisfactory evidence to the Auditor within five working days following the Audit that the Minor Non-Conformity has been rectified, the Auditor may at its discretion take such evidence into account within the final Audit Report. However, even where satisfactory evidence of rectification is provided in accordance with this clause 3.4.2, the final audit star rating will be determined by the audit results disregarding any such rectification.

3.5 Report Publication

3.5.1 RSSB will endeavour to publish the completed Audit Report on the RISQS Portal within ten working days of the date the Audit was completed, at which point the Supplier Member's qualification status will be amended to reflect the result of the Audit. However, where an audit is failed, the RISQS Portal will be updated earlier in accordance with clause 3.9.

3.6 Audit validity

3.6.1 Subject to clause 3.6.2, the audit results shall remain valid for 12 months from the date of the first audit and annually from that date thereafter. If the Audit is not renewed or not renewed on time then immediately after the validity expires the Supplier Member's entry on the RISQS Portal will be changed to "audit expired"

3.6.2 Audits are only valid during the period when the Supplier Member's RISQS supplier member subscription is current.

3.7 Major Non-Conformities - Initial audits

- 3.7.1 A supplier that receives any Major Non-Conformities during an initial audit of any module will not pass and another audit will be needed in order for the supplier to qualify.

3.8 Major Non-Conformities – five-day close-out period for renewal audits

- 3.8.1 If on a renewal audit the Auditor determines that the Supplier Member has between one and five Major Non-Conformities at the end of their Audit, the Supplier Member will be notified and will be given five working days to close-out those Non-Conformities prior to the audit report being published.

- 3.8.2 If, at the end of this five-day period, all of the Major Non-Conformities have been closed-out, the audit report will be published as a “pass” but with no audit star rating. If any of the Major Non-Conformities have not been closed-out as determined by the Auditor, then the Audit will have been failed and the Supplier Member’s record on the RISQS Portal will be updated in accordance with clause 3.9.2 below.

- 3.8.3 Where an Audit is passed following the successful close-out all Major Non-Conformities, the “pass” status may be subject to the Supplier Member agreeing to, paying for and passing a one-day re-audit to be carried out approximately 12 weeks after the initial Audit, to ensure that any corrective actions to close-out Major Non-Conformities identified in the original Audit are still in place. The exceptions to this re-audit requirement are detailed in the RISQS rules available on the RISQS Website.

- 3.8.4 In addition to the process set out in clauses 3.8.1 to 3.8.3, where the Auditor determines that the Supplier Member has between one and five Major Non-Conformities at the end of their Audit, a risk mitigation process will be undertaken involving Network Rail and/or TfL, as appropriate. A report will be sent to the RISQS scheme manager, who will review any non-conformities identified with Network Rail and/or TfL. Network Rail and/or TfL will then determine based on the risk likely to be imported to the infrastructure whether the Supplier Member:

- (i) may continue to work on the infrastructure as normal;
- (ii) may continue to work on the infrastructure but only in accordance with specified restrictions; or
- (iii) must stop all work on the infrastructure.

3.9 Audit Failure

- 3.9.1 If the Supplier Member has six or more Major Non-Conformities at the end of their Audit, they will have failed the Audit.

- 3.9.2 Where an Audit has been failed, the RISQS Portal will be immediately updated to reflect the failure and Buyer Members will be notified within one working day. The failure of an Audit will affect the Supplier Member’s eligibility to carry out or be invited to tender for works of the type that they were audited against.

3.10 Appeals

3.10.1 If the Supplier Member wishes to appeal against the result of an Audit, they must do so in accordance with the RISQS appeals procedure which is available on the RISQS Portal.

3.11 Audit Cancellation

3.11.1 RSSB will make every reasonable effort to carry out Audits as booked. However, where RSSB needs to cancel an Audit, RSSB will have no liability in excess of refunding any Audit Fee paid or re-booking the Audit at the earliest date practical to both RSSB and the Supplier Member.

3.11.2 Where an Audit is cancelled or re-scheduled at the request of the Supplier Member, the following percentages of the Audit Fee for the originally scheduled Audit will remain payable by the Supplier Member (in addition to the Audit Fee for any re-scheduled Audit):

Period of notice given prior to scheduled audit date	Percentage remaining payable
6 weeks or more	0%
4 to 6 weeks	25%
2 to 4 weeks	50%
Less than 2 weeks	100%

4 Limitation of liability

4.1 Nothing in the Contract shall limit or exclude RSSB's liability for:

4.1.1 death or personal injury caused by its negligence, or the negligence of its personnel, agents or subcontractors;

4.1.2 fraud or fraudulent misrepresentation; or

4.1.3 any other liability that cannot be limited or excluded by law.

4.2 Subject to clause 4.1, RSSB shall not be liable to the Supplier Member, whether in contract, tort (including without limitation negligence), for breach of statutory duty, or otherwise, arising under or in connection with the Contract for:

4.2.1 loss of profits, loss of sales or business, loss of agreements or contracts or loss of or damage to goodwill; or

4.2.2 any indirect or consequential loss.

4.3 Subject to clause 4.1, RSSB's total liability to the Supplier Member whether in contract, tort (including without limitation negligence), breach of statutory duty, or otherwise, arising under or in connection with the Contract shall be limited to the value of the Audit Fee paid to RSSB by the Supplier Member.

4.4 Except as expressly set out in these Terms, all conditions, warranties, terms and undertakings, express or implied, in respect of the RISQS Portal or the services to be provided by RSSB are hereby excluded to the fullest extent permitted by law.

5 General

- 5.1 **Duration and termination.** The Contract shall remain in force for as long as the Supplier Member remains a supplier member of RISQS and shall automatically terminate when its membership terminates or expires.
- 5.2 **Anti-bribery and corruption.** The Supplier Member shall not offer, give or agree to give any gift or inducement to the Auditor or any person working for or on behalf of RSSB (or any Nominated Service Provider) in relation to an Audit or any other aspect of RISQS. Any breach of this condition by the Supplier Member or anyone acting on its behalf will result in the Supplier Member's immediate expulsion from RISQS and no refunds of any fees paid will be made.
- 5.3 **Parent and sister companies.** Each supplier organisation that is a separate legal entity (e.g. with a different company or LLP registration number) must have its own RISQS supplier membership subscription and where relevant must undergo its own Audit. Where a supplier organisation does not have a Companies House number, it must provide its own DUNS number to RSSB to define its organisation.
- 5.4 **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.
- 5.5 **Entire agreement.** The Contract constitutes the entire understanding between the parties with respect to the subject matter of the Contract and supersedes and replaces all prior agreements, negotiations and discussions between the parties relating to it. The Supplier Member confirms and acknowledges that it has not been induced to enter into the Contract by any representation, warranty, or undertaking not expressly incorporated into it. However, nothing in the Contract purports to exclude liability for any fraudulent statement or act.
- 5.6 **Variation.** RSSB may vary these Terms (and so vary the Contract) from time to time by publishing an updated version on the RISQS website (www.risqs.org). Any such variation shall take effect on publication and RSSB shall endeavour to provide the Supplier Member with as much notice as reasonably practicable of any planned variations.
- 5.7 **Waiver.** No failure or delay by any party to fully exercise any right or remedy provided under the Contract or by law shall constitute a full or partial waiver of that or any other right or remedy, nor shall it prevent or restrict the further exercise of that or any other right or remedy.
- 5.8 **Severance.** If any clause in these Terms 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 this is not possible, it shall be deemed deleted. Any such modification or deletion shall not affect the validity or enforceability of the rest of the Contract.
- 5.9 **Third party rights.** 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.
- 5.10 **Law.** The Contract and any dispute or claim (whether contractual or non-contractual) arising out of or in connection with it or its subject matter or formation shall be governed by and construed in accordance with the laws of England and Wales and the parties hereby agree to submit to the exclusive jurisdiction of the courts of England and Wales.