

NCH GENERAL TERMS AND CONDITIONS OF SALE (ENGLAND AND WALES)

1. INTERPRETATION

In these terms and conditions ("Conditions") the following words and expressions will have the following meanings unless inconsistent with the context:

"Contract"	the purchase order and the Supplier's acceptance of it, or the Customer's acceptance of a quotation for Work by the Supplier under condition 2.2;
"Goods"	the goods (if any) as set out in the purchase order or quotation;
"Input Material"	all documents, information and materials provided by the Customer relating to the Work, including the information provided by the Customer set out in the purchase order or quotation;
"Services"	the services (if any) as set out in the purchase order or quotation;
"Supplier's Equipment"	any equipment, including tools, cabling or associated consumables provided by the Supplier and used in the supply of the Work (including the equipment set out in the purchase order or quotation);
"VAT"	value added tax chargeable under the law of England and Wales for the time being and any similar additional tax; and
"Work"	the Services and the Goods.

2. APPLICATION OF CONDITIONS

- 2.1 These Conditions shall apply and be incorporated into the Contract.
- 2.2 The purchase order, or the Customer's acceptance of a quotation by the Supplier, constitutes an offer by the Customer to purchase the Work specified in it on these Conditions. No offer placed by the Customer shall be accepted by the Supplier other than:
 - (a) by a written acknowledgement issued and executed by the Supplier; or
 - (b) (if earlier) by the Supplier starting to provide the Work.
- 2.3 The Customer's standard terms and conditions (if any) attached to, enclosed with or referred to in any purchase order or other document shall not govern the Contract.
- 2.4 Quotations are given by the Supplier on the basis that no Contract shall come into existence except in accordance with condition 2.2. Any quotation is valid for a period of 30 days from its date, provided that the Supplier has not previously withdrawn it.

3. PERFORMANCE OF THE WORK

SERVICES

- 3.1 The Supplier shall provide the Services to the Customer from the date and, subject to condition 11, continuing for the period specified in the purchase order, the quotation or as otherwise agreed between the parties in writing.

GOODS

- 3.2 The Supplier shall endeavour to deliver the Goods to the Customer at the address and on the date(s) specified in the purchase order, the quotation or as otherwise agreed between the parties in writing. In the absence of an express delivery address or delivery date, the delivery address shall be the Supplier's premises and the delivery date shall be within 28 days from the purchase order or acceptance of quotation.
 - 3.3 The Goods are at the risk of the Customer from the time of delivery.
 - 3.4 Ownership of the Goods shall not pass to the Customer until the Supplier has received all sums due to it in respect of the Goods.
- #### 4. CUSTOMER'S OBLIGATIONS
- 4.1 The Customer shall (at its own cost):
 - (a) co-operate with the Supplier and follow the Supplier's instructions relating to the Work,
 - (b) provide for the Supplier, in a timely manner and at no charge, access to the Customer's premises and other facilities as reasonably required by the Supplier;
 - (c) provide, in a timely manner, such Input Material and other information as the Supplier may reasonably require, and ensure that it is accurate in all material respects;
 - (d) be responsible for preparing and maintaining the relevant premises for the supply of the Work;
 - (e) keep, maintain and insure the Supplier's Equipment in good condition;
 - (f) as is required for the provision of the Work, set out in the purchase order or quotation or notified to the Customer by the Supplier, provide and maintain continuous and adequate electricity, compressed air and water supplies to the Supplier's Equipment;
 - (g) provide reasonable notice to the Supplier before ceasing its obligation at (f) above
 - (h) not copy, adapt, reverse engineer, disassemble or modify the Supplier's Equipment; and
 - (i) not resell the Goods or dispose of or use the Supplier's Equipment other than in accordance with the Supplier's written instructions or authorisation.
 - 4.2 For the avoidance of doubt, the Supplier shall not be liable for any storage costs or charges in relation to the provision of the Work or the Supplier's Equipment at the relevant premises.
 - 4.3 If the Supplier's performance under the Contract is prevented or delayed by any act or omission of the Customer, the Supplier shall not be liable for any costs, charges or losses sustained or incurred by the Customer that arise directly or indirectly.
 - 4.4 For the avoidance of doubt, in the case of non-performance by the Supplier in the circumstances described in condition 4.3 above, such non-performance shall not release the Customer from any of its obligations under the Contract and the charges described in condition 5.1 shall remain payable.

5. CHARGES AND PAYMENT

- 5.1 In consideration of the provision of the Work by the Supplier, the Customer shall pay the charges payable for the Work as set out in the purchase order or quotation.
- 5.2 The Supplier shall invoice the Customer monthly in arrears for its charges for the month concerned.
- 5.3 The Supplier shall invoice the Customer for the price specified in the purchase order, the quotation or as otherwise agreed between the parties in writing plus the cost of any insurance, packaging, transportation and delivery charges.

SERVICES & GOODS

- 5.4 The Customer shall pay each invoice submitted to it by the Supplier, unless otherwise stipulated in the contract.
- 5.5 All amount stated are exclusive of VAT and/or any other applicable taxes or levy, which shall be charged in addition.
- 5.6 Without prejudice to any other right or remedy that it may have, if the Customer fails to pay the Supplier on the due date, the Supplier may charge interest on such sum from the due date for payment at the annual rate of 8% accruing on a daily basis.
- 5.7 Time for payment shall be of the essence of the Contract.
- 5.8 The Supplier may, without prejudice to any other rights it may have, set off any liability of the Customer to the Supplier against any liability of the Supplier to the Customer.

PRICE INCREASES

- 5.9 Subject to 5.10, the Supplier shall be entitled to increase the Charges payable once in any period of 12 months, upon giving at least 21 days' notice to the Customer, by the amount of Consumer Price Inflation ("CPI").
- 5.10 In exceptional circumstances, where the costs suffered by the Supplier increase as a result of changes in laws or regulations, changes in the cost of materials used in the provision of the Services or other changes affecting its costs which are outside its control, the Supplier shall be entitled to increase the Charges payable at any time upon giving at least 21 days' notice to the Customer provided always that any such increase shall not take effect less than two months after the start of the Initial Term.

6. SUPPLIER'S PROPERTY

All materials and equipment supplied by the Supplier (including the Supplier's Equipment but excluding the Goods) shall, at all times, be and remain the exclusive property of the Supplier, but shall be held by the Customer in safe custody at its own risk and maintained and kept in good condition by the Customer until returned to the Supplier, and shall not be disposed of or used other than in accordance with the Supplier's written instructions or authorisation.

7. DEFECTS

- 7.1 The Supplier will, at its option, either make good by repair or by the supply of a replacement, where defects which, under proper use, appear in the Goods within a period of 14 days after the Goods have been delivered and installed, provided that:
 - (a) The Customer notifies the Supplier in writing of the claimed defects immediately on their appearance; and
 - (b) the Supplier is satisfied that the defects arise solely from faulty design (other than a design made, furnished or specified by the Customer), materials or workmanship; and
 - (c) if required by the Supplier, the Goods claimed to be defective are returned to the Supplier at the expense of the Customer.
- 7.2 The repaired or replacement Goods will be delivered to the Customer to the original place of delivery, but otherwise subject to the provisions of this Contract.
- 7.3 As an alternative to clause 7.1, the Supplier shall be, in its absolute discretion, entitled to return the sums paid by the Customer for the Goods to the Customer if the Customer has already paid such sums when the claimed defect is notified by the Customer to the Supplier.
- 7.4 The remedy provided in this clause 7 is without prejudice to the other provisions of this Contract, including, without limitation, clause 8 below.

8. LIMITATION OF LIABILITY

- 8.1 All warranties, conditions and other terms implied by statute or common law are, to the fullest extent permitted by law, excluded from the Contract.
- 8.2 Nothing in the Contract limits or excludes the liability of the Supplier:
 - (a) for death or personal injury resulting from negligence; or
 - (b) for any damage or liability incurred by the Customer as a result of fraud or fraudulent misrepresentation by the Supplier.
- 8.3 Subject to condition 8.1 and condition 8.2:
 - (a) the Supplier shall not be liable for any loss of profits, loss of business, depletion of goodwill and/or similar losses, loss of anticipated savings, loss of goods, loss of contract, loss of use or any special, indirect, consequential or pure economic loss, costs, damages, charges or expenses; and
 - (b) the Supplier's total liability in contract, tort (including negligence or breach of statutory duty), misrepresentation, restitution or otherwise arising in connection with the performance or contemplated performance of the Contract shall be limited to the price paid for the Work.

9. DATA PROTECTION

The Customer acknowledges and agrees that details of the Customer's name, address and payment record may be submitted to a credit reference agency, and personal data will be processed by and on behalf of the Supplier in connection with the Work.

10. PROTECTION OF CONFIDENTIAL INFORMATION

- 10.1 Each Party ('the Receiving Party') shall keep the confidential information of the other Party ('the Supplying Party') confidential and secret. The Receiving Party shall only use the confidential information of the Supplying Party for the purposes of the Contract. The Receiving Party shall inform its officers, employees and agents of the Receiving Party's obligations under the provisions of this Clause 10, and ensure that they meet the obligations.
- 10.2 The obligations of Clause 10.1 shall not apply to any information which:
 - (a) was known or in the possession of the Receiving Party before it was provided to the Receiving Party by the Supplying Party;
 - (b) is, or becomes, publicly available through no fault of the Receiving Party;
 - (c) is provided to the Receiving Party without restriction or disclosure by a third party, who did not breach any confidentiality obligations by making such a disclosure;
 - (d) was developed by the Receiving Party (or on its behalf) with no direct access to, or use or knowledge of, the confidential information supplied by the Supplying Party; or
 - (e) is required to be disclosed by order of a court of competent jurisdiction.

11. TERMINATION

- 11.1 Without prejudice to any other rights or remedies which the parties may have, either party may terminate the Contract without liability to the other on giving notice to the other if:
 - (a) the other party fails to pay any amount due under the Contract on the due date for payment and remains in default not less than 30 days after being notified in writing to make such payment; or
 - (b) the other party commits a material breach of any of the material terms 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 of the breach; or
 - (c) the other party goes into liquidation or an administrative receiver or receiver and manager or administrator is appointed for the other party or its assets or the other party enters into a voluntary arrangement with its creditors or suffers any similar insolvency process or process which affords the other party protection from its creditors.
- 11.2 The parties acknowledge and agree that any breach of conditions 4 or 5 shall constitute a material breach for the purposes of this condition 11.
- 11.3 On termination of the Contract for any reason:
 - (a) the Customer shall immediately pay to the Supplier all of the Supplier's outstanding unpaid invoices and interest and, in respect of Work supplied but for which no invoice has been submitted, the Supplier may submit an invoice, which shall be payable immediately on receipt;
 - (b) the Customer shall pay to the Supplier all sums payable for all future Work due to be supplied for the remainder of the Contract term, if so demanded.
 - (c) the Customer shall return (at its own cost, except on expiry of the term of the Contract or termination by the Supplier) all of the Supplier's Equipment in accordance with the Supplier's instructions. If the Customer fails to do so, then the Supplier may enter the Customer's premises and take possession of them. Until they have been returned, the Customer shall be solely responsible for their safe keeping and the charges described in condition 5.1 shall continue to accrue and remain payable; and
 - (d) the accrued rights and liabilities of the parties as at termination and the continuation of any provision expressly stated to survive or implicitly surviving termination, shall not be affected.
- 11.4 On termination of the Contract (however arising) conditions 6, 7, 8, 10, 11.3 and 12.5 shall survive and continue in full force and effect.

12. GENERAL

- 12.1 No variation of the Contract or of any of the documents referred to in it shall be valid unless it is in writing and signed by or on behalf of each of the parties.
- 12.2 If any provision of the Contract (or part of any provision) is found by any court or other authority of competent jurisdiction to be invalid, illegal or unenforceable, that provision or part-provision shall, to the extent required, be deemed not to form part of the Contract, and the validity and enforceability of the other provisions of the Contract shall not be affected.
- 12.3 The Contract and any documents referred to in it constitute the whole agreement between the parties and supersede any previous arrangement, understanding or agreement between them relating to the subject matter of the Contract.
- 12.4 The Customer shall not assign, transfer, charge, mortgage, subcontract or deal in any other manner with all or any of its rights or obligations under the Contract.
- 12.5 The construction, interpretation and performance of the Contract will be governed by the laws of England and Wales to the exclusive jurisdiction of whose courts the parties agree to submit.

