

1. Definitions

Interpretation

The following definitions and rules of interpretation shall apply:

1.1 Definitions:

Affiliates: any other corporation or other form of business entity, which, directly or indirectly, controls, is controlled by, or is under common control with, a party at any time during the term of the Contract. For purposes of this definition, the term "control" means direct or indirect beneficial ownership of 50% or more of the voting share or interest of the entity.

Charges: the charges payable by the Customer for the supply of the Services in accordance with clause 5.

Commencement Date: has the meaning given in clause 2.2.

Conditions: these terms and conditions as amended from time to time in accordance with clause 11.5.

Contract: the contract between NSK and the Customer for the supply of Services in accordance with these Conditions.

Customer: a business who purchases Services from NSK.

Customer Default: has the meaning set out in clause 4.2.

Deliverables: the deliverables set out in the Order Acknowledgment produced by NSK for the Customer.

Intellectual Property Rights: patents, utility models, rights to inventions, copyright and neighbouring and related rights, moral rights, trade marks and service marks, business names and domain names, rights in get-up and trade dress, goodwill and the right to sue for passing off or unfair competition, rights in designs, rights in computer software, database rights, rights to use, and protect the confidentiality of, confidential information (including know-how and trade secrets), and all other intellectual property rights, in each case whether registered or unregistered and including all applications and rights to apply for and be granted, renewals or extensions of, and rights to claim priority from, such rights and all similar or equivalent rights or forms of protection which subsist or will subsist now or in the future in any part of the world.

Order: the Customer's order for Services as set out in the Customer's purchase order.

Order Acknowledgment: has the meaning set out in clause 2.2.

Services: the services, including the Deliverables, supplied by NSK to the Customer as set out in the Specifications.

Specifications: the description or specification of the Services provided in writing by NSK to the Customer.

NSK: the Affiliate of NSK Europe Limited, registered in England and Wales with company number

02223191, that issues the quotation or Order Acknowledgment to the Customer.

NSK Materials: has the meaning set out in clause 4.1(f).

1.2 Interpretation:

(a) A reference to legislation or a legislative provision is a reference to it as amended, extended or re-enacted from time to time; and shall include all subordinate legislation made from time to time under that legislation or legislative provision.

(b) Any words following the terms including, include, in particular, for example or any similar expression, shall be construed as illustrative and shall not limit the sense of the words preceding those terms.

(c) A reference to writing or written includes email.

2. Basis of contract

2.1 The Order constitutes an offer by the Customer to purchase Services in accordance with these Conditions.

2.2 The Order shall only be deemed to be accepted when NSK issues written acceptance of the Order (**Order Acknowledgment**) at which point the Contract shall come into existence (**Commencement Date**).

2.3 Unless otherwise agreed between the Parties in the Order Acknowledgment, any samples, drawings, descriptive matter or advertising issued by NSK, and any descriptions or illustrations contained in NSK's catalogues or brochures, are issued or published for the sole purpose of giving an approximate idea of the Services described in them. They shall not form part of the Contract or have any contractual force.

2.4 These Conditions apply to the Contract to the exclusion of any other terms that the Customer seeks to incorporate, or which are implied by law, trade custom, practice or course of dealing.

2.5 Any quotation given by NSK shall not constitute an offer and is only valid for a period of 30 calendar days from its date of issue.

3. Supply of Services

3.1 NSK shall supply the Services to the Customer in accordance with the Specifications.

3.2 NSK shall use all reasonable endeavours to meet any performance dates specified in the Order Acknowledgment, but any such dates shall be estimates only and time shall not be of the essence for performance of the Services.

3.3 NSK reserves the right to amend the Specifications if necessary to comply with any applicable law or regulatory requirement, or if the amendment will not materially affect the nature or quality of the Services, and NSK shall notify the Customer in any such event.

3.4 NSK warrants to the Customer that the Services will be provided using reasonable care and skill.

4. Customer's obligations

4.1 The Customer shall:

(a) ensure that the terms of the Order and any information it provides in the Specification are complete and accurate;

(b) co-operate with NSK in all matters relating to the Services;

(c) provide NSK with such information and materials as NSK may reasonably require in order to supply the Services, and ensure that such information is complete and accurate in all material respects;

(d) where required, prepare the Customer's premises for the supply of the Services;

(e) obtain and maintain all necessary licences, permissions and consents which may be required for the Services before the date on which the Services are to start;

(f) keep all materials, equipment, documents and other property of NSK (**NSK Materials**) at the Customer's premises in safe custody at its own risk, maintain NSK Materials in good condition until returned to NSK, and not dispose of or use NSK Materials other than in accordance with NSK's written instructions or authorisation; and

(g) comply with any additional obligations as set out in the Specifications.

4.2 If NSK's performance of any of its obligations under the Contract is prevented or delayed by any act or omission by the Customer or failure by the Customer to perform any relevant obligation (**Customer Default**):

(a) without limiting or affecting any other right or remedy available to it, NSK shall have the right to suspend performance of the Services until the Customer remedies the Customer Default;

(b) NSK shall not be liable for any costs or losses sustained or incurred by the Customer arising directly or indirectly from NSK's failure or delay to perform any of its obligations as set out in this clause 4.2; and

(c) the Customer shall reimburse NSK on written demand for any costs or losses sustained or incurred by NSK arising directly or indirectly from the Customer Default.

5. Charges and payment

5.1 The Charges for the Services shall be calculated on a time and materials basis.

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

and required by NSK for the performance of the Services, and for the cost of any materials.

5.3 Unless otherwise agreed between the Parties, NSK shall invoice the Customer on completion of the Services.

5.4 The Customer shall pay each invoice submitted by NSK within 30 days of the date of the invoice in full and in cleared funds to a bank account nominated in writing by NSK. Time for payment shall be of the essence of the Contract.

5.5 The Customer shall, on receipt of a valid VAT invoice from NSK, pay to NSK such additional amounts in respect of VAT as are chargeable on the supply of the Services at the same time as payment is due for the supply of the Services.

5.6 If the Customer fails to make a payment by the due date, then, without limiting NSK's remedies under clause 8, the Customer shall pay interest on the overdue sum from the due date until payment of the overdue sum, whether before or after judgment at 4% a year above the Bank of England's base rate from time to time.

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

6. Intellectual property rights

Unless otherwise agreed between the Parties in writing,

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

6.2 NSK grants to the Customer a fully paid-up, worldwide, non-exclusive, royalty-free perpetual and irrevocable licence to copy the Deliverables for the purpose of receiving and using the Services and the Deliverables in its business.

6.3 The Customer shall not sub-license, assign or otherwise transfer the rights granted in clause 6.2.

6.4 The Customer grants NSK a fully paid-up, non-exclusive, royalty-free, non-transferable licence to use and/or modify any materials provided by the Customer to NSK for the term of the Contract for the purpose of providing the Services to the Customer.

7. Limitation of liability

7.1 References to liability in this clause 7 include every kind of liability arising under or in connection with the Contract including liability in contract, tort (including negligence), misrepresentation, restitution or otherwise.

7.2 Nothing in this clause 7 shall limit the Customer's payment

obligations under the Contract.

7.3 Nothing in the Contract limits any liability which cannot legally be limited, including but not limited to liability for:

- (a) death or personal injury caused by negligence;
- (b) fraud or fraudulent misrepresentation; and
- (c) breach of the terms implied by section 2 of the Supply of Goods and Services Act 1982 (title and quiet possession).

7.4 Subject to clause 7.3, NSK's total liability to the Customer for all loss or damage shall not exceed the Charges invoiced for the Services.

7.5 Subject to clauses 7.2, 7.3 and 7.4, this clause 7.5 sets out the types of loss that are wholly excluded:

- (a) loss of profits.
- (b) loss of sales or business.
- (c) loss of agreements or contracts.
- (d) loss of anticipated savings.
- (e) loss of use or corruption of software, data or information.
- (f) loss of or damage to goodwill; and
- (g) indirect or consequential loss.

7.6 NSK has given commitments as to compliance of the Services with the Specifications set out in clause 3. In view of these commitments, the terms implied by sections 3, and 5 of the Supply of Goods and Services Act 1982 are, to the fullest extent permitted by law, excluded from the Contract.

7.7 Unless the Customer notifies NSK that it intends to make a claim in respect of an event within the notice period, NSK shall have no liability for that event. The notice period for an event shall start on the day on which the Customer became, or ought reasonably to have become, aware of the event having occurred and shall expire 6 months from that date. The notice must be in writing and must identify the event and the grounds for the claim in reasonable detail.

7.8 This clause 7 shall survive termination of the Contract.

8. Termination

8.1 Without affecting any other right or remedy available to it, either party may terminate the Contract with immediate effect by giving written notice to the other party if:

- (a) the other party commits a material breach of any term of the Contract and (if such a breach is remediable) fails to remedy that breach within 30 days of that party being notified in writing to do so;
- (b) the other party takes any step or action in connection with its entering administration, provisional liquidation or any composition or arrangement with its creditors (other than in relation to a solvent restructuring), applying to court for or obtaining a moratorium under Part A1 of the

Insolvency Act 1986, being wound up (whether voluntarily or by order of the court, unless for the purpose of a solvent restructuring), having a receiver appointed to any of its assets or ceasing to carry on business or, if the step or action is taken in another jurisdiction, in connection with any analogous procedure in the relevant jurisdiction;

(c) the other party suspends, or threatens to suspend, or ceases or threatens to cease to carry on all or a substantial part of its business; or

(d) the other party's financial position deteriorates to such an extent that in the terminating party's opinion the other party's capability to adequately fulfil its obligations under the Contract has been placed in jeopardy.

8.2 Without affecting any other right or remedy available to it, NSK may suspend the supply of Services under the Contract if:

(a) the Customer fails to pay any amount due under the Contract on the due date for payment; or

(b) the Customer becomes subject to any of the events listed in clause 8.1(c) or clause 8.1(d), or NSK reasonably believes that the Customer is about to become subject to any of them.

9. Consequences of termination

9.1 On termination of the Contract: (a) the Customer shall immediately pay to NSK all of NSK's outstanding unpaid invoices and interest and, in respect of Services supplied but for which no invoice has been submitted, NSK shall submit an invoice, which shall be payable by the Customer immediately on receipt;

(b) the Customer shall return all of NSK Materials and any Deliverables which have not been fully paid for. If the Customer fails to do so, then NSK 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 will not use them for any purpose not connected with the Contract.

9.2 Termination of the Contract shall not affect any rights, remedies, obligations or liabilities of the parties that have accrued up to the date of termination, including the right to claim damages in respect of any breach of the Contract which existed at or before the date of termination.

9.3 Any provision of the Contract that expressly or by implication is intended to come into or continue in force on or after termination of the Contract shall remain in full force and effect.

10. General

10.1 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.

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

10.3 Confidentiality.

(a) Each party undertakes that it shall not at any time during the Contract, and for a period of five years after termination of the Contract, disclose to any person any confidential information concerning the business, affairs, customers, clients or suppliers of the other party, except as permitted by clause 11.3(b).

(b) Each party may disclose the other party's confidential information:

- (i) to its employees, officers, representatives, contractors, subcontractors or advisers or those of its Affiliates who need to know such information for the purposes of carrying out the party's obligations under the Contract. Each party shall ensure that its employees, officers, representatives, contractors, subcontractors or advisers to whom it discloses the other party's confidential information comply with this clause 11.3; and
- (ii) as may be required by law, a court of competent jurisdiction or any governmental or regulatory authority.

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

10.4 Entire agreement.

(a) The Contract constitutes the entire agreement between the parties and supersedes and extinguishes all previous agreements, promises, assurances, warranties, representations and understandings between them, whether written or oral, relating to its subject matter.

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

(c) Nothing in this clause shall limit or exclude any liability for fraud.

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

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

10.7 Severance. If any provision or part thereof is or becomes invalid, illegal or unenforceable, it shall be deemed deleted, but that shall not affect the validity and enforceability of the rest of this agreement. If any provision or part-provision of this Contract deleted under this clause 10.7 the parties shall negotiate in good faith to agree a replacement provision that, to the greatest extent possible, achieves the intended commercial result of the original provision.

10.8 Notices.

(a) Any notice given to a party in connection with the Contract may be given by email or by use of a delivery service at its registered office or principal place of business.

(b) Any notice shall be deemed to have been received:

- (i) if sent by email at the time of transmission, or, if this time falls outside business hours in the place of receipt, when business hours resume; or
- (ii) if sent by a delivery service, on the day on which delivery is recorded.

(c) This clause 10.8 does not apply to the service of any proceedings in any legal action or, where applicable, any other method of dispute resolution.

10.9 Third party rights. The Contract shall give the NSK Affiliate, that issues the quotation or Order Acknowledgment to the Customer, rights under the Contracts (Rights of Third Parties) Act 1999 to enforce any term of the Contract.

10.10 Governing law and Jurisdiction. The Contract, and any dispute or claim (including non-contractual disputes or claims) arising out of or in connection with it or its subject matter or formation shall be governed by the laws of England and Wales. Each party irrevocably agrees that the courts of England shall have exclusive jurisdiction to settle any dispute or claim (including non-contractual disputes or claims) arising out of or in connection with the Contract or its subject matter or formation.