

NEXGEN SPECIALISTS LIMITED

Standard Terms and Conditions

1. DEFINITIONS

In the NEXGEN Terms and Conditions the following terms shall have the following meanings:

- 1.1 “**NEXGEN**” means NEXGEN SPECIALISTS LIMITED registered in England and Wales with company number 14144245 and whose registered office is Unit 11 Berkeley Court, Manor Park, Runcorn, England, WA7 1TQ.
- 1.2 “**NEXGEN Terms and Conditions**” means the NEXGEN standard terms and conditions of business contained within this document, as amended from time to time.
- 1.3 “**Contract Work(s)**” means the goods, materials and Services.
- 1.4 “**Customer**” means the person or company who purchases the Services from NEXGEN.
- 1.5 “**Data Protection Laws**” means all applicable laws, statutes, regulations and binding regulatory requirements relating to the processing, privacy, security, confidentiality or protection of Personal Data (or equivalent concept) that apply to a Party in connection with these NEXGEN Terms and Conditions, including (where applicable) the UK GDPR, the Data Protection Act 2018, the Privacy and Electronic Communications (EC Directive) Regulations 2003 (as amended), and any guidance, codes of practice or binding decisions issued by a competent supervisory authority, in each case as amended, extended, re-enacted or replaced from time to time.
- 1.6 “**Engagement**” means the Customer’s appointment of NEXGEN to provide particular goods and or services in accordance with the Quotation and pursuant to the NEXGEN Terms and Conditions.
- 1.7 “**Force Majeure Event**” means any event described in Clause 13.1.
- 1.8 “**Intellectual Property Rights**” means all patents, utility models, rights to inventions, copyright and related rights, database rights, design rights, trade marks, trade names, domain names, rights in get-up, moral rights, rights in confidential information (including know-how and trade secrets), and all applications, renewals and extensions thereof.
- 1.9 “**Party**” means NEXGEN or the Customer as the case may be.
- 1.10 “**Personal Data**” means any information relating to an identified or identifiable natural person (a “**Data Subject**”); an identifiable natural person is one who can be identified, directly or indirectly, in particular by reference to an identifier such as a name, an identification number, location data, an online identifier, or to one or more factors specific to the physical, physiological, genetic, mental, economic, cultural or social identity of that natural person.
- 1.11 “**Quotation**” means a written statement issued via email by NEXGEN setting out the price for specified Contract Work calculated by reference to NEXGEN’s current price list, prepared on the basis of information provided by the Customer. A Quotation relates only to the works expressly described in it, and any additional or varied works identified at any time (including following attendance on site) may be carried out by NEXGEN and charged at NEXGEN’s standard rates per Clause 29.
- 1.12 “**Services**” means the services set out in the Quotation provided by NEXGEN to the Customer.
- 1.13 “**UK GDPR**” means Regulation (EU) 2016/679 as it forms part of the law of England and Wales, Scotland and Northern Ireland by virtue of section 3 of the European Union (Withdrawal) Act 2018, as amended from time to time.

2. INTERPRETATION

- 2.1 Words importing the singular also include the plural and vice versa where the context requires.
- 2.2 Words importing persons or parties shall include firms, corporations and any other organisation having legal capacity.
- 2.3 All references in the NEXGEN Terms and Conditions to Clause numbers are references to Clause numbers in the NEXGEN Terms and Conditions and not to those in any other documents forming part of the NEXGEN Terms and Conditions unless the context otherwise indicates.
- 2.4 Reference to a statute or statutory provision includes it as from time to time amended, extended or re-enacted.
- 2.5 These NEXGEN Terms and Conditions and any applicable Quotation shall be read together as a single document.

3. SCOPE OF BUSINESS

- 3.1 Where the Customer appoints NEXGEN to provide Services, the appointment shall be on the basis of the NEXGEN Terms and Conditions and any applicable Quotation, purchase order, or email instructions. The purpose of a Quotation shall be to address business line and project specific issues including the precise scope of Services, estimated timescales for Contract Work and charges/costs associated with the specific Contract Work. Any timescales provided are estimates only, time is not of the essence, and completion dates are subject to the availability of parts and materials from suppliers.
- 3.2 In carrying out the Services NEXGEN shall exercise the reasonable care and skill to be expected of a competent provider of services similar in scope nature and complexity to the Services. No other warranty or representation, express or implied, shall apply under and/or in connection with the Engagement. NEXGEN will only be liable to carry out the works expressly described in the Quotation. Additional works shall be charged at NEXGEN's standard rates per Clause 29. Acceptance of the Quotation constitutes acceptance of NEXGEN's Terms and Conditions, including the charging provisions relating to additional works.
- 3.3 NEXGEN reserves the right to appoint a subcontractor of its choice to carry out any part of the works.

4. CHARGES

- 4.1 NEXGEN reserves the right to require payments to be made on account before commencing or completing any Services. In such event, the amount of the on account payment shall be calculated having regard to the programme for performance of the Services and the estimated timing and amounts of expenses to be incurred.
- 4.2 The Quotation relates only to the works expressly described in the Quotation. Additional works shall be charged at NEXGEN's standard rates per Clause 29. Acceptance of the Quotation is acceptance of NEXGEN's Terms and Conditions, including the charging provisions relating to additional works.
- 4.3 Upon NEXGEN's acceptance of any additional works, NEXGEN shall provide the Customer with written confirmation of the scope of such additional works within 24 hours of such acceptance.
- 4.4 Charges stated shall be exclusive of value added tax which, where applicable, shall be charged to the Customer at the prevailing rate.

5. PAYMENT TERMS

- 5.1 All invoices, interim or otherwise are strictly net and must be paid in full unless otherwise agreed within 30 days from the end of the month in which the invoice is issued.
- 5.2 NEXGEN will be entitled to submit interim invoices in respect of work undertaken and goods or materials dispatched up to the date of the invoice, at intervals to be specified, and, upon completion of the Contract Works, NEXGEN will submit invoices to the Customer for the value of the completed work.
- 5.3 All payments due to be made to NEXGEN under the NEXGEN Terms and Conditions shall be made without set-off or counterclaim and free of and without deduction for any taxes, levies or duties of any description. If the Customer is required at any time by any applicable law to make any such deduction from any payment, the sum due in respect of such payment shall be increased such as shall result, notwithstanding such deduction in NEXGEN's receipt on its due date, in a net sum equal to the sum NEXGEN would have received had no such deduction been required.
- 5.4 Interest at the rate of 4.0% above the Bank of England base rate shall be paid by the Customer on all overdue accounts. Additionally, in such event, NEXGEN shall be entitled, without prejudice to any right to damages or other remedy, by giving seven days' notice in writing to the Customer, to suspend the Contract Works for so long as any such overdue payments remain outstanding.

6. CUSTOMER OBLIGATIONS

- 6.1 The Customer shall pay to NEXGEN all charges, expenses and value added tax, as required pursuant to Clauses 4 and 5. NEXGEN may suspend and/or cease further work on behalf of the Customer in the event of none, partial or late payment of any NEXGEN invoice.
- 6.2 The Customer shall provide to NEXGEN all information reasonably required and at the necessary times to enable NEXGEN to carry out the Services pursuant to the NEXGEN Terms and Conditions.
- 6.3 The Customer acknowledges that NEXGEN is entitled to rely upon the accuracy, consistency and sufficiency of any information supplied by the Customer.
- 6.4 NEXGEN shall have no liability for any inaccuracies contained in any information provided by the Customer or any third Party on behalf of the Customer.
- 6.5 The Customer shall provide NEXGEN employees and contractors with safe access to the site, maintain a safe working environment throughout the duration of the Contract Works, comply with all applicable health and safety requirements, and maintain the appropriate level of public liability insurance and employer's liability insurance as required by law.
- 6.6 The Customer authorises NEXGEN to speak to or meet with any other person it may need to contact in order to provide the Services. NEXGEN may release to such person for the purpose of the Services any information reasonably necessary to perform the Services and which it has obtained during the Engagement. NEXGEN shall not be liable for any use subsequently made of that information.

7. CONFIDENTIALITY AND INTELLECTUAL PROPERTY

- 7.1 NEXGEN is the beneficial owner of all Intellectual Property Rights arising out of or in connection with the provision of the Services to the Customer.



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- 7.2 The drawings, designs, plans, specification or other documentation or materials provided by NEXGEN are NEXGEN's confidential information. By receiving this, the Customer acknowledges that use or disclosure of such confidential information (whether directly or indirectly) to NEXGEN's existing or potential competitors would place NEXGEN at a competitive disadvantage and would accordingly damage NEXGEN.
- 7.3 The Customer shall keep confidential and not disclose to any other person (whether before or after termination or expiry of the Engagement):
- (a) any information received by it in respect of the methodologies and/or technologies used by NEXGEN in providing the Services;
 - (b) the details of the commercial terms on which NEXGEN provides the Services; and
 - (c) any other information in respect of NEXGEN's business activities which comes into its possession as a consequence of NEXGEN providing the Services and which is not publicly available.
- 7.4 NEXGEN shall seek the Customer's prior consent to NEXGEN announcing without limitation, through advertising and by references in proposals or submissions to prospective Customers, that they are providing or have provided the Services to the Customer. Such consent shall not be unreasonably withheld or delayed.
- 7.5 NEXGEN shall keep confidential and not disclose to any other person whether before or after termination or expiry of the Engagement any information in respect of the Customer's business activities which comes into its possession as a consequence of NEXGEN providing the Services and which is not publicly available.
- 7.6 The provisions of Clause 7.2, Clause 7.3 and Clause 7.5 shall not apply to either Party to the extent that disclosure is required by law or regulatory authorities or to the respective professional advisers of the Parties.

8. ELECTRONIC COMMUNICATIONS

- 8.1 NEXGEN may communicate with the Customer by email.
- 8.2 NEXGEN shall not be liable for any loss arising from the Customer's receipt of any information, data or communications supplied or sent by NEXGEN electronically. The Customer shall use all reasonable procedures to ensure that any materials sent by electronic means or on removable media to NEXGEN are virus-free.

9. NON-SOLICITATION BY THE CUSTOMER

- 9.1 The Customer shall not offer employment to any employee of NEXGEN working on an Engagement for the Customer or induce or solicit any such employee to take up employment with the Customer for a period of 6 months following the end of any involvement by that person with any Engagement for the Customer.
- 9.2 In the event that the Customer breaches Clause 9.1, NEXGEN shall be entitled to be paid compensation by the Customer equal to 50% of the employee's total gross annual remuneration (including salary and contractual benefits) immediately prior to departure.

10. INSURANCE

- 10.1 NEXGEN shall effect and maintain employers' liability insurance, public liability insurance and professional indemnity insurance throughout the duration of the Contract Works. The limit of indemnity shall be no less than the total value of the relevant Engagement or the Contract Works, in the aggregate, subject to any liabilities which cannot be excluded or limited by law.

11. LIMITATION OF LIABILITY

- 11.1 NEXGEN shall not be liable for any special, indirect or consequential loss or damage (including, without limitation, loss of profits or business revenue) suffered by the Customer (including as a result of an action brought by a third Party).
- 11.2 Without prejudice to the other sub-clauses of this Clause 11, where the Engagement involves NEXGEN being appointed as part of a Customer project team, liability for loss and/or damage arising under or in connection with the Engagement shall be limited to that proportion of the Customer's loss and/or damage which it would be just and equitable to require NEXGEN to pay having regard to the extent of NEXGEN's responsibility for the same and on the basis that all other Customer consultants and contractors shall be deemed to have provided contractual undertakings on terms no less onerous than this Clause 11.2 to the Customer in respect of the performance of their services in connection with the project and that there are no exclusions of or limitation of liability nor joint insurance or coinsurance provisions between the Customer and any other Party referred to above and on the basis they shall be deemed to have paid to the Customer such proportion which would be just and equitable for them to pay having regard to the extent of their responsibility. If and to the extent such undertakings are not given, NEXGEN's liability shall be assessed on the basis of the court's apportionment having regard to others' responsibility whether or not liable to the Customer.
- 11.3 NEXGEN shall have no duty or liability in tort to the Customer save that nothing in this Clause 11, or in the Engagement, shall exclude or restrict any liability either Party may have for death or personal injury arising out of negligence.
- 11.4 Notwithstanding anything to the contrary contained elsewhere in the Engagement, the total liability of NEXGEN arising under or in connection with an Engagement shall not exceed the total value of the relevant Contract Works.
- 11.5 The Customer will indemnify and keep indemnified, NEXGEN, NEXGEN's agents, servants and sub-contractors against NEXGEN's loss or damage of whatsoever nature including but not limited to, death of or injury to any person or persons howsoever arising, incurred or suffered by NEXGEN or its agents, servants or sub-contractors by reason of any claim made by a third Party which loss or damage would not have been incurred or suffered if the third Party had been in direct contractual relationship with NEXGEN, NEXGEN's agents, servants or sub-contractors provided always that this indemnity shall not apply where such loss or damage arise from any negligence or breach of the NEXGEN Terms and Conditions on the part of NEXGEN, NEXGEN's agents, servants or sub-contractors.

12. MONEY LAUNDERING AND ANTI-BRIBERY PROCEDURES

- 12.1 The Customer shall provide all necessary cooperation so as to ensure that NEXGEN is able to meet its obligations under:
- (a) all applicable anti-money laundering legislation and regulations;
 - (b) all applicable anti-bribery legislation and regulations, and
- shall itself comply with such obligations.

12.2 Failure to comply shall entitle NEXGEN to suspend performance of Contract Works.

13. FORCE MAJEURE

- 13.1 Neither Party shall be deemed to be in default or liable to the other Party for any matter whatsoever for any delays in performance or from failure to perform or to comply with the NEXGEN Terms and Conditions due to any cause beyond that Party's reasonable control including, without limitation, acts of God, acts of Government or other competent regulatory authority, telecommunications, network operators, war or national emergency, riots, civil commotion, fire, explosion, flood, epidemic, lock-outs, strikes and other industrial disputes, delays or failures in the supply of parts or materials from suppliers, in each case, whether or not relating to that Party's workforce.
- 13.2 Each Party agrees to give notice forthwith to the other upon becoming aware of a Force Majeure Event, such notice to contain details of the circumstances giving rise to the Force Majeure Event.
- 13.3 The affected Party shall use reasonable endeavours to mitigate any Force Majeure Event. If a Force Majeure Event subsists for 90 days, either Party may terminate on 30 days' notice.

14. TERMINATION

- 14.1 Without prejudice to any other rights or remedies a Party may possess:
- (a) NEXGEN may terminate the Engagement by notice immediately if the Customer has failed to pay an invoice within 30 days from the end of the month in which the invoice is issued.
 - (b) Either Party may terminate the Engagement by notice immediately if the other Party becomes insolvent.
 - (c) Either Party may terminate the Engagement by notice immediately if the other Party is in breach of its obligations and where such breach is capable of remedy the other Party fails to remedy such breach within 30 days of receipt of a notice specifying the breach.
- 14.2 For the purposes of Clause 14.1(b), a Party is insolvent if it enters into an arrangement, compromise or composition in satisfaction of its debts or goes into liquidation (in either case otherwise than for the purpose of amalgamation or reconstruction), or has a winding up or bankruptcy order made against it, or it has appointed to it an administrator or administrative receiver or any step analogous to any of the foregoing occurs.
- 14.3 Either Party may terminate an Engagement by giving not less than 30 days written notice to the other at any time. In such event NEXGEN shall be entitled to payment from the Customer of costs for the Services it has performed and payment of the expenses it has properly incurred, up to the date of termination.
- 14.4 Where the Customer cancels scheduled Contract Works seven days or less before the agreed commencement date, the Customer shall be liable to pay NEXGEN's costs in accordance with Clause 34.2.
- 14.5 The expiration or the termination of an Engagement, however arising, shall not operate to affect such of the provisions of the Engagement as are expressed to operate or continue in effect after then and shall be without prejudice to any rights or liabilities accrued at the date of such expiration or termination.

- 14.6 The Engagement will terminate immediately upon service of written notice of termination by NEXGEN on the Customer if the carrying out of the Contract Works, or any substantial part thereof, is prevented or rendered impracticable for a continuous period of ninety days by reason of accidental damage of any kind whatsoever and howsoever arising, or by any act or default of any person other than NEXGEN, including the Customer.
- 14.7 Termination of the Engagement in any way whatsoever will be without prejudice of the rights, obligations and liabilities of either Party accrued prior to termination.
- 14.8 Without prejudice to any of our other rights to claim damages, the Customer will, on termination of the Engagement under this Clause 14, or if the Customer cancels, extends or delays, or purports to cancel, extend or delay the Engagement, or fails to take delivery of any goods or materials, indemnify NEXGEN against any loss, damage or expense incurred by NEXGEN in connection with the Engagement, including, but not limited to, the payment of the costs of any goods, materials, plant or tools used, or intended to be used therefor, and the cost of labour and other overheads, including a percentage in respect of profit.

15. NO WAIVER, PARTNERSHIP OR JOINT VENTURE

- 15.1 No waiver by a Party of any breach by another Party in the performance of any of its obligations under these NEXGEN Terms and Conditions shall operate or be construed as a waiver of any other or further breach whether of a like or different character or be effective unless in writing duly executed by an authorised representative of the waiving Party.
- 15.2 The failure by a Party to insist on any occasion upon the performance of the terms, conditions and provisions of the Engagement, or time or other indulgence granted by one Party to another shall not thereby act as a waiver of any breach, as acceptance of any variation, or as the relinquishment of any right under the Engagement, which shall remain in full force and effect.
- 15.3 An Engagement shall not be interpreted or construed to create an association, joint venture or partnership between the Parties, or to impose any partnership obligation or liability upon either Party.

16. ENTIRE AGREEMENT

- 16.1 The NEXGEN Terms and Conditions and Quotation constitute the entire agreement and understanding of the Parties. They supersede any prior agreement or understandings between the Parties and no variation of the NEXGEN Terms and Conditions or Quotation shall be binding unless agreed in writing and signed by authorised representatives of both Parties.
- 16.2 The Customer expressly acknowledges that they have not been induced to enter into the NEXGEN Terms and Conditions by any warranty or representation or other assurance not expressly incorporated in the NEXGEN Terms and Conditions.

17. SEVERABILITY

- 17.1 If any provision of the NEXGEN Terms and Conditions is or becomes invalid, illegal or unenforceable, the validity, legality and enforceability of the remaining provisions of the NEXGEN Terms and Conditions shall not be impaired.

18. CONTRACTS (RIGHTS OF THIRD PARTIES)

- 18.1 No term of the Engagement is intended for the benefit of a third Party and the Parties do not intend that any term of the Engagement shall be enforceable by a third Party in accordance with the Contracts (Rights of Third Parties) Act 1999.

19. NOTICES

- 19.1 Any notice or other information to be given by either Party to the other under the Engagement shall be given by:
- (a) delivering the same by hand;
 - (b) sending the same by pre-paid registered post; or
 - (c) sending the same by e-mail,
- to the other Party at the address given in Clause 19.4.
- 19.2 Any notice or information sent by post in the manner provided by Clause 19.1(b) which is not returned to the sender as undelivered shall be deemed to have been given on the second day after the envelope containing it was so posted; and proof that the envelope containing any such notice or information was properly addressed, pre-paid, registered and posted, and that it has not been returned to the sender, shall be sufficient evidence that the notice or information has been duly given.
- 19.3 Any notice or information sent by email shall be deemed to have been duly given on the date of transmission to the email address notified under Clause 19.4.
- 19.4 The address of either Party for service of notices under this Clause 19 shall be the address notified to the other Party in writing from time to time. For service of proceedings, the Parties shall use their registered office addresses unless otherwise notified.

20. MISCELLANEOUS

- 20.1 Each Party warrants that it has power to enter into the NEXGEN Terms and Conditions and that it has obtained all necessary consents and/or approvals to do so.
- 20.2 The Engagement shall enure to the benefit of and be binding upon the permitted successors and permitted assignees to the Parties.
- 20.3 Where the Customer comprises two or more Parties their liability under the Engagement shall be joint and several.

21. DISPUTE RESOLUTION AND GOVERNING LAW

- 21.1 In the event that the Customer is dissatisfied with the provision of the Services by NEXGEN under the NEXGEN Terms and Conditions it must refer such complaint in the first instance to the Director in charge of the Engagement in accordance with the provisions of NEXGEN's complaints procedure current at the time of the complaint. NEXGEN shall supply to the Customer a copy of the complaints procedure upon request.
- 21.2 These NEXGEN Terms and Conditions 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 and construed in accordance with the law of England and Wales.

21.3 The courts of England and Wales shall have exclusive jurisdiction.

22. DATA PROTECTION

22.1 NEXGEN may use the Customer's details in providing the Services under the Engagement and for the ongoing administration of the Services to the extent that Data Protection Laws apply, NEXGEN undertakes that:

- (a) it shall comply with applicable obligations under Data Protection Laws (including, where acting as a controller, the obligations of a controller);
- (b) it shall not disclose or allow access to any personal data provided by the Customer or acquired by NEXGEN during the course of executing its obligations under this Engagement, other than to NEXGEN's personnel and to NEXGEN's legal or financial advisers; and
- (c) any disclosure of or access allowed to personal data shall be made in confidence and shall extend only so far as is necessary for the purposes of carrying out the Engagement and shall not be disclosed in breach of Data Protection Laws.

23. VALIDITY

23.1 Unless other terms and conditions are expressly accepted by NEXGEN by a written amendment referring specifically to the term to be amended and signed by a NEXGEN Director, the Contract Works shall be undertaken in line with the NEXGEN Terms and Conditions as set out within this document and any NEXGEN Quotation to the exclusion of any other terms and conditions (except any conditions implied by statute the exclusion of which would be void) whether or not the same are endorsed upon, delivered with, or referred to in any purchase order or other document delivered by the Customer to NEXGEN.

24. REPRESENTATIONS BEFORE CONTRACT

24.1 If a Customer wishes to rely upon any representations made by NEXGEN or on NEXGEN's behalf but not expressly embodied in any Quotation or sub-contract to which these NEXGEN Terms and Conditions apply, the Customer must give NEXGEN written notice of such reliance before placing an order or signing a contract or sub-contract with NEXGEN and shall not otherwise be entitled to rely on such representations.

25. FORM OF CONTRACT

25.1 The NEXGEN Terms and Conditions apply to all Quotations, Engagements and Contract Works. Acceptance of any Quotation constitutes acceptance of these NEXGEN Terms and Conditions, including charging provisions relating to additional works. In the event of any inconsistency between these NEXGEN Terms and Conditions and any other form of contract, these NEXGEN Terms and Conditions shall prevail unless agreed otherwise in writing and signed by authorised representatives of both Parties.

26. OFFER AND ACCEPTANCE

26.1 No Quotation submitted by NEXGEN will constitute a binding offer. The Quotation relates only to the Contract Works expressly described in the Quotation. Additional works shall be charged at NEXGEN's standard rates per Clause 29. Any order or instruction based on a Quotation will be subject to acceptance in writing by NEXGEN. Acceptance of the Quotation constitutes acceptance of NEXGEN's Terms and Conditions, including the charging provisions relating to additional works. Any stipulations or conditions in the Customer's order form which would conflict with these conditions or in any way qualify or negative the same shall be deemed to be inapplicable to the order placed with NEXGEN unless expressly agreed to by NEXGEN when acknowledging the order in question.

26.2 Quotations are prepared based on the information supplied by the Customer. Any timescales provided are estimates only, time is not of the essence, and completion dates are subject to the availability of parts and materials from suppliers. Until a formal order is placed with NEXGEN, based upon any Quotation, no liability will be accepted to the Customer or any other person, nor shall any specification, design or other technical criteria be used or relied upon by any other person.

27. CREDIT

27.1 It is a condition of any Engagement, that NEXGEN may search credit records relating to the Customer and (where applicable) its officers for credit assessment purposes.

27.2 Engagements are accepted subject to the Customer's credit being approved by NEXGEN.

28. OWNERSHIP AND RISK

28.1 The property, in goods or materials, used or unused, supplied in the Contract Works, ("the Goods") will not pass to the Customer until NEXGEN have received in full (cash or cleared funds) all sums due to NEXGEN in respect of the Goods and all other sums which are or which become due to NEXGEN from the Customer on any account.

28.2 Until ownership of the Goods has passed to the Customer, the Customer must:-

- (a) hold the Goods on a fiduciary basis as our bailee;
- (b) store the Goods separately at no cost to NEXGEN;
- (c) not destroy, deface or obscure any identifying mark or packaging on or relating to the Goods
- (d) maintain the Goods in a satisfactory condition insured on behalf of NEXGEN to NEXGEN's reasonable satisfaction for their full replacement value against all risks including theft from site. On request the Customer will produce the policy of insurance to NEXGEN; and
- (e) hold the proceeds of any insurance claim referred to in the sub-clause immediately preceding this sub-clause on trust for NEXGEN and not mix them with any other monies, nor pay the proceeds into any overdrawn bank account.

28.3 Without prejudice to any of NEXGEN's other rights (whether in damages or otherwise howsoever) NEXGEN may, at any time after the price for Goods or any other sum payable by the Customer to NEXGEN under the Quotation has become due and remains unpaid, rescind the Engagement and recover the Goods or any of them which are still NEXGEN's property and may enter onto the Customer's premises, either by NEXGEN's agents or servants for that purpose.

28.4 The Customer's right to possession of the Goods shall terminate immediately if:

- (a) the Customer has a bankruptcy order made against it or makes an arrangement or composition with its creditors, or otherwise takes the benefit of any act for the time being in force for the relief of insolvent debtors, or (being a body corporate) convenes a meeting of creditors (whether formal or informal), or enters into liquidation for the purposes only of reconstruction or amalgamation, or has a receiver and/or manager, administrator or administrative receiver appointed of its undertaking or any part thereof, or a resolution is passed or a petition presented to any court for the winding up of the Customer or for the granting of an administration order in respect of the Customer, or any proceedings are commenced relating to the insolvency or possible insolvency of the Customer; or
- (b) the Customer suffers or allows any execution, whether legal or equitable, to be levied on its property or obtained against it, or fails to observe/perform any of its obligations under the Quotation, the NEXGEN Terms and Conditions, or any other contract between NEXGEN and the Customer, or is unable to pay its debts within the meaning of section 123 of the Insolvency Act 1986 or the Customer ceases to trade; or
- (c) the Customer encumbers or in any way charges any of the Goods.

- 28.5 NEXGEN shall be entitled to recover payment for the goods notwithstanding that ownership of any of the Goods has not passed from it.
- 28.6 All goods or materials fixed or unfixed on site will be at the sole risk of the Customer. The cost of repairing or replacing any such goods or materials and any of the Contract Works which are lost, damaged, or destroyed, from whatever cause, will be charged by NEXGEN as additional. The Customer is required to maintain appropriate insurance for all goods, materials and works on site.
- 28.7 Notwithstanding any agreed terms of payment the ownership of the goods shall not transfer unless all materials supplied and all work done shall have been paid for in full.
- 28.8 NEXGEN will not, however, accept responsibility for loss or damage to our materials on site for any reasons whatsoever unless such loss or damage occurs whilst a NEXGEN employee or sub-contractor is physically handling the goods on site.
- 28.9 All plant and equipment brought to the site will remain the property of NEXGEN at all times.

29. PRICING AND QUOTATIONS

- 29.1 Prices are based upon NEXGEN's pricing structure in accordance with its current price list. NEXGEN reserves the right to amend prices to take account of any variation in these costs or the imposition of any new taxes or duties occurring from whatever cause between date of Quotation and completion of the Contract Works.
- 29.2 The quote provided relates only to the Contract Works expressly described in the Quotation. The Customer will, in addition, pay for any additional work identified following attendance on site. Additional works shall be charged at NEXGEN's standard rates as per its price list at that time.
- 29.3 The Customer will, in addition, pay for any work:
 - (a) carried out by NEXGEN at the Customer's request and not being work which NEXGEN was originally contracted to undertake;
 - (b) carried out by NEXGEN following attendance on site, not being work which NEXGEN originally quoted for;

- (c) required as a result of any matter or thing which, at date of Quotation, NEXGEN did not know existed and which NEXGEN could not reasonably have foreseen;
- (d) arising from any inadequate or inaccurate instructions or drawings given to NEXGEN by the Customer or arising from the Customer failing to comply with any term of these NEXGEN Terms and Conditions;
- (e) any additional costs payable by the Customer as a result of the matters specified in Clause 29.1 and Clause 29.2, or any variation or additional work required, ordered or approved by, or on behalf of, the Customer will, where not previously agreed, be charged at NEXGEN's standard rates at that time; and
- (f) Quotation prices do not include Value Added Tax.

29.4 Unless otherwise expressly stated NEXGEN's price is open for acceptance for 30 days from the date of Quotation. Notwithstanding this, NEXGEN will be reimbursed by the equipment owner or its agents for the net cost to NEXGEN of any additional Government tax, surcharge or other statutory imposition, which may apply to the work during the currency of the agreement.

30. DETAILS

- 30.1 All drawings, illustrations in catalogues, price lists and other advertising materials must be treated as approximate representations only and are not binding in detail and none shall form part of a contract.
- 30.2 Any timescales provided are estimates only, time is not of the essence, and completion dates are subject to the availability of parts and materials from suppliers.

31. DELIVERY AND COMPLETION

- 31.1 Any timescales or completion dates quoted by NEXGEN for completion of Contract Works are estimates only, and are from the date of receipt by NEXGEN of full and final instructions in the form of a purchase order or email instruction. Time is not of the essence and all estimated completion dates are subject to:
- (a) the availability of parts and materials from suppliers;
 - (b) the receipt of all requisite information;
 - (c) sufficient and suitable availability and access to the works area to allow NEXGEN to proceed;
 - (d) any preparatory work by others including the Main Contractor being sufficiently advanced and electricity supplies being available as reasonably required by NEXGEN; and
 - (e) NEXGEN not being hindered or prevented from delivering the goods by any cause whatsoever beyond NEXGEN's control including but not limited to, strikes, lock outs, civil commotion, riot.

In any such event, the sub-contract period shall be extended by such time as NEXGEN may reasonably require.

- 31.2 NEXGEN will endeavour to complete the Contract Works within the time agreed and, if no time is agreed, within a reasonable time but in no circumstances, will NEXGEN be liable for loss or damage of any kind whatsoever caused, directly or indirectly, if completion of the Contract Works or delivery of goods or materials is delayed by reason of any cause whatsoever and whenever occurring beyond our control, including but not limited to any Act of God, war, national emergency, Act of Parliament, order, regulation or bye-law under any statutory authority, industrial dispute, strike, lock-out, civil commotion, fire, tempest, flood, or failure to deliver or delay in delivery by any of our suppliers from whatever cause arising, nor will delay arising from any such cause entitle the Customer to terminate or rescind the Engagement, save as expressly permitted under Clause 13.3 or Clause 14.3.
- 31.3 If NEXGEN incurs any loss and/or expense by reason of the progress of the Contract Works being impeded by any act or default not of NEXGEN's making, or by delay on the part of other contractors, then the amount of such loss and/or expense shall be added to the Quotation.

32. CUSTOMER'S DEFAULT

- 32.1 If at the date(s) specified for delivery, the Customer delays the acceptance of the contract goods for reasons outside of NEXGEN's control the goods will be stored by NEXGEN but the Customer will pay NEXGEN an amount equivalent to what would have been payable if the goods had, in fact been delivered and (when applicable) included in any certificate referred to in Clause 5.3.
- 32.2 In addition, the Customer will be liable to pay reasonable storage charges for the period of delay plus the cost of any additional handling and transport incurred. Alternatively, at NEXGEN's option NEXGEN may, by giving fourteen days notice in writing, cancel the Engagement or any balance of the Contract Works remaining unfulfilled on the date of the expiry of such notice in writing when NEXGEN shall be entitled to recover from the Customer as damages, any loss, expense or other damage suffered by NEXGEN as a result of such cancellation.

33. CHANGES IN QUANTITIES

- 33.1 Changes in quantities may result in increases and adjustments to unit prices, and possible delays in delivery. Any additional works or changes in quantities will be carried out and charged at NEXGEN's standard rates in accordance with its current price list.
- 33.2 Unless otherwise advised it is envisaged that NEXGEN will complete the Engagement in the number of visits stated in the Quotation and any further visits required by the Customer, for reasons beyond our control, will be additional to the Quotation and charged at NEXGEN's standard rates in accordance with its current price list and NEXGEN Terms and Conditions.

34. VARIATIONS AND CANCELLATIONS

- 34.1 Any additional works identified may be carried out and charged at NEXGEN's standard rates per Clause 29. Acceptance of the Quotation constitutes acceptance of NEXGEN's Terms and Conditions, including the charging provisions relating to additional works.
- 34.2 Where the Customer cancels scheduled Contract Works seven days or less before the agreed commencement date, the Customer shall be liable to pay 100% of the cost of any parts or materials ordered and incurred by NEXGEN, and 20% of the labour costs, representing NEXGEN's administrative costs.

35. TESTING

- 35.1 Testing of equipment in terms of frequency and scope will be undertaken in accordance with the relevant British or other relevant standards and documented accordingly.
- 35.2 Any applicable warranty is conditional upon the Customer following NEXGEN's guidance regarding inspection and testing, and ensuring that maintenance and testing are carried out only by suitably trained and competent engineers.

36. COMPLIANCE WITH OFFICIAL REQUIREMENTS AND BUILDING SUITABILITY

- 36.1 It is a condition of any Engagement and Quotation that NEXGEN's Customers undertake without charge to NEXGEN to comply with any statute, order in council, decree, regulation, bye-law or other requirement for the time being in force of any Government department, municipality or other competent authority. If, owing to the Customer's failure to comply with this condition, NEXGEN incurs any loss or expense the Customer will be liable to reimburse NEXGEN the full amount thereof.
- 36.2 It is the Customer's responsibility to ensure that the building is suitable for the proposed Contract Works.

37. TRANSFER OF GUARANTEE OR WARRANTY

- 37.1 So far as NEXGEN reasonably can, NEXGEN will transfer or make over to the Customer, the benefit of any guarantee, warranty, or free service or maintenance commitment which may have been given by the manufacturer or any other person in respect of goods or materials, the subject of the contract which are not made by NEXGEN.
- 37.2 Any applicable warranties will be identified within the purchase order or Quotation email. Any warranty is conditional upon the Customer:
- (a) maintaining the relevant assets in accordance with NEXGEN's recommendations and industry standards;
 - (b) following NEXGEN's guidance and industry standards regarding inspection and testing;
 - (c) ensuring that testing is carried out only by suitably trained and competent personnel;
 - (d) ensuring that any equipment supplied and fitted by NEXGEN, for which a warranty is provided, be maintained by NEXGEN throughout the applicable warranty period; and
 - (e) keeping accurate and reasonable records of all inspections, testing and maintenance undertaken.

Failure to comply with any of these requirements will void the warranty.

- 37.3 Where the Engagement is for the supply only of goods, the defective part is to be returned, carriage paid, to NEXGEN and any cost or expenses incurred by NEXGEN or any other person in dismantling or re-assembling must be borne by the Customer.
- 37.4 NEXGEN will not, however, be liable to repair or replace as aforesaid if the Contract Work has not been properly maintained in accordance with NEXGEN's recommended maintenance procedure, or if maintenance and testing have not been carried out by suitably trained and competent engineers, or has been subject to any misuse, unauthorised repair, replacement, modification or alteration, nor will NEXGEN be so liable:-

- (a) in respect of any equipment which has not been commissioned by NEXGEN and hand-over certificate issued to the Customer, or
- (b) arising from any goods or materials supplied or installation work carried out under the Engagement being put into operation by the Customer or by NEXGEN at the Customer's request before completion of the Contract Work, or
- (c) as a result of frost or other extremities of weather or temperature.

Provided always that, where the Customer is dealing as a consumer (as defined in the Unfair Contract Terms Act 1977), any condition or stipulation in this Clause 37 which is void against a consumer shall not be included, and the Customer's statutory rights shall remain unaffected

- 37.5 Save as aforesaid, under no circumstances will NEXGEN, NEXGEN's agents, servants or subcontractors, be liable for any loss or damage of any kind whatsoever (except personal injury or death resulting from NEXGEN, or NEXGEN's agents', servants' or sub-contractors', negligence) arising out of or caused, directly or indirectly, by any defect or omission in the Contract Work or by any negligence on our part or on the part of our servants, agents or sub-contractors and all warranties and conditions, express or implied, statutory or otherwise, hereby expressly excluded provided always that such exclusion of liability so far as it relates to defects in goods and materials supplied under the contract shall not apply where the Customer is in relation to the contract dealing as a consumer (defined as aforesaid). If the Customer is so dealing, then its statutory rights against NEXGEN in relation to such goods and materials shall remain unaffected. NEXGEN's liability is subject to Clause 11.
- 37.6 Without prejudice to the generality of the foregoing, NEXGEN will, in no circumstances, accept any responsibility for or liability in respect of or be deemed to have given any warranty or guarantee in respect of the efficient operation or technical design of any plant or equipment which has been acquired by the Customer or any other person otherwise than under these NEXGEN Terms and Conditions as a result of or arising from the installation, dismantling, repositioning, repairing, or maintaining by NEXGEN of such plant or equipment.
- 37.7 The Customer will indemnify NEXGEN against all claims, costs, proceedings, demands or liability incurred by or made against NEXGEN:-
- (a) which arise from any services carried out by NEXGEN which result directly, or indirectly, partially or wholly, from any act or omission of the Customer or any other person; or,
 - (b) arising or resulting from the death or of injury to any of NEXGEN's agents, servants or sub-contractors while they are on site (being the place, wherever that may be, other than our own premises, where such person or persons are performing services for the Customer) howsoever caused otherwise than wholly through NEXGEN, or NEXGEN's agents', servants or sub-contractors' negligence.

38. QUALITY OF GOODS AND STANDARD OF WORKMANSHIP

- 38.1 Any warranty is conditional upon the Customer maintaining the relevant assets in accordance with NEXGEN's recommendations, following NEXGEN's guidance regarding inspection and testing, ensuring that maintenance and testing are carried out only by suitably trained and competent engineers, and keeping accurate and reasonable records of all inspections, testing and maintenance undertaken. Failure to comply with any of these requirements will void the warranty.

38.2 NEXGEN's liability under this Clause shall be in lieu of any warranty or conditions implied by law as to the quality or fitness for any particular purpose of the goods and save as provided in this Clause, NEXGEN shall not be under any liability whether in contract, tort or otherwise in respect of defects in goods delivered or for any damage or loss resulting from such defect or from any work done in connection therewith. NEXGEN's liability shall be limited to the total value of the relevant Engagement or the Contract Works, subject to Clause 11.

38.3 The Customer on their part warrants and agrees to indemnify NEXGEN and hold NEXGEN harmless from any liability or claims for injury or death of any person or persons always provided such liability arises otherwise than by the acts of omissions of NEXGEN, NEXGEN's agents, servants and sub-contractors and for damages to the property of any person arising out of or alleged to be caused by the use of the goods whether fixed or not.

38.4 In the case of goods supplied but not manufactured by NEXGEN, NEXGEN's liability is limited to such rights as NEXGEN may have against NEXGEN's supplier and/ or the manufacturer.

38.5 The re-test date stated on the test certificate supplied at the time of installation shall not have passed without a re-test being carried out by a competent person.

39.LOSS OR DAMAGE IN TRANSIT

39.1 NEXGEN are not to be under any liability to replace or repair goods lost or damaged in transit unless written notice shall have been given to both the carrier and to NEXGEN, in the case of non-delivery within 14 days of the date of dispatch as indicated on NEXGEN's advice note and in the case of damage or shortage within 7 days of receipt.

40.DESIGN LIABILITY

40.1 Where any goods or materials are manufactured and/or installed to the design drawings or specification of the Customer, the fact that NEXGEN has undertaken to carry out the Contract Work on the basis thereof, does not constitute any warranty, guarantee or representation of the practicability of construction of or the efficiency, safety or otherwise of materials to be supplied or work to be executed by NEXGEN in accordance therewith.

40.2 NEXGEN shall be under no liability whatsoever to the Customer where any of our suppliers varies the specification of goods or materials forming the whole or part of the Contract Work and NEXGEN then supply to the Customer goods or materials similar to be not the same as the goods and materials specified in the Quotation.

40.3 Copyright (together with all and any other intellectual property rights which may exist therein) to all and any drawings, designs, plans, specifications or other documentation or provided or supplied or otherwise made available by NEXGEN to the Customer is owned by and vested in NEXGEN and no part of the whole thereof may be reproduced in any form without the prior written consent of NEXGEN. The doing of an unauthorised act in relation to a copyright work may result in both criminal proceedings or a civil claim for damages.

41.SERVICES REQUIRED

41.1 It is a condition of any sub-contract awarded to NEXGEN that unless otherwise expressly stated, the “Main Contractor” (being the Customer’s main contractor, if any) will accept full responsibility, free of charge to NEXGEN, for the items listed in NEXGEN’s Quotation and for which no allowance has been made in NEXGEN’s pricing.

41.2 In the case of access equipment, the equipment owner or its agent will provide, free of charge to NEXGEN the following services:

- (a) safe and unimpeded access to the installed position of the equipment; and
- (b) a warranty that associated electrical or other apparatus not forming part of or covered by NEXGEN’s Quotation shall be safe and properly maintained.

42. WORKPLACE REGULATIONS

42.1 NEXGEN’s price is based on the understanding that provisions on site will be made free of charge to NEXGEN for the use of all equipment and facilities to enable NEXGEN to comply with the Workplace (Health, Safety and Welfare) Regulations 1992 and any other relevant statutory provisions and all regulations, orders, bye-laws, and other provisions and any modification of the same, or any of them for the time being in force.

43. PROGRAMME OF WORK

43.1 Any timescales provided for the programme of site Contract Work are estimates only and are subject to change. Time shall not be of the essence. Completion dates are dependent upon the availability of parts and materials from suppliers.

43.2 NEXGEN will use reasonable endeavours to ensure that the Contract Works are completed within a reasonable timeframe but will not be liable for any delay caused by factors outside its control, including delays in the supply of parts and materials.

44. SITE ACCESS

44.1 NEXGEN’s Quotations are based on the understanding that a clear site with adequate working space will be provided and that working conditions and facilities will allow any agreed phase of Contract Work to be completed in one operation during normal working hours. The Customer must provide NEXGEN’s employees and contractors with safe access to the site, maintain a safe working environment throughout the duration of the Contract Works, and comply with all applicable health and safety requirements. If these conditions are not met the Customer will be liable for an additional charge at NEXGEN’s standard rates per Clause 29.

44.2 The Customer will, at their own expense, provide:

- (a) at whatever place on the site NEXGEN may require, adequate and appropriate equipment and manual assistance and offloading goods, material and construction plant, together with suitable covered storage for such items and a workshop or suitable space for work benches and fixed tools;
- (b) convenient access to and about the site on roads or surfaces satisfactory for transporting the weight of goods and materials involved; and
- (c) first aid, shelter and accommodation for meals, washing and sanitary facilities.



45. WORKING HOURS

- 45.1 NEXGEN's normal hours of working are 08:00 to 16:30 Monday to Friday.
- 45.2 Outside Normal Hours means 16:31-07:59 Monday to Friday and any time on Saturdays, Sundays and public holidays in England and Wales.

46. DELAYS BY OTHER TRADES

- 46.1 No allowance is made in NEXGEN's Quotations for delays caused by other trades and lost time will be charged at NEXGEN's standard rates in accordance with Clause 29.

47. SUPERVISION

- 47.1 NEXGEN accepts no responsibility for works carried out otherwise than under NEXGEN's control.

48. HIDDEN OBSTRUCTIONS

- 48.1 The execution of NEXGEN's Contract Works shall be on the basis that NEXGEN's Customer has disclosed to NEXGEN details of all cables, ducts, obstructions, pipework and the like which may reasonably be expected to be found at NEXGEN's nominated fixing positions. No liability will be accepted by NEXGEN for damage caused by NEXGEN operatives to any obstruction unless their locations have been disclosed to NEXGEN in writing in advance at Quotation stage. Where obstructions are found that have not been disclosed to NEXGEN at the time of issuing the Quotation NEXGEN reserves the right to modify fixing methods, locations and prices accordingly.

49. EXCLUSIONS

- 49.1 To the fullest extent permitted by law, and except as set out in Clause 11 or expressly stated otherwise in these NEXGEN Terms and Conditions, all implied terms are excluded.

50. ASSIGNMENT

- 50.1 Subject to the Customer's prior written approval, such approval not to be unreasonably withheld or delayed, NEXGEN shall be entitled to assign, subcontract or sublet the Engagement or any part thereof.