

**CONTRACT and CONDITIONS** These terms and conditions (“Conditions”) shall apply to all contracts or agreements (“Contract(s)”) between Next Step Solutions Ltd company registration number: 05822969 (hereinafter referred to as “the Company”) whose usual business address is at 12 Vancouver Wharf, Hazel Road, Southampton, SO19 7BN, UK (“the Premises”) and any person, firm or company (hereinafter called “the Buyer”) whereby the Company supplies any goods agreed in the Contract(s) (“the Good(s)”) or services as agreed in the Contract(s) (“the Services”) to be supplied to the Buyer by the Company (including any part or parts of them) or whereby the Company agrees to provide Services to the Buyer. The Company contracts upon the terms of these Conditions only to the exclusion of all other terms and conditions (including any terms or conditions which the Buyer purports to apply under any purchase order, confirmation of order, specification or other document). These Conditions shall not be modified without written agreement of the Company.

## **2. PRICES**

2.1 The price (“the Price”) shall be the Company’s quoted price for Goods and Services. The Price is exclusive of value added tax (“VAT”) which shall be due at the rate ruling at the date of the Company’s invoice.

2.2 Payment of the Price and VAT shall be due at the time indicated on the invoice issued by the Company.

2.3 The Price shall be exclusive of any VAT and all costs or charges in relation to packaging, loading, unloading, carriage and insurance, all of which amounts the Buyer shall pay in addition when payment for the Goods falls due.

2.5 The Buyer shall indemnify the Company against any claims, loss, cost or expense or damage incurred by the Company as a result directly or indirectly, of the Buyer’s instructions or lack of instructions or through any failure by the Buyer.

## **3. PAYMENT TERMS**

3.1 Payment in full is required prior to delivery of the Goods. The outstanding balance including all costs or charges in relation to packaging, loading, unloading, carriage and insurance, and any applicable VAT will be requested by the Company when the goods are ready to ship, and a shipment date given on receipt of this balance.

3.2 No payment shall be deemed to have been received until the Company has received cleared funds.

3.3 Returned cheques will be charged at £25.00 per presentation for payment.

3.4 The Buyer shall make all payments due under the Contract in full without any deduction whether by way of set-off, counterclaim, discount, abatement or otherwise unless the Buyer has a valid court order requiring an amount equal to such deduction to be paid by the Company to the Buyer.

3.5 All payments payable to the Company under the Contract shall become due immediately on its termination despite any other provision.

3.6 Payment of the Price is due in the currency quoted by the Company. Any fees or currency exchange commission shall be paid by the Buyer.

## **4. DELIVERY DATES**

4.1 The Company shall state the place and terms of delivery upon an Order Confirmation. Absent of any stated place and terms and unless otherwise agreed in writing by the Company, delivery of the Goods shall take place Ex Works (Incoterm) at the Company’s place of business.

4.2 Any dates specified by the Company for delivery of the Goods are intended to be an estimate and time for delivery shall not be made of the essence by notice. If no dates are so specified, delivery shall be within a reasonable time.

4.3 Subject to the other provisions of these Conditions the Company shall not be liable for any direct, indirect or consequential loss (all three of which terms include, without limitation, pure economic loss, loss of profits, loss of business, depletion of goodwill and similar loss), costs, damages, charges or expenses caused directly or indirectly by any delay in the delivery of the Goods (even if caused by the Company’s negligence), nor shall any delay entitle the Buyer to terminate or rescind the Contract unless such delay exceeds 180 days.

4.4 If for any reason the Buyer fails to accept delivery of any of the Goods when they are ready for delivery, or the Company is unable to deliver the Goods on time because the Buyer has not provided appropriate instructions, documents, licenses or authorisations:

(a) risk in the Goods shall pass to the Buyer (including for loss or damage caused by the Company’s negligence);

(b) the Goods shall be deemed to have been delivered; and

(c) the Company may store the Goods until delivery, whereupon the Buyer shall be liable for all related costs and expenses (including, without limitation, storage and insurance).

4.6 If Goods arrive damaged or short in number, written notification and evidence must be given to the Company within 7 days; otherwise the Company shall not be liable. Claims regarding non delivery or transit damage can only be considered if made within the limits imposed by the carriers.

4.7 Each order shall be a separate Contract and no cancellation or termination of any one Contract relating to an instalment shall entitle the Buyer to repudiate or cancel any other Contract or instalment.

## **5. NON-DELIVERY**

5.1 The quantity of any consignment of Goods as recorded by the Company upon despatch from the Company's Premises shall be conclusive evidence of the quantity received by the Buyer on delivery unless the Buyer can provide conclusive evidence proving the contrary.

5.2 The Company shall not be liable for any non-delivery of Goods (even if caused by the Company's negligence) unless the Buyer gives written notice to the Company of the non-delivery within 7 days of the date when the Goods would in the ordinary course of events have been received.

5.3 Any liability of the Company for non-delivery of the Goods shall be limited to replacing the Goods within a reasonable time or issuing a credit note at the pro rata Contract rate against any invoice raised for such Goods.

**6. RETURNS** Goods may not be returned to the Company without the Company's express permission in writing. Duly authorised returns shall be sent to the Company's Premises at the Buyer's expense. Any Goods which have been returned by the Buyer without the Company's written permission may be stored by the Company at the Buyer's risk.

## **7. RISK AND RESERVE OF TITLE**

7.1 The Goods shall be at the Buyer's risk from the time of delivery.

7.2 Where Goods are delivered by a carrier, the risk therein will pass to the Buyer immediately unloading commences (upon delivery). Where Goods are delivered by the Buyer's carrier, the risk therein will pass to the Buyer from the time of delivery to that carrier.

7.3 Ownership of the Goods shall not pass to the Buyer until the Company has received in full (in cash or cleared funds) all sums due to it in respect of:

(a) the Goods; and

(b) all other sums which are or which become due to the Company from the Buyer on any account.

7.3.1 The Buyer shall have paid the Price plus VAT in full; and 7.3.2 no other sums whatever shall be due from the Buyer to the Company.

7.4 Until Property and the Goods passes to the Buyer in accordance with clause 7.3 the Buyer shall hold the Goods and each of them on a fiduciary basis as bailee for the Company. The Buyer shall store the Goods (at no cost to the Company) and marked in such a way that they are clearly identified as the Company's property.

7.5 Notwithstanding that the Goods remain the property of the Company, the Buyer may with only written permission from the Company use or transfer the Goods.

7.6 The Company shall be entitled to recover payment for the Goods notwithstanding that ownership of any of the Goods has not passed from the Company.

7.7 Until such time as the Property and the Goods passes from the Company, the Buyer shall upon request deliver up such Goods to the Company. The Buyer grants the Company, its agents and employees an irrevocable licence at any time to enter any premises where the Goods are or may be stored in order to inspect them, or, where the Buyer's right to possession has terminated, to recover them. If the Buyer fails to do so the Company may enter upon any premises owned, occupied or controlled by the Buyer where the Goods are situated and repossess the Goods. On making of such request the rights of the Buyer under clause 7.5 shall cease.

7.8 The Buyer will maintain the Goods in satisfactory condition and shall insure and keep insured Goods to the Price against "all risks" to the reasonable satisfaction of the Company until the date the Property and the Goods passes from the Company, and shall whenever requested by the Company produce a copy of the Policy of insurance. Without prejudice to the other rights of the Company, if the Buyer fails to do so all sums whatever owing by the Buyer to the Company shall forthwith become due and payable.

7.9 The Buyer shall promptly deliver the prescribed particulars of this Contract to the Registrar in accordance with Companies Act 1985 Part XII as amended. Without prejudice to the other rights of the Company, if the Buyer fails to do so all sums whatever owing by the Buyer to the Company shall forthwith become due and payable.

7.10 The Buyer's right to possession of the Goods shall terminate immediately if:

(a) the Buyer has a bankruptcy order made against them or makes an arrangement or composition with their creditors, or otherwise takes the benefit of any statutory provision 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 (whether voluntary or compulsory), except a solvent voluntary liquidation for the purpose 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 documents are filed with the court for the appointment of an administrator of the Buyer, or notice of intention to appoint an administrator is given by the Buyer or their directors or by a qualifying floating charge holder (as defined in paragraph 14 of Schedule B1 to the Insolvency Act 1986), or a resolution is passed or a petition presented to any court for the winding-up of the Buyer or for the granting of an administration order in respect of the Buyer, or any proceedings are commenced relating to the insolvency or possible insolvency of the Buyer; or

(b) the Buyer suffers or allows any execution, whether legal or equitable, to be levied on their property or obtained against them, or fails to observe or perform any of their obligations under the Contract or any other contract between the Company and the Buyer, or is unable to pay their debts within the meaning of section 123 of the Insolvency Act 1986 or the Buyer ceases to trade; or

(c) the Buyer encumbers or in any way charges any of the Goods.

7.11 On termination of the Contract, howsoever caused, the Company's (but not the Buyer's) rights contained in this condition 7 shall remain in effect.

## **8. ACCEPTANCE OF THE GOODS**

The Buyer shall be deemed to have accepted the Goods (24 hours) after the delivery to the Buyer. After acceptance the Buyer shall not be entitled to reject Goods which are not in accordance with the Contract.

## **9. CONSEQUENTIAL LOSS**

The Company shall not be liable for any costs, claims, damages or expenses arising out of any tortious act or omission or any breach of contract or statutory duty calculated by reference to profits, income, production or accruals or loss of such profits, income, production or accruals or by reference to accrual of such costs, claims, damages or expenses on a time basis.

## **10. LIABILITY CLAUSE**

10.1 The following provisions set out the entire financial liability of the Company (including any liability for the acts or omissions of its employees, agents and subcontractors) to the Buyer in respect of:

- (a) any breach of these Conditions;
- (b) any use made or resale by the Buyer of any of the Goods, or of any product incorporating any of the Goods; and
- (c) any representation, statement or tortious act or omission including negligence arising under or in connection with the Contract.

10.2 All warranties, conditions and other terms implied by statute or common law (save for the conditions implied by section 12 of the Sale of Goods Act 1979) are, to the fullest extent permitted by law, excluded from the Contract.

10.3 Nothing in these Conditions excludes or limits the liability of the Company:

- (a) for death or personal injury caused by the Company's negligence; or
- (b) under section 2(3), Consumer Protection Act 1987; or
- (c) for any matter which it would be illegal for the Company to exclude or attempt to exclude its liability; or
- (d) for fraud or fraudulent misrepresentation.

10.4 Subject to condition 10.2 and condition 10.3:

- (a) the Company'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; and
- (b) the Company shall not be liable to the Buyer for any pure economic loss, loss of profit, loss of business, depletion of goodwill or otherwise, in each case whether direct, indirect or consequential, or any claims for consequential compensation whatsoever (howsoever caused) which arise out of or in connection with the Contract.

## **11. FORCE MAJEURE**

The Company shall not be liable to the Buyer for any loss, damage or default occasioned by reason of any Act of God, strike, labour dispute, fire, flood, war, terrorism, reduction in or unavailability of power at the manufacturing plant, breakdown of plant or machinery, public disaster, shortage or unavailability of raw materials from normal sources of supply, or any other cause or reason beyond the control of the Company. The terms of this contract shall be extended by a reasonable period in the event thereof.

## **12. DATA PROTECTION ACT 1998**

The Company may transfer information about the Buyer to other parties, as may be required in conducting business.

## **13. CANCELLATION**

Save as provided in these Conditions the Contract may not be cancelled except by agreement in writing of both parties and upon the payment to the Company of such amount as may be necessary to indemnify the Company against all loss resulting from the said cancellation.

## **14. INTELLECTUAL PROPERTY RIGHTS**

14.1 The Company, save as where expressly agreed in writing by the Company and the Buyer having provided Services or Goods, is the owner or licensee of all patents, trade marks, service marks, rights (registered or unregistered) in any designs, applications for any of the foregoing, trade or business names, copyright (including rights in computer software) and topography rights, knowhow, secrets, formulae and processes, lists of suppliers and customers and other proprietary knowledge and information, internet domain names, rights protecting goodwill and reputation, database rights and all rights and forms of protection of a similar nature to any of the foregoing, or having equivalent effect anywhere in the world and all rights under licences and consents

("Intellectual Property Rights") forming part of the Goods and Services.

14.2 Save where expressly agreed in writing by the Company and the Buyer, these Conditions shall not be construed to convey or transfer any ownership or proprietary interest in any Intellectual Property Rights in the Goods or Services.

14.3 Save where expressly agreed in writing by the Company and the Buyer, and except to the extent that the Company cannot prohibit such acts by law, the Buyer agrees not to translate, adapt, vary, modify, disassemble, decompile or reverse engineer the Goods or Services provided or create derivative works of the same for any purpose (including error correction or any other type of maintenance) without the Company's prior written consent.

14.4 Save where expressly agreed in writing by the Company and the Buyer, the Buyer undertakes to first consult the Company regarding any data the Buyer requires in order to achieve interoperability.

14.5 The Buyer undertakes throughout the Term not to cause or permit anything which may damage or endanger the Company's Intellectual Property Rights or the Company's title to them or assist or allow others to do so

## **15. ASSIGNMENT**

15.1 The Company may assign the Contract or any part of it to any person, firm or company.

15.2 The Buyer shall not be entitled to assign the Contract or any part of it without the prior written consent of the Company.

## **16. COMMUNICATIONS**

16.1 All communications between the parties about the Contract shall be in writing and delivered by hand or sent by pre-paid first class post or sent by fax:

(a) (in case of communications to the Company) to its Premises or such changed address as shall be notified to the Buyer by the Company; or

(b) (in the case of the communications to the Buyer) to the registered office of the addressee (if it is a company) or (in any other case) to any address of the Buyer set out in any document which forms part of the Contract or such other address as shall be notified to the Company by the Buyer.

16.2 Communications shall be deemed to have been received:

(a) if sent by pre-paid first class post, two days (excluding Saturdays, Sundays and bank and public holidays) after posting (exclusive of the day of posting); or

(b) if delivered by hand, on the day of delivery; or

(c) if sent by fax on a working day prior to 1600hrs, at the time of transmission and otherwise on the next working day.

16.3 Communications addressed to the Company shall be marked for the attention of the Company Directors.

## **17 WARRANTY**

17.1 Provided that the Buyer subject the Goods to operating conditions that are within the technical specification limits of the Goods and operate the Goods in accordance with the Company's written operating instructions, the Company warrants that the Goods are free of both material defects and workmanship defects for a period of 12 months after the date that the Products are delivered. The above warranty does not apply to: (i) used Goods or Goods that have been repaired; (ii) Goods that have been modified or subjected to improper handling, storage, installation, operation or maintenance by the Buyer, including use of unauthorized replacement parts; (iii) parts of Goods requiring replacement because of normal wear and tear.

17.2 The Company's liability for breach of this warranty is expressly limited to the repair or replacement, at its sole option, of any Goods or parts of Goods which prove to be defective during the warranty period. The Company shall only be liable for the cost of time and labour where that work is carried out by the Company.

17.3 The Company will not be responsible for any incidental or consequential damages of any kind under the terms of this warranty.

17.4 The Buyer must notify the Company in writing of any warranty claim within 60 days of discovery. The Buyer must keep the products in an unaltered condition, and must not use the Goods, awaiting instruction from the Company.

## **18. GENERAL**

18.1 Each right or remedy of the Company under the Contract is without prejudice to any other right or remedy of the Company whether under the Contract or not.

18.2 If any provision of the Contract is found by any court, tribunal or administrative body of competent jurisdiction to be wholly or partly illegal, invalid, void, voidable, unenforceable or unreasonable, it shall to the extent of such illegality, invalidity, voidness, voidability, unenforceability or unreasonableness be deemed severable, and the remaining provisions of the Contract and the remainder of such provision shall continue in full force and effect.

18.3 Failure or delay by the Company in enforcing or partially enforcing any provision of the Contract shall not be construed as a waiver of any of its rights under the Contract.

18.4 Any waiver by the Company of any breach of, or any default under, any provision of the Contract by the Buyer, shall not be deemed a waiver of any subsequent breach or default and shall in no way affect the other terms of the Contract.

18.5 The parties to the Contract do not intend that any term of the Contract shall be enforceable by virtue of the Contracts (Rights of Third Parties) Act 1999 by any person that is not a party to it.

18.6 The formation, existence, construction, performance, validity and all aspects of the Contract shall be governed by English Law and the parties submit to the exclusive jurisdiction of the English courts.