

# NES LIMITED

## 1. INTERPRETATION

### 1.1 Definitions:

**Applicable Law:** means:

- (a) the laws of England and Wales and the European Union and any of the laws or regulations including the statutes and other legislative instruments, common law and equity;
- (b) any lawful requirement of any Court, governmental body or other regulatory authority; and
- (c) regulatory policies, guidance and codes of practice, rule of Court or directives or requirements of any regulator delegate or subordinate or notice of any regulatory or any undertakings to a regulator to which any party is subject.

**Authorised User:** a director, officer, employee, contractor or consultant of the Customer who is granted individual access to Courses purchased in accordance with the Contract.

**Booking Form:** the booking form used from time to time by NES and issued/completed by the Customer.

**Business Day:** a day other than a Saturday, Sunday or public holiday in England when banks in London are open for business.

**Charges:** the charges payable by the Customer for the Courses or other services provided by NES, as set out in the Booking Form.

**Conditions:** these terms and conditions set out in clause 1 to clause 13 (inclusive).

**Confidential Information:** in relation to NES all information of a confidential nature relating to the business and/or operations of NES (in whatever medium) including:

- (a) any trade secrets, processes, customer lists, NES information, databases, trading details, information in relation to employees and officers or other information or activities of a confidential nature or which is commercially sensitive or price sensitive relating to either party or third parties including details of activities, businesses or finances of NES;
- (b) any other information specifically designated by NES as Confidential Information;
- (c) any such information subsisting in any Intellectual Property Rights of NES or its agents or sub-contractors.

**Contract:** the contract between the Customer and NES for the delivery of the Course(s) in accordance with the Booking Form and these Conditions.

**Course:** a course to be delivered or provided by NES including but not limited to training days, webinars and E Learning courses.

**Course Location:** the location where a Course is to be delivered.

**Course Materials:** all documents (in whatever media) all materials, specifications and data authored by NES.

**Credit Agreement:** means a credit agreement between a finance company and the Customer in such form as may be supplied by the finance company to NES from time to time or available on NES' website.

**Customer:** sole trader, body corporate or unincorporated body who books on/purchases courses from NES from time to time or the Customers, directors, officers, employees, agents and contractors if the context so permits.

**Force Majeure Event:** and event which is not attributable to any act or failure to take preventative action by the affected party including but not limited to armed conflict, explosion, fire, flood, violent storm, earthquake, volcanic eruption, volcanic ash cloud, insurrection, riot, civil disturbance, acts of terrorism, rebellion and industrial action by a third party.

**Good Industry Practice:** the degree of skill, prudence, care, diligence and foresight that would reasonably and ordinarily be expected from a skilled and experienced supplier providing services and/or deliverables of the same (or materially similar) nature as those to be provided under the Contract.

**NES:** National Energy Services Limited, a company registered in England and Wales with company Number 1753762 whose registered office is at National Energy Centre, Davey Avenue, Milton Keynes, MK5 8NA.

**NES Intellectual Property Rights:** all patents, rights to inventions, utility models, copyright and related rights, trademarks, service marks, trade, business and domain names, rights in trade dress or get-up, rights in goodwill or to sue for passing off, unfair competition rights, rights in designs, rights in computer software, database rights, topography rights, rights in confidential information (including know-how and trade secrets) and any other intellectual property rights, in each case whether registered or unregistered and including all applications for, and renewals or extensions of, such rights, and all similar or equivalent rights or forms of protection in any part of the world owned or licenced by NES.

**Software:** the Software provided by NES enabling the Customer to access Courses.

**Term:** the term of the Contract as specified in the Booking Form.

## 1.2 Interpretation:

- (a) A reference to a statute or statutory provision is a reference to it as amended or re-enacted. A reference to a statute or statutory provision includes any subordinate legislation made under that statute or statutory provision, as amended or re-enacted.
- (b) Any phrase introduced by the terms **including, include, in particular** 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 e-mail.
- (d) The singular shall include the plural and vice versa.

## 2. BASIS OF CONTRACT/COMMENCEMENT

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

2.2 This Contract shall come into existence at the point at which NES issues an e. mail acknowledgement or other form of written communication which indicates that NES has confirmed the terms of the Contract are acceptable.

## 3. SUPPLY OF SERVICES

3.1 NES shall deliver/provide the Course(s) to the Customer in accordance with the Contract.

3.2 In delivering the Course(s), NES shall deliver the Course(s) with reasonable care and skill and Good Industry Practice.

3.3 Each party shall comply with all Applicable Laws in connection with the performance of the Contract.

#### **4. TRAINING COURSES**

- 4.1 NES may offer a range of different Courses from time to time. NES may at its election vary or change any Course content.
- 4.2 Where a period of assessment for a Course is expressed to be 12 months (Assessment Period) Customers must complete the Course within the Assessment Period and time shall be of the essence. In the event that a Customer fails to do so NES shall not be under any obligation to extend the Course.
- 4.3 Should a Customer wish to change a Course Location or the date of a Customer's attendance on a Course, the Customer's request must be submitted to NES in writing. NES may at its election agree to change the Course Location or date as the case may be and it shall be entitled to charge and reasonable fees/costs incurred effecting such change (including but not limited to NES's reasonable administration fees.)
- 4.4 Where personal attendance at a Course is required, should a Customer fail to attend on the agreed date(s) and at the agreed Course Location, NES shall be entitled to charge the full cost of the Course together with any reasonably incurred costs and expenses arising out of the Customer's non-attendance.
- 4.5 Where a Course is an E Learning Course, NES shall grant Authorised Users access to its Software for the purpose of delivering the Course to the Customer. NES does not make any warranty or representation and the access to the Software shall be uninterrupted and fault free.
- 4.6 NES makes no representation or warranty (whether express or implied) as to the suitability of its Courses for Customers.
- 4.7 NES gives no guarantee or warranty nor makes any representation (whether express or implied) to the Customer that successful completion of a Course will result in accreditation to any accredited schemes or professional bodies.
- 4.8 For the avoidance of doubt, nothing in the Contract authorises or permits the Customer or any of its directors and officers, employees, agents or contractors to share their user name and password with any other third party for E Learning Courses.
- 4.9 Unless otherwise agreed the Customer must complete an E Learning Course within 90 days from the date the Contract comes into existence.

#### **5. COURSE MATERIALS/INTELLECTUAL PROPERTY RIGHTS**

- 5.1 NES's Intellectual Property Rights in the Course(s) and the Course Materials shall at all times remain vested in NES. Nothing in the Contract shall constitute an assignment of such rights (express or implied).
- 5.2 NES grants to the Customer a non-exclusive, royalty free, non-transferrable licence to use NES's Intellectual Property Rights for the purpose of the Contract and its own internal business purposes.
- 5.3 NES's Course Materials may not be reproduced or copied unless NES has given its express written consent.

#### **6. CHARGES AND PAYMENT**

- 6.1 In consideration for the delivery/provision of the Course(s) the Customer shall pay NES the Charges.

- 6.2 All amounts payable by the Customer exclude amounts in respect of value added tax (VAT), which the Customer shall additionally be liable to pay to NES at the prevailing rate (if applicable), subject to receipt of a valid VAT invoice. Time for payment shall be of the essence.
- 6.3 NES shall submit invoices for the Charges plus VAT if applicable to the Customer. Invoices shall be payable within 30 days following the date of invoice.
- 6.4 If the Customer fails to make any payment due to NES under the Contract by the due date for payment, then the Customer shall pay interest on the overdue amount at the rate of 4% per annum above Barclays bank base rate from time to time. Such interest shall accrue on a daily basis from the due date until actual payment of the overdue amount, whether before or after judgment. The Customer shall pay interest together with the overdue amount and any administration fee for late or missed payments.
- 6.5 Where NES permits payment by instalments, in the event that the Customer fails to pay any instalment on the date due, the amount outstanding from time to time shall become immediately due and payable.
- 6.6 NES may raise an additional charge for any additional training, assessment, or accompanied inspection.

## 7. FINANCE

- 7.1 The Customer may be offered finance via NES for the purpose of funding a Course. For these purposes, NES is registered as an introducer and may, from time to time act as an agent of a finance company for the purpose of completing a Credit Agreement.
- 7.2 The Customer warrants and represents that it shall at all times comply with the terms of any finance agreement and indemnify NES and hold NES harmless at all times in respect of all losses, costs, claims, damages and other expenses arising out of the Customer's failure to comply with the terms of a Credit Agreement.

## 8. CANCELLATION

- 8.1 In the event that a Customer wishes to cancel a Course, subject to NES's consent and provided that all charges outstanding have been paid, the Customer shall be entitled to a refund on the cost of the Course as follows:

Notification of intention to cancel between 12 and 26 weeks	100%
Notification of intention to cancel between 8 weeks and 11 weeks 6 days	75%
Notification of intention to cancel between 21 business days and 7 weeks 6 days	50%
Notification of intention to cancel between 0 and 19 business days	0%

- 8.2 NES reserves the right to cancel the Contract if:
- (a) insufficient delegates mean that the Course is no longer financially viable; or
  - (b) it is unable to offer the Course at the originally agreed location; or
  - (c) in its reasonable opinion, it is not appropriate for the Customer to remain on the Course.

In such circumstances NES will refund the charges paid by the Customer. Alternatively, NES will use its reasonable endeavours to offer the Customer a suitable replacement Course if one is available.

## **9. CONFIDENTIALITY**

9.1 The Customer agrees and undertakes at all times:

- (a) to keep all Confidential Information confidential and protected from theft, damage, loss or unauthorised access;
- (b) to use the Confidential Information solely for the purposes of the Contract and not for its own benefit or the benefit of any third party; and
- (c) not to disclose the Confidential Information to any other person other than as permitted under this clause 9.3.

9.2 The Customer shall immediately notify NES if it becomes aware of any unauthorised use, copying, or disclosure of Confidential Information

9.3 Clause 9.1 shall not apply to the disclosure of Confidential Information:

- (a) with the written consent of NES;
- (b) if and to the extent required by law or by any competent regulatory authority or recognised stock exchange; or
- (c) which is already in the public domain other than through breach of this clause.

9.4 The restrictions contained in clause 9.1 shall continue to apply notwithstanding termination of the Contract.

## **10. INSURANCE**

10.1 NES shall maintain adequate professional indemnity insurance up to a maximum of £5 million or such other amount as may be advised from time to time.

## **11. LIMITATION OF LIABILITY**

11.1 Nothing in this Contract shall limit or exclude the Parties liability for:

- (a) death or personal injury caused by its negligence, or the negligence of its personnel, agents or subcontractors;
- (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) or any other liability which cannot be limited or excluded by applicable law.

11.2 Subject to clause 11.1, NES shall not be liable to the Customer, whether in contract, tort (including negligence), for breach of statutory duty, or otherwise, arising under or in connection with this agreement for:

- (a) loss of profits;
- (b) loss of sales or business;
- (c) loss of agreements or contracts;
- (d) loss of anticipated savings;
- (e) loss of earnings;

- (f) loss or corruption of data;
- (g) loss of use or corruption of software, data or information;
- (h) loss of or damage to goodwill; and
- (i) any indirect or consequential loss.

11.3 Subject to clause 11.1, NES's total liability to the Customer, whether in contract, tort (including negligence), breach of statutory duty, or otherwise, arising under or in connection with this Contract shall be limited to the Charges.

## 12. TERMINATION

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

- (a) the other party commits a material breach of any term of this Contract which breach is irremediable or (if such breach is remediable) fails to remedy that breach within a period of 14 days after 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), 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 this Contract has been placed in jeopardy.

12.2 On termination of this Contract for whatever reason:

- (a) Termination of the Contract shall not affect any of the parties' rights and remedies that have accrued as at termination, including the right to claim damages in respect of any breach of this Contract which existed at or before the date of termination; and
- (b) Any provision of the Contract that expressly or by implication is intended to come into or continue in force on or after termination shall remain in full force and effect.

## 13. GENERAL

13.1 **Force majeure.** Neither party shall be in breach of this Contract nor liable for delay in performing, or failure to perform, any of its obligations under this Contract if such delay or failure results from Force Majeure Event.

13.2 **Assignment and other dealings.**

- (a) The Customer shall not assign, transfer, charge, subcontract, declare a trust over or deal in any other manner with any or all of its rights and obligations under this Contract without NES's prior written consent.

- (b) NES may at any time assign, transfer, charge, subcontract, declare a trust over or deal in any other manner with any or all of its rights under this Contract.

### 13.3 **Status**

The relationship between the Customer and NES is that of independent contractor and nothing in this Contract shall render it an employee, worker, agent or partner of the Customer and NES shall not hold itself out as such.

### 13.4 **Entire agreement.**

- (a) This 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 agrees that it shall have no remedies in respect of any statement, representation, assurance or warranty (whether made innocently or negligently) that is not set out in this Contract. Each party agrees that it shall have no claim for innocent or negligent misrepresentation based on any statement in this Contract.

13.5 **Variation.** No variation of this Contract shall be effective unless it is in writing and signed by the parties (or their authorised representatives).

13.6 **Waiver.** A waiver of any right or remedy is only effective if given in writing and shall not be deemed a waiver of any subsequent breach or default. A delay or failure to exercise, or the single or partial exercise of, any right or remedy shall not:

- (a) waive that or any other right or remedy; or
- (b) prevent or restrict the further exercise of that or any other right or remedy.

13.7 **Severance.** If any provision or part-provision of this Contract is or becomes invalid, illegal or unenforceable, it shall be deemed modified to the minimum extent necessary to make it valid, legal and enforceable. If such modification is not possible, the relevant provision or part-provision shall be deemed deleted. Any modification to or deletion of a provision or part-provision under this clause shall not affect the validity and enforceability of the rest of this Contract.

### 13.8 **Notices.**

- (a) Any notice or other communication given to a party under or in connection with this Contract shall be in writing, addressed to that party at its registered office or such other address as that party may have specified to the other party in writing in accordance with this clause, and shall be delivered personally, or sent by pre-paid first class post or other next working day delivery service, commercial courier or e-mail.
- (b) A notice or other communication shall be deemed to have been received: if delivered personally, when left at the address referred to in clause 14.8(a); if sent by pre-paid first class post or other next working day delivery service, at 9.00 am on the second Business Day after posting; if delivered by commercial courier, on the date and at the time that the courier's delivery receipt is signed; or, if sent by e-mail, one Business Day after transmission.
- (c) The provisions of this clause shall not apply to the service of any proceedings or other documents in any legal action.

- 13.9 **Third party rights.** The Customer and NES and any of NES's holding companies, associated companies or subsidiaries shall have the right to enforce any of the terms of the Contract. Save as expressly provided in this clause 14.9 no other party may enforce the terms of the Contract.
- 13.10 **Governing law.** This Contract, and any dispute or claim arising out of or in connection with it or its subject matter or formation (including non-contractual disputes or claims), shall be governed by, and construed in accordance with the law of England and Wales.
- 13.11 **Jurisdiction.** Each party irrevocably agrees that the courts of England and Wales shall have exclusive jurisdiction to settle any dispute or claim arising out of or in connection with this Contract or its subject matter or formation (including non-contractual disputes or claims).