

# NXGEN ENGINEERING LTD – GENERAL TERMS AND CONDITIONS FOR ENGINEERING

These NXGEN Engineering General Terms and Conditions for Engineering form part of each and every Contract between NXGEN and the Client that involves engineering work and/or performing studies including any and all Variation Orders thereto and of all other contracts arising from or are in connection with them and to all quotations, offers, declarations of intent, orders, order confirmations and other documents and actions set up and/or carried out in preparation for and/or preceding and/or in connection with a Contract.

No terms and conditions of any kind and under any name whatsoever that the Client employs and/or to which the Client refers to, shall apply and all such terms and conditions are hereby expressly excluded by NXGEN. In the event of conflict between these General Terms and the content of the Contract, the stipulations of the Contract shall take precedence.

## 1. DEFINITIONS:

**"Client Group"** means the Client, its own client, the enterprises associated and or affiliated with the Client and/or its own client and their own contractors and subcontractors, customers, directors and members of staff.

**"Client"**: the person or legal person that enters into a Contract with NXGEN concerning the Work;

**"Contract"**: the separate agreement between NXGEN and the Client for the provision of engineering work and or studies, including (not limited to) the Contract Price, the scope of the Work and or Product, together with all schedules and/or amendments and/or additions thereto;

**"Contract Price"**: the price for the Product as agreed under the Contract.

**"Coronavirus Event"** means any event, circumstance, action or inaction that directly or indirectly results from or is connected with Coronavirus, or any actual or suspected outbreak of Coronavirus, including but not limited to officially mandated or recommended quarantines, social distancing, transport, travel or working bans or restrictions.

**"Coronavirus"** means, collectively and individually COVID-19 disease, SARS-CoV-2 virus or any other or similar name given to the pandemic by the International Committee on Taxonomy of Viruses (ICTV) and any variants thereof.

**"Documentation"**: the material, drawings, specifications (including technical specifications), designs, calculations, models, prototypes and other documents, that are or will be made available by the Client to NXGEN concerning and/or in connection with the Work and or Product;

**"General Terms and Conditions"**: these terms and conditions;

**"NXGEN"**, the NXGEN entity stated in the Contract.

**"Parties"**: NXGEN and the Client together;

**"Party"**: NXGEN or the Client;

**"Product"**: the engineering concept, drawings, studies or other results that are produced by NXGEN in the context of the Contract;

**"Specifications"**: the agreed requirements set down for the Product.

**"Work"**: the work NXGEN carries out under this Contract in order to produce the Product;

**"Variation Order"**: an order placed by the Client with NXGEN for modifications and/or additions to and/or extensions of the Work and or Product.

## 2. CONTRACT PRICE

2.1 Except as expressly stated otherwise in the Contract, the Contract Price is based on performance during normal working hours on a daily and/or weekly basis and in normal circumstances and under normal 2.2 working conditions as applicable in the country where the Work is carried out

2.3 The Contract Price includes only the charge for the Work and or Product as specified in the Contract.

2.4 The Contract Price is exclusive of VAT and exclusive of all taxes, costs, penalties and/or incremental penalties levied by government and/or other authorities in respect of and/or in connection with the Contract (with the exception of corporation tax and/or other tax on income for which NXGEN is liable).

2.5 If the cost price of one or more elements of the Contract Price over which NXGEN has no influence rises substantially after the date of conclusion of the Contract, NXGEN will be entitled to increase the Contract Price accordingly. To qualify as substantial a price rise must be at least 3% (three per cent).

2.6 The provisions of this article are also applicable to the (extra) costs of modifications, additions and/or extensions, regardless of whether or not they are included in Variation Orders

## 3. PAYMENT

3.1 The Client must pay within the payment period shown in the Contract or, if no payment period is shown in the Contract, within 30 (thirty) days after the invoice date (due date).

3.2 Payment must be made, without any deduction or settlement or withholding of any kind whatsoever, to the bank account indicated by NXGEN, unless agreed otherwise between the Parties.

3.3 Payments by the Client to NXGEN shall never be dependent upon the Client's receiving payments from third parties, including the Client's client.

3.4 If the Client has not paid by the due date, the Client shall be in default, without any notice of default being required, and the Client shall owe NXGEN interest for delay in payment to the amount of 1.5% (one and a half percent) per month on the amounts owing from the relevant due date.

3.5 In the event of the Client's failure to pay, all costs and expenditure (including all the costs of legal assistance, both legal and extralegal) incurred by NXGEN in connection with collecting the amount owed, with a minimum of EUR 250.00 (two hundred and fifty euros), will be charged to the Client.

## 4. USE, TITLE AND CONFIDENTIALITY

4.1 The Client's Documentation will serve as the basis for carrying out the Work and for the Product.

4.2 The Client shall make the Documentation considered necessary by NXGEN available in good time and free of charge.

4.3 The Client guarantees that the Documentation it provides, or is provided on its behalf will be accurate, complete and correct. The Client shall at all times be and remain liable for the consequences of inaccuracy, incorrectness, incompleteness, errors, omissions and/or lack of clarity in the Documentation.

4.4 NXGEN guarantees that the Product will meet the Specifications based on information provided and at details at the time.

4.5 Intellectual property rights in or arising from the Product shall remain with NXGEN unless otherwise agreed in writing.

4.6 The Client is entitled to use the Product for the intended purpose as long as the Client has fulfilled its obligations in accordance with the Contract and insofar as the intended purpose does not conflict with the stipulations of the Contract.

4.7 The Product is based on NXGEN's current technology, engineering concepts and material. A third party must not assume anything about the Product, but must investigate for itself the possibilities, limitations or circumstances that in its opinion are relevant to the operational use of the Product. The Product is intended solely for preparing for operational implementation by NXGEN, unless agreed otherwise. NXGEN shall not be liable for any consequences thereof.

4.8 The Parties will keep the Documentation and the Product strictly confidential, unless agreed otherwise. The Documentation and the Product will not be made available to third parties or be made public in any way.

## 5. INSURANCE

5.1 Professional Indemnity insurance is not included.

5.2 The Parties must take out all compulsory insurance as required by law.

## 6. VARIATION ORDERS

6.1 The Client is entitled to submit written Variation Orders to NXGEN

6.2 NXGEN will be obliged to execute Variation Orders unless the activities entailed by the Variation Order do not form part of the normal business activities of NXGEN and/or if NXGEN does not have the resources available and/or if other projects of NXGEN could be substantially delayed as a result.

6.3 The Client is not entitled to issue an instruction or Variation Order that would make NXGEN act in conflict with professional standards or outside its area of expertise.

6.4 NXGEN will charge the Client additionally for the costs of all amendments and/or additions to and/or extensions of the Contract as a consequence of a Variation Order. The costs will be calculated in accordance with the applicable unit rates and or prices contained in the Contract. In the absence of such unit rates and or prices or if the specific unit prices are not applicable to the Variation Order, the

charge will be determined on a fair and reasonable basis accounting for market conditions at the time

6.5 In the event of delays or suspension, the Client shall compensate NXGEN in accordance with the applicable rates contained in the Contract. If no such rates have been agreed, or if those rates are not applicable, the compensation shall be at market rates.

6.6 In the event of changes, Variation Order, or additions to the Contract, the parties shall establish the extension of the time for implementing the Contract reasonably and fairly.

## 7. FORCE MAJEURE

7.1 "**Force Majeure**" means circumstances, conditions and/or events that cannot be affected by any Party, that occur outside the fault or negligence of any Party and cannot be avoided or impeded by taking reasonable measures, that temporarily or permanently impede the implement of any obligation (with the exception of obligations to pay) under the Contract, such as strikes, acts of government, quarantine, epidemics, war (declared or undeclared), terrorism, blockades, embargoes, riot, demonstrations, insurrection, fire, named storms and/or other extreme weather conditions and/or Acts of God, as long as there has been no cause or contribution to those circumstances by either party.

7.2 If the implementation of the work by NXGEN is impeded temporarily as a result of an instance of force majeure, the consequences of that instance of force majeure will be only a delay to the implementation of the work by NXGEN, and that instance will not be a reason for the Client not to fulfill its obligations to pay in accordance with what is stipulated in the Contract.

7.3 If implementation of the work by NXGEN is impeded permanently by an instance of force majeure, or is impeded temporarily by an instance of force majeure for a period that is expected to be at least 60 (sixty) days, both parties are entitled to cancel the Contract.

## 8. DELAY AND SUSPENSION

8.1 NXGEN is entitled to suspend (including partly) its obligations under the Contract if the Client is in default in fulfilling one or more of its obligations under the Contract, or has stopped fulfilling one or more of its obligations under the Contract, including payment of any amount due by virtue of the Contract, without any prior notification or notice of default being required.

8.2 If the scope and/or progress of the Work is delayed and/or suspended as a result of circumstances not being force majeure, that are caused by NXGEN, NXGEN shall not be liable for any loss, costs or damages.

8.3 If the scope and/or progress of the Work is delayed and/or suspended as a result of circumstances that are not caused by NXGEN, NXGEN shall be entitled to a Variation Order and compensation in accordance with Article 6.

## 9. TERMINATION

9.1 Each Party shall be entitled to cancel and/or terminate the Contract with immediate effect, without the intervention of intermediaries or resorting to the courts, and without being obliged to pay any compensation to the other Party, under any of the following circumstances:

- a) if the other Party is in default and continues to be so after the Party that is in default has been called upon to rectify the default and (ten) days have passed without the default being rectified (thereby complying with the summons/notice of default);
- b) if control of or the controlling interest in the other Party's company is transferred directly or indirectly to a third party;
- c) if the other Party is declared bankrupt, applies for or obtains suspension of payment (including provisionally), or in any other way loses free control of its company or its equity, without any prior notification being necessary.

9.2 If the Client terminates the Contract for the reasons provided for in 9.1, the Client shall pay NXGEN the following amounts:

- a) for the Work performed until the date of termination, including (but not limited to) the costs of engineering and other costs incurred before the date of termination; and
- b) all costs which NXGEN must incur as a consequence of the termination, including (but not limited to) demobilisation costs and costs and/or penalties which NXGEN must pay to third parties.

## 10. LIMITATION AND LAPSING OF LIABILITY (THE CLIENT'S ATTENTION IF PARTICULARLY DRAWN TO THIS CLAUSE)

10.1 If through its own fault or negligence NXGEN fails to comply with the Contract, it shall be bound only to fulfilling (or again fulfilling) its obligations under the Contract. Client shall have no further claims against NXGEN arising from such failure to comply with the Contract.

10.2 All claims by the Client by virtue of the Contract become null and void after fourteen days has have passed from the time the Client knew or should have known about the event giving rise to such claim.

10.3 Client waives right to make any claims after 1 (one) month has passed beginning upon completion of the Work or delivery of the Product, whichever occurs earliest.

10.4 Subject to 10.1 and notwithstanding anything to the contrary contained in the Contract or these General Terms and Conditions, with the exception of intent or deliberate recklessness on the part of NXGEN, to the fullest extent of the law, the total liability of NXGEN whether in contract, tort (including negligence), breach of statutory duty, or otherwise, arising under or in connection with the Contract will be limited to twenty percent (20%) of the Contract Price or EUR 50,000 whichever is the lower amount. The Client will indemnify NXGEN, its affiliates, and its subcontractors against all claims, costs, liabilities and so forth of the Client Group which exceed the above-mentioned liability limits.

10.5 NXGEN shall not be liable to the Client for any loss of profit, loss of use, loss of contracts and/or economic loss and/or for any indirect damage and/or for multiple damages and/or punitive damages. Damage or loss suffered by the Client Group as referred to in this paragraph will be treated as damage or loss suffered by the Client. The Client will indemnify, defend and hold harmless NXGEN accordingly.

10.6 NXGEN shall not be liable to Client Group for its use of the Product or anything arising therefrom. Client shall indemnify, defend and hold harmless NXGEN for and against any loss, damages, claims, liability, expense or otherwise incurred and or received by Client Group arising from the Product.

10.7 No warranty / guarantee period will apply to the Work and or the Product.

## 11. APPLICABLE LAW AND JURISDICTION

11.1 All contracts to which these terms and conditions apply and all subsequent contracts resulting therefrom, including any disputes relating to the existence, validity and/or termination thereof, will be governed exclusively by and construed in accordance with the laws of England and Wales.

11.2 The English Courts, shall have exclusive jurisdiction for this Contract, to the exclusion of other courts.

## 12. DISPUTE RESOLUTION

### 12.1 Adjudication

For Work carried out within the United Kingdom, both Parties shall have a right to refer any difference or dispute arising under or in connection with the Contract to adjudication and the procedure set out in Part 1 of the Scheme for Construction Contracts (England and Wales) Regulations 1998 (or any amendment or re-enactment thereof for the time being in force) will apply. The specified nominating body to select adjudicators shall be the Construction Plant-hire Association acting by its President or Chief Executive for the time being. The Parties shall comply forthwith with any decision of the adjudicator.

### 12.2 Expert Determination

For Work carried out outside of the United Kingdom: any dispute which relates to a delay by either Party or to change arising from delay, may be referred by either Party to expert determination by an expert (Expert). The Expert will be appointed by agreement in writing between the Parties, but in the event of a failure to agree within 10 Business Days, or if the person appointed is unable or unwilling to act, the Expert will be appointed by NXGEN.

The Expert will act on the following basis:

- a) he/she will act as an expert and not as an arbitrator and will act fairly and impartially;
- b) the Expert's determination will (in the absence of a material failure to follow the agreed procedures) be final and binding on the Parties;

the Expert will decide the procedure to be followed in the determination and will be requested to make his/her determination within 30 Business Days of his appointment or as soon as reasonably practicable thereafter and the parties will assist and provide the documentation that the Expert requires for the purpose of the determination;

- c) the determination process will be conducted in private and will be confidential; and
- d) the Expert will determine how and by whom the costs of the determination, including his/her fees and expenses, are to be paid

### 12.3 Arbitration

For Work carried out outside of the United Kingdom, any dispute arising out of or in connection with the Contract, including any question regarding its existence, validity or termination, will be referred to and finally resolved by arbitration under the London Court of International Arbitration (LCIA) Rules, which Rules are

deemed to be incorporated by reference into this condition. The number of arbitrators will be three. The seat, or legal place, of arbitration will be London Court of International Arbitration, London, UK. The language to be used in the arbitral proceedings will be English. The decision will be binding and final for both parties.

b) prevent or restrict the further exercise of that or any other right or remedy

### 13. COVID-19

13.1 If, by reason of a Coronavirus Event, NXGEN incurs additional costs and/ or is hindered, prevented from or delayed in performing the Work or its other obligations under the Contract and or these General Terms and Conditions, NXGEN shall not be considered in default under the Contract or these General Terms and Conditions.

13.2 NXGEN shall be entitled to a Variation Order in accordance with Article 6 of these General Terms and Conditions to the extent it incurs additional costs and/or suffers delay in the performance of the Work or its other obligations under the Contract or these General Terms and Conditions by reason of a Coronavirus Event.

13.3 Insofar as it affects the performance of NXGEN, a Coronavirus Event shall not be treated as Force Majeure.

### 14. CLIENT SECURITY

14.1 NXGEN may require the Client to execute a Parent Company Guarantee from an entity acceptable to NXGEN and/or Payment Bank Guarantee on terms and in a form acceptable to NXGEN. Where NXGEN so requires, it will not be obliged to provide any Work or the Product or do anything else pursuant to the Contract until such guarantee(s) are duly executed and delivered to NXGEN.

14.2 Notwithstanding clause 3, credit terms extended by NXGEN to the Client are at NXGENs discretion and shall be based upon the information gathered and or received pertaining to the Clients credit worthiness prior to the Commencement Date. If NXGEN's assessment of the Client's credit worthiness returns a result that is not acceptable to Contractor, then Contractor may request and Client shall be obliged to pay Contractor for Work and or the Product in advance of the Work being performed. Such advance payment shall be a condition precedent to Contractors performance of the Work.

14.3 NXGEN may reconsider credit terms for the Client at any time. NXGEN will conduct periodic credit assessments of the Client's financial position throughout the duration of the Contract. Should any credit assessment conducted by NXGEN demonstrate that the Client's financial position has deteriorated further security or credit arrangements may be required. NXGEN is not obliged to provide any Services and or Hire or do anything else pursuant to the Contract should the credit assessment of the Client deteriorate significantly from that carried out prior to execution of the Contract

### 15. MISCELLANEOUS

15.1 The titles of the articles in these General Terms and Conditions are intended solely for the purposes of the layout and have no effect on the interpretation of the relevant stipulations.

15.2 If any stipulation or any part of the Contract or of these General Terms and Conditions turns out to be null and void or unenforceable for any reason whatsoever, then is the state of being null and void or unenforceable restricted to that stipulation and has no further scope.

15.3 All such parts of the Contract or of these General Terms and Conditions that are null and void or unenforceable shall be replaced (or considered to be replaced) by stipulations that are neither null and void nor unenforceable and deviate as little as possible from the stipulations that are null and void and/or unenforceable, taking into account the intentions of the Contract and the General Terms and Conditions and of the relevant stipulations.

15.4 The Contract and these General Terms and Conditions 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.

15.5 Each Party agrees that it will have no remedies in respect of any statement, representation, assurance or warranty (whether made innocently or negligently) that is not set out in this agreement. Each Party agrees that it will have no claim for innocent or negligent misrepresentation or negligent misstatement based on any statement in this agreement.

15.6 Any samples, drawings, presentations, descriptive matter or advertising issued by NXGEN, and any descriptions or illustrations contained in NXGEN's catalogues or brochures, are issued or published for the sole purpose of giving an approximate idea of the Work and or Product described in them. They will not form part of the Contract or have any contractual force

15.7 A waiver of any right or remedy is only effective if given in writing and will 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 will not:

a) waive that or any other right or remedy; or