

# **NORTHUMBRIAN WATER SCIENTIFIC SERVICES**

## **TERMS AND CONDITIONS OF SUPPLY**

### **1. INTERPOLATION**

1.1 In these conditions of supply the following words shall except where the context otherwise requires have the following meanings:-

"NWSS" means Northumbrian Water Scientific Services, a trading division of Northumbrian Water Limited;

"Agreement" means any agreement to provide Services upon the terms and conditions set out herein or such other terms and conditions as the parties agree in writing;

"Client" means the company, person or firm purchasing or offering to purchase Services from NWSS;

"Services" means any services to be supplied to the Client by or on behalf of NWSS.

1.2 The headings in these conditions are for convenience only and shall not affect construction.

### **2. STATUS OF TERMS AND VARIATIONS**

2.1 The supply of all Services shall be subject to these conditions which shall supersede any other conditions in any document or other communication used or issued by the Client in relation to any Services.

2.2 No variation or addition to any Agreement is effective unless and until NWSS so agrees in writing.

### **3. TIME, PRICE AND PAYMENT**

3.1 NWSS shall make all reasonable efforts to supply and perform the Services by the date agreed (if any) but NWSS does not guarantee such a date, which is given by way of estimate.

3.2 The price payable for the Services is the net price (after deduction of any discounts) and is exclusive of all taxes, duties and any other impositions whatsoever, which if applicable shall be paid by the Client in addition to the price. Any other charges stated separately from the price are payable by the Client at the same time, and shall be treated as part of the price.

3.3 Prices are payable without set-off or counterclaim in United Kingdom sterling in immediately available funds within 30 days from the date of the relevant invoice. Payment by cheque or other negotiable instrument is ineffective until it is honoured and NWSS's bank account is credited with the amount due.

3.4 Where the term or duration of any Agreement will, or is likely to, exceed six months NWSS shall be entitled to invoice, and the Client shall pay, an interim payment in respect of each three month period, which payment shall be on account of the price.

3.5 The time for payment of the price shall be of the essence. Without prejudice to any other rights of NWSS, interest shall be payable on any unpaid amount at the rate of 2 per cent per annum above the base rate from time to time of National Westminster Bank PLC, calculated from the date of due payment until the date of actual payment.

3.6 If NWSS agrees to any change in the Services or to supply any additional Services after commencement of any Agreement the price payable for those Services will be the rate applicable at the date of invoice.

### **4. LIABILITIES OF NWSS**

4.1 NWSS shall carry out the Services with reasonable care and skill but the Client acknowledges that:

4.1.1 it is in the nature of the Services that total accuracy of results cannot be achieved; and

4.1.2 no warranty is given that the Services are appropriate or sufficient for the Client's intended purposes (whether or not known to NWSS).

4.2 No collateral contract, representation, warranty or condition is made or given and no liability or obligation (whether arising in contract, tort or otherwise) is undertaken by NWSS or its employees or agents in relation to the Services or otherwise in relation to the Client save as is expressly set out in these terms or specifically agreed to by NWSS, such agreement being in writing, specifically referring to this clause and being signed by a person authorised to sign for and on behalf of NWSS.

4.3 Notwithstanding the provisions of clause 4.1 above, in no circumstances shall NWSS be liable in contract, tort (including negligence or breach of statutory duty) or otherwise howsoever and whatever the cause thereof:

4.3.1 for any increased costs or expenses;

4.3.2 for any loss of profit, business, contracts, revenues or anticipated savings; or

4.3.3 for any special indirect or consequential damage of any nature whatsoever arising directly or indirectly out of the provision of the Services or of any defect or error therein, or of the performance, non-performance or delayed performance of the Services.

4.4 The liability of NWSS, its officers, employees, agents and sub-contractors for any loss, costs, claims or damage caused by or resulting from improper or negligent performance, purported performance or non-performance of the Services shall not exceed in aggregate a sum equal to five times the fee payable for the Services (save in respect of death or personal injury caused by the negligence of NWSS, in respect of which no limit shall apply).

4.5 The liability of NWSS in respect of the Services shall also be limited as set out in clause 5 below.

### **5. DEFECTS**

5.1 The Client shall give NWSS written notice of any defects in Services as soon as it is aware of them and shall in any event give NWSS detailed written notice of those defects within 3 months of the Services being supplied.

5.2 The Client shall not be entitled to make any claim in respect of any defects except when it has given notice as required by this Clause.

5.3 In respect of any defects in the Services notified to NWSS, NWSS shall, at its sole option, either use all reasonable endeavours to make good such defects without further charge or refund the price for the defective services to the Client.

### **6. ASSIGNMENT AND THIRD PARTY USE**

6.1 The Client shall not assign, mortgage, charge, sub-let or otherwise dispose of any Agreement or any rights there under in whole or in part without NWSS's prior written consent. Any of the same purported to be effected without such consent shall be void.

6.2 No person other than the Client and NWSS has any rights under the Contracts (Rights of Third Parties) Act 1999 to enforce any term of this Agreement.

### **7. EVENTS OF DEFAULT, TERMINATION, SUSPENSION**

7.1 If:-

7.1.1 the Client fails to pay sums due to NWSS promptly; or

7.1.2 the Client, is or in the reasonable opinion of NWSS appears to be, unable to pay its debts as they become due, or the value of its assets is less than the amount of its liabilities (including contingent and prospective liabilities), or the Client otherwise becomes insolvent or suspends payment or ceases to trade, or threatens to do either of these; or

7.1.3 steps are taken to (a) propose any composition, scheme of arrangement, compromise or arrangement involving the Client and its creditors generally, (b) obtain an administration order or appoint any administrative or other receiver or manager in relation to, or put in fore any legal process against the Client or any of its property, (c) enforce any charge or other security over the Client's property, or (d) wind up or dissolve the Client; or

7.1.4 where the Client is an individual or partnership he or any partner dies or any steps are taken with a view to make bankruptcy order against him or any partner; or

7.1.5 outside England and Wales, anything similar or equivalent to any of the above occurs

then the Client shall be deemed to have repudiated each Agreement and shall notify NWSS forthwith.

7.2 In the event of any event or circumstance set out in clause 7.1 arising, NWSS may (at its discretion and without prejudice to its other rights hereunder or otherwise) by and/or following written notice to the Client do any one or more of the following:-

7.2.1 terminate, cancel and/or rescind any or all Agreements;

7.2.2 declare (whereupon it shall become) immediately due any amounts owed by the Client to NWSS under any Agreement;

7.2.3 cease supplying any Services;

7.2.4 proceed against the Client for the price of the Services and/or damages.

### **8. CONFIDENTIAL INFORMATION**

NWSS shall maintain information which is supplied by the Client and designated as confidential in strict confidence. Upon completing the supply of Services under an Agreement NWSS shall immediately return to the Client any confidential document that it has received from the Client in that connection.

### **9. FORBEARANCE**

NWSS's rights shall not be prejudiced or restricted by any indulgence or forbearance extended to the Client or any variation in the Services and no waiver by NWSS in respect of any breach shall operate as a waiver in respect of any subsequent breach.

### **10. FORCE MAJEURE**

In the event that performance of the Services is rendered uneconomic, prevented or delayed as a result of circumstances or a cause beyond the reasonable control of NWSS, NWSS may by written notice to the Client, at NWSS's option, either cancel, suspend or postpone performance of the Services with no liability on either side, save in respect of rights already accrued.

### **11. VALIDITY AND SEVERABILITY**

The complete or partial invalidity or unenforceability for any reason of any part of these terms and conditions shall not prejudice or affect the validity or enforceability of the remainder. Any such provisions shall be deemed to be severed and the remainder shall remain in full force and effect subject to such consequential modifications as may be necessary to give effect to them.

### **12. LAW AND JURISDICTION**

The construction, validity and performance of all Agreements shall be governed by English law and any claim or dispute arising from them or in connection with any Services shall, without prejudice to NWSS's other rights, be subject to the jurisdiction of the English Courts or to which the parties hereby submit.