

The Client's attention is particularly drawn to the provisions of clause 8.

## 1. INTERPRETATION

### 1.1 Definitions

In these Conditions, the following words and phrases have the meanings set out opposite:

“**Business Day**” means a day (other than a Saturday, Sunday or public holiday) when banks in London are open for business;

“**Client**” means the person or firm who purchases Services from the Supplier;

“**Commencement Date**” has the meaning set out in clause 2.2;

“**Conditions**” means these terms and conditions as amended from time to time in accordance with clause 11.8;

“**Contract**” means the contract between the Supplier and the Client for the supply of Services in accordance with these Conditions;

“**Deliverables**” means the designs in whatever form, drawing, model, manufacturing file, manual, graphic or other deliverables (if any) set out in the Order to be produced by the Supplier for the Client;

“**Fees**” means the fees and charges payable by the Client for the supply of the Services in accordance with clause 5;

“**Intellectual Property Rights**” means all patents, rights to inventions, utility models, copyright and related rights, trade marks, 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 right, topography rights, moral 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;

“**Order**” means the Client's order for Services in whatever form as confirmed and accepted in the Order Confirmation;

“**Order Confirmation**” means the form confirming and accepting an Order and setting out agreed terms of the Order issued by the Supplier;

“**Services**” means the services, including the provision of the Deliverables to be supplied by the Supplier to the Client as set out in the Specification;

“**Specification**” means the description or specification of the Services provided in writing by the Supplier to the Client as set out in the Order Confirmation or otherwise;

“**Supplier**” means NEXTGEN 3D LIMITED registered in England and Wales with company number 8159019;

“**Supplier Background Intellectual Property Rights**” means in relation to any Order pre-existing Intellectual Property Rights of the Supplier created or arising before undertaking work or Services for the Client in connection with the Order or independently of such work or Services; and

“**Supplier Materials**” has the meaning set out in clause 4.1(f).

### 1.2 Construction.

In these Conditions, the following rules apply:

a. a **person** includes a natural person, corporate or unincorporated body (whether or not having separate legal personality);

b. a reference to a party includes its personal representatives, successors or permitted assigns;

c. a reference to a statute or statutory provision is a reference to such statute or statutory provision 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;

d. 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; and

e. a reference to **writing** or **written** includes faxes .

## 2. BASIS OF CONTRACT

2.1 The Order constitutes an offer by the Client to purchase Services in accordance with these Conditions.

2.2 The Order shall only be deemed to be accepted when the Supplier issues written acceptance of the Order by means of an Order Confirmation at which point and on which date the Contract shall come into existence (**Commencement Date**).

2.3 In the event that the Client does not approve the details of the Order as set out in the Order Confirmation the Client shall notify the Supplier in writing as soon as possible and in any event within three (3) Business Days of receipt of the Order Confirmation.

2.4 The Contract constitutes the entire agreement between the parties. The Client acknowledges that it has not relied on any statement, promise or representation made or given by or on behalf of the Supplier which is not set out in the Contract. Any descriptive or advertising matter issued by the Supplier is issued or published for the sole purpose of giving an approximate idea of the Services described in them. They shall not form part of the Contract or have any contractual force.

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

2.6 The Supplier shall not be obliged to issue any quotation of fees or estimate of time for completion of any Order and it may be difficult or impossible for the Supplier to do so with any accuracy. Unless the Supplier expressly agrees a fixed fee for Services in writing, any quotation or estimate issued by the Supplier is by nature of an estimate only and is not binding. A quotation or estimate shall in no event constitute an offer, and shall only be valid for a period of 20 Business Days from its date of issue.

2.7 If a maximum budget for the Fees for Services is specified by the Client in the Order or otherwise expressly agreed in writing with the Supplier in respect of an Order, the Supplier will not charge fees in excess of the specified or agreed budget but shall not be obliged to work in excess of the time permitted within that budget at the time based fee rate applicable to the Order. In such cases, the Supplier shall be required to deliver to the Client only such work as the Supplier has produced in relation to the Services

in the time spent on the Order and the proper spending of the time in producing such work shall be the Supplier's sole obligation in respect of the Order. The Client acknowledges and agrees that any work produced within such time constraints may be incomplete or otherwise not in accordance with the Client's requirements and accordingly shall be delivered by the Supplier and accepted by the Client on that basis without any warranty or representation in that regard.

**2.8** If the Client wishes to change the Specification or the Contract it will send a request to the Supplier in writing accordingly. The Client will consider and the requested change and endeavour to co-operate with the Client to accommodate the requested changes or to put forward alternative proposals in discussion with the Client but the Supplier shall not be obliged to accept any change. The Client will pay the costs of the Supplier incurred prior to or arising as a result of any proposed change.

### 3. SUPPLY OF SERVICES

**3.1** The Supplier shall supply the Services to the Client in accordance with the Specification in all material respects.

**3.2** The Supplier shall use all reasonable endeavours to meet any performance dates specified in the Order, but any such dates shall be estimates only and time shall not be of the essence for performance of the Services.

**3.3** The Supplier shall have the right to make any changes to the Services which do not materially affect the nature or quality of the Services, and the Supplier shall notify the Client in any such event.

**3.4** The Supplier warrants to the Client that the Services will be provided using reasonable care and skill.

### 4. CLIENT'S OBLIGATIONS

**4.1** The Client shall:

- a. ensure that the terms of the Order and any information it provides in the Specification are complete and accurate;
- b. co-operate with the Supplier in all matters relating to the Services;
- c. where appropriate provide the Supplier, its employees, agents, consultants and subcontractors, with access to the Client's premises, office accommodation and other facilities as reasonably required by the Supplier for the performance of the Services;
- d. provide the Supplier with such information and materials as the Supplier may reasonably require in order to supply the Services, and ensure that such information is accurate in all material respects;
- e. obtain and maintain all necessary licences, permissions and consents which may be required before the date on which the Services are to start; does this cover Intellectual Property Rights and documents supplied by the client during the term of the contract?
- f. keep and maintain any materials, equipment, documents and other property of the Supplier (**Supplier Materials**) at the Client's premises in safe custody at its own risk, maintain the Supplier Materials in good condition until returned to the Supplier, and not dispose of or use the Supplier Materials other than in accordance with the Supplier's written instructions or authorisation.

**4.2** The Client acknowledges and agrees that (unless otherwise expressly agreed by the Supplier in writing) the Client shall be solely responsible for ensuring that all goods or products manufactured by or for the Client using the Deliverables or otherwise derived from the Services:

- a. are fit and safe in their design and manufacture for the purpose for which they are to be used in the operating conditions in which they are to be used;
- b. are manufactured using materials of an appropriate nature and specification for the purposes for which they are to be used in the operating conditions in which they are to be used;
- c. are manufactured to the necessary standards of quality;
- d. are appropriately inspected and tested so as to verify that they conform to the required standards of quality, specification, performance and safety prior to use;
- e. are supplied with all necessary and appropriate materials including without limitation manuals, directions and instructions required for their use, handling, storage or disposal including any relevant health and safety materials; and
- f. comply with all applicable laws, regulations and standards;

and that no warranty or representation is given by the Supplier or to be implied in respect of any of the matters which are the responsibility of the Client as set out in this clause.

**4.3** If the Supplier's performance of any of its obligations under the Contract is prevented or delayed by any act or omission by the Client or failure by the Client to perform any relevant obligation (**Client Default**):

- a. the Supplier shall without limiting its other rights or remedies have the right to suspend performance of the Services until the Client remedies the Client Default, and to rely on the Client Default to relieve it from the performance of any of its obligations to the extent the Client Default prevents or delays the Supplier's performance of any of its obligations;
- b. the Supplier shall not be liable for any costs or losses sustained or incurred by the Client arising directly or indirectly from the Supplier's failure or delay to perform any of its obligations as set out in this clause 4; and
- c. the Client shall reimburse the Supplier on written demand for any costs or losses sustained or incurred by the Supplier arising directly or indirectly from the Client Default.

**4.4** The Client shall indemnify and agrees to keep indemnified the Supplier against any loss or cost or expense to or any claim or action against the Supplier arising from the failure by the Supplier to perform any relevant obligation under the Contract.

### 5. FEES AND PAYMENT

**5.1** Unless otherwise expressly agreed by the Supplier in writing, the Fees for the Services shall be on a time and materials basis and:

- a. the Fees shall be calculated in accordance with the Supplier's standard daily or (where applicable) hourly fee rates, as set out in the Order Confirmation;

b. the Supplier's standard daily fee rates for each individual shall be calculated on the basis of an eight-hour day from 9.00 am to 5.00 pm worked on Business Days;

c. the Supplier shall be entitled to charge an overtime rate of 25 per cent of the standard daily fee rate on a pro-rata basis for each part day or for any time worked by individuals engaged on the Services outside the hours referred to in clause 5.1(b); at the request of the Client and

d. the Supplier shall be entitled to charge the Client for any expenses reasonably incurred by the individuals whom the Supplier engages in connection with the Services including, but not limited to, travelling expenses, hotel costs, subsistence and any associated expenses, and for the cost of services provided by third parties and required by the Supplier for the performance of the Services (such third party services being either at the request of the Client or, if proposed by the Supplier, notified by the Supplier to the Client in advance) and for the cost of any materials.

5.2 The Supplier reserves the right to increase its standard daily or hourly fee rates subject to giving the Client written notice of any such increase 3 months before the proposed date of the increase.

5.3 The terms of payment shall be as specified in the Order Confirmation or otherwise agreed by the Supplier in writing. If so not so specified or agreed the Supplier shall be entitled in its discretion to invoice the Client on completion of the Services or weekly or monthly in arrears or may require payment in advance of performing any Services or incurring any expense.

5.4 The Client shall pay each invoice submitted by the Supplier:

- a. within 30 days of the date of the invoice; and
- b. in full and in cleared funds to a bank account nominated in writing by the Supplier; and

time for payment shall be of the essence of the Contract.

5.5 All amounts payable by the Client under the Contract are exclusive of amounts in respect of value added tax chargeable for the time being ("VAT"). Where any taxable supply for VAT purposes is made under the Contract by the Supplier to the Client, the Client shall, on receipt of a valid VAT invoice from the Supplier, pay to the Supplier such additional amounts in respect of VAT as are chargeable on the supply of the Services at the same time as payment is due for the supply of the Services.

5.6 Without limiting any other right or remedy of the Supplier, if the Client fails to make any payment due to the Supplier under the Contract by the due date for payment ("Due Date"), the Supplier shall have the right to charge interest on the overdue amount at the rate set out in the Late Payment of Commercial Debts (Interest) Act 1988 accruing on a daily basis from the Due Date until the date of actual payment of the overdue amount, whether before or after judgment, and compounding quarterly.

5.7 The Client shall pay all amounts due under the Contract in full without any deduction or withholding except as required by law and the Client shall not be entitled to assert any credit, set-off or counterclaim against the Supplier in order to justify withholding payment of any such amount in whole or in part. The Supplier may, without limiting its other rights or remedies, set off any amount owing to it by the Client against any amount payable by the Supplier to the Client.

## 6. INTELLECTUAL PROPERTY RIGHTS

6.1 Subject to clause 6.2, all Intellectual Property Rights created by the Supplier or arising out of or in connection with the Services shall be owned by the Supplier. The Client shall have a licence from the Supplier to use any such rights relating to any work commissioned by or Services delivered to the Client which has been paid for by the Client to the extent necessary for any purpose notified to the Supplier by the Client or which is or would reasonably be expected or understood by the Supplier to fall within such purpose.

6.2 Where specified in the terms of an Order, Intellectual Property Rights arising out of or in connection with the Services may be agreed to be owned by or transferred to the Client on or following their creation on such terms as may be approved by the Supplier in writing provided that unless expressly provided and agreed by the Supplier in writing such terms of the Order shall have effect and be construed so that:

- a. no Supplier Background Intellectual Property Rights shall not be owned by or transferred to the Client; and
- b. the Client acknowledges and agrees that: it shall have no right or make no claim to ownership of Supplier Background Intellectual Property Rights or to prevent the Supplier from using the same and that the Supplier shall at all times be entitled to use and exploit such Supplier Background Intellectual Property Rights without restriction for such purposes as the Supplier in its discretion sees fit.

6.3 The Client warrants that all Intellectual Property Rights in any materials in whatever form provided to the Supplier by the Client (or by its employees, representatives, advisers, agents or contractors) in connection with any Order or for the purpose of any Services to be performed by the Supplier are the property of the Supplier or (if the property of any third party) are licensed to the Client on terms that they may be provided to the Supplier and in either case that the Supplier is licensed to use the Materials without charge or restriction in connection with the performance of the Services. The Client shall indemnify and agrees to keep the Supplier indemnified in relation to any costs (including legal costs on an indemnity basis) or expenses of or any damages or claims against the Supplier arising in relation to any breach of the warranty set out in this clause.

6.4 All Supplier Materials are the exclusive property of the Supplier.

## 7. CONFIDENTIALITY

Unless otherwise expressly agreed in writing, a party (**Receiving Party**) shall keep in strict confidence all technical or commercial know-how, specifications, inventions, processes or initiatives which are of a confidential nature and have been disclosed to the Receiving Party by the other party (**Disclosing Party**), its employees, agents or subcontractors, and any other confidential information concerning the Disclosing Party's business or its products or its services which the Receiving Party may obtain. The Receiving Party shall restrict disclosure of such confidential information to such of its employees, agents or subcontractors as need to know it for the purpose of discharging the Receiving Party's obligations under the Contract, and shall ensure that such employees, agents or subcontractors are subject to obligations of confidentiality corresponding to those which bind the Receiving Party. This clause 7 shall survive termination of the Contract.

**8. LIMITATION OF LIABILITY: THE CLIENT 'S ATTENTION IS PARTICULARLY DRAWN TO THIS CLAUSE**

8.1 Nothing in these Conditions shall limit or exclude the Supplier's liability for:

- a. death or personal injury caused by its negligence, or the negligence of its employees, agents or subcontractors;
- b. fraud or fraudulent misrepresentation; or
- c. breach of the terms implied by section 2 of the Supply of Goods and Services Act 1982 (title and quiet possession).

**8.2 Subject to clause 8.1:**

- a. the Supplier shall under no circumstances whatever be liable to the Client, whether in contract, tort (including negligence), breach of statutory duty, or otherwise, for any loss of profit, or any indirect or consequential loss arising under or in connection with the Contract; and
- b. the Supplier's total liability to the Client in respect of all other losses arising under or in connection with the Contract, whether in contract, tort (including negligence), breach of statutory duty, or otherwise, shall in no circumstances exceed £1000,000.

8.3 Except as set out in these Conditions, all warranties, conditions and other terms implied by statute or common law are, to the fullest extent permitted by law, excluded from the Contract.

8.4 This clause 8 shall survive termination of the Contract.

**9. TERMINATION**

9.1 Without limiting its other rights or remedies, each party may terminate the Contract with immediate effect by giving written notice to the other party if:

- a. the other party commits a material breach of the Contract and (if such a breach is remediable) fails to remedy that breach within 30 days of that party being notified in writing of the breach;
- b. the other party suspends, or threatens to suspend, payment of its debts or is unable to pay its debts as they fall due or admits inability to pay its debts or (being a company) is deemed unable to pay its debts within the meaning of section 123 of the Insolvency Act 1986 or (being an individual) is deemed either unable to pay its debts or as having no reasonable prospect of so doing, in either case, within the meaning of section 268 of the Insolvency Act 1986 or (being a partnership) has any partner to whom any of the foregoing apply;
- c. the other party commences negotiations with all or any class of its creditors with a view to rescheduling any of its debts, or makes a proposal for or enters into any compromise or arrangement with its creditors;
- d. a petition is filed, a notice is given, a resolution is passed, or an order is made, for or in connection with the winding up of that other party (being a company) other than for the sole purpose of a scheme for a solvent amalgamation of that other party with one or more other companies or the solvent reconstruction of that other party;
- e. the other party (being an individual) is the subject of a

bankruptcy petition or order;

- f. a creditor or encumbrancer of the other party attaches or takes possession of, or a distress, execution, sequestration or other such process is levied or enforced on or sued against, the whole or any part of its assets and such attachment or process is not discharged within 14 days;
- g. an application is made to court, or an order is made, for the appointment of an administrator or if a notice of intention to appoint an administrator is given or if an administrator is appointed over the other party (being a company);
- h. a floating charge holder over the assets of that other party (being a company) has become entitled to appoint or has appointed an administrative receiver;
- i. a person becomes entitled to appoint a receiver over the assets of the other party or a receiver is appointed over the assets of the other party;
- ii. any event occurs or proceeding is taken with respect to the other party in any jurisdiction to which it is subject that has an effect equivalent or similar to any of the events mentioned in clause 9.1(b) to clause 9.1(i) (inclusive);
- iii. the other party suspends or ceases, or threatens to suspend or cease, to carry on all or a substantial part of its business; or
- iv. the other party (being an individual) dies or, by reason of illness or incapacity (whether mental or physical), is incapable of managing his own affairs or becomes a patient under any mental health legislation.

9.2 Without limiting its other rights or remedies, the Supplier may terminate the Contract with immediate effect by giving written notice to the Client if the Client fails to pay any amount due under this Contract on the due date for payment.

9.3 Without limiting its other rights or remedies, each party shall have the right to terminate the Contract by giving the other party one month's written notice.

9.4 Without limiting its other rights or remedies, the Supplier shall have the right to suspend provision of the Services under the Contract or any other contract between the Client and the Supplier if the Client becomes subject to any of the events listed in clause 9.1(b) to clause 9.1(i), or the Supplier reasonably believes that the Client is about to become subject to any of them, or if the Client fails to pay any amount due under this Contract on the due date for payment.

**10. CONSEQUENCES OF TERMINATION**

On termination of the Contract for any reason:

- a. the Client shall immediately pay to the Supplier all of the Supplier's outstanding unpaid invoices and interest and, in respect of Services supplied but for which no invoice has been submitted, the Supplier shall submit an invoice, which shall be payable by the Client immediately on receipt;
- b. the Client shall return all of the Supplier Materials and any Deliverables which have not been fully paid for. If the Client fails to do so, then the Supplier may enter the Client's premises and take possession of them. Until they have been returned, the Client shall be solely responsible for their safe keeping and will not use them for any purpose not connected

with this Contract;

- c. the accrued rights, remedies, obligations and liabilities of the parties as at expiry or termination shall not be affected, including the right to claim damages in respect of any breach of the Contract which existed at or before the date of termination or expiry; and
- d. clauses which expressly or by implication have effect after termination shall continue in full force and effect.

## 11. GENERAL

### 11.1 Force majeure:

- a. For the purposes of this Contract, Force Majeure Event means an event beyond the reasonable control of the Supplier including but not limited to strikes, lock-outs or other industrial disputes (whether involving the workforce of the Supplier or any other party), failure of a utility service or transport network, act of God, war, riot, civil commotion, malicious damage, compliance with any law or governmental order, rule, regulation or direction, accident, breakdown of plant or machinery, fire, flood, storm or default of suppliers or subcontractors.
- b. The Supplier shall not be liable to the Client as a result of any delay or failure to perform its obligations under this Contract as a result of a Force Majeure Event.
- c. If the Force Majeure Event prevents the Supplier from providing any of the Services for more than six weeks, the Supplier shall, without limiting its other rights or remedies, have the right to terminate this Contract immediately by giving written notice to the Client.

### 11.2 Assignment and subcontracting:

- a. Subject to clause 11.2(a), the Supplier may at any time charge, subcontract or deal in any other manner with all or any of its rights under the Contract and may subcontract or delegate in any manner any or all of its obligations under the Contract to any third party or agent.
- b. Neither party may without the prior written consent of the other assign any of its obligations under the Contract.

### 11.3 Notices:

- a. Any notice or other communication required to be given to a party under or in connection with this Contract shall be in writing and shall be delivered to the other party personally or sent by prepaid first-class post, recorded delivery or by commercial courier, at its registered office (if a company) or (in any other case) its principal place of business, or sent by fax to the other party's main fax number.
- b. Any notice or other communication shall be deemed to have been duly received if delivered personally, when left at the address referred to above or, if sent by pre-paid first-class post or recorded delivery, at 9.00 am on the second Business Day after posting, or if delivered by commercial courier, on the date and at the time that the courier's delivery receipt is signed, or if sent by fax, on the next Business Day after transmission.
- c. This clause 11.3 shall not apply to the service of any proceedings or other documents in any legal action. For the purposes of this clause, "writing" shall not include e-mails

and for the avoidance of doubt notice given under this Contract shall not be validly served if sent by e-mail.

### 11.4 Waiver:

- a. A waiver of any right under the Contract is only effective if it is in writing and shall not be deemed to be a waiver of any subsequent breach or default. No failure or delay by a party in exercising any right or remedy under the Contract or by law shall constitute a waiver of that or any other right or remedy, nor preclude or restrict its further exercise. No single or partial exercise of such right or remedy shall preclude or restrict the further exercise of that or any other right or remedy.
- b. Unless specifically provided otherwise, rights arising under the Contract are cumulative and do not exclude rights provided by law.

### 11.5 Severance:

- a. If a court or any other competent authority finds that any provision of the Contract (or part of any provision) is invalid, illegal or unenforceable, that provision or part-provision shall, to the extent required, be deemed deleted, and the validity and enforceability of the other provisions of the Contract shall not be affected.
- b. If any invalid, unenforceable or illegal provision of the Contract would be valid, enforceable and legal if some part of it were deleted, the provision shall apply with the minimum modification necessary to make it legal, valid and enforceable.

### 11.6 No partnership:

Nothing in the Contract is intended to, or shall be deemed to, constitute a partnership or joint venture of any kind between any of the parties, nor constitute any party the agent of another party for any purpose. No party shall have authority to act as agent for, or to bind, the other party in any way.

### 11.7 Third parties:

A person who is not a party to the Contract shall not have any rights under or in connection with it.

### 11.8 Variation:

Except as set out in these Conditions, any variation, including the introduction of any additional terms and conditions, to the Contract, shall only be binding when agreed in writing and signed by the Supplier.

### 11.9 Governing law and jurisdiction:

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, English law, and the parties irrevocably submit to the exclusive jurisdiction of the courts of England and Wales.