

NHBC Health & Safety Services

Terms and conditions

1. Definitions

- 1.1. In this document, the following terms are defined as:
 - 1.1.1. Client: the person, firm or company to which NHBC is to provide Health & Safety Services as named in the Health & Safety Services Agreement.
 - 1.1.2. NHBC: NHBC Services Limited, whose registered office is at NHBC House, Davy Avenue, Knowlhill, Milton Keynes, MK5 8FP and whose company registration number is 03067703.
 - 1.1.3. Terms and Conditions: these standard terms and conditions of business.
 - 1.1.4. Engagement: the contract on the Terms and Conditions between NHBC and the Client to provide particular Health & Safety Services to the Client following acceptance by NHBC of a request to provide those services using the ordering procedure.
 - 1.1.5. Engagement Letter: a letter issued by NHBC to the Client which confirms to the Client that NHBC has agreed to provide Health & Safety Services to the Client.
 - 1.1.6. Force Majeure Event: an event falling within the definition set out at Clause 11.
 - 1.1.7. Intellectual Property Rights: all patents, copyrights and design rights (whether registered or not, and all applications for any of the foregoing), and all rights of information, data, know-how or experience whether patentable or not whensoever and howsoever arising, and all renewals and extensions thereof.
 - 1.1.8. Party: NHBC or the Client as the case may be.
 - 1.1.9. Health & Safety Services: Health & Safety Services described in the Health & Safety Services Agreement and as more particularly described in an Engagement Letter.
 - 1.1.10. Health & Safety Services Agreement: the overall agreement between NHBC and the Client concerning the provision of Health & Safety Services.
- 1.2. Words importing the singular also include the plural and vice versa where the context requires.
- 1.3. Words importing persons or parties shall include firms, corporations and any other organisation having legal capacity.
- 1.4. The headings in the Terms and Conditions are not part of the Terms and Conditions, nor shall they be taken into consideration in its interpretation or construction.

2. Provision of Health & Safety Services

- 2.1. In carrying out the Health & Safety Services, NHBC shall exercise the reasonable care and skill to be expected of a competent provider of Health & Safety Services similar in scope, nature and complexity to the Health & Safety Services. No other warranty or representation, express or implied, shall apply under and/or in connection with the Engagement.
- 2.2. When any aspect of any Health & Safety Services is governed by any statutory provisions which apply specifically to those services (for instance, acting as CDM Coordinator under the Construction (Design and Management) Regulations 2007), the Client acknowledges and agrees that NHBC shall act in accordance with the requirements of the statutory provisions (as they apply to NHBC as the service provider) and the Client agrees that they shall act in accordance with the requirements of the statutory provisions (as they apply to the Client as the service recipient).

3. Fees and expenses

- 3.1. All fees for performance of the Health & Safety Services shall be calculated in accordance with the fee structure of the Health & Safety Services Agreement, unless agreed otherwise for a particular Engagement and specified in the Engagement Letter. NHBC shall be entitled to be paid the full amount of its fee even if provision of the Health & Safety Services cannot be started or completed, unless that is due to NHBC's breach of the terms of the Engagement.
- 3.2. The Client shall reimburse to NHBC all expenses properly incurred by it in the performance of the Health & Safety Services, including without limitation, travel expenses, accommodation, subsistence, telephone, fax, postage, copying, photography, advertising and any other goods and Health & Safety Services purchased.



- 3.3. NHBC has the right to require payments to be made on account before commencing or completing any Health & Safety Services. In such event, the amount of the account payment shall be calculated in line with the programme for performance of the Health & Safety Services and the likely timing and amounts of expenses to be incurred.
- 3.4. Fees stated shall be exclusive of value added tax which, where applicable, shall be charged to the Client at the prevailing rate.

4. Payment

- 4.1. Invoices will be issued when provision of the relevant Health & Safety Services has been completed, unless the provision of the Health & Safety Services takes more than four (4) weeks, in which case NHBC may issue invoices for a rateable proportion of the fees monthly in arrears or as otherwise agreed.
- 4.2. Invoices shall be paid by the Client within thirty (30) days of the date of the invoice.
- 4.3. All payments due to NHBC shall be made in sterling and without set-off or counterclaim, and free of and without deduction for any taxes, levies or duties of any description.
- 4.4. NHBC may charge the Client interest (both before and after any judgement) on the balance of any unpaid invoice, at the rate of 5% per annum over the Bank of England base rate. Such interest shall run from the due date of settlement of the invoice until the date payment of the balance is received.

5. The Client's obligations

- 5.1. The Client shall pay to NHBC all fees, expenses and value added tax as required pursuant to Clauses 3 and 4. NHBC may suspend and/or cease further work on behalf of the Client in the event of non-, partial or late payment of any NHBC invoice.
- 5.2. The Client shall provide to NHBC all information, access to personnel and (with the Client taking all appropriate precautions to ensure the safety of NHBC's personnel) access to premises reasonably required, and at the necessary times, to enable NHBC to carry out the Health & Safety Services.
- 5.3. The Client acknowledges that NHBC is entitled to rely upon the accuracy, sufficiency and consistency of any information supplied to it by the Client. NHBC shall have no liability for any inaccuracies contained in any information provided by the Client or any third party on behalf of the Client.
- 5.4. The Client authorises NHBC to speak to or meet with any other person it may need to contact in order to provide the Health & Safety Services. NHBC may release to such person, for the purpose of the Health & Safety Services, any information reasonably necessary to perform the Health & Safety Services and which it has obtained in connection with the Engagement. NHBC shall not be liable for any use subsequently made of that information.

6. Intellectual property

- 6.1. NHBC is the beneficial owner of all Intellectual Property Rights arising out of, or in connection with, the provision of the Health & Safety Services to the Client.
- 6.2. Subject to all payments due in connection with the Engagement having been paid, the Client shall have an irrevocable, royalty-free, non-exclusive licence to copy and use all materials created by, or on behalf of, NHBC (and in relation to which NHBC is the beneficial owner of the Intellectual Property Rights) for any purpose relating to the Engagement.

7. Documents and reliance on Health & Safety Services

- 7.1. The provision of the Health & Safety Services is for the Client's benefit only. No part of any report or advice produced by NHBC for the Client shall be reproduced, transmitted, copied or disclosed to any third party without the prior written consent of NHBC, and NHBC shall not be liable to any third party which relies upon any such report or advice.
- 7.2. After completing the provision of the Health & Safety Services under an Engagement, NHBC shall be entitled to keep any Client papers and documents held while payments due in respect of the Engagement are outstanding. NHBC shall keep records of the Health & Safety Services for six (6) years after issue of NHBC's final invoice, on the basis that NHBC shall have the Client's authority to destroy the files upon the expiry of that period, unless the Client has beforehand requested in writing the return of Client papers or documents.

8. Confidentiality

- 8.1. The Client shall keep confidential and not disclose to any other person (whether before or after termination or expiry of the Engagement): (a) any information received by it in respect of the methodologies and/or technologies used by NHBC in providing the Health & Safety Services; (b) the details of the commercial terms on which NHBC provides the Health & Safety Services; and (c) any other information in respect of NHBC's business activities which comes into its possession as a consequence of NHBC providing the Health & Safety Services and which is not publicly available.
- 8.2. NHBC shall keep confidential, and not disclose to any other person (whether before or after termination or expiry of the Engagement), any information in respect of the Client's business activities which comes into its possession as a consequence of NHBC providing the Health & Safety Services and which is not publicly available.
- 8.3. The provisions of Clauses 8.2 and 8.3 shall not apply to either Party to the extent that disclosure is required by law or regulatory authorities or to the respective professional advisers of the Parties.

9. Professional indemnity insurance

- 9.1. NHBC shall effect and maintain, for a period of six (6) years from completion of any Engagement, professional indemnity insurance with a limit of indemnity of no less than £5 million, provided always that such insurance remains available at commercially reasonable rates.

10. Limitation of liability

- 10.1. NHBC shall not be liable for any special, indirect or consequential loss or damage (including, without limitation, loss of profits or business revenue) suffered by the Client (including as a result of an action brought by a third party).
- 10.2. Without prejudice to the other sub-clauses of Clause 10, where the Engagement involves NHBC being appointed as part of a Client project team, liability for loss and/or damage arising under, or in connection with, the Engagement shall be limited to that proportion of the Client's loss and/or damage which it would be just and equitable to require NHBC to pay, having regard to the extent of NHBC's responsibility for the same and on the basis that all other Client consultants and contractors shall be deemed to have provided contractual undertakings on terms no less onerous than this Clause 10.2 to the Client in respect of the performance of their Health & Safety Services in connection with the project, and that there are no exclusions of, or limitation of, liability nor joint insurance or co-insurance provisions between the Client and any other party referred to above, and on the basis they shall be deemed to have paid to the Client such proportion which would be just and equitable for them to pay having regard to the extent of their responsibility.
- 10.3. NHBC shall have no duty or liability in tort to the Client save that nothing in this Clause 10, or in the Engagement, shall exclude or restrict any liability either Party may have for death or personal injury arising out of negligence.
- 10.4. Notwithstanding anything to the contrary contained elsewhere in the Engagement, the total liability of NHBC arising under, or in connection with, an Engagement shall not exceed the lesser of £5,000,000 or four (4) times the amount of the fees paid and payable for the Engagement.

11. Force Majeure Event

- 11.1. Neither Party shall be in default or liable to the other Party for any matter whatsoever for any delays in performance or from failure to perform or to comply with the Terms and Conditions due to any cause beyond that Party's reasonable control including, without limitation, acts of God, acts of government or other competent regulatory authority, telecommunications, network operators, war or national emergency, riots, civil commotion, fire, explosion, flood, epidemic, lock-outs, strikes and other industrial disputes (in each case, whether or not relating to that Party's workforce).
- 11.2. Each Party agrees to give notice forthwith to the other upon becoming aware of a Force Majeure Event, such notice to contain details of the circumstances giving rise to the Force Majeure Event.

12. Termination

- 12.1. Without prejudice to any other rights or remedies that Party may possess:
 - 12.1.1. NHBC may terminate the Engagement by notice immediately if the Client has failed to pay an invoice within 30 days of the final date for payment of that invoice.
 - 12.1.2. Either Party may terminate the Engagement by notice immediately if the other Party becomes insolvent.
 - 12.1.3. Either Party may terminate the Engagement by notice immediately if the other Party is in breach of its obligations and, where such breach is capable of remedy, the other Party fails to remedy such breach within 30 days of receipt of a notice specifying the breach.
- 12.2. For the purposes of Clause 12.1.2 a Party is insolvent if it enters into an arrangement, compromise or composition in satisfaction of its debts, or goes into liquidation (in either case otherwise than for the purpose of amalgamation or reconstruction), or has a winding-up or bankruptcy order made against it, or it has appointed to it an administrator or administrative receiver, or any step analogous to any of the foregoing occurs.
- 12.3. The expiration or the termination of an Engagement, however arising, shall not operate to affect such of the provisions of the Engagement as are expressed to operate or continue in effect after then, and shall be without prejudice to any rights or liabilities accrued at the date of such expiration or termination.

13. No waiver, partnership or joint venture

- 13.1. No waiver by a Party of any breach by another Party in the performance of any of its obligations under this Agreement shall operate or be construed as a waiver of any other or further breach, whether of a like or different character or be effective unless in writing, duly executed by an authorised representative of the affected Party.
- 13.2. The failure by a Party to insist, on any occasion, upon the performance of the terms, conditions and provisions of the Engagement, or time or other indulgence granted by one Party to another, shall not thereby act as a waiver of any breach, as acceptance of any variation, or as the relinquishment of any right under the Engagement, which shall remain in full force and effect.
- 13.3. An Engagement shall not be interpreted or construed to create an association, joint venture or partnership between the Parties, or to impose any partnership obligation or liability upon either Party.

14. Entire agreement

- 14.1. These Terms and Conditions, together with the Health & Safety Services Agreement and Engagement Letter, shall constitute the entire agreement and understanding of the Parties as to the subject matter of the Engagement. They supersede any prior agreement or understandings between the Parties, and no variation shall be binding unless agreed in writing.
- 14.2. The Client expressly acknowledges that it has not been induced to enter into an Engagement by any warranty or representation or other assurance not expressly incorporated into the Health & Safety Services Agreement or Engagement Letter.

15. Severability

- 15.1. If any provision of the Terms and Conditions becomes invalid, illegal or unenforceable, the validity, legality and enforceability of the remaining provisions of the Terms and Conditions shall not be impaired.

16. Contracts (Rights of Third Parties) Act 1999

- 16.1. NHBC may perform any of its obligations or exercise any of its rights under the Terms and Conditions through any subsidiary or associated company of NHBC or any subsidiary or associated company of such holding company, but in all other respects, no term of the Engagement is intended for the benefit of a third party, and the Parties do not intend that any term of the Engagement shall be enforceable by a third party, either under the Contracts (Rights of Third Parties) Act 1999 or otherwise.

17. Assignment

- 17.1. An Engagement shall not be assigned or transferred by either Party without the prior consent of the other, save that NHBC shall be entitled, by writing to the Client, to assign all or any of its rights under an Engagement to any company in the same group of companies as NHBC or associated with NHBC.

18. Notices

- 18.1. Any notice or other information to be given by either Party to the other under the Engagement shall be given by:
- 18.1.1. delivering the same by hand;
 - 18.1.2. sending the same by pre-paid registered post; or
 - 18.1.3. to the Party's registered office address or, if not a company or limited liability partnership, at its place of business as recorded in the Health & Safety Services Agreement.
- 18.2. Any notice or information sent by post in the manner provided by Clause 18.1.2 which is not returned to the sender as undelivered shall be deemed to have been given on the second day after the envelope containing it was so posted; and proof that the envelope containing any such notice or information was properly addressed, pre-paid, registered and posted, and that it has not been returned to the sender, shall be sufficient evidence that the notice or information has been duly given.
- 18.3. Any notice or information sent by facsimile transmission or comparable means of communication shall be deemed to have been duly given on the date of transmission, provided that a confirming copy is sent to the other Party within 24 hours after transmission.

19. General contract provisions

- 19.1. Each Party warrants that it has power to enter into the Terms and Conditions and that it has obtained all necessary consents and/or approvals to do so.
- 19.2. The Engagement shall inure to the benefit of, and be binding upon, the permitted successors and permitted assignees to the Parties.
- 19.3. Where the Client comprises two or more Parties, their liability under the Engagement shall be joint and several.
- 19.4. No actions or proceedings arising under, or in respect of, the Engagement shall be commenced against NHBC after six (6) years after the date of completion of the Engagement, or such earlier date as may be prescribed by law.

20. Dispute resolution and governing law

- 20.1. The Parties irrevocably submit to the exclusive jurisdiction of the English Courts, subject to the right of either Party to enforce a judgement obtained in the English Courts in any other jurisdiction.
- 20.2. The Terms and Conditions and Engagement shall be governed by and construed in accordance with English Law.

