

TERMS & CONDITIONS

These terms and conditions confirm the basis upon which **Nethaus Ltd** ("**Nethaus Ltd**") is to be engaged for the provision of specialist services and/or the supply and installation of equipment. The contract between the parties will consist solely of the following documents and the order of precedence shall be:

- i. these terms and conditions;
- ii. the Proposal produced in accordance with these terms and conditions;
- iii. any drawings, schedules and like documents produced by Nethaus Ltd in accordance with these terms and conditions;
- iv. any other documents expressly referred to in the above documents.

1. PROJECT COMMENCEMENT

- 1.1. Preliminary meeting. Nethaus Ltd will take a brief from the Client or its appointed representatives ("Client") for the purposes of producing a budget proposal ("Budget Proposal") which will outline the design and/or installation work to be carried out and/or equipment and/or materials to be supplied by Nethaus Ltd ("Works") and give an estimate of the likely cost. Where the works are limited to design only, Nethaus Ltd will provide a design fee proposal ("Design Fee Proposal") which will describe the scope of the design work and the fee for such work. In the event Nethaus Ltd are then selected to undertake the supply and installation work, the design fee shall be deemed to be included within the total cost of the Works.
- 1.2. The Proposal. Following confirmation from or on behalf of the Client orally or in writing (and if orally, then confirmed in writing) that the Client wishes to proceed on the basis of the Budget Proposal, Nethaus Ltd will provide a proposal ("Proposal") giving the price for the Works ("Price"). The Price will be adjusted to reflect new and improved technologies, changing specifications and any Client instructed changes. In preparing the Proposal, Nethaus Ltd may produce documentation including one or more of the following: positional and/or schematic drawings, a wiring schedule, a costing sheet and a payment terms schedule ("Payment Terms Schedule").
- 1.3. Acceptance of the Proposal. A Proposal remains valid for 30 days from submission, following which, the Proposal will expire unless extended in writing by Nethaus Ltd.
- 1.4. Any subsequent instruction or request by the Client or on behalf of the Client to commence the Works will constitute acceptance of the Proposal, including for the avoidance of doubt, the Price and the Payment Terms Schedule.
- 1.5. The Payment Terms Schedule. The schedule sets out the payments to Nethaus Ltd and the dates when those payments will become due.
- 1.6. The Payment Terms Schedule is developed from the site programme and allows for the purchase of equipment in good time to meet such a programme. If payment is not made

in accordance with the Payment Terms Schedule then equipment purchases may not proceed and the Works may need to be rescheduled. Nethaus Ltd will have no liability whatsoever for any project delay caused by late or incomplete payment by the Client.

- 1.7. Payments within the Payment Terms Schedule will be updated over the course of the project to reflect any adjustments referred to in paragraph ii (Proposal) or any other change beyond the reasonable control of Nethaus Ltd.

2. PAYMENT

- 2.1. Nethaus Ltd will submit a request for payment in accordance with the instalment dates set out in the Payment Terms Schedule.
- 2.2. The request for payment shall state the sum the Nethaus Ltd considers to be or to have been due to Nethaus Ltd at the due date and the basis upon which that sum is calculated ("Payment Application").
- 2.3. The due date shall be the date that the Client receives the Payment Application.
- 2.4. Not later than 7 days after the due date the Client shall give a notice to Nethaus Ltd which will specify the sum that he considers to be or to have been due at the due date (even if that sum is zero) and the basis upon which that sum have been calculated ("Client Payment Notice") and subject to 2.8, the sum to be paid by the Client shall be the sum specified in the Client Payment Notice.
- 2.5. If the Client fails to give a Client Payment Notice in accordance with 2.1 the sum to be paid by the Client shall, subject to 2.8 be the sum specified in the Payment Application.
- 2.6. The final date for payment shall be 28 days after the due date.
- 2.7. If the Client intends to pay less than the sum specified in the Client's Payment Notice (or, if applicable, in the Payment Application) then he shall not later than 7 days before the final date for payment give a notice to Nethaus Ltd specifying the sum that the Client considers to be due on the date the notice is served and the basis upon which that sum is calculated ("Pay Less Notice").
- 2.8. Interest on late payments will be charged in accordance with the Late Payment of Commercial Debts (Interest) Act 1998. Further, without prejudice to any other rights and remedies available to it, where a notified sum under this contract is not paid by the final date for payment and no withholding notice has been issued, Nethaus Ltd may suspend performance of any and all obligations under this contract until such time as all outstanding payments are received in full (together with any interest payable thereon).
- 2.9. In the event that the Client wishes to delay payment of a stage payment for any reason (such as project delay) then 3 months advance notice in writing is required.

- 2.10. If the Client adds equipment and/or goods or services greater than 5% of the total Price, Nethaus Ltd reserve the right to add an additional stage payment to cover the extra work. Nethaus Ltd reserve the right to suspend all or part of the project if payment is not made in accordance with these terms.

3. ATTENDANCES NOT COVERED BY THE Proposal

- 3.1. From time to time Nethaus Ltd' attendance at site or elsewhere may be required for the provision of additional services, over and above those described in the Proposal.
- 3.2. Where such services are not included in the Proposal, all time spent engaged in these or similar matters will be charged additionally at the applicable Nethaus Ltd hourly rate, the amount of which will be notified in the Payment Terms Schedule ("Nethaus Ltd Hourly Rate").
- 3.3. All sums referred to in or pursuant to this contract, including the sums set out in the Proposal and the Nethaus Ltd Hourly Rate are exclusive of VAT.

4. CHANGES BY THE CLIENT AFTER ACCEPTANCE OF THE PROPOSAL

- 4.1. In the event that after acceptance of the Proposal changes to the Works are instructed orally or in writing (and if orally, then confirmed in writing) by or on behalf of the Client, any costs reasonably and properly arising from such instruction will be charged to the Client as follows:
 - 4.1.1. where reasonably practicable, on the basis of an agreed lump sum price;
 - 4.1.2. alternatively, based on a fair and reasonable sum for the additional work carried out, materials supplied and time spent, which in the absence of agreement to the contrary will be calculated using the Nethaus Ltd Hourly Rate plus a reasonable charge for any additional materials and/or equipment supplied.

5. SUBSTITUTION OF EQUIPMENT AND MATERIALS BY NETHAUS LTD (OR THE CLIENT)

- 5.1.1. Nethaus Ltd wish to provide the Client with the best and most appropriate equipment available within the Price. We therefore reserve the right, for whatever reason, and at whatever stage of the project, to substitute any equipment and/or materials specified in the Proposal or elsewhere with equipment and/or materials of an equivalent or superior quality. The Client may also make substitutions of the equipment specified in the Proposal with equipment of equivalent or superior quality, subject to the prior agreement of Nethaus Ltd, such agreement not to be unreasonably withheld.

6. COPYRIGHT

- 6.1. The Client shall have a licence to use the drawings, manuals and other information prepared by Nethaus Ltd and the designs contained in them ("Copyright Material"), except for

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proprietary software or other similar products, for purposes relating to the project on the site or part of the site to which the Works relate. Such purposes shall include operation, maintenance, repair and reinstatement but shall not include reproduction of the Copyright Material, or disclosure of it to third parties, without our prior written consent.

- 6.2.** Nethaus Ltd shall not be liable to the Client or any other party if the Copyright Material is modified or used for any purpose other than for which it was prepared, or if it is used for any unauthorised purpose.
- 6.3.** In the event that the Client is in default of paying any amount of the Price, Nethaus Ltd may suspend the licence referred to in this clause on 7 days' notice to the Client. The licence shall resume on receipt of the outstanding amount.
- 6.4.** If for whatever reason this contract is terminated, the Client shall immediately return to Nethaus Ltd all copies of the Copyright Material, whether in hard copy or electronic format.
- 6.5.** Programming charges allow for the use of Nethaus Ltd' program/s on a specific site; however the programming, code and graphics produced by our software developers remain the intellectual property of Nethaus Ltd. The un-complied code which comprises the program specific to the project will be held securely by Nethaus Ltd. The Client is entitled to hold a copy of this un-complied code with a solicitor if required. This un-complied code shall only be used in connection with the project for which it was written and produced. We shall require a signed non disclosure agreement from any third party the Client might employ at a later stage to carry out works on the project or the site. This excludes any "applications" used in the creation of the program that are device specific.
- 7. DELIVERY AND INSTALLATION OF EQUIPMENT**
- 7.1.** Confirmation of delivery dates will be subject to:
- 7.1.1.** acceptance in writing of the Proposal;
- 7.1.2.** any sums due for payment being paid in accordance with Clause 2 above;
- 7.1.3.** receipt of any technical approvals from the Client or its representative.
- 7.2.** Nethaus Ltd reserve the right to request payment for equipment which has been ordered but which cannot be delivered at the agreed date for delivery for reasons beyond the control of Nethaus Ltd.
- 7.3. Delivery Date(s)**
- 7.3.1.** Delivery dates represent Nethaus Ltd' best estimate of the achievable date for delivery and whilst Nethaus Ltd will use all reasonable endeavours to meet such dates, no liability is accepted by Nethaus Ltd if any date is not met, for whatever reason, unless otherwise agreed in writing and/or

except insofar as Nethaus Ltd have failed to use such reasonable endeavours.

- 7.3.2.** Due to the nature of the equipment being installed and the significant potential for damage with third party couriers Nethaus Ltd deliver the majority of items to site in our own dedicated delivery vehicle. This is a premium service that guarantees the condition and time of delivery. This service is charged at Nethaus Ltd' scheduled rates.

8. INSURANCE

- 8.1.** In circumstances where the Client wishes to delay delivery to site beyond the original delivery date or delivery to site is delayed for any other reason which is not the responsibility of Nethaus Ltd, Nethaus Ltd will arrange storage and insurance for the equipment at the Client's expense. Otherwise, any equipment will remain at Nethaus Ltd' risk up to the date of delivery to site. From and including the date upon which delivery to site takes place, maintenance of insurance cover will be the responsibility of the Client.
- 8.2.** If the Client requires additional insurances such as an advanced payment guarantee then Nethaus Ltd would pass these additional costs on to the Client together with an administration charge of 5%.
- 9. OWNERSHIP OF EQUIPMENT AND MATERIALS SUPPLIED**
- 9.1.** Title in all equipment and/or materials and/ or documentation supplied shall remain with Nethaus Ltd until payment in full for any such equipment, materials and/or documentation is received. Nethaus Ltd hereby reserve the right to re-enter the site and remove and/or disable (by off or on-site means) all equipment in respect of which payment in full is not received in accordance with Clause 2 above.

10. AFTER SALES SERVICE

- 10.1.** The Price may include on site after sales service and support as described in the After Sales Service Statement section of the Proposal.

11. GUARANTEE OF EQUIPMENT SUPPLIED

- 11.1.** The equipment guarantee is a reflection of the manufacturer's guarantee and shall be of no greater duration.
- 11.2.** Unless specifically stated otherwise, it is a return to base guarantee that excludes all labour; unless the project is covered by a current Nethaus Ltd Service Cover Agreement.
- 11.3.** Any guarantee will be revoked automatically in circumstances where:
- 11.3.1.** the equipment is damaged, modified or interfered with by any person other than a representative of Nethaus Ltd; and/or
- 11.3.2.** the equipment is subjected to excessive dust during building works or excessive temperature once installed on site; and/or

- 11.3.3.** without the prior written consent of Nethaus Ltd, the equipment is worked upon and/or repaired by anyone other than a representative of Nethaus Ltd, or a person under the supervision of a representative of Nethaus Ltd;

12. THIRD PARTY RIGHTS

- 1.1.** No third party rights are conferred or are intended to be conferred by any provision of this contract.

13. DISPUTES

- 1.1.** Nethaus Ltd and the Client will attempt to resolve any dispute amicably. All disputes arising under this contract shall be governed by English law and will be subject to the jurisdiction of the English courts.
- 1.2.** Either party shall be entitled at any time to refer any dispute to adjudication by an adjudicator nominated by the Chairman for the time being of the Technology and Construction Solicitors' Association ("TeCSA"). Any adjudication shall be conducted in accordance with the edition then current of the TeCSA Adjudication Rules.

14. OVERSEAS INSTALLATIONS (INCLUDING SCOTLAND, WALES AND IRELAND).

- 14.1.** For overseas installations within short-haul range, our employees will travel on FlyBe or similar economical carrier depending on availability of flights and will stay at reasonable local accommodation.
- 14.2.** Subsistence will be charged at the agreed rates (listed in our Schedule of Rates).
- 14.3.** Long-haul flights will be British Airways Economy Class, or similar. These charges will be confirmed to the Client regularly and an administration fee of 5% will be added. We cannot provide a fixed cost for this element and these costs will vary according to flight availability, the time of year, the notice given by the Client or its representative for attendance on site and all the normal variances that occur.
- 14.4.** The Proposal will not include any costs for shipping, export or import duties, local handling charges or local storage charges or local VAT.
- 14.5.** For the safety of our personnel, Nethaus Ltd reserves the right to cancel any overseas site visits if the Foreign and Commonwealth Office suggests the region to be under social unrest or dangerous to British nationals.

15. SCHEDULE OF WORKS

- 1.1.** Nethaus Ltd may issue a document ("Schedule of Works") describing the scope of the Works and the works we would expect the other trades on the project to complete. This document should be included in any package sent out to tender by the Client.

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16. DESIGN AND PROJECT MANAGEMENT

16.1. We charge a design fee (listed in our schedule of rates) to cover the design and project management work we carry out, provision of drawings and schematics, builder's works details, site liaison with other contractors and members of the design team, attending site and Client meetings. This fee covers the described services for the period up until the initial agreed completion date as recorded in the Payment Terms Schedule. If the project is materially delayed or disrupted for more than 3 months beyond the agreed completion date by any cause beyond the reasonable control of Nethaus Ltd, we reserve the right on notice to the Client to charge for our continued involvement at a proportional rate to the original Price.

17. CABLING

1.1. All Prices exclude any provision or installation of first fix cabling. The "Nethaus Ltd Cable Price" List is updated every twelve months and is only valid until the date shown. Use of any cabling other than that purchased from Nethaus Ltd has to be approved in writing by Nethaus Ltd in order to guarantee compatibility.

18. SITE AND ACCESS

1.1. Before commencement of the Works, the Client shall provide Nethaus Ltd with up to date and sufficient information concerning the site and the project to enable (where necessary for the proper performance of the Works) Nethaus Ltd to ascertain fully and at no extra cost to Nethaus Ltd

1.1.1. the relationship of the Works with existing structures and any phasing requirements and

1.1.2. the Client's business and/or safety requirements for the project.

1.2. Nethaus Ltd relies and shall be entitled to rely on any and all information relating to the project, the site and its environs provided to Nethaus Ltd by or on behalf of the Client including as to the integrity of the site, the extent and means of communication with and restrictions on access to it.

1.3. Nethaus Ltd shall not be deemed to have knowledge of the terms of any other contract which the Client may have with any third party.

19. TERMINATION

1.1. This contract and performance of the Works under it may be determined immediately on notice from either party if:

1.1.1. we or the Client become insolvent

1.1.2. the Client commits a material breach of its obligations, we may give notice to the Client specifying the breach and requiring its remedy.

1.2. if the Client fails to comply with such notice within 28 days we may give notice to the Client immediately terminating this contract.

1.3. The amount due to Nethaus Ltd on termination shall be calculated as the amount determined under clause 2 as completed up to the termination date (or pro rata for part of any applicable Works stage) plus (unless termination is due to Nethaus Ltd' insolvency) any demobilisation and other costs and/ or expenses properly and necessarily incurred by Nethaus Ltd, less any amounts previously paid to us in accordance with this contract. Determination of the contract pursuant to this clause shall be without prejudice to the accrued rights of either party, and the provisions of this contract shall continue to bind Nethaus Ltd and the Client after termination for as long as is necessary to give effect to the parties' rights, remedies and obligations under it.

20. 20. **Liability.** Nethaus Ltd' total liability to the Client whether in contract, tort, for breach of statutory duty, misrepresentation, restitution or otherwise arising in connection with the performance or anticipated performance of the Works shall be limited in the aggregate to the Price and Nethaus Ltd shall not be liable to the Client for any pure economic loss, loss of profit or loss of business (in each case whether direct, indirect or consequential). This limitation does not apply to Nethaus Ltd' liability for death or personal injury caused by Nethaus Ltd' negligence, or for fraud or fraudulent misrepresentation, or for any other matter in respect of which it would be illegal for Nethaus Ltd to exclude or attempt to exclude liability.