

Terms and Conditions of Sale

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Nexus Open System

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1. Introduction

This document (together with the documents referred to on it), and the Privacy Policy, tell you the terms and conditions on which we supply any of the products and services (Products) including any products listed on our website www.nexusos.co.uk (our site) to you. Please read these terms and conditions carefully and make sure that you understand them, before ordering any Products from us. You should understand that by ordering any of our Products, you agree to be bound by these terms and conditions. Please retain a copy of these terms and conditions and your order for future reference.

2. Definitions and Interpretation

The following defined terms have the following meanings:

Company:	refers to Nexus Open Systems Limited (registered in England under number 3603046).
we, us and our:	refer to Nexus Open Systems Limited.
you and your:	refer to the purchase of any Products from us.
Agreement:	these terms and conditions of sale (T's & C's) and any other document entered into by the parties pertaining to Services.
Customer:	person, firm or company to whom Services are provided.
Quote:	is our quote to you with respect to Services.
Retained Technical Services (RTS)	means any retained technical service contract including block hour or retainer contracts.
Services:	services to be provided by Company to Customer under the Agreement which includes hardware and software deployment services, cloud services, support services, training services, consultancy services, project management and administration, provision of equipment or systems, conduct of examinations, venue hire, courseware.

Use of words 'includes', 'including', or similar expression will be construed as illustrative and without limitation to the generality of related words. No provision of this Agreement shall be construed adversely to a party solely on ground that such party was responsible for preparation of this Agreement.

Contract:	means the contract between you and us for the sale by us to you of Products as detailed in clause 6 .
Products:	mean any goods or services you order from us.
Order:	means the Customer's order for the supply of Goods or Services, as set out in the Customer's written acceptance of a Quote, or means an order placed by you for the purchase of Products by clicking "Buy Now" on the checkout page on our website enabled checkout which gives details of the Products you wish to order from us.
Consumer:	means any natural person who, when placing an order with us, is acting for purposes which are outside his or her trade business or profession.

3. Information about us

- 3.1 We operate the website <http://www.nexusos.co.uk> We are Nexus Open Systems Limited, a company registered in England and Wales under company number 3603046 and have our registered office at Vale House, Pynes Hill, Exeter, Devon EX2 5AZ. Our VAT number is 203 9709 14.

4. Your status

- 4.1 By placing an order through our site, you warrant that:
- 4.1.1 you are legally capable of entering into binding contracts;
 - 4.1.2 you are at least 18 years old;
 - 4.1.3 you are resident in the UK; and
 - 4.1.4 you are accessing our site from that country.

5. Links to other websites

- 5.1 We may provide links on our site to the websites of other companies, whether affiliated with us or not. We cannot give any undertaking that products you purchase from companies to whose website we have provided a link on our site, will be of satisfactory quality, and any such warranties are DISCLAIMED by us absolutely. This DISCLAIMER does not affect your statutory rights against the third party seller. If you would like information about your legal rights you should contact your local trading standards or citizens advice bureau. We will notify you when a third party is involved in a transaction, and we may disclose your personal information related to that transaction to the third party seller.

6. How the contract is formed between you and us

- 6.1 After placing an order, you will receive an email from us acknowledging that we have received your order. Please note that we are not obliged to accept your order. Your order constitutes an offer to us to buy a Product. All orders are subject to acceptance by us, and we will confirm such acceptance to you by sending you an email that confirms that the Product has been despatched (Despatch Confirmation). The contract between us (Contract) will only be formed when we send you the Despatch Confirmation.
- 6.2 The Contract will relate only to those Products whose despatch we have confirmed in the Despatch Confirmation. We will not be obliged to supply any other Products which may have been part of your order until the despatch of such Products has been confirmed in a separate Despatch Confirmation.

7. Description of the goods

- 7.1 We make every effort to ensure that prices and descriptions of Products on our Quote or shown on our website are accurate at the time you place your order. We have made all reasonable efforts to accurately indicate the colours and designs of the Products. You acknowledge and accept that sizes, colours, shapes and patterns indicated are approximate only.

8. Availability and delivery

- 8.1 We will deliver the Products that you order to the delivery address you give when you place your order.
- 8.2 We will endeavour to deliver the Products by the delivery date set out in the Despatch Confirmation or, if no delivery date is specified, then within a reasonable time of the date of the Despatch Confirmation,

unless there are exceptional circumstances.

- 8.3 If there is no one available to accept the delivery when our courier arrives, the courier will usually keep the Products for up to three days and you can arrange for a new delivery date. After three days we may treat the order as cancelled by you. In this case we may refund the price of the Products, but we shall be entitled to keep the amount you paid for delivery.
- 8.4 If you give us an incorrect or incomplete delivery address and as a result we try but are not able to make the delivery, we may treat the order as cancelled by you. In this case we may refund the price of the Products, but we shall be entitled to keep the amount you paid for delivery.

9. Risk and title

- 9.1 The Products will be your responsibility from the time of delivery.
- 9.2 Ownership of the Products will only pass to you when we receive full payment of all sums due from you to us, including delivery charges.

10. Price and payment

- 10.1 The price of the Products and our delivery charges will be as stated in our quote or on our site from time to time, except in cases of obvious error.
- 10.2 Product prices exclude VAT. However, if the rate of VAT changes between the date of your order and the date of delivery, we will adjust the VAT you pay, unless you have already paid for the Products in full before the change in VAT takes effect.
- 10.3 Product prices and delivery charges are liable to change at any time, but changes will not affect orders in respect of which we have already sent you a Despatch Confirmation.
- 10.4 It is always possible that, despite our best efforts, some of the Products on our Quote or listed on our site may be incorrectly priced. If the pricing error is obvious and unmistakable and could have reasonably been recognised by you as an error, we do not have to provide the Products to you at the incorrect price and reserve the right to rectify the price accordingly.
- 10.5 Payment for all Products on our site must be by Visa, Visa Debit, MasterCard, Visa Electron and PayPal. We will not charge your credit or debit card until we despatch your order.
- 10.6 Payment for all Services on our site must be by Visa, Visa Debit, MasterCard, Visa Electron and PayPal. We will charge your credit or debit card when you place your order.
- 10.7 If you have a credit account facility with us, the specific payment terms relating to your credit agreement are applicable.

11. Faulty Products

- 11.1 In these terms and conditions, Faulty Products means any Product that we supply to you that do not conform to the Contract. Faulty Products does not include any Products that are faulty due to fair wear and tear, wilful damage, accident, negligence by you or any third party, use otherwise than in accordance with their intended use, failure to follow the manufacturer's or our instructions, or any

alteration or repair carried out without the prior approval of us or the manufacturer.

- 11.2 You should contact us on 01392 205095 or <mailto:support@nexusos.co.uk> as soon as possible if you discover that your Products are Faulty Products.
- 11.3 If you find that your Products are Faulty Products on arrival, then you are entitled at our option to a repair, replacement or refund. Please note that for some Products it may be disproportionately costly to repair those Products, and so where this is the case, then we will give you a replacement or refund.
- 11.4 If your Product becomes Faulty after delivery, we will always instruct you to contact the manufacturer directly for a warranty repair or replacement. This is often the quickest way to have a dispute resolved. Alternatively you can contact us directly if the Faulty Products do not conform to the Contract made between us.
- 11.5 If you discover that your Products are visibly damaged on arrival, you should either write on the delivery note that the packaging is damaged, or refuse to accept delivery. Please contact us within seven days with details of the damage. Once we have received the damaged goods back, we will then replace them.
- 11.6 Where you return Faulty Products to us please ensure that you follow the requirements in clause [15](#).
- 11.7 If you return the Products because you think that they are Faulty Products, we may charge you the cost of all transport and our actual costs and expenses in the event that the Products are not in fact Faulty Products.

12. Cancelling your order (customers acting as a consumer)

- 12.1 This clause shall only apply to customers acting as a consumer.
- 12.2 If you have ordered Products from us, but then simply decide to cancel your order, then you are entitled to cancel the Contract at any time within seven working days, beginning on the day after you received the Products. In this case, you will receive a full refund of the price paid for the Products in accordance with our refunds policy (set out in clause [13](#) below). Please note that you may not cancel a Contract for any audio or video recordings or computer software which has been unsealed by you, save where a fault is discovered which could not have been discovered otherwise than by unsealing the goods.
- 12.3 To cancel a Contract, you must inform us in writing. You must also return the Products to us as soon as reasonably practical, and at your own cost. You have a legal obligation to take reasonable care of the Products while they are in your possession. If you fail to comply with this obligation, we may have a right of action against you for compensation. When returning products you are responsible for all shipping and insurance costs.
- 12.4 Where you return Products to us please ensure that you follow the requirements in clause [15](#).
- 12.5 Details of your statutory right of cancellation, and an explanation of how to exercise it, are provided in the Despatch Confirmation. This provision does not affect your other statutory rights as a consumer.

13. Our refunds policy (customers acting as a consumer)

13.1 This clause shall only apply to customers acting as a consumer.

13.2 If you return a Product to us:

13.2.1 because you have cancelled the Contract between us within the seven-day cooling-off period (see clause [12.2](#) above), we will process the refund due to you as soon as possible and, in any case, within 30 days of the day on which you gave us notice of cancellation. In this case, we will refund the price of the Product in full, and any applicable delivery charges. You will be responsible for the cost of returning the item to us.

13.2.2 for any other reason (for instance, because you have notified us in accordance with clause [12](#) that you do not agree to a change in these terms and conditions or in any of our policies, or because you consider that the Product is defective), we will examine the returned Product and will notify you of your refund via email within a reasonable period of time. We will usually process the refund due to you as soon as possible and, in any case, within 30 days of the day we confirmed to you via email that you were entitled to a refund. We will refund the price of a defective Product in full, any applicable delivery charges and any reasonable costs you incur in returning the item to us.

13.3 We will usually refund any money received from you using the same method originally used by you to pay for your purchase.

14. Cancellation and refund (business customers)

14.1 This clause shall only apply to business customers.

14.2 You may make a request to cancel your order at any time before receiving your Despatch Confirmation (providing the Products have not been shipped or are awaiting shipment). To cancel your order you must contact us at admin@nexusos.co.uk or on 01392 205095.

14.3 You may cancel the Contract by informing us in writing within 24 hours beginning on the day after you receive the Products. Products must be returned in the original packaging without any damage in order to receive a refund. You are responsible for all shipping and insurance costs of returning the Products. Delivery costs are not refundable.

14.4 You will not have any right to cancel a Contract if the order is for computer software which has been unsealed by you, save where a fault is discovered which could not have been discovered otherwise than by unsealing the goods.

14.5 Where you return Products to us please ensure that you follow the requirements in clause [15](#).

15. Returning products to us

15.1 If you're returning Products to us it's important that it is packaged correctly so that it does not get damaged during transit. You should package the item in its original packaging (assuming that you have the packaging and it is still intact). Where it's not possible to use the original packaging, please ensure that the Products are sufficiently packaged and cushioned to protect against any reasonable shocks, puncturing, scratching or damage that may occur during carriage, handing and/or sorting.

16. Our liability (customer acting as a consumer)

- 16.1 This clause shall only apply to a customer acting as a consumer.
- 16.2 We shall not be liable to you for any loss or damage:
 - 16.2.1 where there is no breach of a legal duty owed to you by us or our employers or agents;
 - 16.2.2 where such loss or damage is not reasonably foreseeable to us when we accept your order, or
 - 16.2.3 to the extent that any increase in loss or damage results from breach by you of any term of the Contract.
- 16.3 Our maximum liability to you under the Contract shall not exceed the total value of the relevant Products. In no circumstance shall our liability to you exceed twice the value of the Contract.
- 16.4 Nothing in these terms and conditions excludes or limits our liability for death or personal injury caused by our negligence or fraudulent misrepresentation or for any other liability what we are not permitted by law to exclude or limit.
- 16.5 These terms and conditions do not affect you statutory rights.

17. Our liability (business customers)

- 17.1 This clause shall only apply to business customers.
- 17.2 Subject to clause [17.4](#), if we fail to comply with these terms and conditions, we shall only be liable to you for the purchase price of the Products.
- 17.3 Subject to clause [17.4](#), we will not be liable for losses that result from our failure to comply with these terms and conditions that fall into the following categories:
 - 17.3.1 loss of income or revenue;
 - 17.3.2 loss of business;
 - 17.3.3 loss of profits;
 - 17.3.4 loss of anticipated savings;
 - 17.3.5 loss of data; or
 - 17.3.6 waste of management or office time.

However, this clause will not prevent claims for loss of or damage to your physical property that are foreseeable or any other claims for direct loss that are not excluded by categories (17.3.1) to (17.3.6) inclusive of this clause.

- 17.4 Nothing in these terms and conditions excludes or limits our liability for death or personal injury caused by our negligence or fraudulent misrepresentation or for any other liability what we are not permitted by law to exclude or limit.

18. Training and Services

- 18.1 Contractual precedence

Unless otherwise agreed in writing between the parties, if there is any inconsistency between these T's & C's and any other documents executed by the parties, the order of priority in descending order shall be:

- (i) SLA or Quote;
- (ii) any other document executed by a Nexus director and a Customer authorised signatory;
- (iii) these T's & C's;
- (v) if applicable, web portal access terms and conditions;
- (vi) Joining Instructions for Training Courses;

For avoidance of doubt, no other form of contract or communication sent by the Customer to the Company in relation to Services shall be deemed accepted by the Company except where executed in writing.

18.2 Fees and costs

18.2.1 *Fees for Services*: Fees payable by the Customer for Services shall, unless otherwise stated in the Agreement, be the fees chargeable by the Company for such Services current at date of provision and in case of provision of Services over a period, fees payable shall, at the Company's option, be either: (i) fees current at the date of Service provision unless fees are expressly stated to be fixed or firm for a period; or (ii) fees current at the date of invoice for relevant Services; or (iii) where agreed by the parties, fees calculated on a time and materials basis pursuant to rates agreed between the parties in writing. For clarification; examinations are not discountable.

18.2.2 *Fee adjustment*: Unless fees are stated to be fixed or firm for a period the Company's fees payable for Services shall be subject to amendment to take account of variations in wages, materials or other costs since commencement of Agreement. the Company reserves the right to adjust fees payable by the Customer for Services by the amount of any increase in such costs after fees are quoted and fees so adjusted shall be payable as if it were the fees stated as being payable in Agreement. Any adjustments or increases in fees shall not exceed an amount equal to 25% of fees for relevant Services.

18.2.3 *Expenses*: Fees are exclusive of travel, meals or other expenses which shall be payable by the Customer upon presentation of invoices by the Company.

18.2.4 *Value added tax*: Fees are exclusive of VAT which shall be charged at the applicable rate.

18.3 Terms of payment

Except where otherwise agreed in writing fees for Services shall be due and payable by the Customer as follows:

- (i) where Services relate to provision of Training Services, fees shall be paid in full no later than 15 Working Days prior to training commencement;
- (ii) where Services relate to provision of consultancy Services, 50% of fees shall be paid no later than 15 Working Days prior to date upon which consultancy Services are to be provided and balance shall be payable pursuant to milestones agreed between the parties;
- (iii) if Services are provided over a period of time the Company shall be entitled to invoice the Customer at regular intervals during that period and fees shall be payable by the Customer within 30 days of date of such invoice notwithstanding that subsequent Services are not provided or any other alleged default on the part of the Company;
- (iv) if under the Agreement fees are due in instalments, a default by the Customer in payment of any instalment shall entitle the Company to require that the Customer pays the whole balance of fees due within 15 Working Days of such default. The Customer shall not be entitled to exercise any set-off, lien or any similar claim in relation to fees due to the Company. Time of payment shall be of the essence. Without prejudice to any other rights, the Company shall be entitled to charge interest of 8% over base

rate of Bank of England per month or part thereon on overdue payments; such interest to run from payment due date until full payment receipt.

18.4 Cancellations

If the Consumer Protection (Distant Selling) Regulations 2000 apply, the Customer shall have the right to cancel this Agreement without any liability within 14 days of date of Agreement provided that Services have not commenced and are not due to commence in this period. Except as provided under this clause or a SLA, cancellation and/or re-scheduling fees below shall apply to cancellation or re-scheduling of any course by Customer unless the order is made and paid for over the internet in which case it is not cancellable. The Company shall issue a supplementary fee invoice to the Customer for such cancellation and/or re-scheduling fees and the Customer shall make full payment to the Company within 15 Working Days of date of that invoice:

Public scheduled courses

Confirmed booking with agreed dates	15-11 working days before course commencement	10-6 working days before course commencement	5-0 working days before course commencement
Cancellation fee	50%	75%	100%
Re-scheduling fee	25%	50%	100%

All services other than public scheduled courses

Confirmed booking with agreed dates	20-11 working days before course commencement	10-6 working days before course commencement	5-0 working days before course commencement
Cancellation fee	50%	75%	100%
Re-scheduling fee	50%	75%	100%

The Customer may substitute course participants by written notification to the Company subject to new course participants complying with course requirements (including pre-requisites, and pre-course reading) as notified by the Company to the Customer, or as detailed in the course outline. The Customer

acknowledges and accepts that Company will not be responsible for appointing any third party trainer unless expressly stated.

18.5 Provision of Services

Notwithstanding that the Company may have given a detailed quotation for Services, no request for Services shall be binding unless the parties have executed a SLA, or Quote. The Customer must provide a valid purchase order number to the Company. The Company's catalogues, brochures, leaflets or other correspondence including information published on the Company's website are not binding and reasonable variations may be made to Services without notice, and Services so varied shall be accepted as complying with Agreement.

The Company reserves the right to cancel, curtail or re-schedule training courses or events without notice to the Customer and in such instance, the Company's total aggregate liability to the Customer shall be limited to refund of 100% of course fees already paid by the Customer in advance. The Company reserves the right to refuse Services or provide reduced Services if training course participants attending on the Customer's behalf fail to satisfy course requirements or prerequisites.

When attending training courses, each delegate accepts full liability for understanding and satisfying all requirements and prerequisites specified for their course. To avoid disruption to other course attendees, delegates may be asked to leave if they fail to satisfy those requirements. We are unable to offer any refund for delegates who, in our opinion, fail to meet the specified course requirements and prerequisites.

The Company will not be responsible for appointing any third party trainer unless expressly stated by the Company.

Nexus Learning Credits are non-transferable and non-refundable.

19. Intellectual property rights

- 19.1 Except for your license to use the Products as expressly granted under the Agreement, you shall not acquire in any way, any title, rights of ownership, or Intellectual Property Rights of whatever nature in the Products or in any copies of it and no Intellectual Property Rights of either party are transferred or licensed as a result of the Agreement.
- 19.2 *Use of the Company's name, logo:* The Company's name and logo may not be used by the Customer except with the Company's prior written consent.
- 19.3 *Background intellectual property rights:* The Company or its licensors shall retain all right, title and interest in and to all intellectual property rights or other proprietary rights (including copyright, patents, trademarks, trade or business names, know how, moral rights, domain names, database rights or any similar rights) (collectively "Background IPR") owned at any time by the Company or its licensors. The Company hereby grants to the Customer a limited license to use Background IPR solely to the extent necessary for the Customer to receive Services. For avoidance of doubt, the Customer shall not acquire any rights to Background IPR including any documents, training guides, instruction manuals, drawings, diagrams, videos or any other materials provided by the Company in connection with Services and the Customer shall not copy, reproduce, sell, licence, distribute, publish or otherwise circulate such Background IPR except with the Company's prior written consent.

- 19.4 *Foreground intellectual property rights*: During this Agreement, the parties may agree that the Company will create or develop at the Customer's request new intellectual property products or materials and provide certain new Services in which intellectual property rights subsist (collectively "Foreground IPR"). The parties hereby agree that the Company shall own all right, title and interest in and to all Foreground IPR and the Company shall grant to Customer a worldwide, royalty-free, perpetual license to use the Foreground IPR for the Customer's internal business purposes only and provided always that the Customer shall not commercialise Foreground IPR and shall not sell, licence, distribute, publish or otherwise circulate Foreground IPR to any third party except with the Company's prior written consent.
- 19.5 *Notification of infringement*: The Customer shall promptly inform the Company in writing of any infringement or alleged infringement of Background IPR or Foreground IPR or any claim coming to the Customer's attention that Services or Background IPR or Foreground IPR infringe any person's intellectual property rights.
- 19.6 *Indemnities*: Subject to limitations of liability under Clause [21](#), the Company shall indemnify the Customer from and against all losses suffered or incurred by the Customer as a result of a claim that Background IPR or Foreground IPR or Services infringes any person's intellectual property rights. Where the Customer requires Services to be provided by the Company to the Customer's specifications or requires the Company to incorporate the Customer's materials within Services, the Customer shall fully indemnify the Company from and against all losses suffered or incurred by the Company as a result of a claim that provision of Services to the Customer's specifications and/or using the Customer's materials infringes any person's intellectual property rights.

20. Term and termination

The term of this Agreement shall be set out in the SLA or the Quote. The Company may at its discretion terminate or suspend this Agreement upon 10 days' notice to the Customer if:

- (i) the Customer ceases to do business, or otherwise terminates business operations;
- (ii) becomes insolvent or seeks protection under any bankruptcy, receivership, trust deed, creditors arrangement, composition or comparable proceeding or any proceeding is instituted against the Customer;
- (iii) undergoes a change or similar arrangement; and/or
- (iv) fails to make timely payments as required under Agreement.

The Company may at its discretion immediately terminate or suspend this Agreement if the Customer commits a material breach, or a series of breaches the combination of which constitutes a material breach and the Customer fails to remedy the breach(es) within 10 days after receipt of notice giving particulars of breach(es) and requiring them to be remedied.

21. Limitation of liability

- 21.1 *Limitation of liability:* Nothing in this Agreement limits either party's liability for death or personal injury due to negligence or fraudulent misrepresentation. Except as set out in this clause, the Company shall not be liable for lost profits, loss of business, lost or corrupted data or software, loss caused by supply of inaccurate information or any omitted information by the Customer, any consequential, punitive, incidental or indirect loss or damages, whether any claims for such damages are based on tort, contract, or other theories, and whether the Company knew or should have known the possibility of such damages. Except as set out in this clause and clauses [16.3](#) or [17.2](#), the Company's total aggregate liability under this Agreement for any losses or damages shall not exceed the total price payable for Services.
- 21.2 *Viruses:* The Company will use reasonable endeavours to ensure that all software introduced to the Customer's machines will be free of computer viruses and has undergone virus checking procedures in line with current practice. Notwithstanding reasonable endeavours the Company shall not be liable for any damage to any Customer or third party equipment that has been caused by a virus introduced as a result of software loaded by or via the Company.

22. Warranties and representations

Each party warrants and represents that, as at date of this Agreement, it has full capacity and authority to enter into this Agreement. If requested, the Company may help the Customer to choose training or other Services but the Company does not provide any warranties that such Services will be fit for the Customer's purpose and assessment and selection of Services remains the Customer's ultimate responsibility. No statement, description, information, condition or recommendation contained in any Company catalogue, price list, advertisement or communication or made verbally by representatives of the Company shall be construed to vary in any way any of the terms of this Agreement. All other warranties (express or implied) are hereby excluded to maximum extent permitted by applicable law.

23. Retained Technical Services (RTS)

In respect of Retained Technical Services (RTS), the Company shall not be liable for any damages, including but not limited to any direct, indirect, special, incidental or consequential damages, resulting from any use of, or inability to use the software programs or hardware supported, even if the Company has been advised of the possibility of such damages beforehand. The Company is not responsible or liable for damages or costs incurred as a result of loss of time, loss of data, loss of anticipated profits or benefits resulting from the use of the hardware or software programs or loss of use of the software programs, or for damages or costs incurred in connection with obtaining substitute support services or substitute software, claims by others, or similar costs. No employee, agent or representative of the Company is authorised to make any other representation or warranty with respect to our RTS and any other services. Our RTS is provided on a best efforts basis to provide service and support the Buyer's computer and networking systems. The Company reserves the right to modify or terminate support services during your subscription period, and to decline renewal of your subscription at the expiration of any plan period. Where RTS has been used but not paid for, the Company reserves the right to invoice the Buyer for any RTS used, at the prevailing rate. RTS is for 'Services' only and is not transferrable for the purchase of goods. All unused RTS support hours will be forfeited upon early termination of the contract by the Buyer and any pre-paid sums are non-refundable.

24. Modifications and additional items

- 24.1 *Modifications to these T's & C's:* The Company reserves right to modify these T's & C's without prior notice. When changes are made, the Company will update this document on the Company's website. If the Customer does not accept any changes, the Customer shall promptly notify the Company of such non-acceptance and in such case, the old T's & C's shall govern for the remaining term of Agreement and the new T's & C's shall apply to any new Agreement.
- 24.2 *Third party terms:* Upon the Customer's request and in order to meet the Customer's requirements, the Company may from time to time book, on the Customer's behalf, courses provided by third parties. In such instances, the third party contractual terms shall govern the booking of those third party courses and in particular, the third party payment and cancellation terms shall prevail over terms of this Agreement with respect to those third party courses. The Company will provide to the Customer a copy of relevant third party contractual terms upon the Customer's reasonable request.

25. Confidentiality

"Company's Confidential Information" means any commercial information of the Company, any information contained within instruction manuals or other documents provided to the Customer and any other information related to Services. The Customer will keep all the Company's Confidential Information confidential for a period of 3 years after termination of this Agreement or any related agreement with the Company. The Customer may not disclose Company's Confidential Information to any third party without Company's prior written consent. Customer may share the Company's Confidential Information with only its employees who have a 'need to know' and who are subject to legally binding obligations to keep such information confidential. Confidentiality obligations in this clause do not apply to the Company's Confidential Information that (a) the Customer can demonstrate was in its possession before receipt from the Company; (b) is or becomes publicly available through no fault by the Customer; (c) is rightfully received by the Customer from third party without duty of confidentiality. If the Customer is required by government body or court of law to disclose any Company Confidential Information, the Customer shall give the Company reasonable advance notice so that the Company has an opportunity to contest disclosure.

26. Notices

All notices given by you to us must be given to Nexus Open Systems Limited at Vale House, Pynes Hill, Exeter, Devon EX2 5AZ. We may give notice to you at either the email or postal address you provide to us when placing an order. Notice will be deemed received and properly served immediately when posted on our website, 24 hours after an email is sent, or three days after the date of posting of any letter. In proving the service of any notice, it will be sufficient to prove, in the case of a letter, that such letter was properly addressed, stamped and placed in the post and, in the case of an email, that such email was sent to the specified email address of the addressee.

27. Governing law and dispute resolution

- 27.1 These terms and conditions and the Contract will be governed by English law. Any dispute or claim arising out of or in connection with such Contracts or their formation (including non-contractual disputes or claims) will be subject to the exclusive jurisdiction of the courts of England and Wales.

28. Transfer of rights and obligations

- 28.1 The contract between you and us is binding on you and us and on our respective successors and assignees.
- 28.2 You may not transfer, assign, charge or otherwise dispose of a Contract, or any of your rights or obligations arising under it, without our prior written consent.
- 28.3 Subject to notification to the Customer, the Company may transfer, assign, charge, sub-contract or otherwise dispose of a Contract, or any of our rights or obligations arising under it, at any time during the term of the Contract.

29. Entire agreement (customers acting as a consumer)

- 29.1 This clause shall only apply to customers acting as a consumer.
- 29.2 We intend to rely upon these terms and conditions and any document expressly referred to in them in relation to the subject matter of any Contract. While we accept responsibility for statements and representations made by our duly authorised agents, please make sure you ask for any variations from these terms and conditions to be confirmed in writing.

30. Entire agreement (business customers)

- 30.1 This clause shall only apply to business customers.
- 30.2 These terms and conditions and any document expressly referred to in them constitute the whole agreement between us and supersede all previous discussions, correspondence, negotiations, previous arrangement, understanding or agreement between us relating to the subject matter of any Contract.
- 30.3 We each acknowledge that, in entering into a Contract, neither of us relies on any representation or warranty (whether made innocently or negligently) that is not set out in these terms and conditions or the documents referred to in them.
- 30.4 Each of us agrees that our only liability in respect of those representations and warranties that are set out in this agreement (whether made innocently or negligently) will be for breach of contract.
- 30.5 Nothing in this clause limits or excludes any liability for fraud.

31. General

- 31.1 *Export and compliance with laws:* The Customer acknowledges that Services provided under this Agreement may be subject to export control laws and regulations in European Union, United States or other countries. The Customer shall comply with all applicable laws, orders and regulations of any governmental authority in connection with receipt of Services and shall bind its employees or other users of Services accordingly.
- 31.2 *Non-solicitation:* During term of the Agreement, and for a period of 12 months following its termination, the Customer shall not directly or indirectly employ or solicit for employment any members of the Company's then current personnel. If the Customer breaches this clause, in addition to any other remedies available in this Agreement or at law, the Company shall be entitled to recover from the Customer liquidated damages equivalent to 26 weeks of gross annual salary of the member of Company's personnel employed or solicited for employment. The Parties agree that such amount is a

genuine pre-estimate of the Company's loss and not a penalty. This clause shall not restrict the Customer from employing any members of the Company's personnel who apply unsolicited in response to a general advertising or other general recruitment campaign.

- 31.3 *Force majeure:* The Company shall be entitled to delay or cancel delivery of Services or to reduce the amount of Services delivered if it is prevented from or hindered in or delayed in the provision of Services through any circumstances beyond its reasonable control including strike, lock-out, accident, war, government action, national emergency, act of terrorism, protest, riot, civil commotion, explosion, flood, epidemic, fire.
- 31.4 *Relationship of parties:* The parties are each independent contractors. Nothing in this Agreement shall give rise to a partnership, joint venture, agency or any such other relationship between the parties. Neither party shall claim to be a legal representative, partner, agent, franchisee or employee of the other party.
- 31.5 *Data protection:* The Company's privacy statement at <https://www.nexusos.co.uk/privacy-policy/> shall apply.
- 31.6 *Third party rights:* This Agreement is not intended to be for benefit of, and shall not be enforceable by, any person other than a party, under the Contracts (Rights of Third Parties) Act 1999.
- 31.7 *Survival:* Clauses [2](#) (Definitions and interpretation), [18.1](#) (Contractual precedence), [18.3](#) (Terms of Payment), [19](#) (Intellectual property rights), [20](#) (Term and termination), [21](#) (Limitation of liability), [25](#) (Confidentiality), [27](#) (Governing law and dispute resolution), [31.5](#) (Data protection), [31.1](#) (Export and compliance with laws), [31.7](#) (Survival) and [31.2](#) (Non-solicitation) shall survive any termination or expiration of this Agreement.
- 31.8 We shall not be liable or responsible for or be deemed to be in breach of this Contract for any delays or failures in performance of this Contract which result from circumstances beyond our control.
- 31.9 Applicable laws require that some of the information or communications we send to you should be in writing. When using our site, you accept that communication with us will be mainly electronic. We will contact you by email or provide you with information by posting notices on our website. For contractual purposes, you agree to this electronic means of communication and you acknowledge that all contracts, notices, information and other communications that we provide to you electronically comply with any legal requirement that such communications be in writing. This condition does not affect your statutory rights.
- 31.10 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.
- 31.11 If any court or competent authority decides that any of the provisions of these terms and conditions or any provisions of a Contract are invalid, unlawful or unenforceable to any extent, the term will, to that extent only, be severed from the remaining terms, which will continue to be valid to the fullest extent permitted by law.

31.12 We may change these terms and conditions at any time. Any changes will apply to any orders that you place after the time that we update the terms and conditions of our website. The changes will not apply to any order that you place before we make the changes on our website.

Nexus Open Systems