



Terms and Conditions

Relating to the purchase and supply of products to NTT

Netherlands

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Terms and Conditions

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Please quote reference {Document Reference Number} in any correspondence or order.

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This document is valid until 11 July 2019 and, in the absence of any other written agreement between the parties, NTT and {Client} acknowledge and agree is subject to NTT's standard terms and conditions which are available on request. NTT reserves the right to vary the terms of this document in response to changes to the specifications or information made available by {Client}. Submission of this document by NTT in no way conveys any right, title, interest, or license in any intellectual property rights (including but not limited to patents, copyrights, trade secrets or trademarks) contained herein. All rights are reserved.

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All contracts with NTT will be governed by {Law} Law and be subject to the exclusive jurisdiction of the {Law} courts.





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1. Definitions and Interpretation

- 1.1. These terms and conditions of purchase (hereinafter “**Terms**”) shall apply to all contracts concluded by **NTT** (Netherlands) GmbH (hereinafter “**NTT**”) as the purchasing or ordering party (hereinafter “**Agreement**”), unless otherwise expressly agreed in writing.
- 1.2. **The “Addendum: Data Protection Agreement” is an integral part of the Terms.**
- 1.3. Terms and conditions of business of the supplier that differ from the Terms shall not be regarded as part of the purchasing contract, even where they have not been expressly rejected by NTT.
- 1.4. Any words following the terms ‘including’, ‘include’, ‘in particular’, ‘for example’, or any similar expression, shall be construed as illustrative and shall not limit the sense of the words, description, definition, phrase or term preceding those terms.
- 1.5. “**Product**” shall mean Services, equipment or software or any other products.
- 1.6. “**Purchase Order**” shall mean NTT’s instruction (written and/or by E-mail) to supply the Product incorporating the Terms.
- 1.7. “**Services**” shall mean the services to be provided by Supplier as described in a Purchase Order.
- 1.8. “**Supplier**” shall mean the person, firm or company who accepts the Purchase Order.



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2. Applicability

2.1. The Terms shall:

- a) apply to and be incorporated in the Agreement; and
- b) prevail over any inconsistent terms or conditions contained in or referred to in the Supplier's quotation, acceptance, correspondence or elsewhere or implied by law, trade custom, practice or course of dealing.

2.2. The Purchase Order constitutes an offer by NTT to purchase the equipment subject to the Terms. Accordingly, any acceptance of the Purchase Order by the Supplier shall establish an Agreement for the sale and purchase of that Product on the Terms. Any counter- offer made by the Supplier to supply the Product on other conditions shall only be validly accepted if such acceptance is in writing and signed by a duly authorised representative of NTT.

No changes to, modifications to, amendment to, addition to, variation of, exclusion or attempted exclusion of the Purchase Order or these Terms or any of them shall be effective unless in writing and signed by a duly authorised representative of NTT and the Supplier.

2.3. The execution and return of the acknowledgement copy of the Purchase Order form by the Supplier, or the Supplier's execution, commencement of work or commencement of delivery pursuant to the Purchase Order constitutes acceptance of the Purchase Order on the Terms by the Supplier.

2.4. Where the Purchase Order is for more than one item, it shall be regarded as a single Agreement for all Product supplied pursuant to that Purchase Order.



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3. Prices

All prices are fixed and inclusive of delivery, packaging, packing, shipping, carriage, insurance and other charges and dues, and are not subject to adjustment save as specifically provided in these Terms or the Purchase Order. NTT will pay only undisputed amounts that appear on the invoice to which such fees relate from the later of forty-five (45) days after (i) receipt of a valid invoice, or (ii) NTT's acceptance of Products. Fees for renewing Services may increase only if NTT agrees in writing at the time of renewal. All prices shall be in EURO excluding VAT.



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4. Warranties and Covenants

- 4.1. The Supplier warrants and covenants that all Products are and will: (i) be new and will conform with these Terms and all specifications; (ii) be free from defects in materials, workmanship and design; (iii) be free from liens, restrictions, reservations, security interests or encumbrances; (iv) be suitable for, and perform in accordance with, the particular purposes (a) for which they were purchased by NTT and (b) for which they were designed, manufactured or constructed; and (v) not infringe any third party intellectual property rights.
- 4.2. Supplier warrants and covenants that all Services will be performed with reasonable skill and care, and to a standard that should reasonably be expected of a leading provider of the services in question.
- 4.3. NTT retains all legal rights and entitlements to make claims based on defects, non-conforming Products or Services; under all circumstances NTT shall be entitled to demand the removal of defects or the supply of replacement goods. If Supplier does not promptly **correct** defects or **replace** non-conforming Products or Services after written notice to Supplier, NTT may make corrections or replace Products and Services and charge Supplier for the cost incurred. The right to compensation for damages, in particular, without limitation, with regard to compensation for damages in place of delivery, is expressly reserved.



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5. Delivery

- 5.1.** The Supplier shall deliver the Product on the date specified in the Purchase Order or, if no such date is specified, within 28 days of the date of the Purchase Order. Time is of the essence as to the delivery of the Product under the Agreement and if the Supplier does not comply with its obligations in the preceding sentence, NTT may, without prejudice to any other rights or remedies that it may have:
- cancel the Agreement in whole or in part without incurring any liability to the Supplier;
 - refuse to accept any subsequent delivery of items comprised in the Product which the Supplier attempts to make;
 - purchase substitute items elsewhere; **and/or**
 - hold the Supplier accountable for any loss and additional costs incurred.
- 5.2.** The Product shall be properly packed and secured in such manner as to enable it to reach its destination in good condition. No charge shall be made for wrapping, packing, cartons, boxes, crating or containers unless specified in the Purchase Order, and the Customer shall not be responsible for returning any such materials.
- 5.3.** The Products will be shipped carriage free to the place of delivery unless otherwise agreed in writing. Time of delivery shall be of the essence. NTT may without penalty on five (5) days' written notice: (a) cancel or delay the scheduled date for delivery of Product and/or performance of Services; (b) change the quantity of Products to be shipped, or scope of Services to be provided. No restocking fees will apply.
- 5.4.** The Product shall be at the risk of the Supplier until delivery to NTT at the place of delivery specified in the Purchase Order, or as otherwise specified by NTT. The Supplier shall off-load the equipment at its own risk as directed by NTT.



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6. Transfer of Ownership

Ownership of the Product shall pass to NTT on completion of delivery (including off- loading) in accordance with the Purchase Order. The passing of ownership in the Product is without prejudice to any right of rejection to which NTT may be entitled under the Agreement or otherwise.



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7. Indemnity

- 7.1.** The Supplier will indemnify, defend and hold NTT and its respective officers, employees, agents and directors harmless from and against any and all claims, actions, suits, proceedings, costs, expenses, damages (including punitive, treble and enhanced damages, if applicable) and liabilities, including reasonable legal fees arising out of, connected with or resulting from a claim based on: the Products and/or Services; any act or omission by Supplier under this Agreement; or any claim of infringement, misappropriation, or violation of any third party patents, copyrights, trademarks or trade secret rights or other proprietary rights. NTT will have no authority to settle any claim on behalf of Supplier without Supplier's prior written consent. If Supplier cannot resolve an infringement claim, Supplier will in addition to any claim made by NTT refund all amounts paid for the applicable Products and/or Services.
- 7.2.** The Supplier will indemnify and hold NTT, its directors, officers, employees, shareholders, and agents harmless from and against any and all fines, costs, judgements, damages and assessments, including all reasonable professionals' fees and expenses incurred by NTT as a result of the Supplier's breach of the Terms.



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8. Intellectual Property (herein after “IP”)

- 8.1. Supplier must promptly disclose and assign to NTT all intellectual property generated or developed under this Agreement, including but not limited to all documentation, software and other proprietary information, resulting from this Agreement, and any resulting patents (collectively “Supplier IP”). Supplier will provide reasonable assistance to NTT to secure intellectual property protection, including assistance in the preparation and filing of any patent applications, copyright registrations, and the execution of all applications, assignments or other instruments for perfection or protection of title.
- 8.2. For non-Supplier IP (including off-the-shelf software), Supplier grants to NTT a fully paid-up, worldwide, perpetual licence to install, execute, use, copy, test, display, perform and distribute such intellectual property for NTT’s business purposes subject to the terms of the manufacturer’s terms and conditions including the EULA (end-user licence agreement).



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9. Limitation of Liability

- 9.1.** EXCEPT FOR UNDISPUTED FEES DUE TO SUPPLIER, NTT WILL NOT BE LIABLE TO SUPPLIER FOR ANY LOST PROFITS OR DIRECT, INDIRECT, CONSEQUENTIAL, INCIDENTAL OR PUNITIVE DAMAGES, WHETHER IN TORT, CONTRACT OR OTHERWISE. NTT'S TOTAL LIABILITY UNDER THIS AGREEMENT SHALL BE LIMITED TO THE AMOUNT SET OUT IN THE RELEVANT PURCHASE ORDER OR OTHER ORDERING DOCUMENT UNDER WHICH THE CLAIM OR ALLEGED CLAIM ARISES (AGREEMENT'S VALUE). THE FOREGOING LIMITATION OF LIABILITY SHALL NOT APPLY TO CLAIMS ARISING AS A RESULT OF GROSS NEGLIGENCE, FRAUDULENT OR WILFUL MISCONDUCT, OR ANY PERSONAL INJURY, DEATH OR BODILY HARM.
- 9.2.** NTT WILL NOT BE LIABLE FOR ANY LOSS OR DAMAGE CAUSED BY AN ASSOCIATE UNLESS THE RESPECTIVE CLAIM IS ARISING AS A RESULT OF PERSONAL INJURY, DEATH OR BODILY HARM.



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10. Termination of Agreement

NTT may terminate this Agreement or the provision of any Products or Services in whole or in part for any reason on ten (10) working days written notice, without liability (including termination fees) except for undisputed fees arising prior to the termination date. Supplier will promptly refund to NTT any unused prepaid fees (including prepaid recurring fees, on a pro-rata basis to the date of termination).



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11. Confidentiality and Trademarks

- 11.1.** NTT may disclose to Supplier proprietary, confidential or trade secret information pertaining to its business, customers or partners (hereinafter “**Confidential Information**”). Supplier shall not disclose such Confidential Information to any third party or use such Confidential Information except to perform its obligations under this Agreement and shall upon expiration or termination of this Agreement destroy any originals and copies of such Confidential Information other than one copy held for archive purposes. Any personal data made available to Supplier by NTT shall be deemed Confidential Information.
- 11.2.** Supplier will not publicise this Agreement or identify NTT or its customer as a client in any disclosure, or use NTT’s name or trademarks (or any variation thereof), without NTT’s prior written consent in each case.



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12. Insurance

- 12.1.** Supplier shall effect and maintain adequate insurance including employer's liability insurance, professional negligence insurance, and product liability insurance in respect of persons in its employment, whether seconded to NTT or otherwise appropriate to the nature of the Products and/or Services to be supplied, and commercial general liability insurance covering claims for bodily injury, death, personal injury, or property damage with **minimum limits of EURO 2,500,000 for each occurrence.**
- 12.2.** NTT shall have the right to receive on request a copy of insurance effected or maintained by Supplier under this Agreement prior to the delivery of Products or Services. This insurance shall not be suspended, voided, cancelled, or be reduced in coverage or in limits except with 90 days' written notice to NTT. For any claims, Supplier's insurance will be primary, and NTT's insurance will not contribute to it.



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13. Compliance

- 13.1.** The Supplier undertakes that it will at all times comply at its own expense with all applicable laws, orders and regulations, including but not limited to international standards, international conventions, national, regional, provincial and local laws, regulations, orders, conventions and standards that relate to the manufacture, labelling, import, export, licensing, approval or certification of suppliers and supplies, data privacy legislation and governing laws.
- 13.2.** While on the premises of NTT or in contact with NTT systems, Supplier will comply with all applicable NTT or its affiliates' rules, regulations and security policies.
- 13.3.** **Supplier holds NTT harmless against any claims, expenses, losses or fines NTT incurs including but not limited to legal costs arising as a result of the Supplier not fully complying with the provisions of the said laws or policies.**



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14. Independence of Parties

- 14.1.** The parties hereto are independent contractors. There is no relationship of agency, partnership, joint venture, employment or franchise created between either party and its respective employees and the other party under this Agreement.
- 14.2.** Supplier is an independent contractor and not an agent or employee of NTT and Supplier is solely responsible for paying wages, salaries, fringe benefits and any other compensation to or claims by Supplier's employees or contractors.



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15. Further Provisions

- 15.1. Assignment:** NTT may assign this Agreement in whole or in part, without the prior written consent of Supplier, to any affiliate or in connection with a merger or acquisition or sale of all or a portion of the assets of NTT. Supplier may not assign all or any part of this Agreement without the prior written consent of NTT.
- 15.2. Offset:** NTT shall have the right to set-off any amount it owes to Supplier against any amount Supplier owes NTT.
- 15.3. Severability:** The invalidity, in whole or in part, of any provision of this Agreement will not affect the validity of any other provision. The Parties of this Agreement undertake to replace any invalid or void parts by economically equivalent, valid provisions which accomplish, to the best possible extent, the economic purpose of the invalid provisions.
- 15.4. No Waiver:** Failure by NTT to insist upon strict performance by Supplier of any of its obligations under this Agreement will not waive any subsequent or other default or failure to perform by Supplier.
- 15.5.** NTT's rights and remedies in law or equity are cumulative and may be exercised concurrently or separately.
- 15.6.** A reference to a statute or statutory provision or policy is a reference to it as amended, extended or re-enacted from time to time.



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16. Governing Law and Jurisdiction

This Agreement shall be governed exclusively by the **laws of Netherlands** to the exclusion of private international law and the United Nations Convention on Contracts for the International Sale of Goods (CISG). The **exclusive place of jurisdiction** for all disputes arising from or in connection with the Agreement is **NTT's registered office in Netherlands**.



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Addendum Data Protection Agreement

This Addendum (the “Addendum”) applies to and forms part of any and all agreements (each an “Agreement”) between NTT (Netherlands) B.V (“NTT”) and the entity supplying NTT (“Supplier”). NTT is entering into this Addendum on behalf of itself and for the benefit of NTT Group. The Supplier is providing services to and for the benefit of NTT and NTT Group.

Any capitalised terms not defined in this Addendum shall have the respective meanings given to them in the Agreement. With respect to provisions regarding processing of NTT Data (defined below), to the extent of any conflict between the Agreement and this Addendum, the provisions of this Addendum shall prevail.

1. Definitions

The following definitions shall apply in this Addendum:

- a) “**Control**” means in relation to any entity: (i) holding a majority of the voting rights in it; (ii) having the right to appoint or remove a majority of its board of directors; or (iii) otherwise controlling its direction, management and policies pursuant to an agreement, and **Controls** and **Controlled** shall be construed accordingly;
- b) “**Controller**” means the natural or legal person who determines the purposes and means of Processing Personal Data;
- c) “**Data Protection Legislation**” means all laws relating to the Processing of Personal Data, privacy and security, including, without limitation, the EU General Data Protection Regulation 2016/679 and the EU Privacy and Electronic Communications Directive 2002/58/EC, as implemented in each jurisdiction, and all amendments, or all other applicable or replacement international, regional, federal or national data protection laws, regulations and regulatory guidance;
- d) “**NTT Data**” means Personal Data provided by NTT to the Supplier pursuant to the Agreement or which is otherwise Processed by the Supplier pursuant to the Agreement; and
- e) “**NTT Group**” means any and all of NTT, any company NTT Controls, any company NTT is Controlled by, and any company with which NTT is under common Control.
- f) “**Personal Data**” means any information relating to an identified or identifiable natural person; an identifiable person is one who can be identified, directly or indirectly, in particular by reference to an identification number or to one or more factors specific to his physical, physiological, mental, economic, cultural or social identity;



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- g) “**Process**” or “**Processing**” means any operation or set of operations which is performed on Personal Data whether or not by automated means;
- h) “**Processor**” means an entity that processes Personal Data on behalf of a Controller.

2. Obligations of the Parties

Each party shall comply with its respective obligations under applicable Data Protection Legislation.

3. Obligations of the Supplier

To the extent the Supplier processes NTT Data as a Processor, the Supplier shall:

- a) process NTT Data only in accordance with NTT’s documented instructions unless required by applicable law to process for other purposes, in which case the Supplier shall inform NTT of that legal requirement before Processing, unless prohibited from doing so. Upon termination or expiry of the Agreement, at NTT’s request, the Supplier shall promptly delete or return all NTT Data;
- b) implement appropriate technical and organisational measures to protect NTT Data against unauthorised or unlawful Processing and against accidental loss, destruction, damage, alteration or disclosure, including ensuring personnel with access to NTT Data are subject to a binding obligation to protect the confidentiality of NTT Data;
- c) notify NTT without undue delay in writing (but in any event within 12 hours of becoming aware of it), of any data incident, including any suspected, potential or actual accidental, unlawful or unauthorised destruction, disclosure, loss, alteration or access in relation to NTT Data;
- d) provide reasonable information and assistance to NTT to assist NTT in complying with its obligations under applicable Data Protection Legislation (including referring promptly to NTT any requests, notices or other communication from individuals, third parties, relevant data protection authorities relating to NTT Data) and to demonstrate the Supplier’s compliance with this clause 3;
- e) not subcontract any Processing of NTT Data without the prior written consent of NTT and subject to imposing the same as or equivalent to/substantially the same as the obligations on the subcontractor as this clause 3 and the Supplier remaining fully liable for the acts and omissions of any such subcontractors as if they were acts and omissions of the Supplier itself;



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- f) not process and/or transfer NTT Data outside the country in which the individual to whom the NTT Data relates resides where that country has in place Data Protection Legislation that imposes data transfer restrictions (or, in the case of the individual residing in the European Economic Area (“EEA”) outside the EEA (“Country of Residence”)) without the prior written consent of NTT and subject to implementing or relying on a data transfer mechanism provided for by the applicable Data Protection Legislation to allow for the lawful Processing and/or transfer of NTT Data; and
- g) where required by applicable Data Protection Legislation and to the extent not set out in the Agreement or this Addendum, the parties shall include into the Agreement a description of the relevant Processing activities to be carried out by the Supplier pursuant to the Agreement (including the subject-matter and duration of the Processing, the nature and purpose of the Processing, the type of personal data, the categories of data subjects and the obligations and rights of NTT).

4. Indemnity

The Supplier shall indemnify and hold NTT and each NTT group company harmless in respect of all losses, damages, costs, charges, expenses and liabilities (including regulatory penalties imposed on NTT and each NTT group company) arising out of or in connection with a breach by the Supplier of this Addendum.