



# Standard Terms and Conditions of Sale

## 1 Definitions

“Supplier” means the local entity which is part of NTT Group.

“Supplier Warranty” means any warranty which Supplier may from time to time provide to Purchaser in respect of Products or Services.

“Supplier Quote” means this document which provides information of the Products, Vendor Branded Service(s), Services and the price.

“Delivery” means standard Supplier shipping to and arrival at the receiving area at the “Ship To” address specified on Purchaser’s Order.

“Custom Services” means Supplier-provided professional services, managed services and/or other Supplier-performed services other than General Services.

“General Services” means Supplier-provided staging services, installation services, time and material based services, packaged consulting services and other non-technical services.

“Order” means an order placed with Supplier for the supply of Products, Services or Vendor Branded Service(s).

“Products” means third party branded products (including software forming part of the products) or software licenses resold by Supplier.

“Purchaser” means any person or corporate entity which issues Supplier a purchase order in response to a Supplier Quote whether or not such person or corporate entity enters into an agreement with Supplier (or the purchase of Products or the provision of Services including its executors, administrators, successors and permitted assigns).

“Services” means General Services and Custom Services collectively.

“Vendor Branded Service(s)” means maintenance services or professional services provided by a third -party original manufacturer and resold by Supplier.

## 2 FORMATION OF CONTRACT

Each order constitutes an offer by the Purchaser to acquire the Products or Service subject to these Terms and Conditions. A contract shall be made between Supplier and the Purchaser for the supply of Products or Services only if an order has been accepted by Supplier.

These Terms and Conditions supersede all previous terms and conditions and may only be varied with the written consent of Supplier. Any subsequent Purchaser terms and conditions confirming this Supplier Quote or order is not applicable and will be rendered null and void.

## 3 PRICES QUOTED

Unless otherwise specified, prices quoted do not include taxes of any kind, including but not limited to value added tax, GST, local or state tax, import duties and taxes, import/export fees, withholding taxes or other related charges, and Purchaser shall pay or reimburse Supplier for all such taxes and charges. Supplier reserves the right to amend the prices quoted should there be any variation in the quantity of Products and/or Services ultimately supplied. Unless otherwise advised, all Supplier Quotes are valid for 30 days from the date of issuance. The Purchaser acknowledges however that the prices for Products or Services are subject to change without notice due to changes in supplier quotes, exchange rates, tariffs or either government charges.

## 4 PACKING

Unless otherwise stated, the price quoted includes commercial packaging as is as shipped by the original equipment manufacturers/ original suppliers. It is agreed that special packaging required by the Purchaser or deemed necessary by Supplier would be made to the Purchaser’s account.

## 5 INSPECTION

If the Purchaser desires to inspect the Products before delivery such an inspection must be made at Supplier’s premises. If Supplier is required to provide assistance in the Purchaser’s inspection of the Products prior to delivery in excess of 15 minutes per unit, such assistance will be provided at Supplier’s standard rates current at the time of the inspection. The Purchaser shall be deemed to have accepted the Products as soon as the inspection shall have been completed unless Purchaser forthwith makes an objection to Supplier regarding the quantity or otherwise of the Products. If no such inspection is made, the Purchaser shall be deemed to have accepted the Products when they are delivered.

## 6 DELIVERY

Unless otherwise specified on Supplier Quotes, prices quoted are DDP (Delivered Duty Paid), and risk of loss or damage will pass from Supplier to Purchaser upon receipt at Ship-To address. If other delivery terms are agreed by the Parties, the delivery and passing of risk shall be according to such agreed delivery terms in writing. If Purchaser instructs Supplier to withhold delivery (whether fully or partially) or to store the Products at a destination other than the Ship-To address, thereby causing the Products to remain in the possession or control of Supplier after the delivery date specified on the Order or, if no delivery date is specified, 30 days after the ready-to-ship notification (“Deemed Delivery Date”), the Purchaser: (i) must pay such storage costs,

additional delivery fees and handling charges as Supplier may charge; (ii) agrees that risk of loss or damage will be deemed to have passed to Purchaser 30 days after the delivery date specified on the Order or the Deemed Delivery Date; and (iii) agrees that the Supplier may rightfully raise its invoice 30 days after the delivery date specified on the Order or Deemed Delivery Date. Any terms as to quantity of Products to be delivered or time of delivery of Products or Services agreed between Supplier and Purchaser are not of the essence. Supplier may, at Supplier's absolute discretion, make partial deliveries and invoice each partial delivery separately. Notwithstanding any of the foregoing (including any prices quoted as DDP), Supplier may charge additional delivery or logistic fees to the Purchaser, which Purchaser agrees to pay, in the event of any unexpected, regulatory or force majeure events that cause the Supplier to incur additional delivery or logistics fees that are 5% or more than as originally quoted by Supplier.

## **7 INSURANCE**

Supplier will maintain the following minimum insurance coverage: (i) Worker's Compensation and employees liability, per statutory requirements; (ii) Comprehensive General Liability insurance including contractual liability coverage with the following limits: Bodily injury (per person, per occurrence and in aggregate: US\$1,000,000); Property Damage (per accident and in aggregate: US\$1,000,000). Supplier will provide a certificate of insurance upon request. The Purchaser must maintain adequate insurance cover with a reputable insurer to cover any insurable Loss in respect of Products howsoever caused between the Delivery and the time that title in the Products passes to the Purchaser, and the Purchaser must produce certificates of currency relating to such insurance to Supplier upon request.

## **8 RESERVATION OF TITLE**

Notwithstanding delivery or anything contain in these terms and conditions, the title in the Products sold hereunder shall not pass to the Purchaser until receipt of payment in full by Supplier of the price for the Products sold to the Purchaser by Supplier hereunder. Supplier's title shall subsist notwithstanding such Products shall be incorporated in or become components or constituents of Products or that such Products or such other Products shall be sold or transferred to third parties by the Purchaser. Any such sale by the Purchaser shall be subject to Supplier's title in the Products and the Purchaser shall, if required by Supplier, account to Supplier for all the proceeds of sale attributable to such Products. The Purchaser grants to Supplier an irrevocable licence to enter the Purchaser's premises, exercisable upon the happening of any event listed in clause 13 or upon any breach of the provisions of clause 17, which licence to enter permits Supplier at its sole option, to enter the Purchaser's premises and repossess and remove all or any Products which has not been paid for.

## **9 INSTALLATION**

Supplier shall install the Products in the premises of the Purchaser upon request by the Purchaser and subject to payment of the Services charges as imposed by Supplier. Supplier shall have no liability under the warranty or otherwise for losses sustained as a result of faulty installation not performed by Supplier.

## **10 FORCE MAJEURE**

Force Majeure refers to a circumstance which is beyond the reasonable control of the company, or an unexpected and disruptive event, which results in the company being unable, delayed or otherwise hindered in its ability to observe or perform an obligation under an agreement and such circumstances include, but are not limited to the following examples:

- (a) governmental actions, trade sanctions, blockades, embargoes, quarantines, or other imposed travel restrictions;
- (b) acts of God, lightning strikes, asteroids, meteorites, earthquakes and other seismic events, floods, droughts, storms, solar flares, tempests, mud slides, washaways, explosions, fires or any natural disasters;
- (c) epidemics and pandemics or a lesser spread of disease that causes interruption or delay (including any vector-borne disease);
- (d) acts of war, acts of public enemies, terrorism, riots, insurrections, civil commotions, disturbances or unrest, malicious damage, sabotage and revolution;
- (e) internet or telecommunication systems failures, equipment failures, electrical power failures, cyber warfare, cyber intrusion and cybercrime, cyber espionage, computer or cyber sabotage;
- (f) failures of third party systems, infrastructure, software and applications;
- (g) any law or any action taken by a government or public authority that restricts or prohibits performance of the party's obligations.

Neither party will be liable for performance delays nor for non-performance due to causes beyond its reasonable control, except for payment obligations.

## **11 PAYMENT**

Subject to other payment terms agreed between the Parties and specified on Supplier Quote, the Purchaser must pay the full amount of Supplier's invoice without deduction or set-off within 30 days of the date of Supplier's invoice.

Supplier may charge and the Purchaser agrees to pay interest on all amounts overdue at the rate of two percent (2%) per month or the highest interest rate permitted by law, whichever shall be the lower, from the date of default until the day on which the payment is received by Supplier.

## 12 CANCELLATION

No Order for Products, Vendor Branded Service(s) or Services may be cancelled or modified without Supplier's written consent (which consent shall not be unreasonably withheld or delayed). If Supplier consents, Purchaser agrees to pay all actual resulting costs, expenses and fees incurred by Supplier from the manufacturer, the distributor and/or shippers.

## 13 TERMINATION

Either party shall have the right to terminate this contract if the other party:

- (a) Commits a material breach of any provision of this contract and fails to remedy that breach within twenty (20) days after notice in writing to do so;
- (b) Commits an act of bankruptcy or enters into voluntary or compulsory liquidation or suffers any receiver or manager to be appointed in respect of its assets or any portion thereof;
- (c) Negotiates or makes any agreement of composition amongst its creditors or
- (d) Has execution levied on its assets or any portion thereof.

## 14 RETURN OF PRODUCTS

The Purchaser is required to give Supplier written notice of any claim of defects no later than fifteen (15) days after the Delivery. No Products are to be returned without prior written authorization and shipping instructions first having been obtained from Supplier. Freight, boarding and other charges will be charged to the Purchaser's account.

## 15 WARRANTY

15.1 Subject to any Supplier Warranty and unless otherwise expressly provided in these Terms and Conditions:

- (a) All terms, conditions, warranties, undertakings or representations whether express, implied or otherwise relating in any way to Products or Services supplied or to these Terms and Conditions are excluded or limited to the fullest extent permissible by law; and
- (b) Supplier is not the manufacturer of the Products. Supplier hereby assigns to Purchaser any rights under any warranties in respect of the Products, copies of which will be supplied on request, and Supplier will assist Purchaser at Purchaser's expense in enforcing Purchaser's rights under such warranties. EXCEPT AS EXPRESSLY PROVIDED IN THIS AGREEMENT, NO WARRANTY, CONDITION, UNDERTAKING OR TERM, EXPRESS OR IMPLIED, STATUTORY OR OTHERWISE AS TO THE CONDITION, QUALITY, PERFORMANCE, MERCHANTABILITY, DURABILITY OR FITNESS FOR PURPOSE OF ANY THIRD PARTY PRODUCT IS GIVEN OR ASSUMED BY Supplier AND ALL SUCH WARRANTIES, CONDITIONS, UNDERTAKINGS AND TERMS ARE HEREBY EXCLUDED.

15.2 The Purchaser warrants, acknowledges and agrees that it has not relied on any representation made by Supplier stated expressly in these Terms and Conditions or upon any descriptions or illustrations or specifications contained in any document of any nature, including any catalogue, list, brochure or publicity material, produced by Supplier or supplied to the Purchaser in relation to the supply of any Products or Services. To the extent that the United Nations Convention on Contracts for the international Sale of Goods would otherwise apply to the supply of any Products or Services it is agreed that such Convention does not apply.

## 16 LIMITATION OF LIABILITY

Supplier's maximum aggregate liability for any single or a number of claims whatsoever arising out of or in connection with the performance of these Terms and Conditions will be limited to an amount not exceeding the total fees and charges paid by the Purchaser to Supplier in the preceding twelve (12) months under the Order.

Supplier is not liable to the Purchaser in contract, in tort, in equity, by operation of statute (to the extent liability maybe excluded by law) or otherwise for any kind of indirect or consequential loss or damage, loss of opportunity, loss of revenue, loss of profit or anticipated profit, loss of contracts, loss of goodwill, loss arising from business interruption, loss of data or software, or liability arising out of or in connection with pollution or contamination arising out of or in connection with this Terms and Conditions.

## 17 DESIGN / INTELLECTUAL PROPERTY

No intellectual property rights will transfer under these Terms and Conditions. The Purchaser is not entitled to alter or obscure any copyright notice included with the Product. Any Software provided will be subject to the licence terms which accompany such software.

## 18 SOFTWARE LICENSING

All software license terms are established directly between Purchaser and the owner or licensor of the software. Any software delivered hereunder is subject to the license terms provided with it. Unless otherwise specified,

Supplier is not a party to any such software license and makes no warranty or representations related to the software.

## 19 EXPORT CONTROL

Some of the Products sold hereunder are licensed by the United States Government for an ultimate destination within the territory this Supplier Quote is issued, and may not be exported by the Purchaser or any third party without prior written authorization of Supplier. Customer who exports, re-exports, or imports Products, technology, or technical data assumes responsibility for complying with applicable laws and regulations and for obtaining required export and import authorizations.

## 20 COMPLETENESS AND PERFORMANCE OF AGREEMENT

No amendment to the agreement will be valid unless signed by both parties. No failure or delay by a Party to exercise any right or remedy provided under this agreement or by law will constitute a waiver of that, or any other, right or remedy, nor will it prevent or restrict the further exercise of that, or any other, right or remedy.

## 21 SEVERABILITY

If all or part of these Terms and Conditions infringes any law where this Supplier Quote is issued, it must be read down so that it does not infringe that law, otherwise it will be deemed void and severable.

## 22 ASSIGNMENT AND SUBCONTRACTING

The Purchaser may only assign an order and any rights under the resulting contract with the prior written consent of Supplier, which Supplier may refuse or grant in its absolute discretion. Supplier may appoint sub-contractors to supply Products (or any part thereof) or to provide any part of the Services. Supplier remains liable for the delivery of Products or Services supplied by its authorized subcontractors.

Supplier may assign an Order or any of its rights and obligations hereunder to any related corporation of Supplier.

## 23 NOTICES

All notices to be given under these Terms and Conditions shall be in English and in writing and may be given to the other party by hand delivery, prepaid post or facsimile addressed to the other party at its last known address.

## 24 GOVERNING LAW

The Order and all transactions made under these terms and conditions will be governed by and interpreted in accordance with the laws of the Hong Kong Special Administrative Region of the People's Republic of China. The United Nations Convention on Contracts for the International Sale of Goods will not apply. The Parties may amend, modify, or supplement these terms and conditions only in writing signed by all the Parties. The parties further declare that nothing in these Terms and Conditions, including any Order or SOW issued hereunder, confer or purport to confer on any third party any benefit or any right to enforce any term of these terms and conditions pursuant to the Contracts (Rights of Third Parties) Ordinance (Cap. 623 of the Laws of Hong Kong).

## 25 PERSONAL DATA PROTECTION

USE OF PERSONAL DATA: Any information supplied by Purchaser to Supplier in relation to an Order will be subject to the Privacy Policy and the Personal Data (Privacy) Ordinance (CAP 486). Purchaser hereby consents to Supplier's use of any data supplied by Purchaser for the purpose of processing the Order and for the operation and provision of the Services and other services to be included from time to time. The foregoing consent of the Purchaser shall also extend to the use of such data by Supplier's Associated Companies, affiliates, agents, sub-contractors and third party providers on a need-to-know basis. Purchaser also consents to such data being transferred to another legal jurisdiction outside Hong Kong which may not have laws protecting personal data similar to the said ordinance.

## 26 ANTI-BRIBERY AND CORRUPTION

Supplier complies and will continue to comply with all applicable local and international laws prohibiting the bribery of public officials and private persons. These laws include but are not limited to the US Foreign Corrupt Practices Act and UK Bribery Act. Supplier has put in place and implements reasonable policies and measures to prevent bribery and corruption.

## 27 VENDOR BRANDED SERVICE(S)

Vendor Branded Service(s) resold by Supplier hereunder is subject to the service description and terms and conditions ("Vendor Terms") identified by the applicable third party original manufacturer. Subject to the Purchaser's fulfilment of its payment obligations herein, Supplier's sole responsibility is to purchase the Vendor Branded Service(s) for the Purchaser and pay the third party original manufacturer accordingly, and shall not be held responsible for delivery of the Vendor Branded Service(s).

## 28 SERVICES

Sale and purchase of Services will be governed by additional Supplier terms and conditions ("Additional Supplier Terms and Conditions") applicable to such Services, which shall be available either on Supplier's portal or upon

request to the client representative responsible for the Purchaser's account. In the event of conflict between these terms and conditions and the Additional Supplier Terms and Conditions, the Additional Supplier Terms and Conditions shall prevail and govern. A statement of work ("SOW") will also supplement and form part of a contract. A SOW is an agreement between the Parties specifying the details of a particular transaction, including but not limited to deliverables, fees, scope of work, testing, objectives, and project timelines, as well as any special terms and conditions, requirements or considerations as applicable to the transaction. In the event of conflict between these terms and conditions (or the Additional Supplier Terms and Conditions) and the SOW, these terms and conditions (or the Additional Supplier Terms and Conditions, as the case may be) shall prevail and govern. Except as provided herein, the commencement date of Services purchased by the PURCHASER shall be as mutually agreed in writing between the parties. Where the PURCHASER purchases Uptime Services for certain Products ("Uptime-covered Products"), the following shall apply to the commencement date:

- (a) if the PURCHASER purchases Uptime Services before the Uptime-covered Products are delivered to the PURCHASER, the Uptime Services shall commence upon the delivery of such Uptime-covered Products;  
or
- (b) if the PURCHASER purchases Uptime Services after the Uptime-covered Products have been delivered to the PURCHASER, the Uptime Services shall commence on a date that is mutually agreed in writing between the parties.