

NTT UNITED KINGDOM LIMITED (FORMERLY NTT EUROPE LTD) – GENERAL TERMS AND CONDITIONS OF SUPPLY (English law version)

1 INTERPRETATION

1.1 **Definitions.** In these Conditions, the following definitions apply:

- (a) **Business Day:** means a day other than a Saturday, Sunday or public holiday in England.
- (b) **Charges:** means the payments due by Client in respect of the supply of Equipment and/or Software.
- (c) **Conditions:** means the terms and conditions set out in this document as amended from time to time in accordance with clause 13.10.
- (d) **Contract:** means the contract between Client and NTT for the sale and purchase of Equipment and/or Software in accordance with these Conditions.
- (e) **Client:** means the person or company who acquires the Equipment and/or Software from NTT.
- (f) **Data Protection Legislation:** means any applicable law of the European Union or any of its Member States protecting Personal Data and privacy, including but not limited to Data Protection Act 2018, the GDPR, where applicable the guidance and codes of practice issued by the Information Commissioners Office or other relevant regulatory body and such other equivalent data protection legislation in any other applicable jurisdiction relating to a party.
- (g) **Delivery Location:** has the meaning ascribed to it under clause 3.2.
- (h) **Effective Date:** means the date on which the Contract comes into existence.
- (i) **Equipment:** means any apparatus, equipment, hardware, material or other items (including parts and components) manufactured by a Third Party Provider, which is supplied by NTT to Client.
- (j) **GDPR:** means the Regulation (EU) 2016/679 of 27 April 2016 on the protection of natural persons with regard to the processing of personal data and on the free movement of such data, and repealing Directive 95/46/EC.
- (k) **Intellectual Property Right:** means any intellectual property rights anywhere in the world whether registrable or not, including, without limitation, patents, trademarks, service marks, rights in designs, copyright and related rights, database rights, rights in computer software, topography rights, know-how, moral rights, image rights, business and domain names, rights in trade dress or get-up, rights in goodwill or to sue for passing off or unfair competition, inventions, rights to use, and protect the confidentiality of confidential information (including know-how and trade secrets), in each case whether registered or unregistered, as well as applications for registration of such rights and the right to apply for registrations and be granted, or renewals or extensions of, and rights to claim priority from, such rights, and all equivalent or similar rights or forms of protection which subsist or will subsist now or in the future howsoever arising and in whatever media.
- (l) **License Agreement:** means any license agreement entered into by and between a Third Party Provider and Client for use of a Software.
- (m) **Order:** means any Client order for the Equipment and/or Software, as set out in a purchase order form in the format provided by NTT OR in Client's written acceptance of a NTT's quotation as the case may be, including any specific terms and conditions provided to the Client.
- (n) **Relevant Requirements:** has the meaning ascribed to it under clause 13.2.
- (o) **Software:** means any operating system, utility or applications software manufactured by a Third Party Provider, which is supplied by NTT to Client in machine-readable object, or interpreted form, and either incorporated within the Equipment or separately supplied (including related documentation).
- (p) **NTT:** means NTT Europe Ltd (registered in England and Wales with registered number: 002307625), whose registered office is at 1 King William Street, London, EC4N 7AR, England.
- (q) **Third Party Provider:** means any third party (not being NTT) who manufactures the Equipment and/or Software.

1.2 Construction.

In these Conditions, unless the context requires otherwise, the following rules apply: (a) a person includes a natural person, corporate or unincorporated body (whether or not having separate legal personality); (b) a reference to a party includes its personal representatives, successors or permitted assigns; (c) a reference to a statute or statutory provision is a reference to such statute or provision as amended or re-enacted. A reference to a statute or statutory provision includes any subordinate legislation made under that statute or statutory provision, as amended or re-enacted; (d) any phrase introduced by the terms “including”, “include”, “in particular” or any similar expression shall be construed as illustrative and shall not limit the sense of the words preceding those terms; and (e) a reference to “writing” or “written” includes faxes and e-mails.

2 BASIS OF CONTRACT

- 2.1 These Conditions apply to the Contract to the exclusion of any other standard terms of Client or which are implied by trade, custom, practice or course of dealing.
- 2.2 Any quotations given by NTT shall be valid for the period set out in the relevant quotation but shall not be binding unless and until an Order has been accepted by NTT. Until such date NTT may revise or withdraw any quotation.
- 2.3 The Order constitutes an offer by Client to purchase the Equipment and/or Software in accordance with these Conditions. The Equipment and/or Software to be provided by NTT shall be specified in the Order.
- 2.4 The Order shall be deemed accepted on the earlier of: (a) NTT issuing a written acceptance of the Order; or (b) NTT doing any act consistent with fulfilling the Order, at which point the Contract shall come into existence.
- 2.5 In the event of a conflict between these Conditions and the Order, the Order (and any special conditions stated on that Order) shall prevail.

3 DELIVERY OF EQUIPMENT

- 3.1 Delivery times are estimates only. Delivery delays may in no event result in cancellation of the Order, compensation or late penalties to the benefit of Client.
- 3.2 NTT shall deliver the Equipment (a) to Client's premises or such other location as is set out in

the Order, or as otherwise agreed in writing with Client prior to delivery (Delivery Location); and (b) during Client's normal business hours, or as otherwise agreed with Client prior to delivery.

- 3.3 Delivery of the Equipment shall be completed on the completion of unloading the Equipment at the Delivery Location.
- 3.4 NTT may deliver the Equipment in instalments. Where the Equipment is to be delivered by instalments, they may be invoiced and paid for separately.
- 3.5 Risk in the Equipment, including risk of loss, theft and destruction, shall pass to Client upon completion of delivery. Title in the Equipment shall pass to Client upon complete payment of such Equipment.
- 3.6 No Equipment may be returned without NTT's prior written approval. Any return of Equipment by Client, without NTT's prior written approval, or for other reasons than non-compliance or hidden defects that render it unfit for normal use, will be at Client's sole risks and expense.

4 SUPPLY OF SOFTWARE

- 4.1 Delivery times are estimates only. Delivery delays may in no event result in cancellation of the Order, compensation or late penalties to the benefit of Client.
- 4.2 NTT shall supply the Software as stated in the Order (e.g. URL link, hard media).

5. USE OF EQUIPMENT AND/OR SOFTWARE

- 5.1 In using the Equipment and Software, Client will, and will ensure that any of its authorized users will: (a) comply with any reasonable operating instructions or requirements of NTT and/or Third Party Provider notified to Client and/or authorized users from time to time; (b) comply with all applicable laws; (c) obtain and maintain and comply with or procure with all its permissions, licences, registrations and approvals necessary; (d) not infringe the rights of any third party (including, without limitation, by defamation or by infringement of Intellectual Property Rights); (e) not transmit, store, facilitate the transmission or storage of, or knowingly receive, viruses or other material, which may interrupt or damage the Equipment and/or Software or render the Equipment and/or Software less functional or less effective; (f) not reproduce, disseminate or otherwise disclose the content of any Equipment and/or Software except as expressly set out in the Contract and/or the License Agreement; and (g) not modify, disassemble, decompile, or reverse engineer any Equipment and/or Software except to the extent expressly permitted by applicable law or by NTT or Third Party Provider in writing.

Client shall immediately notify NTT in writing if it becomes aware of any breach of this clause 5. Client is responsible for all use of the Equipment and/or Software and for providing and maintaining its own equipment and/or software necessary in addition to the Equipment and/or Software for connecting to, accessing and using the Equipment and/or Software. Client shall properly train its personnel to a competent standard in the use of the Equipment and/or Software.

5.2 The Contract does not confer any Intellectual Property Rights in the Equipment and/or Software to Client.

5.3 The Software is licensed, not sold. Use of the Software by Client and all its authorized users is subject to the License Agreement only. Client acknowledges that such License Agreement may be in the form of a shrink-wrap or click-wrap license agreement, which shall be accepted by Client. Client warrants that the person accepting the License Agreement is an authorized representative of Client. Client agrees to use the Software in accordance with the License Agreement only and agrees that the Third Party Provider will have the right to enforce the terms of such License Agreement directly against Client despite not being a party to this Contract. Likewise, Client agrees that NTT will have the right to enforce the terms of the License Agreement directly against Client despite not being a party to such License Agreement. A copy of the then current License Agreement, which may be modified by the Third Party Provider from time to time, is set out in Appendix 1 for information purposes only.

6 WARRANTIES AND REMEDIES

6.1 Unless otherwise specified, the Equipment and/or Software is supplied only in accordance with the Third Party Provider's warranty and standard specifications as detailed in the relevant Licence Agreement and/or product literature supplied by NTT or the Third Party Provider.

6.2 Where NTT is not the manufacturer of the Equipment and/or Software, NTT shall use reasonable endeavours to transfer to Client the benefit of any warranty or guarantee given by the Third Party Provider to NTT.

6.3 If any Equipment should prove defective in materials or workmanship under normal operation or service, such Equipment will be repaired or replaced only in accordance with the Third Party Provider's warranty cover and terms, provided that no unauthorised modifications to the Equipment or to the system of which the Equipment forms part have taken place.

6.4 Subject to clause 6.3 NTT will only accept the return of Equipment rejected by Client as not being in accordance with Client's order or its specifications or Third Party Provider's warranty if NTT receives written notification thereof giving detailed reasons for rejection.

6.5 NTT will only accept Equipment for return in its original undamaged packaging complete with any ancillary equipment (including power-packs or attachments) and manuals. Failure to do so may result in NTT refusing to accept the returns or charging a fee in respect of any deficit.

6.6 All Software supplied by NTT is subject to the conditions of the Third Party Provider's licence and warranty. NTT shall use reasonable endeavours to obtain and supply a corrected version from the Third Party Provider concerned in the event that any such Software should fail to conform to its product description as detailed in the Third Party Provider's current product literature and warranty, provided that Client notifies NTT of any such non-conformity within any time period set out in the relevant end user licence.

6.7 NTT will not consider any claim for compensation, indemnity or refund until liability, if any, has been established or agreed with the Third Party Provider and where applicable the insurance company. Under no circumstances shall the invoiced Equipment and/or Software be deducted or set off by Client until NTT has issued a corresponding credit note.

6.8 The warranties given under this clause 6 are the sole warranties and remedies given to Client under the Contract.

7. PRICE AND PAYMENT

7.1 The price of the Equipment and/or Software shall be the price set out in the Order, or, if no price is quoted, the price set out in NTT's published price list in force as at the date the Contract came into existence. The price of the Equipment includes the costs of packaging, insurance and carriage of the Equipment. The Charges are payable in euros, unless another currency is stated in the Order. The recurring Charges are payable monthly, unless another frequency is stated in the Order.

7.2 The Charges are exclusive of amounts in respect of any taxes, such as value added tax (VAT). Client shall, on receipt of a valid invoice from NTT, pay to NTT such additional amounts in respect of taxes such as VAT as are chargeable on the supply of the Equipment and/or Software. Furthermore, the Charges are exclusive of amounts in respect of any maintenance and support services for the Equipment and/or Software, which may be purchased separately from NTT or Third Party Provider.

- 7.3 NTT may invoice Client for non-recurring Charges on or at any time after the completion of delivery of the Equipment and/or Software pursuant to applicable law. In respect of recurring Charges, NTT shall invoice Client in monthly instalments on or around one (1) month in advance of each month, or as otherwise stated in the Order.
- 7.4 Client shall pay correctly rendered invoices within thirty (30) days of issuance of the undisputed invoice, or as otherwise stated in the Order.
- 7.5 7.5 If Client fails to make any payment due to NTT under the Contract by the due date for payment ("Due Date"), then Client shall pay interest on the overdue amount at the rate of 3% per annum above Barclay's Bank PLC base rate from time to time. Such interest shall accrue on a daily basis from the Due Date until the date of actual payment of the overdue amount, whether before or after judgment. Client shall pay the interest together with the overdue amount. This clause shall not apply to payments Client has disputed in good faith by giving notice in writing to NTT setting out the grounds for such invoice dispute.

8 INTELLECTUAL PROPERTY

- 8.1 All Intellectual Property Rights used by NTT in the provision of or pertaining to the Equipment and/or Software shall remain the property of NTT, the Third Party Provider and/or any third party licensors of such Intellectual Property Rights.
- 8.2 Client shall not infringe the Intellectual Property Rights of NTT, Third Party Provider and/or any third party licensors of such Intellectual Property Rights, nor may Client copy, modify or translate the Intellectual Property Rights of NTT, Third Party Provider and/or third party licensors, or decompile, disassemble or reverse engineer it, or use it, or grant any other person or entity the right to do any of the foregoing, except to the extent applicable law and/or the License Agreement specifically permits to do so.
- 8.3 If a third party claims that the use of the Equipment and/or Software by Client or any of its authorized users, in breach of the Contract or the License Agreement, infringes any Intellectual Property Right, Client will defend and hold NTT harmless against such claim at Client's expense and Client shall pay all costs, fees, liabilities, losses and/or damages of any nature that a court finally awards, or incurred or paid by NTT, provided that: (i) NTT promptly notifies Client of the claim when NTT learns of the claim of the third party; and (ii) cooperates with Client in the defence and provides the relevant materials as reasonably required.

9. INSURANCE AND LIMITS OF LIABILITY

- 9.1 **Insurance.** During the term of the Contract, each party shall maintain in force, with a reputable insurance company, professional indemnity insurance, product liability insurance and public liability insurance to cover such heads of liability as may arise under or in connection with the Contract, and shall, on the other party's request, produce both the insurance certificate giving details of cover and the receipt for the current year's premium in respect of each insurance.
- 9.2 **Liability.**
- 9.2.1 Neither party shall in any circumstances exclude or limit its liability for: (i) death or personal injury caused by its negligence; and/or (ii) fraud or fraudulent misrepresentations; and/or (iii) any other events or circumstances to the extent that they that cannot be lawfully limited or excluded under law.
- 9.2.2 NTT shall not be liable to Client, whether in contract, tort (including negligence), breach of statutory duty, or otherwise, for any for any consequential, indirect and/or special damages or losses of whatever nature howsoever arising, and any loss of profit, loss of revenue, loss of business, loss of opportunity, loss of reputation, loss or corruption of data, loss of anticipated savings, and/or loss of goodwill (whether such losses are deemed direct or indirect).
- 9.2.3 The Parties' Contractual Liability to the other shall not exceed the value of the charges paid or payable by Client to NTT under the relevant Order during the previous twelve (12) months of the relevant Order. "Contractual Liability" means the total maximum aggregate liability howsoever arising under or in relation to the subject matter of this Contract that is not: (i) unlimited by virtue of clause 9.2.1, and/or (ii) limited or excluded pursuant to clause 9.2.2.
- 9.3 Where applicable law does not allow the exclusion or limitation of liability so that the above limitations or exclusions may not apply, NTT's liability in respect of the liability that had been purported to be limited or excluded shall be limited to the greatest extent permitted by applicable law.

10. CONFIDENTIAL INFORMATION

A party (**receiving party**) shall keep in strict confidence all information (whether marked as confidential or which may reasonably be supposed to be confidential by its nature), including technical or commercial know-how, inventions, processes or initiatives, which are disclosed to the receiving party by the other party (**disclosing party**), its employees, agents or subcontractors, and any other confidential information concerning the disclosing party's business, its products or its services which the receiving party may obtain. The receiving party shall only disclose such confidential information to those of its employees, agents or subcontractors who need to know the same for the purposes of the Contract, and shall ensure that such employees, agents or subcontractors shall keep such

information confidential. For the avoidance of doubt, confidential information of Client shall include any information about or disclosed by any of NTT's affiliates or Third Party Providers. This clause 10 shall survive termination of the Contract for as long as the disclosing party has an interest in keeping information as confidential and in any event for at least five (5) years after termination of the Contract.

11. TERM AND TERMINATION

11.1 **Equipment.** Without prejudice to any other rights or remedies to which it may be entitled, NTT may terminate the Contract with immediate effect, in whole or in part, at any time by giving written notice to Client if Client is in breach of its payment obligation under the Contract and has failed to remedy it within thirty (30) days of receipt of the prior formal notice requiring it to do so. No Equipment may be returned without NTT's prior written approval. Client shall return the Equipment at its own risks and expense.

11.2 **Software.**

11.3 The Contract is entered into for the duration set out in the Order.

11.4 Without prejudice to any other rights or remedies to which the parties may be entitled, either party may terminate the Contract, in whole or in part, at any time with immediate effect by giving written notice to the other party:

(a) if the other party is in material breach of any of its obligations under the Contract (which means that the breach is sufficiently serious to merit termination, such as a breach of clauses 5, 8, 10 and 13) which is not remediable, without prior formal notice, or, if it is remediable, the breaching party has failed to remedy it within thirty (30) days of receipt of the prior formal notice requiring it to do so;

(b) if the other party ceases to do business, becomes unable to pay its debts as they fall due, becomes or is deemed insolvent, has a receiver, manager, administrator, administrative receiver or similar officer appointed in respect of the whole or any part of its assets or business, makes any composition or arrangement with its creditors, takes or suffers any similar action in consequence of debt or an order or resolution is made for its dissolution or liquidation (other than for the purpose of bona fide solvent amalgamation or reconstruction), or any equivalent or similar action or proceeding is taken or suffered in any jurisdiction, to the fullest extent permissible by applicable law.

11.5 NTT may also terminate the Contract, in whole or in part, at any time, by giving written prior notice to Client, in case of termination of NTT's agreement with the Third Party Provider, without liability to Client.

11.6 Termination by either party will not affect the rights of Client under the applicable License Agreement. Following termination of the Contract, the Third Party Provider will continue to license the Software to Client in accordance with such License Agreement, and will directly invoice and receive payments from Client.

11.7 Termination of the Contract, however arising, shall not affect any of the parties' rights and remedies that have accrued as at termination. Clauses which expressly, or which it is contemplated from their nature or context that they are to survive termination of the Contract shall continue in full force and effect.

12. FORCE MAJEURE

Neither party shall be liable to the other for any delay or failure in performing its obligations under the Contract (other than a payment obligation) to the extent that such delay or failure is caused by an event or circumstance that is beyond the reasonable control of that party, and which by its nature could not have been foreseen by such party or, if it could have been foreseen, was unavoidable, provided that the affected party shall use all reasonable endeavours to cure any such events or circumstances and resume performance under the Contract. The affected party's obligations under the Contract shall be suspended while the force majeure event continues. If the force majeure event continues for more than thirty (30) days, either party may terminate the Contract by giving no less than fourteen (14) days' written notice to the other party, without liability to the other party.

13. GENERAL

13.1 **Assignment and subcontracting.** Neither Party may assign, transfer, charge, subcontract or deal in any other manner with any or all of its rights or obligations under the Contract ("**Transfer**") without the other Party's prior written consent, save where such Transfer is to an affiliate of the transferring Party in which case the transferring Party shall inform the other Party in writing about such Transfer as soon as possible.

13.2 **Anti-Bribery.** Each party shall (a) comply with all applicable laws, statutes, regulations and codes relating to anti-bribery and anti-corruption in the relevant country including but not limited to UK's Bribery Act 2010 (**Relevant Requirements**); (b) not engage in any activity, practice or conduct which would constitute an offence under sections 1, 2 or 6 of UK's Bribery Act 2010 if such activity, practice or conduct had been carried out in the UK; and (c) have and shall maintain in place their own policies and procedures, to seek to ensure compliance with the Relevant Requirements.

13.3 **Modern Slavery.** Each party shall comply with all applicable laws, statutes, regulations and codes relating to anti-slavery and anti-trafficking in the relevant country including but not limited to UK's Modern Slavery Act 2015 as amended from time to time. Each party shall implement due diligence procedures for its own NTTs,

Clients, subcontractors and other participants in its supply chains, to ensure that there is no slavery or human trafficking in such chains. Each party represents and warrants that at the Effective Date neither it nor any of its officers, employees or other persons associated with it: (a) has been convicted of any offence involving slavery and human trafficking; and (b) to the best of its knowledge, has been or is the subject of any investigation, inquiry or enforcement proceedings by any governmental, administrative or regulatory body regarding any offence or alleged offence of or in connection with slavery and human trafficking.

13.4 **Data Protection Legislation.**

- (a) Each party shall comply with the Data Protection Legislation to the extent applicable to it. The parties agree to enter into such additional data processing agreements as may be required in order to be compliant with such Data Protection Legislation, such as without limitation data processing contractual clauses and/or Standard Contractual Clauses/EU Model Clauses.
- (b) Each party is a data controller in relation to the processing of personal data that it processes for the following purposes: (i) accounting, bookkeeping and billing purposes, (ii) claim management, (iii) management and governance of Client/NTT relationship and (iv) provision, operation, development and promotion of the Equipment and/or Software. Given that neither party acting as a data controller has any direct contractual relationship with the data subjects working for and on behalf of the other party, such other party agrees to carry out such data controller's obligations under the applicable Data Protection Legislation towards the data subjects. In this respect, the other party shall (i) take reasonable steps to ensure that the personal data that it provides to the data controller is accurate, complete and current, (ii) ensure that the data subjects are properly informed in accordance with applicable Data Protection Legislation, (iii) develop and implement appropriate procedures for timely handling of complaints or requests by the data subjects to exercise their access or other rights under Data Protection Legislation and for cooperating with the data controller in the event the data controller receives such requests directly from any data subject and (iv) at all times comply with the applicable requirement of Data Protection Legislation and procure that the data subjects comply with all the applicable requirements of Data Protection Legislation.

13.5 **Notices.** All notices which are required to be given under these Conditions shall be in writing and shall be sent to the address of the recipient set out in these Conditions or such other address as the recipient may designate by notice given in accordance with this clause 13.5. Any such notice may be delivered personally, by first class pre-paid letter (airmail if overseas), by electronic mail or facsimile transmission.

13.6 **Severance.** If any part of the Contract is held unlawful or unenforceable that part shall be struck out and the remainder of this Contract shall remain in effect.

13.7 **Waiver.** No delay, neglect or forbearance by either party in enforcing its rights under the Contract shall be a waiver of or prejudice those rights.

13.8 **Third Party rights.** A person who is not a party to the Contract shall not have any rights under or in connection with it.

13.9 **Entire Agreement.** The Contract constitutes the entire agreement and understanding between the parties with respect to its subject matter and supersedes any prior agreement, understanding or arrangement between the parties whether oral or in writing (including, but not limited to, any terms and conditions set out in any purchase order or other documentation issued by either party) with regard to its subject matter. For the avoidance of doubt, the Contract does not supersede any confidentiality or non-disclosure agreement entered into by the parties prior to the date the Contract came into existence for the purpose of evaluating a possible business relationship and entering into a business relationship (including entering into the Contract), which shall remain in force until terminated pursuant to such agreement.

13.10 **Variation.** Except as set out in these Conditions, any variation to the Contract, including the introduction of any additional terms and conditions, shall only be binding when agreed in writing and signed by authorized representatives of both parties.

13.11 **No Partnership or agency.** Nothing in the Contract is intended to, or shall be deemed to, establish any partnership or joint venture between any of the parties, constitute any party the agent of another party, or authorise any party to make or enter into any commitments for or on behalf of any other party. Each party confirms it is acting on its own behalf and not for the benefit of any other person.

13.12 **Governing law and jurisdiction.** The Contract, and any dispute or claim arising out of or in connection with it or its subject matter or formation (including non-contractual disputes or claims), shall be governed by, and construed in accordance with the laws of England and Wales, and the parties irrevocably submit to the exclusive jurisdiction of the courts of England.

The parties hereby acknowledge having read and understood the Conditions herein and agree to be bound by them.

Signed for and on behalf of Client:

(duly authorized for the purposes hereof)

Date:

Client name:

Registered address:

Registration and VAT numbers:

Signed for and on behalf of NTT:

(duly authorized for the purposes hereof)

Date: