

## NTT Switzerland SA Standard Terms and Conditions

Quoted prices typically include indicative VAT but don't include irrecoverable withholding taxes.

Please submit your order to: [svc.eu.ch.clientpo@global.ntt](mailto:svc.eu.ch.clientpo@global.ntt)

Please note that our company name changed from "Dimension Data SA (Switzerland)" to "NTT Switzerland SA" as of 01.10.2019. Address, VAT number and bank details remain unchanged.

If you have any questions, please call us on +41 21 631 0000 or write to [CH.Finance@global.ntt](mailto:CH.Finance@global.ntt).

### 1 Introduction

1.1 The terms and conditions provided in this document shall apply as between NTT and the Customer in all agreements for the sale or licensing of products or the provision of services or for any quotation or proposal in relation to the sale or licensing of products or the provision of services; unless specifically agreed between the parties, in writing, that the sales or licensing of products or provision of services will be subject to any master services agreement, master supply agreement or any other agreement already entered into or to be entered into between the parties. If the aforementioned agreement is still to be entered into between the parties, these standard terms and conditions shall govern the relationship between the parties until the aforementioned agreement is formally executed.

### 2 Offers and Orders

- 2.1 These Terms and Conditions apply to all contracts relating to the sales or licensing of Products and Services rendered or to be rendered, whether or not such sales or services are rendered pursuant to orders received by telephone, fax, e-mail, orders placed on NTT's ordering tool or orders placed with NTT's agents or representatives on its behalf, and supersede any terms and conditions specified by the Customer or contained in any Customer documentation.
- 2.2 All and any contracts for the sale of licensing of products and for the provision of services shall be constituted only upon confirmation in writing by NTT of an order placed by the Customer.
- 2.3 The contract is deemed to have been concluded on the basis of these Terms and Conditions or on the basis of amendments to these terms and conditions specified on the order confirmation unless an objection is made by registered letter within five days of receipt of the order confirmation.

### 3 Prices

- 3.1 All quotations given by NTT shall be valid for 30 (thirty) days unless otherwise specified in such quotation, and are based upon duties, levies, surcharges, and taxes in effect as of the date of quotation.
- 3.2 All prices quoted for products and services are exclusive of VAT or any other applicable taxes, insurance costs, delivery charges or duties of any kind that shall be paid in addition to the prices for the products and services unless stated otherwise.
- 3.3 For the products and services that contain a currency component which is not the local currency NTT reserves the right to adjust the final price in relation to the currency fluctuation between the local currency and the other currencies. Adjustments due to the exchange rate fluctuation will be calculated at the time NTT receives the order from the Customer.
- 3.4 The provision of services for which the price was not decided before execution shall be performed on a time and material basis and invoiced according to the applicable price list at the date of performance. In case of performance outside the regular working hours an increase in the basis hourly rate shall be applied according to following scale :
- Monday to Friday from 17:30 to 24:00 + 50%
  - Monday to Friday from 24:00 to 08:00 + 100%
  - and at weekend and public holidays + 100%

### 4 Order cancellation

4.1 Orders, after acceptance, may not be cancelled by the Customer in whole or in part or varied by the Customer in any manner whatsoever, unless agreed to by NTT in writing, whereupon the Customer shall be liable to pay NTT a cancellation or variation fee amounting to 15% (fifteen percent) of the total order placed by such Customer.

## 5 Delivery

- 5.1 Estimated lead times for delivery or any date or time for quoted by NTT to deliver products is a good faith estimated only unless agreed otherwise in writing.
- 5.2 NTT has the right to deliver and invoice partial shipments.
- 5.3 The Customer shall provide all information necessary for NTT to deliver the products to the Customer's delivery site.
- 5.4 NTT shall not be required to deliver any products or render any services to the Customer for so long as the Customer is in arrears with any payment owing to NTT from any cause. In the event of the Customer committing an act of insolvency, or being placed under provisional or final administration, judicial management, liquidation or sequestration, NTT reserves the right to cancel any contract or order and to cease further deliveries of products and performance of services.

## 6 Invoicing

- 6.1 Except otherwise agreed in writing products are invoiced upon delivery, services upon delivery and at the latest, once per month, maintenance services yearly in advance.

## 7 Return Policy

- 7.1 The Customer's warranty right to return products is subject to the return policies and procedures defined by the applicable manufacturer and NTT.
- 7.2 No claim in respect of shortages or damage to products sold or licensed shall be entertained unless made in writing and received by NTT within 7 (seven) days from the date of delivery of the products. In the event of material defects or shortages in products proved to NTT's satisfaction, and upon being properly notified, NTT shall, at its option and provided that NTT is able to receive the same undertaking or commitment from the manufacturer :
- either exchange the products for similar products; or
  - take back such products and refund the purchase price and/or licence fees therefore.
- 7.3 All products being returned to NTT for whatever reason require a Return Material Authorisation (RMA) which must accompany the returned items.
- 7.4 Returned products must be in the original shipping cartons, undamaged, unused and unaltered. Opened Software that is not part of a returned product is not returnable.
- 7.5 Customer shall return all failed products that have been advanced replaced within 10 business days of receipt of the replacement product; otherwise the advanced replacement products will be invoiced to the customer at the current list price.

## 8 Transfer of risk and ownership

- 8.1 All risk in and to the products shall pass to the Customer upon delivery thereof. Unless otherwise agreed in writing, delivery will occur when the products are handed over to a Customer representative at the Customer's designated address specified in the Customer's purchase order.
- 8.2 Notwithstanding any thing to the contrary herein contained, ownership in and to the products sold shall only pass to the Customer upon the full purchase price therefore having being paid and received by NTT. Ownership in any software licensed to the Customer shall remain with NTT or its licensors.

## 9 Terms of payment

- 9.1 Unless otherwise agreed in writing between NTT and the Customer, the Customer shall make payment in full, free of any withholdings taxes, duties, levies, surcharges, exchange fees or other costs to NTT within 30 (thirty) days of the date of invoice.
- 9.2 NTT may charge interest at Euribor base rate plus 4% (four percent) on all invoices that are overdue for payment. The Customer will pay any collection or legal fees incurred by NTT in settling any past due invoices.
- 9.3 In the event of the Customer failing to effect payment of the invoiced amount 7 (seven) days from date of written demand for such payment, NTT shall be entitled, at its option, and notwithstanding any indulgence or relaxation granted to the Customer, to cancel the contract of sale or licensing of products or provision of services and reposes any products, software or the balance thereof. The exercise of NTT's rights under this clause shall be without prejudice to any of NTT's rights and remedies at law.

## 10 Professional Services

- 10.1 If any products are installed or are to be installed or services are provided or are to be provided at the Customer's premises, the following shall apply:
- 10.1.1 the Customer shall ensure that NTT is given reasonable access to those premises during reasonable hours for that purpose;
- 10.1.2 whilst NTT will take all reasonable precautions to prevent damage to the Customer's premises, NTT shall not be responsible or liable therefore;
- 10.1.3 the Customer shall ensure that the premises are suitably equipped and comply with all NTT's and/or manufacturer's specifications and requirements including (without limitation), size, power points, lighting and dust free environment;
- 10.1.4 the Customer shall at the Customer's own expense obtain all necessary consents, permits, licences and/or other authorities from the owner of the premises, telecoms provider/s, governmental, municipal, local or other competent authorities and others whose permission is or may be necessary for the installation or use of the products or provision of the services. NTT does not warrant or represent that any such consents, permits, licenses or other authorities will be granted and a failure to obtain any one or other of the same shall not invalidate any order accepted by NTT.
- 10.2 NTT will use its reasonable endeavours to perform the services by the date agreed but will not be liable for any delays in performance caused by matters beyond its control.
- 10.3 Acceptance: unless the Customer gives NTT written notice of any aspect of the services performed which is alleged by the Customer to not be in conformance with these Terms and Conditions or any applicable specifications, within 7 (seven) days of the date of performance of those services, then the Customer is deemed to have accepted those services on performance. Where the Customer puts a deliverable to commercial use, it is deemed to have accepted that deliverable and the services performed in relation to that deliverable on the first day of such use, whether or not a notice of the kind contemplated by this clause is given to NTT as required.

## 11 Managed Services

- 11.1 NTT Managed Services such as but not limited to maintenance will be supplied based on the service level agreement signed with the Customer.
- 11.2 Any third-party maintenance or support services resold by NTT, including but not limited to Cisco Smartnet, are subject to the terms and conditions for such services direct from the provider. NTT is not a party to any such third-party terms and conditions.
- 11.3 Maintenance, Managed and Support Services (including services similar in nature) commence once the deployment process is completed. Unless otherwise agreed up to 45 days should be allowed for the deployment process to be completed, which includes time for manufacturers and third parties to complete their deployment. Within the 45 days, we may provide services on a reasonable endeavours basis, where possible.

## 12 Obligation to Cooperate

- 12.1 The Customer acknowledges that services that are the subject of the agreement provided by NTT depend upon the observance of all obligations to cooperate both with reference to specific skills and knowledge necessary to use the product as well as to time.
- 12.2 All forms of delay that are the outcome of delayed, non-existent or inadequate cooperation that lie within the responsibility of the Customer are not the responsibility of NTT. Any additional costs and outlay resulting from this situation shall be borne by the Customer.

## 13 Subcontracting

- 13.1 NTT shall be entitled to employ sub-contractors to provide products and/or all or any portion of the services.

## 14 Warranty

- 14.1 Where the manufacturer or licensor ("Manufacturer") of products sold or licensed to the Customer provides warranties to NTT, NTT will pass such warranties onto the Customer, with equivalent disclaimers and limitations of liability, in respect of such products.
- 14.2 Where the manufacturer provides a life time warranty on specific products, NTT will apply a cost of 350. - CHF for any RMA case implying such products. This forfeit covers only the administrative time effort to treat a RMA. And this beyond the first year of warranty and onwards.

- 14.3 Save as aforesaid, NTT gives no warranties or undertakings to the Customer whatsoever with regard to products or services, and all implied or residual warranties, including without limitation, the warranties of 'fitness for a particular purpose' and 'merchantability' are hereby disclaimed and excluded.
- 14.4 In all cases, the warranty is confined to repair or replacement of the defective items.
- 14.5 The warranty does not cover damage caused by incorrect use of the equipment or damage caused by the peripherals.
- 14.6 No warranty is given on software unless otherwise indicated.

## **15 Intellectual property rights and prohibition of re-exportation**

- 15.1 The Customer gives an express undertaking to respect intellectual property rights, as well as rights of use protected by copyrights owned by NTT as well as the manufacturer of the relevant product at all times. In particular where there has been transfer of software the Customer shall utilize it only to the extent specified licensing regulations relating to that particular software and derived from the applicable legal regulations.
- 15.2 The Customer undertakes not to re-export any equipment purchased from NTT without the formal authorization of the company.

## **16 General**

- 16.1 NTT shall not be liable for any failure to fulfil its obligations where such failure is due to circumstances beyond its reasonable control.
- 16.2 Any variations to these Terms and Conditions shall be in writing.
- 16.3 If any provision of these Standard Terms and Conditions is found by any court of competent jurisdiction to be invalid, unlawful or unenforceable, such provision shall not invalidate the remaining provisions of these Standard Terms and Conditions
- 16.4 No waiver or abandonment by either party of any of its rights in terms of these Standard Terms and Conditions, shall be binding on that party, unless such waiver or abandonment is in writing and signed by the waiving party.

## **17 Non solicitation**

- 17.1 The Customer shall not during the contract and for a period of 6 (six) months thereafter, directly or indirectly solicit or entice away or endeavour to solicit away any employee of NTT engaged in the provision of the Product and/or the Services of any other related services supplied by NTT to the Customer.

## **18 Law, Jurisdiction and Language**

- 18.1 These Standard Terms and Conditions shall be governed and construed in accordance with the laws of Switzerland.
- 18.2 Any dispute derived from or relating to the contractual relationship between NTT and the Customer shall be subject to the exclusive jurisdiction of the Courts of Lausanne.
- 18.3 In case of difficulty to interpret the present Terms and Conditions translated in foreign languages the English version shall be sole binding.