

Terms and Conditions of Supply

1. Application of these terms

- 1.1 Unless the quotation and the purchase order issued in respect of the quotation specify that they are subject to a separate contract signed by the parties, these terms and conditions apply to the quotation and any purchase order issued in respect of it.

2. Supply of goods, services and software

- 2.1 NTT Australia Pty Ltd (ACN 003 371 239) (“**NTT**”) agrees to supply goods and/or software (“**Products**”) and/or services (“**Services**”) to the recipient of the quotation (“**Client**”) on these standard terms and conditions (“**Terms**”).

3. Support and maintenance services

- 3.1 If the quotation includes hardware maintenance and support services to be performed by NTT, the supply of the services will be on NTT’s Uptime® terms and conditions which are available at the following URL: <https://hello.global.ntt/-/media/ntt/global/legal/australia/uptime-terms.pdf> under the heading “Support” or available upon request from NTT.
- 3.2 If the quotation is for support services to be supplied by a third party, the supply of those services will be on the third party’s terms and conditions which are as published by the third party or available upon request from NTT.
- 3.3 Acceptance of the quotation constitutes acceptance of those terms and conditions for any quoted hardware maintenance services, unless a written contract is signed by the parties

4. Staff augmentation (labour hire) services

- 4.1 If the quotation includes a quotation for labour hire services, the supply of those services will be on NTT’s Staff Augmentation terms and conditions which are available at the following URL: <https://hello.global.ntt/-/media/ntt/global/legal/australia/staff-augmentation.pdf> . Acceptance of the quotation constitutes acceptance of those terms and conditions for any quoted staff augmentation services, unless a written contract is signed by the parties.

5. As a Service

- 5.1 If the quotation is for ‘as a Service’ supplied by a third party, NTT is acting as reseller only and the resell of those services will be subject to the terms of service issued or published by the relevant third party supplier(s) (“Supplier Terms”). These are published by the third party(ies) or supplied by NTT upon request. Acceptance of the quotation by the issue of a purchase order constitutes acceptance of the Supplier Terms. By accepting the Supplier Terms, the Client acknowledges that it has read and agrees to such terms, and has completed any further investigations and information gathering research, as it sees fit, into the services.
- 5.2 The quotation will provide specific stock keeping units (SKUs) which identify the services to be supplied.
- 5.3 The Client agrees that it is responsible, and not NTT, for managing its use of the services including recording and tracking its use against the usage amounts quoted by NTT in its quotation. The Client agrees that it may incur additional overage and/or excess fees, including exchange rate adjustments, for a particular period for any usage above what NTT quoted and the Client purchased pursuant to a purchase order. In this instance, NTT will invoice the Client, and Client agrees to pay such fees when applicable.
- 5.4 For the purposes of this clause 5, the Client will issue one purchase order and NTT will invoice against that purchase order unless a subsequent purchase order is provided.
- 5.5 If the original purchase order has been exhausted, or where there may be additional consumption/overage charges above the original purchase order value, the Client must issue a new purchase order. The purchase order must be delivered to NTT at least 45 days prior to subscription auto-renewal date or within 7 days of being notified in writing of usage / overage charges. Unless NTT receives notice of termination or a new purchase order NTT will continue to invoice the Client referencing the original purchase order number.
- 5.6 There shall be no early termination or cancellation for convenience within the minimum commitment term.
- 5.7 For auto-renewable services, the Client must notify NTT in writing at least 45 days prior to renewal if they wish to cease the service. Cancelled services cannot be re-activated.

6. Software

- 6.1 If the quotation is for software or hardware supplied by a third party, NTT is acting as a reseller only and the resell of the hardware and/or software (as applicable) will be subject to the end user licence agreement or other vendor terms issued or published by the relevant third party supplier(s) ("EULA"). These are published by the third party(ies) or supplied by NTT upon request. Acceptance of the quotation by the issue of a purchase order constitutes acceptance of the EULA. By accepting the EULA, the Client acknowledges that it has read and agrees to such terms, and has completed any further investigations and information gathering research, as it sees fit, into the hardware and/or software.

7. Purchase orders

- 7.1 Any amendments to purchase orders for Products or Services must be approved by NTT in writing to be effective. Only these Terms (and not other terms and conditions which may be attached to or incorporated in a purchase order) form part of the agreement between the parties. Acceptance of a purchase order by NTT will not be acceptance of any such terms or conditions.

8. Taxes and GST

- 8.1 Although the quoted price might exclude GST, the total amount payable to NTT includes taxes, duties and government charges imposed or levied in Australia in connection with the supply of the Products and Services. The Client is liable for any new or varied taxes, duties or charges imposed subsequent to NTT's quotation or proposal or in respect of the supply of the Products and Services.
- 8.2 The client must pay any GST payable in connection with the supply and NTT will issue a valid tax invoice where GST is to be recovered.

9. Payment

- 9.1 Products will be invoiced on delivery (or part delivery in accordance with clause 13.1) to:
- (a) the nominated delivery address, unless 9.1(b), 9.1(c) or 13.2 applies; or
 - (b) NTT's staging facilities where Services are to be performed on the Products; or
 - (c) NTT's storage warehouse where NTT is to store the Products in accordance with the Client's instructions, before shipment to the Client's designated delivery address.
- 9.2 Services will be invoiced at the end of each month and on completion or as otherwise prescribed in the documents describing the Services to be supplied.
- 9.3 For Clients who have approved credit terms, payment terms are strictly 30 days from the date of invoice.
- 9.4 For Clients who do not yet have approved credit terms, payment terms shall be:
- (a) for Goods - cash on delivery; and
 - (b) for Services – payment must be made in advance.
- 9.5 Any discount which NTT may have granted to Client is forfeited by Client if payment is not made to NTT by the due date. Payment of undisputed amounts must not be withheld pending the settlement of any claims or disputes.

10. Price adjustments

- 10.1 Prices quoted are valid for 30 days from the date of the quotation unless otherwise specified in the quotation. If Products or Services are purchased by NTT in a foreign currency (or if the price for them is subject to adjustment in accordance with exchange rate movements), NTT may adjust the price of those Products or Services after receipt of an order to take account of any change in the exchange rate (as quoted by the ANZ Bank) which occurs between the quotation date and the date of invoice to the client.

11. Interest

- 11.1 Any amount not paid on the due date for payment will carry interest from that date until payment is made in full at the rate being 2 percentage points above the overdraft rate charged on overdraft accounts over \$100,000 by the Commonwealth Bank of Australia from time to time.

12. Warranty

- 12.1 NTT makes no warranty in relation to the Products or Services other than as contained in these Terms or as prescribed by a law which cannot be excluded or in the case of Products, as provided by the Products' respective manufacturers as made known to the Client in the documents supplied by NTT or the manufacturer or as otherwise published or made known to the Client.
- 12.2 Defects in Products will be rectified in accordance with the manufacturer's warranty.
- 12.3 Defects in Services reported to NTT within 30 days of performance of the Service will be rectified by NTT at no charge to the Client.
- 12.4 NTT will not provide claimed warranty services for defects or deficiencies in Products or Services which are caused by:
- (a) external causes including natural disaster, fire, accident, neglect, misuse, vandalism, water, lightning, power surge or spike;
 - (b) the use of a Product for other than its intended purpose;
 - (c) the use with or connection of a Product to items not approved by NTT;
 - (d) the performance of maintenance or attempted repair by persons other than NTT or as authorised by NTT;
 - (e) changes made to the deliverables created by performance of the Services or to the operating environment;
 - (f) the relocation of Products by the Client; or
 - (g) configuration or reconfiguration by the Client of the Products or other equipment with which the Products interface.

13. Delivery

- 13.1 NTT will use its reasonable endeavours to deliver Products or Services to the Client by the date agreed but will not be liable for any delays in delivery caused by matters beyond its control. Freight charges incurred by NTT in delivering Products to the Client will be invoiced to the Client at cost unless quoted otherwise. Should there be a delay in the delivery of any Products, the parties agree that NTT may part-deliver the Products which are available.
- 13.2 If the Client fails to take delivery of Products on any scheduled delivery date, the Client shall be deemed to have accepted those Products and NTT will invoice the Client for those Products which are available to be shipped. The Purchaser agrees to reimburse NTT for any reasonable administration, insurance and storage costs incurred by NTT in attempting to deliver Products to the Client and these costs will be added to the invoice.
- 13.3 For each undelivered Product described under clause 13.2, the Client agrees that:
- (a) it has made a fixed commitment to purchase the Products;
 - (b) on failure to take delivery, risk in the Product passes to the Client;
 - (c) the Client has requested that NTT hold the Products on a bill and hold basis for legitimate business purposes;
 - (d) if no delivery date is determined at the time of billing, NTT shall have the right to ship the Products to the Client within 3 to 6 months at NTT's discretion; and
 - (e) the Client will be responsible for any decrease in market value of the Products caused by matters beyond NTT's control that arise during the period NTT holds the undelivered Products.
- 13.4 Within 10 days following a written request from NTT, the Client must provide NTT with a letter confirming each of the items (a) to (e) in clause 13.3 for each batch of undelivered Product.

14. Acceptance

- 14.1 Unless the Client gives NTT written notice of any aspect of a deliverable which is alleged by the Client to be otherwise than in accordance with these Terms or any applicable specifications, within 7 days of the date of delivery of that deliverable, the Client is deemed to have accepted that deliverable on delivery (or the Client's failure to take delivery as set out under clause 13.2 and 13.3). If the Client puts a deliverable to commercial use, it is deemed to have accepted 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.

15. Returns

- 15.1 Products can only be returned if the return is authorised by both the relevant third party supplier and NTT. The Products must be returned in the same condition as delivered by NTT and NTT reserves the right to charge the Client for any costs or losses incurred by NTT if Products which are not faulty are returned.

16. Risk

- 16.1 Risk of loss, theft, damage, deterioration or destruction of Products passes to the Client upon the earlier of:
- delivery to the Client (or the Client's failure to take delivery as set out under clause 13.2 and 13.3);
 - the taking of possession by the Client; and
 - delivery to any carrier contracted to the Client for delivery to the Client.

17. Title

- 17.1 Until the Products have been paid for in full, they remain the property of NTT. If the Client fails to pay any moneys to NTT when due, NTT may immediately without notice or demand enter upon the Client's premises and take possession of the Products. This right is without prejudice to any other rights that NTT may have. Title in software products does not pass to the Client.

18. Client's authority and acknowledgements (Security Testing Services)

- 18.1 In this clause 18, "**Security Testing Services**" means controlled electronic probing of hardware and software in the form of either a vulnerability assessment or an ethical penetration test.
- 18.2 If NTT is supplying Security Testing Services, the Client authorises NTT to:
- provide the Security Testing Services;
 - do all things necessary to provide the Security Testing Services and to discharge its obligations; and
 - access data or software on the relevant system, where required to properly perform the Security Testing Services.
- 18.3 The Client acknowledges that, in providing the Security Testing Services, NTT might:
- circumvent access controls or access protected data;
 - inadvertently modify, alter, corrupt, erase or destroy data or software stored on or accessible through the system; or
 - interfere with, disrupt, interrupt or obstruct the relevant system or the Client's business or operations; and
 - for the avoidance of any doubt, the Client authorises NTT to do all such acts consistent with the Statement of Work in relation to the provision of the Security Testing Services.
- 18.4 The Client acknowledges that the security of the relevant system is and will remain the responsibility of the Client.
- 18.5 The Client acknowledges that the information contained in any security-related report supplied by NTT is sensitive and confidential information and that it should be kept secure at all times.
- 18.6 If the consent, approval or authority of a person other than the Client is required in order for NTT to provide the Security Testing Services lawfully and without infringing the rights of any person, the Client warrants that it will obtain that consent, approval or authority before NTT commences to provide that part of the Security Services for which the consent, approval or authority is required.

19. Confidentiality

- 19.1 NTT and the Client agree that they will keep at all times as strictly confidential any confidential information that is disclosed or provided by one party to the other. In this clause, “**confidential information**” means information in any form but does not include information that is already in the public domain at the time that it is disclosed or becomes part of the public domain otherwise than as a result of an unauthorised disclosure by NTT or the Client.
- 19.2 NTT may disclose the confidential information to those of its officers, employees and advisers and to any relevant subcontractor or third-party OEM, licensor, or service provider (including those based offshore) used in the performance or administration of the Agreement, on a need-to-know basis only and subject to sufficient obligations of confidentiality with such parties.

20. Intellectual property

- 20.1 The Client acknowledges that, unless otherwise agreed in writing, all intellectual property rights attaching to the Products or arising out of the provision of Services are and will remain the property of NTT (or its supplier, where such rights are owned by that supplier). Software will be licensed to the Client on the terms of the relevant licence agreement provided with the Product or as published by the software owner or as otherwise agreed between NTT and the Client in writing. Any rights to be conferred on Client will only commence on payment of all charges payable in connection with those rights.

21. Termination

- 21.1 If the Client:
- (a) makes default in any payment or breaches any of these Terms;
 - (b) becomes unable to pay its debts as and when they fall due; or
 - (c) commits an act of bankruptcy or, being a company, enters into liquidation or provisional liquidation whether compulsory or voluntary or compounds with its creditors generally or has a receiver or receiver manager or administrator appointed over all or part of its assets or passes a resolution for winding-up or a petition is presented for its winding-up,
- 21.2 NTT may without prejudice to any of its rights or remedies under these Terms or otherwise by notice to the Client:
- (a) suspend further supply and require payment in advance for future supply;
 - (b) recover possession of any Product for which payment has not been made;
 - (c) terminate all or any purchase orders for Products or Services which have been accepted by NTT;
 - (d) claim immediate payment of all moneys due by the Client in respect of all Products and/or Services which will then be immediately due and payable notwithstanding the due date or dates for payment or any terms agreed by NTT; and/or
 - (e) continue to enforce its rights and recover from the Client such payments and any other amounts owing as and when they fall due.

22. No representations

- 22.1 The Client acknowledges that NTT has not made any warranty or representation, express or implied, in relation to the Products or the Services, including whether they are suitable for a particular purpose (whether such purpose was made known to NTT or not), unless provided in writing.

23. No implied terms

- 23.1 To the fullest extent permitted by law, the parties agree to exclude any terms which would otherwise be implied into these Terms by any statute. The liability of NTT for a breach of a condition or warranty implied into these Terms by the *Competition and Consumer Act, 2010* (Cth) is limited at the option of NTT:
- (a) if the breach relates to goods, to the replacement of the goods or the supply of equivalent goods, or the repair of the goods, or the payment of the cost of replacing the goods or of acquiring equivalent goods or the payment of the cost of having the goods repaired; and

- (b) if the breach relates to services, the supplying of the services again or the payment of the cost of having the services supplied again.

24. Limitation of liability

Implied Warranties

- 24.1 To the extent permitted by law, all express or implied warranties, representations, statements, terms and conditions relating to NTT or the provision of Products and/or Services under these Terms, not expressly set out in these Terms, are excluded from the agreement between the parties.
- 24.2 If a condition or warranty is implied into this agreement by a law which cannot be excluded, NTT's liability is limited (at NTT's option) to:
 - (a) the replacement or repair of the goods or the payment of the cost of having the goods replaced or repaired, in the case of supply of goods; or
 - (b) the supply of the services again or the payment of the cost of having the services supplied again, in the case of supply of services.

Liability under these Terms and Conditions

- 24.3 NTT's aggregate liability, whether arising from breach of contract, negligence or any other tort, breach of warranty, under an indemnity, or statute, in equity or otherwise is limited to:
 - (a) for claims relating to Services, other than maintenance, support, monitoring or other such ongoing services, an amount equal to 1.5 (one and a half) times the charges payable to NTT for such Services;
 - (b) for claims relating to maintenance, support, monitoring or other such ongoing services, an amount equal to the annual Charges payable to NTT for those Services; and
 - (c) for claims relating to Products, an amount equal to the charges payable to NTT for those Products.
- 24.4 Nothing in clause 24.3 operates to limit NTT's liability for:
 - (a) claims for death or personal injury;
 - (b) claims of fraud or fraudulent misrepresentation; or
 - (c) breach of clause 19 of these Terms.
- 24.5 NTT has no liability to the Client for any incidental, indirect, special or consequential loss or damage, or for loss of or corruption of data, loss of use, revenues, profits, goodwill, bargain, opportunities or anticipated savings, whether arising from breach of contract, negligence or any other tort, in equity or under an indemnity, warranty or otherwise, whether or not NTT was aware of the possibility of such loss or damage.

Consumer Guarantees

- 24.6 If section 102 of the Australian Consumer Law (in the *Competition and Consumer Act 2010 (Cth)*) applies to the supply of NTT's goods and/or services:
 - (a) they come with guarantees that cannot be excluded under the Australian Consumer Law;
 - (b) for major failures in a service, the Client is entitled:
 - (i) to cancel its service contract with NTT; and
 - (ii) to a refund for the unused portion, or to compensation for its reduced value;
 - (c) for major failures with goods the Client is also entitled to choose a refund or replacement;
 - (d) if a failure in the goods or a service does not amount to a major failure, the Client is entitled to have the failure rectified in a reasonable time and if this is not done the Client is entitled to a refund for the goods and to cancel the contract for the service and obtain a refund of any unused portion; and
 - (e) the Client is also entitled to be compensated for any other reasonably foreseeable loss or damage from a failure in the goods or service.

25. Variation

- 25.1 Any variation to these Terms must be in writing. Variations to any of the Services agreed to be supplied will be charged by NTT at its then current rates for those additional services, unless otherwise agreed in writing.

26. Force majeure

- 26.1 For the purpose of these Terms, "**Force Majeure**" means a circumstance (or unexpected and disruptive event) beyond a party's reasonable control, which results in either the Client or NTT being unable, delayed or otherwise hindered in its ability to observe or perform an obligation under the agreement and such circumstances include, but are not limited to, the following examples:
- (a) 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;
 - (b) epidemics and pandemics or a lesser spread of disease that causes interruption or delay (including any vector-borne disease);
 - (c) acts of war, acts of public enemies, terrorism, riots, insurrections, civil commotions, disturbances or unrest, malicious damage, sabotage and revolution;
 - (d) internet or telecommunication systems failures, equipment failures, electrical power failures, cyber warfare, cyber intrusion and cybercrime, cyber espionage, computer or cyber sabotage;
 - (e) failures of third-party systems, infrastructure, software and applications;
 - (f) governmental actions, trade sanctions, blockades, embargoes, quarantines, or other imposed travel restrictions;
 - (g) banking sanctions, orders of courts, agencies or tribunals;
 - (h) non-performance of third parties;
 - (i) any law or any action taken by a government or public authority that restricts or prohibits performance of the party's obligations; or
 - (j) shortages of labour or materials, labour disputes or strikes (but not disputes or strikes by employees, agents or sub-contractors of the parties).
- 26.2 Neither party is responsible for any delay or failure to perform its obligations under the agreement if such delay is due to Force Majeure.
- 26.3 If a delay or failure to perform a party's obligations is caused or anticipated due to Force Majeure, the performance of that party's obligations will be suspended until the Force Majeure has abated. The parties will continue to meet the obligations that are not affected by Force Majeure.
- 26.4 If a party cannot perform a material obligation under the agreement for more than 30 days because of Force Majeure, the other party may terminate the agreement without liability to the affected party on 7 days' written notice.

27. General

- 27.1 Notices must be in writing and sent by email, mail, hand delivery or transmitted by facsimile to the address or facsimile number of the receiving party and are deemed delivered, in the case of:
- (a) email, when the message is sent that is correctly addressed to and the sender's email system successfully records that email (including any attachments), unless within 4 hours, the sender is notified by an automatic notice or otherwise that the email has not been received by the recipient;
 - (b) hand delivery, on delivery;
 - (c) posting, three days after dispatch; and
 - (d) facsimile, on completion of complete and legible transmission.
- 27.2 No leniency, indulgence or extension of time granted by NTT to the Client will prejudice any of NTT's rights in any way or constitute a waiver of any of NTT's rights. If any of these Terms are for any reason declared to be or become unenforceable, invalid or illegal, the remaining Terms will remain in full force and effect. These Terms are governed by the laws of New South Wales and the parties agree to submit to the non-exclusive jurisdiction of the courts of New South Wales.
- 27.3 These Terms, the applicable quotation and the purchase order constitute the entire agreement between the parties on the subject matter and supersede any previous understanding or agreement on that subject matter.