

## Standard Terms and Conditions for the Supply of Goods

Nothing in the Sales Contract is intended to limit any rights the Client may have that may not be excluded by law.

### 1 Application of these terms

- 1.1 These Terms and Conditions apply to the supply of Goods. Where the Client has executed a Master Agreement, these Terms and Conditions prevail over the terms of the Master Agreement to the extent of any inconsistency.
- 1.2 If the supply of Goods includes services requiring a statement of work, the supply of these services will be provided in accordance with NTT's Professional Services Terms and Conditions which are available at the following URL: <https://hello.global.ntt/-/media/ntt/global/legal/australia/professional-services-terms-and-conditions.pdf>.

### 2 Definitions and Interpretation

**Australian Consumer Law** means the *Competition and Consumer Act 2010* (Cth);

**Business Day** means a day that is not a Saturday, Sunday or a public holiday in Sydney, New South Wales or Melbourne, Victoria;

**Client** means the person or entity acquiring Goods under the Sales Contract;

**Delivery** means the delivery from either NTT's or the Vendor's premises to the Client's premises (unless otherwise agreed) and Deliver has a corresponding meaning;

**Goods** means hardware and/or software, other materials and Standard Vendor Services supplied or to be supplied by NTT under the Sales Contract;

**Indent Order** means a custom order placed by the Client with NTT which requires NTT to purchase Goods from a third party (often through a local or foreign agent of a foreign supplier) under specified conditions of sale, rather than supply Standard Goods;

**Master Agreement** means an NTT Master Agreement (or equivalent) signed by the Client and NTT;

**NTT** means NTT Com ICT Solutions (Australia) Pty Ltd (ABN 61 059 040 998), or, where expressly specified on the Order Form, NTT Australia Pty Ltd (ABN 35 003 371 239), its assigns and any related body corporate as defined in the *Corporations Act 2001* (unless that related body corporate is also the Client);

**Order Form** means the Client's order for the Goods specified in, and referencing, a Quotation;

**Personal Information** has the meaning given to it in the *Privacy Act 1988* (Cth);

**PMSI** means a purchase money security interest as defined in the PPSA;

**PPSA** means the *Personal Property Securities Act 2009* (Cth);

**PPSR** means the Personal Property Securities Register;

**Price** means the price specified in a Quotation;

**Return of Materials Authorisation** means a notice issued by NTT authorising the return of specified Goods by the Client to NTT;

**Sales Contract** means (i) these Terms and Conditions; and (ii) an Order Form (or, subject to clause 18.7, the Client's purchase order) referencing a Quotation;

**Standard Goods** means Goods ordinarily supplied by NTT to its customers (not Goods supplied in accordance with the Client's own specifications or requirements);

**Standard Vendor Services** means standard services (such as maintenance) provided by a Vendor which are intrinsically linked to and/or ordinarily sold with the Goods. For the avoidance of doubt, Standard Vendor Services do not include services performed by NTT or services performed by the Vendor for which a separate statement of work has been provided (see the aforementioned URL at clause 1.2);

**Terms and Conditions** means these terms and conditions; **Third Party Terms** means the separate terms and conditions issued by the manufacturer or licensor of the Goods (which may be a Vendor), including licence terms for software or terms for Standard Vendor Services; and

**Vendor** means a third party from whom NTT sources Goods.

The words "includes", "including", or "similar" are not words of limitation. Headings are for convenience and do not affect interpretation. No provision of these Terms and Conditions will be construed adversely to a party solely on the basis that the party was responsible for the preparation of that provision.

### **3 Prices and Taxes**

The Price is valid for the period specified on the Quotation unless otherwise expressly agreed to in writing by NTT. Prices are based on variables including but not limited to rates of freight, insurance, customs duties, exchange rates, shipping expenses, sorting and stacking charges, cartage, wages, cost of materials and other charges affecting the cost of production. NTT may increase the Price to allow for the increased cost to NTT in the event the cost of any of the aforementioned items increase but only if the Goods have not yet been Delivered. Prices do not include Delivery unless specifically stated; the Client, or the Client's carrier, must collect the Goods from premises nominated by NTT. The Client must pay all freight expenses and all taxes and duties. Prices will be adjusted to include any increase in the direct or indirect cost to NTT of supplying the Goods as a result of any applicable new or changed tax, duty or other impost which becomes effective after the date of the Quotation.

### **4 Purchase Orders and Payment Terms**

Where the Client issues a purchase order to NTT the purchase order must reference the Quotation number. The Client agrees to pay the Price, plus GST and any other current or future tax, charge or impost applying to the Goods without any set off or deduction in accordance with the payment terms specified in the Quotation, Order Form or tax invoice, and where no payment terms are specified, within 30 days of the date of the tax invoice. NTT reserves the right to charge interest on all undisputed payments overdue by more than 30 days at or 2% above the business overdraft rate set by Westpac Bank, compounded daily, or the maximum permitted by law from the date the payment was due until payment of the overdue sum. NTT will only order Goods for cash on Delivery once payment is received in advance by way of cleared funds into NTT's bank account by payment via direct deposit.

### **5 Disputed Invoices**

For disputed invoiced amounts, the Client must submit payment for the whole of the invoiced amount together with a written request for credit for the disputed amount within 30 days of the date of the tax invoice. To the extent permitted by applicable law, NTT may, in its absolute discretion, decline to give credit for the disputed amount if the request is not received within 30 days of the date of the tax invoice.

### **6 Credit**

The Client's application to open a credit account must be submitted on an approved NTT credit application form. NTT may refuse credit at its absolute discretion or may allow credit on terms that NTT considers appropriate.

### **7 Packaging**

Prices include standard packaging. Additional charges will apply for any special packaging requested by the Client.

### **8 Delivery**

Dates and times provided by NTT for Delivery of Goods or the performance of Standard Vendor Services are estimates only. NTT is not liable for any loss, damage or expense (consequential or otherwise) arising directly or indirectly from any delay in Delivery or performance and any such delay does not entitle the Client to terminate the Sales Contract. NTT reserves the right to Deliver by instalments in which case each such instalment will be invoiced separately. The payment terms specified in clause 4 apply to these instalment Deliveries. Written claims in relation to Goods ordered but not Delivered will be considered only if received by NTT within 7 days from the date of initial Delivery.

### **9 Title and Risk of Loss**

Title to Goods transfers to the Client upon payment in full of monies due in respect of the Goods. Unless otherwise agreed to in writing by NTT, risk in Goods purchased passes to the Client on Delivery. The Client must store all Goods separately and in a manner enabling them to be clearly identified as NTT's property, keep the Goods fully insured at its own expense and hold the proceeds of any insurance claim in respect of the Goods (to the extent of the Client's indebtedness to NTT) in trust for NTT. The Client hereby charges in favour of NTT all property belonging to the Client in NTT's possession as security for any amounts owed by the Client to NTT. Upon any default by the Client in payment of any amount due to NTT, the Client irrevocably authorises and grants reasonable access rights to NTT by its servants or agents to enter the Client's premises or any other premises where the Goods are known to be stored for the purpose of taking possession of the Goods and hereby authorises NTT by its servants or agents to use all reasonable force to obtain such possession.

### **10 No Cancellation by Client**

Unless otherwise agreed in writing by NTT, an order cannot be cancelled by the Client. Where NTT provides consent to cancellation, the Client may incur cancellation, freight and/or re-stocking fees.

## 11 Return of Goods

The Client may return Goods to NTT for a credit on the following conditions:

- 11.1 The Goods are Standard Goods, i.e. they were not supplied under an Indent Order;
- 11.2 The Client has obtained a Return of Materials Authorisation (“RMA”) for the Goods;
- 11.3 The RMA number accompanies the returned Goods and the Goods correspond with those advised by the Client when obtaining the RMA;
- 11.4 The Client complies with the reasonable conditions specified by NTT (available upon request) in the Return of Materials Authorisation;
- 11.5 The Goods are returned within 14 days of Delivery at the Client's expense, with freight and insurance prepaid;
- 11.6 The Goods are returned in the same condition as when Delivered, including undamaged original packaging; and
- 11.7 At a minimum the Client reimburses NTT its unavoidable costs associated with the return of Goods.

## 12 Default

NTT may by written notice and without prejudice to any of its other rights withhold supply (and dispose) of Goods ordered by the Client, institute legal action for recovery of outstanding amounts and without any liability to the Client, terminate credit facilities and/or terminate the Sales Contract with the Client if any of the following occurs:

- 12.1 The Client commits a breach of the Sales Contract that is capable of remedy and the Client fails to remedy that breach within 7 days of NTT's written notice to the Client requesting it to do so;
- 12.2 The Client commits a breach of the Sales Contract that is incapable of remedy;
- 12.3 The Client ceases to carry on business, becomes insolvent, is unable to pay its debts when due, files for bankruptcy, is subject of involuntary bankruptcy, has an administrator, receiver or receiver and manager appointed, or has its assets assigned.

## 13 Intellectual Property Rights

- 13.1 The Client warrants that any design, specification or instructions furnished by the Client to NTT for the purposes of NTT fulfilling an order will not result in infringement of the Client's or a third party's patent, design, copyright or trademark. The Client indemnifies NTT and its employees, officers, directors and agents against any liability, loss or expense (including legal fees) arising in connection with a breach by the Client of this warranty.
- 13.2 purchase of Goods does not confer on the Client any licence or rights under any patent, design, copyright or trademark belonging to or used by NTT or third parties.
- 13.3 Nothing in the Sales Contract affects the intellectual property rights in any open source software. Intellectual property rights in all open source software is subject to the terms of the open source software licence under which it is provided.

## 14 Thirty Party Terms

Notwithstanding any other provision of the Sales Contract, the Client:

- 14.1 acknowledges and agrees that Third Party Terms are entered into by the applicable third party licensor of the software or the manufacturer of the Goods (including a Vendor, where applicable) and the Client;
- 14.2 warrants that the Client has read, understood and accepted the Third Party Terms; and
- 14.3 indemnifies NTT for any loss or damage incurred by NTT in connection with a result of a breach by the Client or an end user of the applicable Third Party Terms.

In the event the Client is uncertain as to which Third Party Terms apply to their purchase, the Client should contact NTT within two Business Days of receiving the Quotation for clarification.

## 15 Performance

Where there is inconsistency between any figures or estimates given by NTT as to the performance of Goods (which are based upon NTT's experience and are what NTT would expect to obtain on test) and those in the manufacturer's specifications, those in the manufacturer's specifications take precedence to the extent of the inconsistency. The Client is responsible for verifying that the Goods in the Quotation are fit for the Client's purpose before ordering.

## 16 Warranties

- 16.1 Subject to clause 17, to the extent it is legally able to do so, NTT will make available to the Client any standard manufacturer warranties for Goods. Warranties, if any, for software can generally be found in the relevant Third Party Terms.
- 16.2 Without limiting clause 17, NTT does not warrant:
- (a) that Goods will be uninterrupted or free from error (any software is provided on an 'as-is' basis);
  - (b) the results that may be obtained from the use of the Goods or the accuracy, reliability or content of any information contained in or provided through the Goods; or
  - (c) the performance, quality, content or accuracy of any software, services, equipment or information provided by a third party received by the Client through or as a result of the use of the Goods.
- 16.3 Subject to clause 17.1, NTT is not responsible for:
- (a) any defect in the Goods arising from: any drawing, design or specification supplied by the Client, fair wear and tear, wilful damage, negligence, abnormal working conditions, failure to follow NTT's or the manufacturer's instructions (whether oral or in writing) or Third Party Terms, misuse, alteration or repair of the Goods without NTT's or the manufacturer's approval;
  - (b) any parts, materials or equipment in respect of which the Client is entitled to the benefit of any warranty or guarantee given by the manufacturer; or
  - (c) the content or use of any data transferred either to or from the Client or stored by the Client or any end users via the Goods.

## 17 Limitation of Liability

- 17.1 To the extent permitted by applicable law, conditions, warranties, guarantees, rights, remedies, liabilities and other terms implied by statute, custom or the common law are excluded from the Sales Contract.
- 17.2 Where the applicable law prescribes a remedy or liability for breach of a statutory guarantee or warranty for the supply of goods or services, NTT's liability is limited to the prescribed remedy or liability.
- 17.3 Without limiting clause 17.2, if a supply under the Sales Contract is a supply of goods or services to a consumer within the meaning of the Australian Consumer Law set out in Schedule 2 to the *Competition and Consumer Act 2010* (Cth), nothing in the Sales Contract excludes, restricts or modifies the application of any provision, the exercise of any right or remedy, or the imposition of any liability under the Australian Consumer Law, provided that, to the extent that the Australian Consumer Law permits NTT to limit its liability, then NTT's liability will be limited to:
- (a) in the case of services, the cost of supplying the services again or payment of the cost of having the services supplied again; and
  - (b) in the case of Goods, the cost of replacing the Goods, supplying equivalent Goods or having the Goods repaired, or payment of the cost of replacing the Goods, supplying equivalent Goods or having the Goods repaired.
- 17.4 Subject to clause 17.5, nothing in the Sales Contract operates to exclude or restrict a party's liability for:
- (a) death or personal injury (including sickness) for which that party is legally liable;
  - (b) breach of confidentiality or privacy; or
  - (c) fraud or fraudulent misrepresentation.
- 17.5 In no circumstances will NTT be liable for loss of revenue; loss of profits or anticipated savings; loss of business or goodwill; loss or corruption of data; or for any indirect, special or consequential loss or damage, however caused, even if the Client was advised of or aware of the possibility for such liability;
- 17.6 Subject to clause 17.7, the aggregate liability of NTT in contract, tort, breach of statute, or other legal theory arising out of or in relation to the provision of Goods under the Sales Contract, is limited in aggregate to an amount equal to the charges in respect of the Goods the subject of the claim.
- 17.7 The aggregate liability of NTT in contract, tort, breach of statute, or other legal theory for damage to real property and/or tangible personal property arising out of or in relation to the provision of Goods under the Sales Contract, is limited in aggregate to an amount equal to the greater of:
- (a) the charges in respect of the Goods the subject of the claim; and
  - (b) \$5 million.

## 18 General

- 18.1 **Precedence.** Unless otherwise agreed in the Order Form, in the event of any conflict will be resolved in the following order of precedence:
- (a) the Order Form, including any special conditions (provided however that no special condition in an Order Form will be taken to override these Terms and Conditions unless the provision being overridden is expressly and specifically identified);
  - (b) the Quotation;
  - (c) these Terms and Conditions.
- 18.2 **Publicity.** Neither party will publicise nor disclose to any third party without the consent of the other party either the Price or any other part of the Sales Contract, nor the fact of its existence and execution, except as may be necessary to comply with that party's obligations stated in the Sales Contract. Notwithstanding the foregoing, NTT may use the Client's name and identification of the Sales Contract in marketing materials.
- 18.3 **Internal Use.** Goods acquired by the Client under the Sales are solely for the Client's own internal use and not for resale without NTT's prior written consent.
- 18.4 **Force Majeure.** Neither party will be liable for performance delays or for non-performance due to causes beyond its reasonable control, however, this provision does not apply to the Client's payment obligations.
- 18.5 **Assignment.** The Client may not assign, novate or otherwise transfer all or any part of its rights or obligations under the Sales Contract without prior written consent from NTT. Any such attempted assignment, novation or transfer will be null and void.
- 18.6 **Notices.** All notices must be given in writing, must be signed by a person duly authorised to provide such notice and will be considered effective upon receipt. The use of electronic transmissions such as facsimile and email is acceptable as a signed writing and a user ID contained in an electronic document is sufficient to verify the sender's identity.
- 18.7 **Entire Agreement.** To the extent permitted by law the Sales Contract constitutes the entire agreement and understanding between the parties with respect to its subject matter and supersedes any prior representations, negotiations, agreement, understanding or arrangement between the parties whether oral or in writing. For the avoidance of doubt, any terms issued by the Client (including the pre-printed Terms and Conditions of the Client's purchase order, if any) which conflict with the terms of the Sales Contract, are null and void and are expressly excluded.
- 18.8 **Counterparts.** The Sales Contract may be executed in any number of counterparts by the parties, each of which when executed will be deemed to be an original and all of which taken together will constitute one and the same instrument.
- 18.9 **Variation.** No amendment or variation to the Sales Contract unless it is in writing and signed by an authorised representative of NTT.
- 18.10 **Waiver.** No waiver of any breach, or failure to enforce any provision, of the Sales Contract at any time by NTT will in any way limit or waive the right of NTT to subsequently enforce and compel strict compliance with the provisions of the Sales Contract.
- 18.11 **Independent Contractor.** NTT is an independent contractor. No partnership, agency or joint venture is created between the parties, nor does either party have the right, power or authority to create any obligation or duty, express or implied, on behalf of the other, except where otherwise specified in the Sales Contract and/or otherwise expressly agreed in writing. Each party is free to enter into similar agreements with others to develop, acquire, or provide competitive products and services.
- 18.12 **Disputes.** The parties must act reasonably and in good faith to resolve any dispute within 10 Business Days (or other agreed period) of one party notifying the other in writing that a dispute has arisen. Neither party may commence legal proceedings (other than for urgent interlocutory relief) unless the dispute resolution procedures set out in this clause have been followed.
- 18.13 **Severability.** If any term or condition of the Sales Contract is invalid or unenforceable, the remaining provisions remain in full force and effect.
- 18.14 **Compliance with laws.** NTT will comply with local laws generally applicable to it as a provider of ICT goods and services. The Client is responsible for determining the legal requirements applicable to the Client's business, including those relating to the Goods supplied by NTT under the Sales Contract. Each party will comply with all applicable privacy, export and import laws. NTT may collect and manage Personal Information as contemplated by, and in accordance with, the NTT Privacy Policy (as published on the NTT website and updated from time to time), including by disclosing Personal Information to entities located outside Australia, such as its related entities, suppliers and subcontractors.
- 18.15 **Survival.** Clauses 14, 16, 17, 18.16 (and any other provisions which by their nature are intended to survive termination or expiry) will survive termination or expiry of the Sales Contract for any reason.

- 18.16 **Jurisdiction.** The laws in force in New South Wales, Australia govern the Sales Contract, and each party submits to the non-exclusive jurisdiction of the courts exercising jurisdiction in New South Wales, Australia, and any courts competent to hear appeals from those courts.
- 18.17 **Personal Properties Securities.** The Client acknowledges that these Terms and Conditions constitutes a security agreement which creates a security interest in favour of NTT in the Goods (including all Goods previously supplied by NTT to the Client (if any) and all after acquired Goods supplied by NTT to the Client, or for the Client's account). The Client agrees to grant a PMSI in the Goods and all future Goods supplied to the Client by NTT. The Client agrees that the PMSI has attached to all Goods now or in the future supplied to the Client by NTT. The Client agrees, until title in the Goods pass to it, to keep all goods free of any charge, lien or security interest except as created under these Terms and Conditions and not otherwise deal with the goods in a way that will or may prejudice the rights of NTT under these Terms and Conditions or the PPSA. The Client undertakes to sign any further documents and/or provide any further information (which information the Client warrants to be complete, accurate and current) which NTT may reasonably require to enable registration of a financing statement or financing change statement on the PPSR or to ensure that the security interest is otherwise enforceable, perfected and effective. The Client agrees to do all things reasonably necessary to assist NTT to undertake the matters set out above. NTT is not obliged to give the Client any notice or provide copies of any documents under the PPSA (including notice of a verification statement) unless the notice is required by the PPSA and cannot be excluded and the Client consents to the waiver of the requirement for notice or copies of any documents under this clause. The Client and NTT agree that, pursuant to section 115 of the PPSA, the following provisions in the PPSA do not apply in relation to a security interest in the goods to the extent, if any, mentioned (words in this provision have the same meaning as in the PPSA): section 129 (disposal by purchase); section 125 (obligation to dispose of or retain collateral) in that NTT may extend the time for delay as NTT considers appropriate; section 130 (notice of disposal), to the extent that it requires the secured party to give a notice to the grantor before disposal; subsection 132(4) (statement of account if no disposal); section 135 (notice of retention); section 142 (redemption of collateral); section 143 (reinstatement of security agreement)