

# General Terms and Conditions for the purchase of goods and services

## of NTT Global Data Centers EMEA UK Ltd

### 1. Interpretation

**Affiliate:** means, in relation to either party, any company or other entity which at the relevant time is a subsidiary or holding company of that party, or a subsidiary of any such holding company.

**Business Day:** a day other than a Saturday, Sunday or public holiday in the Client's country of incorporation.

**Conditions:** the terms and conditions set out in this document, as amended from time to time.

**Contract:** the contract between the Client and the Supplier for the sale and purchase of Goods and/or Services in accordance with these Conditions and any Order(s).

**Client:** NTT Global Data Centers EMEA UK Ltd, a company incorporated in England & Wales with company number 04239332 and registered address at 3 Centro Boundary Way, Hemel Hempstead, Herts, HP2 7SU and its Affiliates.

**Deliverables:** all documents, products and materials developed by the Supplier, or its agents, contractors or employees, as part of, or in relation to, the Services, in any form or media, including without limitation drawings, maps, plans, diagrams, designs, pictures, computer programs, data, specifications and reports (including drafts).

**Goods:** the goods (or any part of them) set out in the Order.

**Goods Specification:** any specification for the Goods, including any related plans and drawings that are agreed by the Client and the Supplier and included in the Order.

**Order:** any Client order for the Goods and/or Services, as set out in the Client's purchase order form or in the Client's written acceptance of a Supplier's quotation, as the case may be.

**Services:** the services, including without limitation any Deliverables, to be provided by the Supplier under the Contract as set out in the Service Specification.

**Service Specification:** the description or specification for Services agreed in writing by the Client and the Supplier and included in the Order.

**Supplier:** the supplier of the Goods and/or Services as specified in the Order.

### 2. Basis of contract

- 2.1 These Conditions apply to the Contract to the exclusion of any other terms that the Supplier seeks to impose or incorporate.
- 2.2 The Supplier shall ensure that at all times it has and maintains all the licences, permissions, authorizations, consents, permits and insurance that it needs to carry out its obligations under the Contract and shall comply with all applicable laws and regulations in this regard.
- 2.3 The Supplier shall observe all health and safety rules and regulations and any other security requirements that apply at any of the Client's premises, or the Client's customers' premises.
- 2.4 In providing Goods and/or Services (as applicable) under or in connection with the Contract, the Supplier shall ensure that:  
(a) the Goods function and Services are provided in accordance with the Goods Specification and Service Specification respectively, and that the Goods and any Services are fit for their intended purpose as expressly or implicitly communicated by the Client to the Supplier; (b) it complies with the Contract; (c) all Supplier staff supplying the Goods and performing the Services have the necessary skills, competence and expertise to deliver such Goods and/or Services (as applicable) in accordance with the Contract, and are employed in sufficient number as to ensure compliance with this obligation; (d) it delivers Goods and/or Services (as applicable) promptly, effectively and with the level of skill, care and diligence to be expected of a reasonably prudent supplier, experienced in providing goods and/or services that are similar to the Goods and/or Services (as applicable); (e) it cooperates with the Client and complies with the Client's instructions and any and all Client policies notified to the Supplier from time to time; (f) it provides any and all equipment, tools and vehicles and such other items as are required to provide the Services, if and to the extent specified in the Service Specification and/or relevant Order(s); (g) it uses the highest possible quality Goods, materials, standards and techniques, and ensures that the Deliverables, and all Goods and materials supplied and used, including as part of any Services, or transferred to the Client, will be free from defects in workmanship, installation, materials, design and title; (h) it does not do or omit to do anything which may cause the Client to lose any licence, authority, consent or permission upon which it relies for the purposes of conducting its business, and the Supplier acknowledges that the Client may rely and act on any Services provided by the Supplier; and (i) it complies with all applicable laws and regulations.
- 2.5 In the event of a conflict between these Conditions and an Order, the Order shall prevail.

### 3. The Goods

- 3.1 The Goods are described in the Order. The Supplier warrants that the Goods comply with the terms of the Contract, including but not limited to clause 2.4 of these Conditions.
- 3.2 The Goods warranty period is twenty-four (24) months (or such other period as may be agreed between the parties in writing in the Order) from the Delivery Date as defined under clause 4.3 of these Conditions ("**Goods Warranty Period**"). The warranty period in respect of any defective Goods that are repaired or replaced by the Supplier shall be extended by a period equivalent to the Goods Warranty Period, commencing from the date such Goods were repaired or replaced by the Supplier under these Conditions ("**Extended Goods Warranty Period**"). The Supplier warrants that the Goods are new and unused at the date of delivery, free from defects in design, material and workmanship and remain so during the Goods Warranty Period and Extended Goods Warranty Period.
- 3.3 In the event of a defect in any of the Goods arising during the Goods Warranty Period or any Extended Goods Warranty Period, the Supplier shall (at the Client's option and at no cost to the Client) promptly repair or replace the defective Goods, or the Client shall (at its option) be entitled to reject the defective Goods. If the Supplier does not respond to a Client request for it to repair or replace defective Goods within twenty (20) Business Days, the Client shall be entitled to appoint a third party to repair or replace the defective Goods at the Supplier's cost. Any cost or expense incurred by any persons removing, refitting, repairing, replacing or transporting Goods pursuant to this clause 3.3 shall be borne by the Supplier.

#### 4. Delivery of Goods

- 4.1 The Supplier shall deliver the Goods to the location set out in the Order or such other location as the parties may agree (“**Delivery Location**”) on the date and time stipulated in the Order or such other date as mutually agreed in writing between the Client and the Supplier (“**Delivery Date**”). The Incoterm applicable to delivery of the Goods, unless otherwise specified in the Order, shall be Delivered Duty Paid (DDP) Incoterms 2020.
- 4.2 Risk and title in the Goods shall pass to the Client on completion of delivery to the Delivery Location in accordance with the Contract.
- 4.3 Delivery of the Goods shall be completed on the completion of unloading of the Goods at the Delivery Location.

#### 5. Supply of services

- 5.1 The Supplier shall from the date set out in the relevant Order and for the duration of that specific Order provide the Services detailed in that Order to the Client in accordance with the terms of the Contract, including but not limited to clause 2.4 of these Conditions.
- 5.2 The Supplier shall meet any performance dates for the Services specified in the Order or notified to the Supplier by the Client.
- 5.3 Services shall be warranted by the Supplier for a period of twelve (12) months from the date of performance of the relevant Service, or (if different) the period specified in the Order (“**Service Warranty Period**”). In the event of a defect in any of the Services during the Service Warranty Period, the Supplier shall (at the Client’s option and at no cost to the Client) promptly reperform the defective Services so as to render them compliant with this Contract, or the Client shall (at its option) be entitled to reject the defective Services. Any cost or expense incurred by any persons reperforming Services pursuant to this clause 5.3 shall be borne by the Supplier.

#### 6. Price and payment

- 6.1 The price of the Goods shall be the price set out in the Order. The price of the Goods includes the costs of packaging, insurance and carriage of the Goods.
- 6.2 The charges for the Services shall be set out in the Order and shall be the full and exclusive remuneration of the Supplier in respect of the performance of the Services. Unless otherwise agreed in writing by the Client, the charges shall include every cost and expense of the Supplier directly or indirectly incurred in connection with the performance of the Services.
- 6.3 The price of the Goods and/or Services is exclusive of amounts in respect of value added tax (VAT). No extra charges shall be effective unless agreed in writing and signed by the Client. The Client shall, on receipt of a valid VAT invoice from the Supplier, pay to the Supplier such additional amounts in respect of VAT as are chargeable on the supply of the Goods and/or Services pursuant to applicable law.
- 6.4 The Supplier may invoice the Client for the Goods on or at any time after the completion of delivery in accordance with these Conditions. In respect of Services, the Supplier shall invoice the Client on satisfactory completion of the Services in accordance with these Conditions. The Client shall pay correctly rendered invoices within 30 days of receipt of the undisputed invoice.
- 6.5 If a party fails to make any payment due to the other under the Contract by the due date for payment (“**Due Date**”), then the defaulting party shall pay interest on the overdue amount at the rate of 3% per annum. Such interest shall accrue on a daily basis from the Due Date until the date of actual payment of the overdue amount. The defaulting party shall pay the interest together with the overdue amount. This clause shall not apply to payments the defaulting party disputes in good faith.
- 6.6 The Supplier shall maintain complete and accurate records of the time spent and materials used by the Supplier in providing the Services, and the Supplier shall allow the Client to inspect such records at all reasonable times on request.

#### 7. Delay

If Supplier fails to deliver the Goods by the Delivery Date or to provide the Services by agreed performance dates, the Supplier shall provide the Goods and/or Services (as applicable) as soon as reasonably practicable. If the Supplier fails to provide Goods by the Delivery Date or any Services by agreed performance dates on two (2) separate occasions, or on one occasion where the delay exceeds seven (7) Business Days, the Client may: (i) terminate the Contract in whole or in part immediately on written notice to the Supplier without obligation to compensate or further pay the Supplier; (ii) refuse to accept any subsequent delivery of the Goods or provision of the Services; (iii) recover from Supplier any expenses reasonably incurred by Client in obtaining replacement Goods and/or Services from another supplier; (iv) claim (in addition to the penalty below, if any) any additional costs, losses or damages incurred whatsoever by Client which are reasonably attributable to Supplier’s failure to comply with the Goods Delivery Date and/or agreed Services performance date (as applicable); and/or (v) claim the penalty agreed for Supplier’s failure to comply with the Delivery Date as stated in the Order. The penalty shall be payable at a rate specified in the Order. The agreed penalty shall not affect Client’s claim for damages whatsoever nor shall the payment of such penalty relieve the Supplier from any of its obligations and liabilities under the Contract. Client shall be entitled to reserve the right to assert the penalty up until the time of final payment.

#### 8. Intellectual property

- 8.1 In respect of the Goods and any goods that are transferred to the Client as part of the Services under this Contract, including without limitation the Deliverables or any part of them, the Supplier warrants that it has full clear and unencumbered title to all such items, and that at the date of delivery to the Client, it will have full and unrestricted rights to sell and transfer all such items to the Client.
- 8.2 “**Intellectual Property**” or “**IP**” includes any and all inventions whether or not patentable, patents, utility models, trademarks, component designs or manufacturing processes and any improvements or enhancements thereto, copyrights and moral rights, design rights, database rights, trade secrets know-how, goodwill, and methods, in each case whether registered or unregistered, and also including identified technical and non-technical or business-related information such as specifications, computer programs, IP addresses drawings or blueprints. “**Foreground IP**” means any IP that arises or is obtained or developed by a party, or by a contractor on behalf of a party, specifically in the course of or in connection with the performance of an Order or the performance or delivery of Deliverables. “**Background IP**” means IP which is owned by or licensed to a party before the date of issue of the Order, or later developed or otherwise acquired by a party other than through participation in the Order. Nothing in these Conditions shall transfer ownership of Background IP from or to any party. No rights or licences in IP are granted save as expressly set out in the Conditions.
- 8.3 Subject to the Supplier’s compliance with these Conditions, the Client grants to the Supplier for the period of time needed to fulfil the Order, a non-exclusive, non-transferable, royalty-free, personal license to use the Client’s IP solely to the extent

necessary for fulfilling the Supplier's obligations under these Conditions. The Supplier may not sub-licence this licence without the prior written consent of the Client. The Supplier grants to the Client a worldwide, perpetual, irrevocable, paid-up, sub-licensable right to use the Supplier's IP: (i) to fulfil its obligations under the Conditions; and (ii) to use and benefit from any Deliverables and Foreground IP supplied for any purpose whatsoever.

- 8.4 The Client shall own all Foreground IP, whether developed by the Client or the Supplier. To the extent permitted by law, the Supplier hereby assigns (by way of present assignment of future rights) and procures the assignment to the Client, absolutely and with full title guarantee, all ownership rights in such Foreground IP created by the Supplier, its employees, Affiliates and sub-contractors, together with the right to sue for damages and other remedies for any infringement of any of such rights which occurred prior to and after the date of the assignment for the full period of such rights, including all renewals, revivals, re-issues, divisions, continuations or extensions. The Supplier shall furthermore assist and co-operate with the Client in filing and presenting patent applications in relation to any invention conceived or made by it, its Affiliates, sub-contractors or agents in respect of the Deliverables during and after the provision of the Deliverables and will do, and procure the doing of, all such acts and things (including the waiver of moral rights by its employees) as the Client deems necessary in connection with such assistance.
- 8.5 The Supplier acknowledges that all materials, equipment and tools, drawings, Goods Specifications, Service Specifications and data supplied by the Client to the Supplier ("**Client Materials**") and all rights in the Client material are and shall remain the exclusive property of the Client. The Supplier shall keep the Client Materials in safe custody at its own risk, maintain them in good condition until returned to the Client, and not dispose or use the same other than in accordance with the Client's written instructions or authorisation.
- 8.6 The Supplier shall indemnify and hold the Client harmless against all liabilities, costs, expenses, damages, losses (including any direct, indirect or consequential losses, loss of profit, loss of reputation and all interest, penalties and legal and other professional costs and expenses) suffered or incurred by the Client in connection with any claim made against the Client for actual or alleged infringement of a third party's intellectual property rights arising out of or in connection with the Contract and due to an act, omission, default or negligence of the Supplier. Upon Client's request, Supplier shall defend Client against any such third-party claims.
- 8.7 If such a claim as above mentioned is made or appears likely to be made against the Client, the Supplier shall at its option either: (i) procure the right to continue using the intellectual property right which is at issue, to enable the Client to continue to use the Goods and/or Services, or (ii) to modify it, or replace it with goods and/or services that are at least functionally equivalent; or (iii) if use of the goods and/or Services is prevented by a permanent injunction and the Supplier reasonably determines that none of the alternatives in (i) and (ii) above are reasonably available, the Client may return the Goods and/or terminate the Services, and the Supplier will then refund the Client an amount equal to the sum paid by the Client for the Goods and/or Services.

## 9. Insurance

Insurance. During the term of the Contract, the Supplier 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 Client's request, produce both the insurance certificate giving details of cover and the receipt for the current year's premium in respect of each category of insurance coverage.

## 10. Confidential information and data protection

- 10.1 Each party ("**Receiving Party**") shall keep in strict confidence all Confidential Information which are disclosed to the Receiving Party by the other party ("**Disclosing Party**"), its employees, Affiliates, agents or subcontractors. In these Conditions, "**Confidential Information**" shall mean all technical or commercial know-how, Goods Specification and Service Specifications, inventions, processes or initiatives any other confidential information concerning the Disclosing Party's business, product, services or clients. Confidential Information does not include: information that: (a) is or becomes publicly known or available without breach of this Contract by the Receiving Party; (b) is, prior to disclosure hereunder, lawfully known to the Receiving Party without a duty of confidentiality, as evidenced by the Receiving Party's records; (c) is disclosed to the Receiving Party without confidential or proprietary restriction by a third party who rightfully possesses the information (without confidential or proprietary restriction); or (d) is independently developed by the Receiving Party without any use of or reference to the Confidential Information
- 10.2 Subject to the remaining terms of this clause 10.2, the Receiving Party shall not disclose Confidential Information to third parties without the Disclosing Party's prior written consent. The Receiving Party may, without the Disclosing Party's prior written consent, disclose such Confidential Information to its employees, Affiliates, agents or subcontractors who need to know the same, provided that the Receiving Party ensures that such employees, Affiliates, agents and subcontractors keep such Confidential Information confidential, do not disclose it to third parties, are bound by confidentiality obligations that are similar to this clause 10 and the Receiving Party will be liable for any unauthorised disclosures.
- 10.3 Supplier shall comply, at all times, with all applicable data protection legislation.

## 11. Termination

- 11.1 **For convenience:** The Client may terminate the Contract and/or any Order, in whole or in part, for convenience at any time by giving the Supplier thirty (30) days' written notice, whereupon the Supplier shall discontinue all work on the Contract and the relevant Order.
- 11.2 **For breach:** Without prejudice to the Client's rights under clauses 7, 8.7, 12 and 13.2 of these Conditions, the Client may terminate the Contract and/or any Order, in whole or in part, immediately upon written notice, if the Supplier is in breach of any of the terms of this Contract and fails to remedy such breach within seven (7) Business Days of written notification by the Client.
- 11.3 **For insolvency:** Either Party may terminate the Contract with immediate effect by giving written notice to the other Party ("**Insolvent Party**"), if the Insolvent Party ceases to do business, becomes unable to pay its debts as they fall due, becomes or is deemed insolvent, has been granted provisional suspension of payment or is declared bankrupt 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
- 11.4 **Consequences of termination:** If this Contract is terminated, the Client shall pay the Supplier for Goods and Services provided in accordance with this Contract and the relevant Order(s) up to the date of termination and the Client shall have no, and the

Supplier hereby indemnifies the Client from and against any, further liability to the Supplier. Any Goods or Services provided by the Supplier that are not in accordance with this Contract and the relevant Order(s) shall not be eligible for payment.

## 12. Force majeure

Neither party shall be liable to the other for any delay or failure in performing its obligations under the Contract 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, could not reasonably have been mitigated, avoided or overcome by the affected party despite exercising all reasonable skill, care and diligence, "**Force Majeure Event**," provided always that the affected party shall provide written notice to the other party within seven (7) days of occurrence of the Force Majeure Event detailing the nature and impact of such Force Majeure Event, and use all reasonable endeavours to avoid, mitigate the effect of and overcome the Force Majeure Event and resume performance of its obligations under the Contract as soon as reasonably practicable. If the Force Majeure Event prevents the Supplier from carrying out its obligations under the Contract for a continuous period of more than twenty (20) Business Days, the Client may terminate this Contract immediately by giving notice to the Supplier.

## 13. General

- 13.1 **Assignment and subcontracting.** The Client may at any time assign, transfer, charge, subcontract or deal in any other manner with any or all of its rights or obligations under the Contract. The Supplier may not assign, transfer, charge, subcontract or deal in any other manner with any or all of its rights or obligations under the Contract without the Client's prior written consent.
- 13.2 **Anti-Bribery.** Each party shall (a) comply with all applicable laws, statutes, regulations and codes relating to anti-bribery and anti-corruption ("**Relevant Requirements**"); (b) not engage in any activity, practice or conduct which would constitute an offence under applicable anti-bribery and anti-corruption legislation and (c) have and shall maintain in place their own policies and procedures, to seek to ensure compliance with the Relevant Requirements. Each party hereby indemnifies the other party from and against any loss, damage, cost, fine and expense incurred by the indemnified party due to a breach by the indemnifying party of the Relevant Requirements. Any breach by the Supplier of the Relevant Requirements shall be considered a material breach and shall entitle the Client to immediately terminate this Contract and all Orders upon written notice to the Supplier, without any liability to the Supplier.
- 13.3 **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 13.3. Any such notice may be delivered personally, by mail, by electronic mail or facsimile transmission.
- 13.4 **Survival.** Clauses which expressly or by implication survive termination of the Contract shall continue in full force and effect.
- 13.5 **Severance.** If any part of this Contract is held unlawful or unenforceable that part shall be struck out and the remainder of this Agreement shall remain in full force and effect.
- 13.6 **Waiver.** No delay, neglect, or forbearance by either party in enforcing its rights under this Contract shall be a waiver of or prejudice those rights.
- 13.7 **Third party rights.** Other than Affiliates, to the extent so specified in the relevant Order(s), a person who is not a party to the Contract shall not have any rights under or connection with the Contract under The Contracts (Rights of Third Parties) Act 1999.
- 13.8 **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 both parties.
- 13.9 **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 & Wales, and the parties irrevocably submit to the exclusive jurisdiction of the courts of England & Wales. The Vienna Sales Convention (CISG) shall not apply.