

# E-Store Terms and Conditions

(NTT Luxembourg version 1.0 November 2021)

## 1 Introduction

- 1.1 These e-Store General Terms and Conditions (the “**Terms**”) shall govern the use of the e-commerce platform (the “**System / Platform**”) and any Software and/or Services (“**Products**”) ordered and purchased through the e-Store (“**Orders**”), and are binding and enforceable against every person that accesses or uses the System (“**you**”, “**your**” or “**User**”) including each User who registers to purchase Products (“**Registered Users**”). **By using our Platform, you are explicitly acknowledging that you have read, understood and agree to be bound by the Terms. If you disagree with the Terms, then you should not use our System.**
- 1.2 The System and related software applications, which includes the purchasing platform, is owned by and operated by or on behalf of NTT Luxembourg PSF S.A., whose registered office is at WestSide Village, 89D rue Pafebruch, L-8308 Capellen and registered with the Luxembourg Trade and Companies Register under the number B110251 (“**NTT LUX**”, “**we**”, “**us**” and “**our**”). With Products being purchased through the Platform, the Terms are binding and enforceable against every User and Registered User. The Terms apply to technology, software, subscriptions, support services and technical services ordered from NTT LUX’s e-Store. The Terms shall also apply to contracts for the repair, maintenance, testing, placement into service, and refurbishment of the corresponding Orders on the System, insofar as these do not fall within the applicable scope of a separately concluded agreement negotiated between the parties.
- 1.3 Should a User have an existing and still current agreement with NTT LUX, such as a Master Supply Agreement, Master Services Agreement or similar, the terms of that existing agreement shall take precedence over the e-Store Terms, for example in the event of a conflict, ambiguity or omission in the Terms. In the absence of any prior written agreement between you and NTT LUX (together, the “**parties**” to these Terms), the parties acknowledge and agree that all quotes (“**Quotations**”) and/or Orders and the delivery and receipt of the Products and any associated Services to be provided hereunder shall be governed by these Terms and NTT LUX’s Standard Terms and Conditions. Such Standard Terms and Conditions are hereby incorporated into the Terms in their entirety. A copy of such terms is available on request and such Standard Terms shall take precedence over the e-Store Terms, for example in the event of a conflict, ambiguity or omission in the e-Store Terms. For the avoidance of doubt, the parties further agree that none of the User’s terms and conditions shall add to or modify either the Standard Terms or the e-Store Terms or related documentation; neither shall the User’s terms affect either party’s responsibility to the other as detailed herein.
- 1.4 **Important clauses which may limit NTT LUX’s responsibility, or which may involve some risk to you shall be in bold. Please pay special attention to these clauses.**

## 2 General

These Terms govern the ordering, delivery and use of the Hardware, Software, support and maintenance services and/or professional services in connection with the Hardware and/or Software, made available on the e-Store (the “**Services**”). The Software and/or Services combined as part of a particular NTT LUX offering are referred to as a “**Product**”.

You as User and NTT LUX (together, the “**parties**” to these Terms) agree that Orders provided to NTT LUX are exclusively for the purpose of confirming your purchase of the specified Products and/or Services and the price thereof.

## 3 Registration

- 3.1 **Only Registered Users may order and purchase the Products on this Platform.**

- 3.2 **To become a Registered User, you must create an account by providing certain information and personal details to NTT LUX. You shall also be required to provide a unique username and password in order to access the e-Store and purchase Products.**
- 3.3 You agree to provide accurate and complete information when you open an account, and you further agree to update your information, from time to time, in order to keep it accurate, current and complete.
- 3.4 **For security purposes you shall not be allowed to access your account to purchase Products if you fail to enter the correct username and password. You are responsible for ensuring the confidentiality, security and integrity of your username and password.**
- 3.5 **You agree that, once the correct username and password relating to your account have been entered, irrespective of whether the use of the username and password is unauthorised or fraudulent, you shall be liable for payment of any Orders made, save where the Order is cancelled by you in accordance with these Terms.**
- 3.6 You agree to notify NTT LUX immediately in the event that you become aware of or reasonably suspect that there is unauthorised access to your account or use of your username or password and you agree to take steps to lessen any resultant loss or harm.
- 3.7 **If a User creates an account in order to purchase Products on behalf of an organisation or company, then such User is agreeing to these Terms for that organisation or company and warrants that he/she has the necessary authority to bind that organisation or company to these Terms. In such case “you” and “your” shall refer to that organisation or company.**
- 3.8 You agree that you shall not in any way use any device, software or other instrument to interfere, or attempt to interfere, with the proper working of the e-Store or any information contained in the e-Store. In addition, you agree that you shall not use any robot, spider, other automatic device, or manual process, to monitor, copy, distribute or modify the e-Store or Platform, or the information contained therein, for any reason whatsoever.
- 3.9 You may not use the e-Store to distribute material, which is defamatory, offensive, contains, or amounts to, hate speech, or is otherwise unlawful.
- 3.10 You may not display, publish, copy, print, post or otherwise use the e-Store, nor the information contained therein, without the express prior written consent of an authorised NTT LUX representative.
- 3.11 To the extent you provide any data or information concerning yourself as part of becoming a Registered User or purchasing and using Services, or Software (“**Submitted Information**”), such as address, telephone numbers (including mobile), email addresses, and information such as trade references, you represent and warrant that such Submitted Information is true, correct, and current, and that you have the right to possess and use all such Submitted Information. With respect to any Submitted Information relating to the Products, you, not NTT LUX, have sole responsibility for the accuracy, quality, completeness, appropriateness, and intellectual property ownership of, as well as any data protection obligations arising from, all such Submitted Information. By providing Submitted Information to us, you represent and warrant that the Submitted Information is not consumer information and relates to a business, and that such submission is accurate to your best knowledge, not confidential, and not in violation of any laws, rules or regulations, contractual restrictions, or other third party rights. In addition, NTT LUX is not responsible or liable for the deletion, correction, destruction, damage, loss or failure to store any of Submitted Information. You hereby grant to NTT LUX a non-exclusive, irrevocable, worldwide, perpetual, unlimited, assignable, sublicensable, fully paid up and royalty-free right to copy, distribute, publish, remove, retain, add, and use in any way known now or discovered in the future, anything that Submitted Information, without any further consent, notice and/or compensation to you or any third parties.
- 3.12 To the extent you upload, submit or otherwise provide information to us, other than Submitted Information, which relates to your customers’, prospects, or vendors in connection with the Products (the “**Customer Data**”), you represent and warrant that you have all requisite rights and permissions so to do. For the avoidance of doubt, trade reference data and other information you provide in connection with your use of any Products relating to your own

business (including any online business directory) are not included within the definition of Customer Data. You hereby grant NTT LUX a license to store and use the Customer Data for the purposes of providing the applicable Software and/or Services to you. You shall fully indemnify and hold NTT LUX, its licensors and its parent organizations, subsidiaries, affiliates, officers, directors, employees, attorneys and agents harmless from and against any and all claims, costs, damages, losses, liabilities and expenses (including lawyers' fees and costs) arising out of or in connection with a claim alleging that the provision of the Customer Data to NTT LUX infringes the rights of, or has caused harm to, a third party.

## **4 Purchases**

- 4.1 Registered Users may place Orders for Products. Orders shall be accepted by NTT LUX depending on your compliance with NTT LUX's reasonable instructions. NTT LUX shall notify you whether an order has been accepted or declined via the email address provided to NTT LUX upon registration.
- 4.2 You shall pay NTT LUX in accordance with the terms outlined in the electronic order confirmation or other written instrument applicable to your Software license and/or Services (the "Order"). You shall pay any applicable taxes relating to these Terms and your use of the Products.

## **5 Quotations**

- 5.1 Quotations are valid for seven (7) days from the date shown on the Quotation. Quotations are issued errors and omissions excepted. Quotations are exclusive of Value Added Tax or any other Duties, Levies & Taxes. NTT LUX is registered for Value added Tax in Luxembourg.
- 5.2 Unless explicitly stated to the contrary, Quotations do not include delivery for which an additional charge will be made. Licence fees are applicable if maintenance is not purchased and are shown as a chargeable line item on the Quotation. Maintenance options include these Licence fees as part of an enhanced support services offering. Alternatively, these Licence fees may be waived upon written confirmation from you of a support agreement between you and another maintenance partner (or Third Party service provider, see clause 15.116.1 below).
- 5.3 You as User shall confirm acceptance of a Quotation by issuing a purchase order to NTT LUX referencing the Quotation number and listing the items quoted therein. Such purchase order should specify your requested Product delivery and/or Service commencement date. Any such User-requested Product delivery and/or Service commencement date shall be subject to Product availability and confirmation by NTT LUX of Service commencement date.
- 5.4 The pricing is based on the discount and list prices afforded to NTT LUX by Third Party service providers and is subject to change at the Third Party service providers' discretion. In the event of any such changes to either the list prices or the discounts available, NTT LUX reserves the right to update relevant quotations in line with such changes.

## **6 Fees and Payment**

- 6.1 You shall make payment of all fees and costs in respect of Software and/or Services upon receipt of NTT LUX's invoice. You shall not be entitled to use the Software and/or Services until payment has been made. Payment for Software and/or Services shall be made by you within thirty (30) days of the date of NTT LUX's invoice for such Software and/or Services.
- 6.2 All payments shall be made by you without any deduction or set-off.
- 6.3 All fees and costs are exclusive of VAT and such other taxes payable in respect of any services provided by NTT LUX (except taxes based on the income of NTT LUX), which you shall pay.

- 6.4 Unless otherwise agreed between the parties in writing, fees shall be quoted, expressed and paid for in US dollars (US\$). The fees shall be subject to increases imposed by NTT LUX. For example, NTT LUX reserves the right to vary the quoted price of Products and Services by giving notice to you at any time before acceptance of the Order, to reflect any variations in foreign exchange currency rates greater than two percent (2%) that have occurred between the date of your Quotation and the date of your Order. In the event of a change to the fees, NTT LUX shall, to the extent that it is reasonably possible to do so, give you advance notice of such change.
- 6.5 **If you fail to comply with your obligations under these Terms, including any incident involving payment of the price of an Order for any Products, and you fail to remedy such failure within seven (7) days of notice to you by us, we may (in our sole discretion) suspend your access to the e-Store, Software and/or Services, without any prejudice to any claims for damages or otherwise that we may have against you.**
- 6.6 **By application of the law of April 18, 2004 relating to payment periods and late interest, as amended, any invoice unpaid on its due date is automatically increased:**
- 6.6.1 **after the expiration of a period of 3 months from the due date of the invoice, if the Customer is an individual, The interest rate is fixed annually by the “Règlement Grand Ducal”**
- 6.6.2 **in accordance with Article 3 of the amended law of April 18, 2004, from the first day following the due date, without prior notice, if the Customer is a trader, the interest rate correspond to rate fixed by the European Central Bank added by 8 points.**
- 6.7 **In addition, and in accordance with article 5 of the aforementioned law, the invoice will be increased by a lump sum recovery amount of 40.- €, without prejudice to a request for compensation for all other costs including expenses incurred to hire a lawyer.**
- 6.8 Should it become necessary for NTT LUX to take any steps to enforce its rights and recover any outstanding amounts owed by you, you agree to be liable for any costs incurred in taking such steps including, without limitation, the collection fees, lawyers' costs and client scale and tracing fees.
- 6.9 NTT LUX endeavours to provide secure online payment facilities. All transactions are encrypted using appropriate and approved encryption technology.
- 6.10 To the extent you have, during any subscription term, purchased an “add-on” to a particular Service, you shall be charged a pro-rated amount for such add-on for the remainder of the existing subscription term, and the add-on shall thereafter be considered a part of the subscription for the base Service.
- 6.11 Payment can be made for Products only by direct bank deposit or electronic funds transfer (EFT): such payment must be made within thirty (30) days of the date of our invoice.
- 6.12 **You warrant that you are fully authorised to use the accounts involved with the payment for Products and/or Services in this direct bank deposit or EFT way.**
- 6.13 **Registered Users placing Orders shall be provided with a receipt, along with a copy of their quotation, for their purchase which together shall include the following information:**
- 6.13.1 an email address for NTT LUX;
  - 6.13.2 the account holder's name;
  - 6.13.3 the purchase order number;
  - 6.13.4 the transaction date;
  - 6.13.5 the transaction amount;
  - 6.13.6 the transaction currency;
  - 6.13.7 the authorisation code, if any; and
  - 6.13.8 **a description of the Products and/or Services purchased.**

## 7 License; Restrictions; Scope

- 7.1 NTT LUX grants you a non-exclusive, non-transferable, non-sublicensable license to use the Software (in object code format only) for internal business purposes subject to the limitations contained in these Terms for the term of such licence (“**License**”). Subsequent changes to the scope for which the License was purchased may require modifications to your Licence or to the pricing of the Software to reflect such change. Unless otherwise agreed in writing and except as set forth below, each Licence is for a minimum term of twelve (12) months from the date you are first provided access to the applicable Software, and in 12 month increments up to a maximum term of eighty-four (84) months. After the initial term, whatever its duration, each Licence will auto-renew on a twelve (12) monthly basis unless cancelled in writing ninety (90) days prior to the end of the current term.
- 7.2 NTT LUX retains all ownership rights (including copyrights and other intellectual property rights) in the Information and Software, in any form, and you obtain only such rights as are explicitly granted under these Terms.
- 7.3 The Software is Licensed for internal use only by you and your employees in an environment controlled by you and for the scope identified by you in your Order you shall not provide or redistribute the Software to others, whether directly in any media or indirectly through incorporation in a database, marketing list, report or otherwise, or use or permit the use of Software to generate any mathematical, statistical, comparative, or other information that is or shall be provided to third parties (including as the basis for providing recommendations to others); or voluntarily produce information in legal proceedings.
- 7.4 You shall not use the Software to engage in any unfair or deceptive practices and shall use the Software only in compliance with applicable statutes, laws, by-laws, policy rules, treaties, regulations, orders, ordinances, common law or judgments, in each case, of any authority having the force of law, and all judicial interpretations in respect thereof.
- 7.5 You warrant and undertake that your use of an individual’s personal information shall be for limited and legitimate purposes as specified in these Terms or applicable Order.
- 7.6 Upon reasonable notice and during regular business hours, you shall permit NTT LUX to inspect the locations at, or computer systems on which Software is used, stored or transmitted so that NTT LUX can verify your compliance with these Terms and the terms of your Order.
- 7.7 NTT LUX reserves the right to monitor your use to ensure compliance with these Terms. If such monitoring indicates you are not in compliance with these Terms, NTT LUX reserves the right to take such action as it deems necessary, including, but not limited to, suspension or termination of your account or an increase in the charges should the scope set out in the Order be exceeded. You acknowledge that such monitoring of use may include determining whether or not there has been excessive use or users.
- 7.8 Any cancellation or termination of Software License shall result in a loss of search and/or usage histories and any customisations you may have made, as well as a discontinuation of any NTT LUX processes you may have initiated prior to cancellation or termination, such as trade reference submissions.
- 7.9 Software “Updates” (i.e., minor enhancements, additions, and substitutions to Software, including corrections and bug fixes) are provided at no additional fee, if made commercially available by NTT LUX. “Upgrades” (i.e., modifications, additions or substitutions that result in a substantial change, improvement or addition to Software), if made commercially available by NTT LUX, are provided for an additional fee, if applicable. The determination of whether a matter involves an Update or an Upgrade is within the discretion of NTT LUX. All Updates and Upgrades made available to you are subject to these Terms.

## 8 Disclaimer of Warranties

- 8.1 **Though NTT LUX uses extensive procedures to keep its database current and to promote data accuracy, you acknowledge that any information may contain a degree of error. You are responsible for determining whether the Products supplied by NTT LUX are sufficient for your use and you shall use your own skill and judgment when relying upon the Products.**
- 8.2 **Other than as explicitly stated in these Terms, all services, and software is provided on an “as is,” “as available” basis and NTT LUX disclaims all warranties, express or implied, including any warranties of accuracy, completeness, correctness, merchantability or fitness for a particular purpose. NTT LUX does not warrant that the Services or Software shall be uninterrupted or error-free and disclaims any warranty or representation regarding availability of a Service or the Software, service levels or performance. NTT LUX shall not be liable for any loss or injury arising out of, in whole or in part, NTT LUX’s conduct in collecting, compiling, creating or interpreting any information provided by you or any third party.**

## 9 Copyrights and Other Proprietary Rights

- 9.1 **The Software and the Services provided pursuant to these Terms are proprietary to NTT LUX and may include copyrighted works, trade secrets, or other materials created by NTT LUX at great effort and expense. You shall not disclose, contest the Validity or NTT LUX’s ownership of or impair the value of the Software in any way.** You acknowledge that NTT LUX has created, acquired or otherwise obtained rights in the Products and, notwithstanding anything contained in these Terms, NTT LUX shall own all right, title and interest, including all rights under all copyright, patent and other intellectual property laws, in and to the Products and to all patent and intellectual property rights and you shall acquire no right or interest therein.
- 9.2 You shall not be entitled to use the name, trademarks, trade names or other proprietary identifying marks or symbols of NTT LUX, the NTT LUX group of companies or business units or their third party contractors, as applicable, without the prior written consent of NTT LUX, which consent can be withheld and/or withdrawn at any time and for any reason whatsoever.
- 9.3 Without limiting the generality of the foregoing, all right, title and ownership of any code, forms, algorithms, methodologies, frameworks or materials developed by or for NTT LUX or User independently and outside of these Terms and provided during the course of these Terms (“**Existing Material**”) shall remain the sole property of the party providing the Existing Material.
- 9.4 All rights, title and interest, including all rights under all copyright, patent and other intellectual property laws, in and to any deliverable or work product (or any part thereof) created or delivered by NTT LUX relating to the Services shall vest in NTT LUX.
- 9.5 NTT LUX shall defend you against any claims made by an unaffiliated third party that the Software or any Service provided under these Terms infringes its patent, design, copyright or trade mark and NTT LUX shall pay the amount of any resulting final judgment (or settlement agreed by NTT LUX).
- 9.6 You will comply with the following requirements to benefit from the indemnity above:
- 9.6.1 **you will promptly notify any claim to NTT LUX, giving written details of the claim;**
  - 9.6.2 **you will not admit liability or make any agreement or settlement in relation to the claim (unless required by applicable law or a court order) without the prior written consent of NTT LUX;**
  - 9.6.3 **you will give NTT LUX all reasonable assistance at your own cost to enable NTT LUX to contest or defend the claim;**
  - 9.6.4 **NTT LUX shall have the right to conduct the whole or any part of the defence; and**

- 9.6.5 **you will use all reasonable endeavours to mitigate any such claims and losses.**
- 9.7 You will not be indemnified if the claim:
- 9.7.1 **results from the combination of other products or services with the Products or intellectual property rights owned by NTT LUX;**
  - 9.7.2 **results from use of the Products or intellectual property rights owned by NTT LUX which is not in accordance with NTT LUX's instructions;**
  - 9.7.3 **results from modifications by you or any third party to the Products or intellectual property rights owned or provided by NTT LUX; or**
  - 9.7.4 **results from any breach by you of the provisions of these Terms or of the law,** and NTT LUX reserves the right to claim damages against you in such circumstances.
- 9.8 Should any third party succeed in its claim for the infringement of any intellectual property rights, NTT LUX shall, at NTT LUX's discretion and within 30 (thirty) calendar days of the infringing item having been found to so infringe:
- 9.8.1 obtain for you the right to continue using the infringing item or the parts which constitute the infringement;
  - 9.8.2 replace the infringing item or the parts which constitute the infringement with another product which does not infringe and which in all respects operates substantially in accordance with its specifications; alter the infringing item in a way as to render it non-infringing while still in all respects operating substantially in accordance with its specifications; or
  - 9.8.3 withdraw the infringing item and terminate the Order and, if applicable, refund to you all charges which you have already paid to NTT LUX in respect of the period calculated from the date on which the claim arose until the expiry of the then current service period.

## **10 Breach and Termination**

- 10.1 In the event of a material breach by you, NTT LUX may terminate any applicable agreement under these Terms or suspend or terminate your access to the applicable Services or Software without prior notice.
- 10.2 Upon expiration or termination of any Order, NTT LUX shall not be required to maintain or store, and may delete, your content hosted or stored in connection with the terminated Services, unless otherwise agreed in the applicable Order.

## **11 Claims for Defects**

- 11.1 NTT LUX undertakes to remedy any defects, at no charge by way of subsequent contractual performance, of which the cause can be shown to have arisen before the devolution of the risk. The User is to grant NTT LUX the time and opportunity to perform that the latter may deem necessary, at its free discretion, for the purpose of such subsequent contractual performance. Any parts replaced shall become the property of NTT LUX. Once a defect has been identified, this must be promptly reported in writing to NTT LUX. Liability for material defects shall not include for normal wear and tear, and neither for damage resulting from any of the following: improper or negligent handling; modification by you or third parties of the programs delivered along with the System; use of unsuitable operating equipment or premises; any other circumstances that are not the fault of NTT LUX; a deviation from the agreed characteristics that is merely negligible in scope and non-detrimental; or a merely negligible restriction of serviceability. The User shall bear any expenditures arising as the result of subsequent performance being delivered at a location other than the agreed place of performance.
- 11.2. Claims for defects shall become time-barred twelve months after the date of the corresponding service has been performed. If longer compulsory limitation periods are

mandated by law then these shall apply. The length of the respective operating/service life shall have no influence on the limitation period.

- 11.3. If the subsequent contractual performance provided fails to remedy the defect in question, you shall be entitled to revoke the contract or reduce the price, but this shall in no way prejudice any other indemnification claims you may enjoy. You shall not be entitled to assert claims for the compensation of damages or for the reimbursement of costs unless the prerequisites set forth in Clause 12 below have been fulfilled.
- 11.4. NTT LUX may also meet its obligation to satisfy claims for defects by means of remote access, provided it notifies the User in advance and provided the required technical conditions are met. The exchange of data between NTT LUX's remote centre and the System of the User shall occur in a manner compliant with the applicable statutory provisions regarding data protection.

## 12 Limitation of Liability

- 12.1 Save for the indemnity provided under clause 9, the maximum liability of NTT LUX, of any of its affiliates, and the officers, directors, employee, shareholders or agents of any of them to you or a third party arising out of or relating to the Services or Software, or these terms, regardless of the cause of action (whether in contract, tort, breach of warranty or otherwise), or in connection with the e-Store in any way or in connection with the use, inability to use or the results of use of the e-Store, including but not limited to loss or damage due to viruses that may infect your computer equipment, software, data or other property, shall not exceed the value of the order to which the claim relates.
- 12.2 Irrespective of the cause of action and notwithstanding anything else contained in these terms, neither Party shall be liable for any special, incidental, punitive or consequential damages or for any loss of profits, or any other indirect loss or damages, or for any lost profits, revenues, or data, or for any exemplary or punitive damages even if advised of the possibility of such damages.
- 12.3 The limitations contained in clause 10.1 shall not apply to (i) any breach by a party of the other party's proprietary or confidential information or intellectual property; (ii) any loss of or damage to any property or injury to or death of any person which arises from a party's gross negligence; or (iii) damages arising from a party's wilful misconduct (including theft, fraud or other criminal act).
- 12.4 The above limitations and exclusions of liability shall apply regardless of the form of action, whether in contract, tort or otherwise and regardless of whether a party has been advised as to the possibility of such claims, losses or damages.

## 13 Your Representations and Warranties; Indemnification

- 13.1 In addition to representations and warranties you have made elsewhere in these Terms, you represent and warrant that (i) you possess the legal right and ability to enter into these Terms and to comply with these Terms and are duly authorized to act for any business on behalf of whom you are acting when interacting with us or as to whom you are providing Submitted Information; and (ii) you will cooperate with and provide all necessary information and resources to assist us in providing the Products to you and, where obsolete versions of Software are no longer being supported by us, that you will upgrade your hardware and/or software, at your own expense, in order to maintain compatibility with a supported version of the applicable Software.
- 13.2 In addition to the indemnification obligations set forth elsewhere in these Terms, you agree to indemnify, defend and hold harmless NTT LUX, and our respective directors, officers, shareholders, employees and agents (collectively, the "**Indemnified Parties**"), at your expense, against any and all claims, actions, proceedings, and suits and all related liabilities, losses, damages, judgments, settlements, penalties, fines, costs and expenses (including, without limitation, reasonable lawyers' fees and other dispute resolution expenses) ("**Claim**") incurred by any Indemnified Party arising out of or relating to your (i) violation or breach of



any of these Terms or any policy or guidelines referenced herein (including your unauthorized use or distribution of the Products), (ii) your violation of any law, rule, regulation or rights of others in connection with your use of any Products, or (iii) infringement, violation or misappropriation of any copyright, trade secret, or any other intellectual property rights or the violation of any property or privacy right of any third party through your use of the Submitted Information and Customer Data or the provision thereof to NTT LUX in accordance with these Terms.

## 14 Disclaimer

- 14.1 NTT LUX shall take reasonable steps to ensure that the content of the e-Store is accurate and complete, however NTT LUX makes no representations or warranties, whether express or implied, as to the quality, timeliness, operation, integrity, availability or functionality of the e-Store or as to the accuracy, completeness or reliability of any information on the e-Store.
- 14.2 **In addition to the disclaimers contained elsewhere in these Terms, NTT LUX also makes no warranty or representation, whether express or implied, that the information or files available on the E-Store are free of viruses, spyware, malware, Trojans, destructive materials or any other data or code which is able to corrupt, destroy, compromise, disrupt, disable, harm, jeopardise or otherwise impede in any manner the operation, stability, security functionality or content of your computer system, computer network, hardware or software in any way. You accept all risk associated with the existence of such viruses, destructive materials or any other data or code which is able to corrupt, compromise, jeopardise, disrupt, disable, harm or otherwise impede in any manner the operation or content of a computer system, computer network, any handset or mobile device, or your hardware or software, save where such risks arise due to the gross negligence or wilful misconduct of NTT LUX, its employees, agents or authorised representatives. NTT LUX thus disclaims all liability for any damages, loss or liability of any nature whatsoever arising out of or in in connection with your access to or use of the e-Store.**
- 14.3 **By using the e-Store you warrant that you are 18 (eighteen) years of age or older and of full legal capacity. If you are under the age of 18 (eighteen) or if you are not legally permitted to enter into a binding agreement, then you may use the e-Store only with the involvement and supervision of your parent or legal guardian. If your parent or legal guardian supervises you and gives his/her consent, then such person agrees to be bound to these Terms and to be liable and responsible for you and all your obligations under these Terms.**

## 15 Changes to these Terms

- 15.1 NTT LUX may, in its sole discretion, change any of these Terms at any time. It is your responsibility to regularly check these Terms and make sure that you are satisfied with the changes. Should you not be satisfied, you must not place any further Orders on, or in any other way use, your account.
- 15.2 Any such change shall only apply to your use of this e-Store after the change is displayed on the e-Store. If you use the e-Store after such amended Terms have been displayed on the e-Store, you shall be deemed to have accepted such changes.

## 16 Linking to third party service providers

- 16.1 The e-Store may contain links or references to other service providers (“**Third Party service provider**”) which are outside of our control, including those of advertisers, distributors, manufacturers and technical support providers. These Terms do not apply to those Third-Party service providers, and NTT LUX is not responsible for the practices and/or privacy policies of those Third-Party service providers.
- 16.2 **All use of Third Party service providers is entirely at your own risk and NTT LUX shall not be responsible for any loss, expense, claim or damages, whether direct, indirect or consequential, arising from your use of such Third Party service providers or your reliance on any information contained thereon.**

## 17 Privacy

- 17.1 All personal information provided by you to NTT LUX shall be processed in accordance with our privacy policy, a copy of which shall be provided on request, and in accordance with the principles of the General Data Protection Regulation (GDPR). For further information about GDPR please see section 18 below.

## 18 Governing law and jurisdiction

- 18.1 All disputes arising out of or in connection with these Terms shall be finally settled under the Rules of arbitration of the Arbitration Center of the Luxembourg Chamber of Commerce by one or more arbitrators appointed in accordance with said rules. Any notice given under or in connection with these Terms shall be in the English language and any arbitration proceedings shall be conducted in English. All documents provided under or in connection with these Terms shall be in the English language, or accompanied by a certified English translation. If such document is translated into any other language, the English language text shall prevail unless the document is a constitutional, statutory or other official document.
- 18.2 The law governing these Terms shall be the laws of the Grand Duchy of Luxembourg.

## 19 Confidentiality

- 19.1 The term “**Confidential Information**” means any information, in whatsoever form, which by its nature or content is identifiable as confidential and/or proprietary to the party disclosing such information (“**Disclosing Party**”) and/or any third party, which is disclosed or otherwise made available to the other party (“**Receiving Party**”) as a result of or in connection with these Terms.
- 19.2 Each party agrees and undertakes not to:
- 19.2.1 disclose Confidential Information to any third party without the prior written consent of the Disclosing Party; and
  - 19.2.2 use Confidential Information for any purpose whatsoever other than strictly in relation to these Terms.
- 19.3 Notwithstanding the foregoing, Receiving Party may disclose the Confidential Information to its officers, employees and professional advisors to whom such disclosure is reasonably necessary and who are either bound by general confidentiality undertakings no less stringent than that contained in this clause or agree, in writing, to be bound by provisions of this clause prior to such disclosure.
- 19.4 Receiving Party agrees to protect the Confidential Information by using the same standard of care used to safeguard its own information of a confidential and/or proprietary nature (but in any case no less than a reasonable standard of care).
- 19.5 Receiving Party shall, at Disclosing Party’s option, destroy (including, without limitation, extracting from any computer or similar devices) or return the Confidential Information on written demand by Disclosing Party, and shall certify its compliance with this clause to Disclosing Party upon request.
- 19.6 The obligations of Receiving Party pursuant to this clause shall not apply to the extent that such information:
- 19.6.1 is known to or in the possession of Receiving Party prior to disclosure thereof by Disclosing Party, through no breach of obligations owed to Disclosing Party;
  - 19.6.2 is or becomes publicly known, otherwise than pursuant to a breach of these Terms by Receiving Party; is developed independently by Receiving Party in circumstances that do not amount to a breach of the provisions of these Terms and without reference to or use of the Confidential Information of Disclosing Party; and was received by Receiving Party from a third party who is entitled to disclose same free of restriction and without obligation to Disclosing Party.
- 19.7 The Receiving Party shall be entitled to disclose the Confidential Information of the Disclosing Party in order to satisfy the order of a court of competent jurisdiction or to comply with

provisions of any law or regulations in force from time to time, provided that in these circumstances, the Receiving Party shall advise the Disclosing Party in writing prior to such disclosure (unless prohibited by applicable law or a court order of competent jurisdiction) to enable the Disclosing Party to take whatever steps it deems necessary to protect its interest in this regard. Provided further that the Receiving Party shall disclose only that portion of the information which it is legally required to disclose and the Receiving Party shall use its reasonable endeavours to protect the confidentiality of such information to the widest extent possible in the circumstances.

- 19.8 Neither party shall disclose the contents of an Order to any third party without the prior written consent of the other party.
- 19.9 You shall implement and maintain security measures with respect to the Software and information in your possession that effectively restrict access to Software only to authorized users with a need to know, and protect Software from unauthorized use, alteration, access, publication and distribution. In no event shall such security measures be less restrictive than those you employ to safeguard your most confidential information. You shall supply NTT LUX with a description of such security measures at our request. In the event of an actual or suspected breach of such security measures, you shall provide us prompt, but in no event later than (2) days after becoming aware, written notice of any security incident that involves, or which you reasonably believe involves, the unauthorized access, use or disclosure of Software or Information.

## **20 Data Protection**

- 20.1 In these Terms you as Registered User are the Controller and NTT LUX is the Processor. As part of performing the Services, data that is subject to data protection may be exchanged between you and NTT LUX.
- 20.2 NTT LUX shall comply with the applicable statutory provisions regarding data protection, for example by processing in good faith, transparency, appropriation, minimisation of data, correctness and integrity / confidentiality of personal data. Specifically, NTT LUX shall:
- (a) only process Personal Data in accordance with your written instructions which may be specific instructions or standing instructions of general application in relation to the Services, whether set out in these Terms or otherwise notified to NTT LUX, unless such processing is required by any law (other than contract law) to which NTT LUX is subject, in which case NTT LUX shall (to the extent permitted by law) inform you of that legal requirement before carrying out the processing;
  - (b) immediately notify you if it considers that your instructions are in breach of the GDPR or other EU member state laws; and
  - (c) keep a written record of all such processing activities which shall include the information required to be kept under Article 30(2) of the GDPR.
- 20.3 The personal data will be protected by the necessary technical and organisational measures to the extent possible under generally recognised codes of practice.
- Specifically, NTT LUX shall:
- (a) ensure that it has in place appropriate technical and organisational measures to ensure a level of security for the Personal Data which is appropriate to the risks to individuals that may result from the accidental or unlawful destruction, loss, alteration, unauthorised disclosure of, or access to the Personal Data; and
  - (b) ensure that only those NTT LUX personnel, including its affiliates and other sub-processors, who need to have access to the Personal Data are granted access to such data and only for the purposes of the performance of this agreement and all of NTT LUX's personnel required to access the Personal Data are informed of the confidential nature of the Personal Data, comply with the obligations set out in this clause, and are bound by appropriate confidentiality obligations when accessing the Personal Data.
- 20.4 You are hereby advised that the provision of Services may give rise to processing on behalf of others within the meaning of Article 28 General Data Protection Regulation, a situation for

which you may have to conclude a separate data processing agreement with NTT LUX, as the case may be. Unless you issue instructions to the contrary, NTT LUX shall perform its Services with express reference to Article 6 (1) “**Lawfulness of processing**” subsections b. and f. of the General Data Protection Regulation.

- 20.5 If NTT LUX becomes aware of a Personal Data breach, it shall notify you without undue delay on becoming aware of such a breach and shall provide you with reasonable assistance to enable you to comply with your obligations under the applicable Data Protection Legislation, including in relation to data subject rights, data protection impact assessments and reporting to and consulting with supervisory authorities under applicable Data Protection Legislation.
- 20.6 On the expiry or termination of these Terms, NTT LUX shall, without prejudice to and in addition to its obligations, securely and permanently destroy all copies of Personal Data in its possession or control unless NTT LUX is required by law to retain any copies of such data. For the purposes of this Clause, Registered User shall continue to be the Controller in relation to any such retained Personal Data and NTT LUX shall process it solely as necessary to comply with Registered User’s obligations under the GDPR.
- 20.7 To comply with Data Protection Legislation relating to (a) data protection and data security; and (b) the use, collection, retention, storage, security, disclosure, transfer, disposal, and other processing of any personal data, the parties agree to be bound by NTT LUX’s Data Processing Agreement (“**the DPA**”), a copy of which is available on request. Except as described elsewhere in the DPA, any Personal Data that NTT LUX processes on Registered User’s behalf may be transferred to and stored and processed in any country in which NTT LUX or its sub-processors, which includes its affiliates, may operate.

## 21 General

- 21.1 The parties shall act as independent contractors for all purposes under these Terms. Nothing contained herein shall be deemed to construe either party as an agent, representative, employee or partner of the other party, or both parties as joint venture partners or partners for any purpose.
- 21.2 Termination of an Order or one or more of the rights and obligations of the parties, for whatsoever reason, shall not affect the other provisions of these Terms, which are intended to continue to have effect after such termination.
- 21.3 The rule of construction that, in the event of ambiguity, the contract shall be interpreted against the party responsible for the drafting thereof, shall not apply in the interpretation of these Terms.
- 21.4 For the duration of any Order, and for a period of 12 (twelve) months thereafter, neither party shall solicit for employment or retention as an independent contractor any employee or former employee of the other party who was involved in the provision of the Services and/or implementation or execution of these Terms.
- 21.5 Each Order incorporating these Terms shall form a separate agreement between the parties and shall constitute the entire agreement between the parties regarding the subject matter thereof. No party shall be bound by any express or implied term, representation, warranty, promise or the like not stated in these Terms.
- 21.6 No waiver, indulgence, extension of time or abandonment by either party of any of its rights shall be binding on that party, unless such waiver, indulgence, extension of time or abandonment is in writing and signed by the duly authorised representative of the waiving party.
- 21.7 Neither party shall be liable to the other for any delay or failure in performing its obligations under these Terms 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 reasonably foreseen by such party or, if it could have been foreseen, was unavoidable. Estimated lead times are approximate and do not reflect delays associated with Order entry, Order changes or transit times. Please contact your NTT LUX Sales Account Manager at the time of your Order for an updated estimate. Orders procured via e-Store will be delivered direct to the Registered User’s Luxembourg address, as provided to NTT LUX. In

the event that the Luxembourg address is a data centre, additional logistics charges and information will be required in order to schedule and complete delivery.

- 21.8 The parties nominate as their nominated addresses for service upon them of all notices and legal processes in connection with any matter relating to these Terms, the addresses reflected in an Order.
- 21.9 The parties agree to comply with all applicable laws and regulations relating to the performance of their obligations under these Terms, including but not limited to antibribery, anti-corruption and human trafficking, as sanctioned by the Criminal Code, as well as by various other national and international laws, specific national regulations, and to regulations issued by the Luxembourg Supervisor ("CSSF" Commission Sur le Secteur Financier) , and to European regulations on Anti Money Laundering rules as amended from time to time