

## STANDARD TERMS AND CONDITIONS FOR THE SUPPLY OF GOODS

These Terms and Conditions apply to the supply of Goods. Where the Buyer has executed a Master Agreement, these Terms and Conditions prevail over the terms of the Master Agreement to the extent of any inconsistency.

**IMPORTANT:** Any services requiring a statement of work are to be contracted via a NTT ICT Professional Services Service Schedule and associated terms and conditions.

Nothing in these Terms and Conditions is intended to limit any rights the Buyer may have that may not be excluded by law.

### 1. DEFINITIONS AND INTERPRETATION

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

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

**Delivery** means the delivery from either NTT ICT's or the Vendor's premises to the Buyer'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 ICT under the Agreement;

**Indent Order** means a custom order placed by the Buyer with NTT ICT which requires NTT ICT 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 ICT Master Agreement (or equivalent) signed by the Buyer and NTT ICT;

**NTT ICT** means NTT Com ICT Solutions (Australia) Pty Ltd, ABN 61 059 040 998, its assigns and any related body corporate as defined in the *Corporations Act 2001* (unless that related body corporate is also the Buyer);

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

**Personal Information** means information or an opinion about an identified individual, or an individual who is reasonably identifiable, whether the information or opinion is true or not and whether the information or opinion is recorded in a material form or not;

**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;

**Quotation** means a quotation provided by NTT ICT for Goods;

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

**Sales Contract** means (i) these Terms and Conditions; and (ii) an Order Form (or, subject to clause 17g), the Buyer's purchase order) referencing a Quotation;

**Standard Goods** means Goods ordinarily supplied by NTT ICT to its customers (not Goods supplied in accordance with the Buyer'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 ICT or services performed by the Vendor for which a separate statement of work has been provided;

**Third Party Terms** (often referred to as an End User License Agreement or EULA) 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;

**Terms and Conditions** means these terms and conditions; and

**Vendor** means a third party from whom which NTT ICT 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.

### 2. PRICES AND TAXES

The Price is valid for the period specified on the Quotation unless otherwise expressly agreed to in writing by NTT ICT. 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 ICT may increase the Price to allow for the increased cost to NTT ICT 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 Buyer, or the Buyer's carrier, must collect the Goods from premises nominated by NTT ICT. The Buyer 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 ICT 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.

### 3. PURCHASE ORDERS AND PAYMENT TERMS

Where the Buyer issues a purchase order to NTT ICT the purchase order must reference the Quotation number. The Buyer 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 ICT 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 ICT will only order Goods for cash on delivery once payment is received in advance by way of cleared funds into NTT ICT's bank account by payment via direct deposit.

### 4. DISPUTED INVOICES

For disputed invoiced amounts, the Buyer 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 ICT 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.

### 5. CREDIT

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

### 6. PACKAGING

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

### 7. DELIVERY

Dates and times provided by NTT ICT for Delivery of Goods or the performance of Standard Vendor Services are estimates only. NTT ICT 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 Buyer to terminate the Sales Contract. NTT ICT reserves the right to Deliver by instalments in which case each such instalment will be invoiced separately. The payment terms specified in clause 3 apply to these instalment deliveries. Written claims in relation to Goods ordered but not Delivered will be considered only if received by NTT ICT within 7 days from the date of initial Delivery.

## 8. TITLE AND RISK OF LOSS

Title to Goods transfer to the Buyer upon payment in full of monies due in respect of the Goods. Unless otherwise agreed to in writing by NTT ICT, risk in Goods purchased passes to the Buyer on Delivery. The Buyer must store all Goods separately and in a manner enabling them to be clearly identified as NTT ICT'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 Buyer's indebtedness to NTT ICT) in trust for NTT ICT. The Buyer hereby charges in favour of NTT ICT all property belonging to the Buyer in NTT ICT's possession as security for any amounts owed by the Buyer to NTT ICT. Upon any default by the Buyer in payment of any amount due to NTT ICT, the Buyer irrevocably authorises and grants reasonable access rights to NTT ICT by its servants or agents to enter the Buyer'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 ICT by its servants or agents to use all reasonable force to obtain such possession.

## 9. NO CANCELLATION BY BUYER

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

## 10. RETURN OF GOODS

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

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

## 11. DEFAULT

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

- (1) The Buyer commits a breach of the Sales Contract that is capable of remedy and fails to remedy that breach within 7 days of NTT ICT's written notice to the Buyer requesting it to do so;
- (2) The Buyer commits a breach of the Sales Contract that is incapable of remedy;
- (3) The Buyer 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.

## 12. INTELLECTUAL PROPERTY RIGHTS

- a) The Buyer warrants that any design, specification or instructions furnished by the Buyer to NTT ICT for the purposes of NTT ICT fulfilling an order will not result in infringement of the Buyer's or a third party's patent, design, copyright or trade mark. The Buyer indemnifies NTT ICT and its employees, officers, directors and agents against any liability, loss or expense (including legal fees) arising in connection with a breach by the Buyer of this warranty.

- b) The purchase of Goods does not confer on the Buyer any licence or rights under any patent, design, copyright or trade mark belonging to or used by NTT ICT or third parties.
- c) 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.

## 13. THIRD PARTY TERMS

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

- (1) acknowledges and agrees that it enters into the Third Party Terms with the applicable third party licensor of the software or the manufacturer of the Goods (including a Vendor, where applicable);
- (2) warrants that it has read, understood and accepted the Third Party Terms which are generally supplied with the Goods, or, subject to clause 13(4), are available by request;
- (3) indemnifies NTT ICT for any loss or damage incurred by NTT ICT in connection with a result of a breach by the Buyer or the Buyer's end users of the applicable Third Party Terms; and
- (4) acknowledges and agrees that in the event it is uncertain as to which Third Party Terms apply to its purchase, prior to placing an order it may contact NTT ICT at [orders@nttict.com](mailto:orders@nttict.com) referencing its Quotation number for NTT ICT to provide clarification.

## 14. PERFORMANCE

Where there is inconsistency between any figures or estimates given by NTT ICT as to the performance of Goods (which are based upon NTT ICT's experience and are what NTT ICT 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 Buyer is responsible for verifying that the Goods in the Quotation are fit for the Buyer's purpose before ordering.

## 15. WARRANTIES

- a) Subject to clause 16, to the extent it is legally able to do so, NTT ICT will make available to the Buyer any standard manufacturer warranties for Goods. Warranties, if any, for software can generally be found in the relevant Third Party Terms.
- b) Without limiting clause 16, NTT ICT does not warrant:
  - i. that Goods will be uninterrupted or free from error (any software is provided on an 'as-is' basis);
  - ii. 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
  - iii. the performance, quality, content or accuracy of any software, services, equipment or information provided by a third party received by the Buyer through or as a result of the use of the Goods.
- c) Subject to clause 16a), NTT ICT is not responsible for:
  - i. any defect in the Goods arising from: any drawing, design or specification supplied by the Buyer, fair wear and tear, wilful damage, negligence, abnormal working conditions, failure to follow NTT ICT's or the manufacturer's instructions (whether oral or in writing) or Third Party Terms, misuse, alteration or repair of the Goods without NTT ICT's or the manufacturer's approval;
  - ii. any parts, materials or equipment in respect of which the Buyer is entitled to the benefit of any warranty or guarantee given by the manufacturer; or
  - iii. the content or use of any data transferred either to or from the Buyer or stored by the Buyer or any end users via the Goods.

## 16. LIMITATION OF LIABILITY

- a) 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.
- b) 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 ICT's liability is limited to the prescribed remedy or liability.
- c) Without limiting clause 16b), 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 ICT to limit its liability, then NTT ICT's liability will be limited to:
- i. in the case of services, the cost of supplying the services again or payment of the cost of having the services supplied again; and
  - ii. 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.
- d) Subject to clause 16e), nothing in the Sales Contract operates to exclude or restrict a party's liability for:
- i. death or personal injury (including sickness) for which that party is legally liable;
  - ii. breach of confidentiality or privacy; or
  - iii. fraud or fraudulent misrepresentation.
- e) In no circumstances will NTT ICT 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 Buyer was advised of or aware of the possibility for such liability.
- f) Subject to clause 16g), the aggregate liability of NTT ICT 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.
- g) The aggregate liability of NTT ICT 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:
- i. the charges in respect of the Goods the subject of the claim; and
  - ii. \$5 million.
- 17. GENERAL**
- a) **Precedence.** Unless otherwise agreed in the Order Form, in the event of any conflict between the documents comprising the Sales Contract, the conflict will be resolved in the following order of precedence:
- i. 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);
  - ii. the Quotation;
  - iii. these Terms and Conditions.
- b) **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 ICT may use the Buyer's name and identification of the Sales Contract in marketing materials.
- c) **Internal Use.** Goods acquired by the Buyer under the Sales Contract are solely for the Buyer's own internal use and not for resale without NTT ICT's prior written consent.
- d) **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 Buyer's payment obligations.
- e) **Assignment.** The Buyer 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 ICT. Any such attempted assignment, novation or transfer will be null and void.
- f) **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.
- g) **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 Buyer (including the pre-printed terms and conditions of the Buyer's purchase order, if any) which conflict with the terms of the Sales Contract, are null and void and are expressly excluded.
- h) **Counterparts.** The Sales Contract may be executed in any number of counterparts by the parties, each of when executed will be deemed to be an original and all of which taken together will constitute one and the same instrument.
- i) **Variation.** No amendment or variation to the Agreement is effective unless it is in writing and signed by an authorised officer of NTT ICT.
- j) **Waiver.** No waiver of any breach, or failure to enforce any provision, of the Sales Contract at any time by NTT ICT will in any way limit or waive the right of NTT ICT to subsequently enforce and compel strict compliance with the provisions of the Sales Contract.
- k) **Independent Contractor.** NTT ICT 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.
- l) **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.
- m) **Severability.** If any term or condition of the Sales Contract is invalid or unenforceable, the remaining provisions remain in full force and effect.
- n) **Compliance with laws.** NTT ICT will comply with local laws generally applicable to it as a provider of ICT goods and services. The Buyer is responsible for determining the legal requirements applicable to the Buyer's business, including those relating to the Goods supplied by NTT ICT under the Sales Contract. Each party will comply with all applicable privacy, export and import laws. NTT ICT may collect and manage Personal Information as contemplated by, and in accordance with, the NTT ICT Privacy Policy (as published on the NTT ICT 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.
- o) **Survival.** Clauses 13, 15, 16, 17p) (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.

- p) **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. PERSONAL PROPERTIES SECURITIES**

The Buyer acknowledges that these Terms and Conditions constitutes a security agreement which creates a security interest in favour of NTT ICT in the Goods (including all Goods previously supplied by NTT ICT to the Buyer (if any) and all after acquired Goods supplied by NTT ICT to the Buyer, or for the Buyer's account). The Buyer agrees to grant a PMSI in the Goods and all future Goods supplied to the Buyer by NTT ICT. The Buyer agrees that the PMSI has attached to all Goods now or in the future supplied to the Buyer by NTT ICT. The Buyer 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 ICT under these Terms and Conditions or the PPSA. The Buyer undertakes to sign any further documents and/or provide any further information (which information the Buyer warrants to be complete, accurate and current) which NTT ICT 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 Buyer agrees to do all things reasonably necessary to assist NTT ICT to undertake the matters set out above. NTT ICT is not obliged to give the Buyer 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 Buyer consents to the waiver of the requirement for notice or copies of any documents under this clause. The Buyer and NTT ICT 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 ICT may extend the time for delay as NTT ICT 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).