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1 Definitions

In these conditions the term:

[Definitions related to the parties involved in the Order]

- 1.1 **'Purchaser'** shall mean NEC Telecom MODUS Limited ('NECTML');
- 1.2 **'Affiliate'** shall mean any firm or corporation directly or indirectly controlling, controlled by or under common control with NEC Telecom MODUS Limited.
- 1.3 The **'Indemnities'** shall mean collectively the Purchaser, its Affiliates, end users of Goods and its or their respective officers and employees;
- 1.4 **'Supplier'** shall mean the person, firm or company to whom this Order is addressed;

[Definitions related to the Order itself]

- 1.5 **'Purchase Order'** shall mean the Purchaser document describing the Goods or Service to be purchased, identifying the purchase order number and referencing these Terms and Conditions of Purchase;
- 1.6 **'Order'** shall mean collectively the Purchase Order together with the Specifications (if any) and the Purchaser document setting out the Terms and Conditions of Purchase applicable to the Contract;
- 1.7 **'Contract'** shall mean the contract created by acceptance of the Order as set out in clause 3 (Contract & Acceptance);

[Definitions related to the terms and conditions]

- 1.8 **'Conditions'** shall mean the Standard Terms and Conditions of Purchase and (unless the context otherwise requires) includes any Special Terms and Conditions of Purchase.
- 1.9 **'Standard Terms and Conditions of Purchase'** shall mean the terms and conditions set out in this document. The latest version of this document is available to download from the NTML Download Site
- 1.10 **'Special Terms and Conditions of Purchase'** shall mean any special terms and conditions agreed in writing between the Purchaser and the Supplier, including any further terms pre-printed on or added to the face of the Purchase Order by or with the written consent of the Purchaser.
- 1.11 **'NTML Purchasing Process'** shall mean collectively the following activities:
 - Obtaining a quotation for purchasing an item from a Supplier, including any business contact information provided to facilitate the process.
 - The creation of a Purchase Order with its associated Terms and Conditions, acceptance of which leads to the creation of a Contract for the supply of Goods and/or Services.
 - Any subsequent billing and invoicing arising from the Contract.
 - Accessing and downloading Business Documents and Forms stored in the NTML section of the NEC Website.
- 1.12 **'NEC Website'** shall mean the uk.nec.com subdomain of the NEC Corporate website (nec.com) managed by NEC-UK.
- 1.13 **'NTML Download Site'** shall mean the section of the NEC Website where NTML Business Documents and Forms are made available. The NTML Download Site is found at [NEC Telecom MODUS, Ltd \(NTML\) | NEC](#), following links to "Business Documents & Forms".

[Definitions related to the articles supplied under the Order]

- 1.14 **'Goods'** shall mean the article(s) to be supplied under this Order (including any instalment of the articles or any part of them) and described as such on the face hereof and, where appropriate, any article(s) produced consequent upon the provision of any Services;
- 1.15 **'Services'** shall mean the work to be performed (if any) under this Order.
- 1.16 **'Price'** shall mean the price of the Goods and/or the charge for the Services.
- 1.17 **'Specifications'** shall mean specifications, descriptions, samples, drawings and other data furnished or designated by the Purchaser to Supplier in order to fulfil the Order.
- 1.18 **'Delivery Point'** shall mean the premises at the delivery address stated on the Order.

[Definitions related to NEC Corporation's overarching business principles]

- 1.19 **'Principles'** shall mean the principles set out in the NEC Vendors' Charter of Responsible Conduct [Ref.1](#) provided by NEC.

[Definitions related to Data Protection]

- 1.20 **'Data Controller', 'Data Processor', 'Data Subject' and 'Personal Data', 'Special Category of Data', 'Processing' and 'appropriate technical and organisational measures'** shall have the meanings given to them in the EU GDPR and UK GDPR.
- 1.21 **'Data Protection Authority'** shall mean the relevant data protection authority in the territories where the Parties to the Contract are established.

- 1.22 **'Data Protection Laws'** shall mean EU General Data Protection Regulation 2016/679, and applicable Member State laws and UK laws implementing or supplementing the GDPR;
- 1.23 **'Data Sharing Agreement'** shall mean an agreement that sets out the purpose of the data sharing, covers what happens to the data at each stage, sets standards and help all the parties involved in sharing to be clear about their roles and responsibilities. The Data Sharing Agreement should follow the guidance of the [Data Sharing Code of Practice](#), a statutory code of practice made under section 121 of the Data Protection Act 2018 and is available from the [Information Commissioners Office](#).
- 1.24 **'NTML Purchasing Data Privacy Policy'** shall mean the separate document in which NTML detail how Personal Data will be handled by NTML as part of the NTML Purchasing Process. This document is available from the NTML Download Site. The NTML Purchasing Data Privacy Policy
 - Covers NTML's responsibilities as a Data Controller as part of the NTML Purchasing Process and is separate from any Data Sharing Agreement that may arise to cover specific data sharing requirements that might arise under the Contract depending on the nature of the Goods or Services purchased.
 - Does not cover the Suppliers responsibilities as an independent Data Controller under clause 27(Anti-slavery and Human Trafficking Obligations) of the Contract.
- 1.25 **'Personal Data Breach'** shall mean a breach of security leading to the accidental or unlawful destruction, loss, alteration, unauthorised disclosure of, or access to the Shared Personal Data.
- 1.26 **'Shared Personal Data,'** shall mean the Personal Data and Special Category Data to be shared between the Parties under clause 27 (Data Protection) of the Contract.

[Definitions related to Export Control]

- 1.27 **'Sanctions and Export Control Laws'** shall mean all laws, regulations, statutes, prohibitions or wider measures, including but not limited to Japan, European Union, European Union Member States' or United States' export and re-export laws and regulations, applicable to products, services and/or to either Party relating to the adoption, application, implementation and enforcement of economic sanctions, export controls, trade embargoes or any other restrictive measure.
- 1.28 **'Item'** shall mean any item, goods, components, materials, spare parts, software, technical data or technology.
- 1.29 **'Transfer'** shall mean the transfer of title, or delivery whether physically or electronically of an Item, whichever occurs first. Transferred shall be interpreted accordingly;

2 Interpretation

- 2.1 Any reference in these Conditions to a statute or a provision of a statute shall be construed as a reference to that statute or provision as amended, extended or re- enacted at the relevant time.
- 2.2 Any reference in these Conditions to an NEC Policy or Guidance document shall be construed as a reference to the NEC Policy or Guidance document as amended, extended or re- published at the relevant time. See clause 31 (References) for a list of relevant NEC Policy or Guidance documents.
- 2.3 Any reference to writing in these Conditions shall, unless context demands otherwise, include email, postal mail, facsimile transmission and comparable means of communication.
- 2.4 The headings to these Conditions are for convenience only and shall not affect their interpretation.
- 2.5 Words importing the singular include the plural, words importing any gender include every gender and words importing persons include bodies corporate and unincorporate; and (in each case) vice versa.

3 Contract & Acceptance

- 3.1 The Conditions are (save insofar as they are expressly modified with the written consent of the Purchaser) the sole terms of the Contract and they shall override any conflicting conditions that the Supplier may seek to impose.
- 3.2 Supplier shall be deemed to have accepted the Order upon the occurrence of any of the following:
 - 3.2.1 confirmation of the Order in writing by the Supplier to the Purchaser;
 - 3.2.2 shipment of any part of the Goods;
 - 3.2.3 commencement of any part of any Services ordered hereby, or;
 - 3.2.4 presentation to the Purchaser of an invoice in connection with the shipment or performance of any Goods or Services.
- 3.3 By accepting the Order the Supplier shall be deemed conclusively to have agreed to each and every one of the Conditions, unless otherwise agreed by the parties in writing.
- 3.4 The Order shall not bind the Purchaser unless and until Supplier accepts the Order in the manner provided in 3.2.
- 3.5 The Contract comes into effect once the Supplier accepts the Order in the manner provided in 3.2.

4 Price and Payment

- 4.1 The price of the Goods or Services shall be that stated on the face of this Order and shall not be subject to any variation without the prior written consent of the Purchaser or as otherwise provided in clause 5 (Changes).
- 4.2 Unless otherwise agreed in writing by the Purchaser, the stated price shall include all charges including but not limited to, costs of delivery/shipping to the Delivery Point, inspection etc., as well as applicable taxes, duties or charges.
- 4.3 If the Purchaser's employees or agents have to handle the Goods (whether for purposes of unloading or trans-shipment) the cost thereof may be charged to the Supplier.
- 4.4 Where the supply of the Goods or Services is subject to the addition of Value Added Tax, the amount required to be charged shall be identified as a separate item of account failing which the price shall be deemed to include that amount.
- 4.5 Unless otherwise agreed in writing by the Purchaser, the Supplier shall not invoice the Purchaser until performance of this Contract has been completed. Such invoice shall clearly state the Purchaser's official purchase order number as it appears on the Order.
- 4.6 Payment for Goods or Services shall be made, unless otherwise agreed in writing, within thirty (30) days from
 - 4.6.1 the date of Supplier's invoice or
 - 4.6.2 the date of delivery or performance of such Goods or Services, whichever is later or
 - 4.6.3 as otherwise agreed between both Parties.
- 4.7 The Purchaser reserves the right to set off against any liability that it has to the Supplier hereunder any sums in respect of which the Supplier may be indebted or in default to the Purchaser whether or not in connection with the sale or supply of the Goods or the performance of the Services.

5 Changes

- 5.1 The Purchaser reserves the right at any time or from time to time to request changes in any or all of the following:
 - 5.1.1 quantities of Goods ordered;
 - 5.1.2 Specifications with respect to the manufacture, procurement, transportation, supply or performance of any Goods or Services;
 - 5.1.3 method of shipment or packing of any Goods;
 - 5.1.4 Delivery Point or place of performance of any Goods or Services and
 - 5.1.5 time of delivery or performance of any Goods or Services.
- 5.2 Requests for such changes shall be made in writing from Purchaser to Supplier. Supplier shall respond promptly in writing to such requests and shall not unreasonably withhold its consent thereto.

6 Delivery and Performance

- 6.1 The Contract shall be performed on the date specified on the Purchase Order.
- 6.2 The mode of delivery of Goods hereunder shall be that stipulated on the Purchase Order, where applicable.
- 6.3 Unless otherwise expressly provided on the Purchase Order all Goods must be delivered by the Supplier carriage paid to the Delivery Point or to a nominated sub- contractor.
- 6.4 If Supplier shall fail to complete the delivery of Goods or the performance of Services within the time or times specified in the Order or, if no time is so specified, within a reasonable time after the date of the Order, the Purchaser reserves the right, without incurring any liability to Supplier thereby, and without prejudice to any other rights and remedies that the Purchaser may have,
 - 6.4.1 to reject such Goods or cancel such Services and
 - 6.4.2 to purchase similar goods or obtain similar services elsewhere and charge Supplier with any loss, cost or expense incurred.
- 6.5 If any delay in performance is anticipated by the Supplier, the Supplier shall immediately notify the Purchaser's Purchasing Manager of such anticipated delay. The right of the Purchaser to terminate the Contract pursuant to clause 6.4 shall not be affected in any way by giving of such a notice or by any subsequent indulgence allowed by the Purchaser.
- 6.6 Failure to perform the Contract within any time limit that may be applicable pursuant to clause 6.1 shall entitle the Purchaser to terminate the Contract without compensation to the Supplier. Notwithstanding any past indulgence granted by the Purchaser in respect thereof, it shall be entitled to exercise its rights of termination without allowing the Supplier any further time in which to remedy the failure to perform.
- 6.7 Delivery in instalments shall be permitted only with the prior consent in writing of the Purchaser and such consent if given, shall not entitle the Supplier to claim payment prior to delivery of the whole of the Goods, unless otherwise expressly agreed in writing by the Purchaser.

7 Keeping of Adequate Stock

- 7.1 If specified by Purchaser on the Purchase Order, Supplier undertakes either to hold an adequate stock of Goods or not to cease manufacturing Goods without Purchaser's consent so as to ensure continuity of supply for the period specified on the Purchase Order.

8 Entry into Purchaser Premises

- 8.1 The Purchaser or its Affiliates will grant to the Supplier and its employees, agents or contractors licence to enter into and upon and to use such parts of any relevant site and buildings as may be reasonably necessary for the purpose of supplying the Goods or providing the Services.
- 8.2 The Supplier and its employees, agents or contractors shall be subject at all times during the performance of their obligations on the premises of the Purchaser or its Affiliates to such conditions, requirements and regulations relating to security as may be laid down from time to time by the security officer on site or by other authorised officers of the Purchaser or its Affiliates.
- 8.3 Nothing herein shall in any way diminish the responsibility of the Supplier to ensure the safety and well-being of its employees, agents, contractors and third parties likely to be affected by its actions. If any claim is made against the Purchaser or its Affiliates by reason of any injury to any person occasioned by any failure on the part of the Supplier so to do the Supplier shall indemnify the Purchaser and its Affiliates against all damages, liabilities, costs and payments suffered by reason of that claim.

9 Risk in and Title to the Goods

- 9.1 Risk of loss or damage to Goods shall not pass to the Purchaser until completion of delivery, by the Supplier signifying physical receipt thereof by the Purchaser or its Affiliates at the designated Delivery Point, evidenced by signing of an acknowledgement of receipt document.
- 9.2 Risk of loss or damage to Goods shall revert to Supplier upon rejection of such Goods by the Purchaser or its Affiliates.
- 9.3 Title to Goods shall not pass to the Purchaser until receipt thereof by the Purchaser or its Affiliate at the Delivery Point, evidenced by signing of an acknowledgement of receipt document.
- 9.4 Title to Goods shall revert to Supplier upon rejection of such Goods by the Purchaser or its Affiliate.
- 9.5 Title in any of the Goods (or any components to be included in any goods) shall pass to the Purchaser as soon as they are appropriated to the Contract by the Supplier.
- 9.6 No reservation of title by Supplier shall be effective with respect to Goods unless expressly agreed to in writing by the Purchaser.

10 Intellectual Property Rights and Confidentiality

- 10.1 Purchaser retains proprietary rights in and to all Specifications.
- 10.2 All discoveries, inventions, patents, copyright and other intellectual property rights based upon, arising out of or otherwise in respect of work performed by Supplier or any of its subcontractors in connection with the Contract shall belong to the Purchaser free and clear of any claims by Supplier or any such subcontractor of any kind or character whatsoever.
- The Purchaser may reproduce or use such property for any purpose whatsoever and the Suppliers shall not be entitled to any additional remuneration in respect thereof.
- 10.3 Any equipment, patterns, gauges, tools, specifications, plans, drawings, samples, designs, advertising material or other written material supplied by the Purchaser to the Supplier in connection with the Contract shall remain the property of the Purchaser.
- 10.4 The Supplier shall treat all property of the Purchaser as confidential and shall not without the prior written consent of the Purchaser disclose such property to any person outside of its employ or use it otherwise than for the purpose of performing this Contract, other than as allowed by clause 10.5 below.
- 10.5 If Supplier subcontracts or otherwise delegates any duties under the Contract to any third party in accordance with clause 22 (Assignments and Binding Affect), Supplier shall impose on such third party the same obligations as those stipulated in this clause 10 (Intellectual Property Rights and Confidentiality).
- 10.6 The Supplier shall, at the option of the Purchaser, account to the Purchaser for any profits that it may make by reason of any unauthorised disclosure or use or indemnify the Purchaser for any loss that the Purchaser may suffer by reason thereof.
- 10.7 The Supplier shall return to NEC all Specifications and all such other materials and property of the Purchaser, together with any copies thereof, upon completion of the delivery of Goods or performance of Services or, earlier, upon NEC's request or upon termination of the Contract. The Supplier shall take such other steps (if any) as may be necessary to confirm the Purchaser's title to the returned items.
- 10.8 Any information disclosed by Supplier to the Purchaser hereunder shall not be deemed confidential and the Purchaser will not be obligated to retain any such information in confidence, unless otherwise agreed in writing by both parties.
- 10.9 The Supplier shall only disclose the existence or terms of this Contract, other than these Terms and Conditions Data Privacy Policy already in the Public Domain as a result of placement on the NTML Download Site, to any person other than its employees insofar as it is necessary to allow performance of the Contract.
- 10.10 The provisions of this clause 10 (Intellectual Property Rights and Confidentiality) shall survive termination of the Contract.

11 Alterations

- 11.1 The Supplier shall not make any alterations in the design, materials or method of manufacture of the Goods, nor substitute other parts or fitments for any proprietary or special parts or fitments ordered by the Purchaser without the prior written consent of the Purchaser (which consent shall not be unreasonably withheld).
- 11.2 If the Purchaser (being entitled so to do) refuses to give its consent under clause 11.1 above and the Supplier is for any reason unable to perform the Contract without making the alteration or substitution requested, the Purchaser may terminate the Contract forthwith (without compensation to the Supplier and without prejudice to the Purchaser's right to recover damages for the Supplier's breach of Contract) by giving notice in writing to the Supplier.

12 Quality, Verification and Inspection

- 12.1 All Goods and Services supplied shall comply in all respects with the governing Specification of this Order, any express or implied warranties or representations made by the Supplier and any terms or conditions implied into this Contract by law. Any exclusion or limitation of such provision or of the Supplier's liability for breach thereof is hereby expressly rejected by the Purchaser.
- 12.2 For the purpose of satisfying the Purchaser that the Supplier is duly performing its obligations under this Contract, the Supplier shall at all times allow persons duly authorised by the Purchaser to make any such inspections or tests which the Purchaser may require and shall afford all reasonable facilities and assistance free of charge to the Purchaser.
- 12.3 Without limiting the generality of clause 12.2, where the Supplier has carried out any tests or examinations upon the Goods or relied upon any tests or examinations carried out by a third party, the Supplier shall on request provide the Purchaser with copies of the results of such tests or examinations.
- 12.4 Goods shall be subject to inspection and approval by the Purchaser or its Affiliates at the Delivery Point.
- 12.5 If, on inspection or in manufacture or use, it is found that any Goods do not comply with clause 12.1, the Purchaser or its Affiliate may at its option and within a reasonable period of time following discovery of the defect give notice that it:
- 12.5.1 rejects the whole or any part of the Goods; or
 - 12.5.2 requires the Supplier at its own cost to remove the defective Goods and replace them with Goods complying with clause 12.1; or
 - 12.5.3 requires the Supplier at its own cost to rectify the defective Goods.
- 12.6 If at any time it is found that the Services do not comply with clause 12.1, the Purchaser or its Affiliate may at its option within a reasonable period of time following discovery of the defect:
- 12.6.1 reject the whole or any part of the Services or any work produced thereby; or
 - 12.6.2 require the Supplier at its own cost to undertake such work as is necessary to bring the Services into compliance with clause 12.1.
- 12.7 The Purchaser may charge Supplier for any costs incurred by the Purchaser or its Affiliate in inspecting Goods or Services which are rejected, and Supplier shall promptly reimburse the Purchaser for all such costs.
- 12.8 At the request of the Purchaser or its Affiliate, Supplier shall arrange, at its own expense, for the return of the rejected Goods or any items associated with a rejected Service.

- 12.9 Supplier shall give the Purchaser full credit, at the price charged to the Purchaser hereunder, for any Goods or Service rejected by the Purchaser or its Affiliate.
- 12.10 Taking delivery of or making payment for any Goods or Service shall not be deemed as acceptance thereof.
- 12.11 In addition to any other rights under this Contract, the Purchaser shall be indemnified by the Supplier against all loss of whatsoever kind (including any claims by third parties, loss of profit and loss of business) arising by reason of any failure of the Goods or Services to comply with clause 12.1 or otherwise caused by any negligence on the part of the Supplier (or its servants, agents or contractors) in the performance of this Contract.
- 12.12 Representatives of the Purchaser and its Affiliates reserve the right to visit the premises of Supplier and its subcontractors at all reasonable times having given reasonable notice of its intention to do so, in order to inspect progress, quality issues and test Goods relating to the subject of the Order during or after the manufacture thereof and may reject, or request improvement with respect to, any Goods that do not conform to the Order or to any Specifications.

13 Quality of Goods Warranties

- 13.1 Supplier warrants that:
- 13.1.1 all Goods shall be of good quality, workmanship, material and design;
 - 13.1.2 all Goods shall conform fully to all applicable Specifications;
 - 13.1.3 all Goods shall be of merchantable quality and free from defects;
 - 13.1.4 all Goods shall be fit, sufficient and safe for the intended purpose of the Purchaser, its Affiliate and/or end users; and
 - 13.1.5 all Goods shall, at the time of delivery, be free and clear of all claims, liens and other encumbrances of any kind.
- 13.2 Supplier agrees that the foregoing warranties shall survive acceptance of any Goods and shall be in addition to any other express or implied warranties of Supplier. Supplier's warranties hereunder shall include such express or implied warranties as shall be provided by applicable law or other regulations which may be in force at the time of delivery.
- 13.3 Without limitation to the Purchaser's rights of termination set forth in clause 19 (Termination) hereof, if at any time within one (1) year following the delivery of shipment of Goods hereunder, the Purchaser or its Affiliate finds that all or part of the said shipment of Goods does not conform to the warranties specified in this clause 13 (Quality of Goods Warranties) or fails in any other respect to conform to the requirements set forth in the Order, the Supplier shall either repair or replace such non-conforming Goods at the Supplier's expense within a reasonable period in accordance with the Purchaser's or its Affiliates request, provided that the Supplier shall also reimburse the Purchaser for any loss, costs or expense incurred by the Purchaser or any its Affiliates as a result of the non-conformity.

14 Intellectual Property Warranty

- 14.1 The Supplier warrants that the sale of the Goods by it and the further sale, lease, use, importation, exportation or other disposition of the Goods by the Purchaser or its Affiliates or any other Indemnities does not and will not:
- 14.1.1 infringe any British or foreign patent, petty patent, design patent, utility model, trademark, trade name, registered design or other intellectual property right (in all of which cases, whether granted at the date of this Contract or not);

- 14.1.2 infringe any rights of copyright or confidentiality vested in any third party;
 - 14.1.3 entitle any third party to bring proceedings for passing-off or unfair competition;
 - 14.1.4 infringe any rights or entitle any third party to bring proceedings on any grounds, analogous to those identified in clauses 14.1.1-14.1.3 of this clause 14.1.
- 14.2 In the event of any breach of that warranty, the Purchaser may at its option and irrespective of whether the Goods have been accepted either:
- 14.2.1 reject the Goods or any part thereof; or
 - 14.2.2 require the Supplier at its own cost to make such modifications to the Goods as may be necessary to bring the breach of warranty to an end; or
 - 14.2.3 require the Supplier at its own cost to replace the Goods with goods which do not breach the warranty.
- In addition, the Supplier shall indemnify and hold harmless the Indemnities against all loss of whatsoever nature suffered by the Purchaser by reason of any such breach. This shall include, but not be limited to, all claims by the person entitled to such rights, all claims by any other third party, any loss (including without limitation, consequential losses and loss of profits or loss of business) damage, penalties, claims, suits, actions, costs and expenses (including, without limitation, attorney's fees and disbursements).
- 14.3 The warranty in clause 14.1 shall not extend to any infringement or claim which arises by reason of:
- 14.3.1 any combination of the Goods with other goods which is effected by the Purchaser and which was not reasonably foreseeable by the Supplier.
 - 14.3.2 any modification to the Goods or their presentation or advertisement made by the Purchaser.

15 Indemnity

- 15.1 Supplier shall defend, indemnify and hold harmless the Indemnities against all liability, loss, (including, without limitation, consequential losses and loss of profits), damage, penalties, claims, suits, actions, costs and expenses (including, without limitation, attorneys' fees and disbursements), which may be incurred by, imposed on, brought against or suffered by one or more of the Indemnities in respect of any;
- 15.1.1 death or personal injury, or damage to or loss of real or personal property, arising out of or otherwise in connection with the lack of safety, defect and/or malfunction of the Goods; and
 - 15.1.2 death or personal injury, howsoever caused, to any of Supplier's employees, agents or subcontractors while in or around any of the Purchaser's or any of its Affiliates facilities or other places of business, provided that such death or personal injury is not attributable to the gross negligence or wilful misconduct of the Purchaser or any of its Affiliates.

16 Statutory Requirements

- 16.1 The Supplier warrants that the design, construction, quality and labelling of the Goods shall comply in all respects with any requirement of any statute, order or other instrument having the force of law, which may be in force at the time when the Goods are supplied.

17 Packaging, Labelling and Instructions

- 17.1 Supplier, at its own expense, shall have Goods strongly packed and shall take measures to protect Goods during handling, loading and unloading as well as during long-distance sea or air and inland transportation so as to ensure the safe arrival of Goods at the Delivery Point without any damage or deterioration.
- 17.2 Should Goods be damaged or lost due to Supplier's improper packing and/or inadequate protective measures before shipment, Supplier shall be liable for, at Purchaser's sole option, the repair or replacement of such Goods or the payment of monetary damages.
- 17.3 When required by the Purchaser the Supplier shall mark the Goods in accordance with the reasonable instructions of the Purchaser. In any event, the Supplier shall ensure that any of the Goods which are hazardous Goods have prominent warnings in English on all packing and documents.
- 17.4 On or before delivery of the Goods to the Purchaser, the Supplier shall make available to the Purchaser all information, drawings and warnings necessary for the safe and satisfactory maintenance, repair and use for which the Goods have been supplied.

18 Repayment

- 18.1 If the Purchaser exercises any right of rejection or termination, the Supplier shall forthwith repay to the Purchaser any sums paid to the Supplier on account of the purchase price (or, where the right is exercised in respect of a part of the Goods or Services, such part of the sums paid as is attributable to the part rejected) together with interest calculated on a day basis at a rate equivalent to an annual rate of 3 per cent over the Base Rate published from time to time by Barclays Bank Plc.

19 Termination

- 19.1 Without prejudice to any specific rights conferred upon the Purchaser by any other provision of this Contract, should any of the following events occur, Supplier shall be deemed to have repudiated the Order and the Purchaser shall be entitled to forthwith terminate the Contract and pursue all remedies available to it pursuant to the Contract and applicable law;
- 19.1.1 the Purchaser or its Affiliate rightfully rejects any Goods
- 19.1.2 Supplier breaches any of the Terms & Conditions set forth in the Order, including, without limitation, any of the warranties specified in clause 13 (Quality of Goods Warranties) or clause 14 (Intellectual Property Warranty) irrespective of whether:
- (a) that breach substantially affects the nature of the performance received or to be received by the Purchaser or its Affiliate; and
 - (b) the Purchaser or its Affiliate has accepted the Goods or (as the case may be) used or had any benefit from the Services.

- 19.2 In the event that the Purchaser terminates the Contract pursuant to clause 19.1, the Purchaser without prejudice to any other rights and remedies available to it under applicable laws for breach of the Contract, shall have the right;
- 19.2.1 to refuse, or to cause its Affiliate to refuse, to accept delivery of Goods in which case the Purchaser shall be relieved from liability for any payments to Supplier therefore;
 - 19.2.2 to recover from Supplier all advance payments for undelivered or returned Goods (including without limitation, all payments for freight, storage, handling and other expenses incurred by the Purchaser or any of its Affiliates in connection therewith); and
 - 19.2.3 to purchase goods similar to Goods elsewhere and charge Supplier with any loss, cost or expenses incurred,
- 19.3 If the Contract provides for delivery of the Goods or for performance of the Services by instalments, any breach in relation to any single instalment shall entitle the Purchaser to terminate the entire Contract.
- 19.4 The Purchaser may cancel this Contract prior to its completion unilaterally, in whole or in part, by giving written notice thereof to the Supplier in which case:
- 19.4.1 the Supplier shall forthwith deliver to the Purchaser all property of the Purchaser in its possession; and
 - 19.4.2 the Purchaser's sole liability shall (once the Supplier has performed its obligations under clause 19.4.1 above) be to pay such proportion of the Contract price as the costs reasonably incurred by the Supplier in performance of the Contract prior to service of the notice bear to the total costs that would have been incurred had performance been completed.
- 19.5 The Purchaser shall be entitled to terminate this Contract by written notice if
- 19.5.1 the Supplier becomes insolvent,
 - 19.5.2 Supplier's filing of a voluntary petition in bankruptcy,
 - 19.5.3 the filing of an involuntary petition to have Supplier declared bankrupt,
 - 19.5.4 goes into liquidation,
 - 19.5.5 has a receiver appointed or trustee for Supplier over the whole or any part of its undertaking or assets,
 - 19.5.6 voluntarily ceases trading,
 - 19.5.7 or merges with or is acquired by a third party,
 - 19.5.8 or the conclusion by Supplier of an assignment for the benefit of creditors,
 - 19.5.9 or if any of the aforementioned events is or are threatened.

20 Compliance with Laws

- 20.1 Supplier shall defend, indemnify and hold harmless the Indemnities from and against all liability, loss, damage, penalties, claims, suits, actions, costs and expenses (including, without limitation, attorney's fees and disbursements) which may be incurred by, imposed on, brought against or suffered by any one or more the Indemnities for or in relation to Supplier's failure to comply with any laws or regulations by which the performance of the Contract will be governed.

21 Lien

- 21.1 The Purchaser or its Affiliate shall be entitled to retain any Goods or any work produced by the Services rejected by it or its Affiliate or any property of the Supplier of which it has possession until all sums due from the Supplier under this Contract have been paid in full.

22 Assignments and Binding Affect

- 22.1 The Suppliers shall not without the prior written consent of the Purchaser assign, transfer or sub-let the Contract or any part thereof other than for minor details or for any part of the Goods of which the makers or suppliers are named in the Order.
- 22.2 The Order shall be binding upon and inure to the benefit of the Purchaser and Supplier and their respective successors and permitted assigns, and is also made for the benefit of, and shall be enforceable by, each Indemnity to the extent of its interest hereunder

23 Force Majeure

- 23.1 The Purchaser shall not be in breach of this Contract by reason of any delay in the performance or any non-performance of any of its obligations hereunder (and shall not be liable for any loss or damage caused thereby) where the same is occasioned by any event whatsoever that is beyond its control. Should any such event occur:
- 23.1.1 such obligations of the Purchaser as are affected by the event shall be suspended for so long as the event continues;
- 23.1.2 in calculating the time at which the Purchaser is to perform the obligations once the event has ceased, a period equal in length to the duration of the event shall be added to the time at which such obligations were to be performed before such an event happened; and
- 23.1.3 the Purchaser may terminate this Contract at any time during the event's subsistence in so far as it concerns any Goods that have not been delivered to the Purchaser or any Services not performed without any liability to the Supplier in respect thereof.

24 Export Regulations and Trade Restrictions

- 24.1 Supplier shall comply with all and any Sanctions and Export Control Laws which are applicable to any Item or services.
- 24.2 Supplier represents and warrants that no Item or service under the Contract is subject to Export Controls and Sanctions. Should any Item or service be subject to Export Control and Sanctions, Supplier shall inform the Purchaser thereof at the time of entering into the Contract. Supplier undertakes to immediately inform the Purchaser about any change during the terms of the Contract.
- 24.3 At any time before the Transfer of any Item, or delivery of any service, Supplier shall immediately inform the Purchaser of any and all sanctions and export control conditions and authorisations applicable to the Transfer of an Item or delivery of a service, including, where applicable, the export control classification number or rating of such Item.
- 24.4 The Supplier expressly undertakes to provide Purchaser, at no extra cost,
- 24.4.1 with sufficient information and clarification, as may be reasonably requested by the Purchaser, from time to time, including technical classification and documentation on the Item, in order for the Purchaser to confirm the export control classification of the Item.
- 24.4.2 the HS code and supporting product description documentation should NEC be planning to re-export the products.

- 24.5 In the event that the Transfer of any Item or delivery of service by the Supplier, necessary for the fulfilment of the Order, is subject to obtaining an export licence, it shall be the responsibility of the Supplier to obtain such a licence from the appropriate authorities and to comply strictly with its terms.
- 24.6 In the event that an application for an export licence is delayed or denied, or the Supplier has Transferred the Item or delivered the service in breach of the licence conditions or otherwise of Sanctions and Export Control Laws, Supplier hereby indemnifies and shall hold harmless the Purchaser against all and any claims, actions, suits, proceedings, losses, damages, fines, cost and expenses (including legal costs and fees), resulting from or arising out of any said licence delay or denial or breach by the Supplier.
- 24.7 Without prejudice to Supplier's liability for any action or omission of its subcontractors, Supplier shall ensure that any subcontractor is also contractually obliged to provisions equivalent to those set out in this clause 24 (Export Regulations and Trade Restrictions).
- 24.8 If, following the date of the Order,
- 24.8.1 there shall be imposed any import, export or other restriction on international trade or commerce or there shall be enacted or otherwise issued any law, regulation or order regulating or purporting to regulate any import, export or other international trade or commerce in any way including, without limitation, any creation or increase (whether retaliatory or otherwise) of tariffs, import surcharges, anti- dumping or countervailing duties, fees or any other form of charges whatsoever, or the imposition of any import or export quota or embargo, and
- 24.8.2 the Purchaser's ability to perform the Order is adversely affected thereby, or its underlying economic assumptions with respect to the Order become inaccurate in any respect, the Purchaser shall have the option either
- (a) to terminate the Order in whole or in part by written notice to Supplier, without incurring any liability to Supplier thereby, or
 - (b) to require Supplier to renegotiate, in good faith, for the purpose of adjusting equitably any of the Terms and Conditions, in which event Supplier shall promptly commence such renegotiations with the Purchaser.

25 Anti-corruption Obligation

- 25.1 The Supplier shall not, and shall procure that its employees, agents and sub-contractors shall not: offer, promise, give or agree to give, solicit, request, accept or agree to accept to or from any person or entity (in private or public office), whether for itself or on behalf of another, any gift, payment, consideration, financial or non-financial advantage or benefit of any kind to or for the benefit of any person or entity (in private or public office), which constitutes an illegal or corrupt practice under any applicable laws (including applicable foreign or domestic anti-bribery and anti-corruption laws and regulations, the UK Bribery Act 2010, the US Foreign Corrupt Practices Act 1977 and any laws intended to implement the OECD Convention on Combating Bribery of Foreign Public Officials in International Business Transactions).
- 25.2 The Supplier shall immediately disclose in writing to Purchaser details of any breach of the Anti-Corruption Obligation.
- 25.3 The Supplier shall:
- 25.3.1 always maintain strict compliance with the Anti-Corruption Obligation;
 - 25.3.2 monitor its employees, agents and sub-contractors to ensure compliance with the Anti-Corruption Obligation; and
 - 25.3.3 make clear, in all its dealings in connection with the Purchaser that it is required by the Purchaser to act, and is acting, in accordance with the Anti-Corruption Obligation.
- 25.4 The obligations set out in this clause 25 (Anti-corruption Obligation) are ongoing obligations.

26 Anti-slavery and Human Trafficking Obligations

- 26.1 the Supplier shall:
- 26.1.1 comply with all applicable anti-slavery and human trafficking laws, statutes and regulations in force including but not limited to the Modern Slavery Act 2015; and
 - 26.1.2 comply with the Principles and the NEC Group Human Rights Policy [Ref 2](#), supplied by NEC, and have and maintain throughout the term of the Contract its own policies and procedures to ensure its compliance; and
 - 26.1.3 not engage in any activity, practice or conduct that would constitute an offence under sections 1, 2 or 4, of the Modern Slavery Act 2015 if such activity, practice or conduct were carried out in the UK; and
 - 26.1.4 include in its contracts with its direct subcontractors and suppliers enforceable anti-slavery and human trafficking provisions that are at least as onerous as those set out in this clause 26 (Anti-slavery and Human Trafficking Obligations).

27 Data Protection

- 27.1 This clause 27 (Data Protection) sets out the framework for the sharing of Personal Data between the parties as Data Controllers and defines the principles and procedures that the parties shall adhere to and the responsibilities the parties owe to each other.
- 27.2 The parties require access to Personal Data for providing certain services. This clause is required to ensure that where Personal Data may be accessed, such access will at all times comply with the requirements of the Data Protection Laws.
- 27.3 The sharing of Personal Data is necessary for the purposes of carrying out the NTML Purchasing Process (the Agreed Purposes)
- 27.4 Each of the parties is and will remain a separate and independent controller in respect of the Contract and shall independently determine the purposes and means of such processing of personal data.
- 27.5 The parties shall remain responsible for ensuring that all uses of the Shared Personal Data are in compliance with all applicable Data Protection Laws and these terms during the life of this Contract.
- 27.6 For the Agreed Purposes as listed in clause 27.3, Personal Data that forms part of standard commercial information may be shared between the parties during the term of the Contract.
- 27.7 For the avoidance of doubt, NTNL has set out its responsibilities as an independent Data Controller in the NTML Purchasing Data Privacy Policy. The NTML Purchasing Data Privacy Policy is intended to supplement these Terms and Conditions. In the event of a conflict of interpretation between these Terms and Conditions and the NTML Purchasing Data Privacy Policy as to how NTML will handle Personal Data, these Terms and Conditions will take precedence.
- 27.8 Where Personal Data other than that detailed in clause 27.6 needs to be exchanged to fulfil the requirements of the Order, then a separate Data Sharing Agreement will be set up and executed between the Purchaser and the Supplier.
- 27.9 Each of the parties will, on request, provide the other party with reasonable assistance, information and cooperation, at its own expense, to ensure the other party's compliance with the respective obligations under Data Protection Laws in relation to the Contract.
- 27.10 If a data subject makes a written request to a party concerning the Shared Personal Data which the other party is the controller, such party shall;

- 27.10.1 forward the request to the other party promptly and in any event within five (5) business days from the date on which it received the request and
- 27.10.2 upon the other party's reasonable written request, provide that other party with reasonable co-operation and assistance in relation to that request to enable the other party to respond to such request and meet applicable deadlines under Data Protection Laws.
- 27.11 If either party (the 'Data Receiving Party') receives a complaint, notice or communication from a Data Protection Authority regarding directly or indirectly the other party's
- 27.11.1 Shared Personal Data; or
- 27.11.2 a potential failure to comply with Data Protection Laws, the Data Receiving Party shall, to the extent permitted by law, promptly forward the complaint, notice or communication to the other Party and provide the other Party with reasonable cooperation and assistance in relation to the same.
- 27.12 Each party shall implement appropriate technical and organisational security measures in relation to the Shared Personal Data by or on behalf of such party in the performance of this Contract, which shall ensure a level of security appropriate to the risk including, as appropriate,
- 27.12.1 pseudonymisation and encryption;
- 27.12.2 the ability to ensure the ongoing confidentiality, integrity, availability and resilience of processing systems and services;
- 27.12.3 the ability to restore the availability and access to the Shared Personal Data in a timely manner in the event of a physical or technical incident; and
- 27.12.4 a process for regularly testing, assessing and evaluating the effectiveness of those measures.
- 27.13 If either party becomes aware of a Personal Data Breach involving this Contract, it shall notify the other party without undue delay, and the parties shall co-operate with each other, to the extent reasonably requested, in relation to any notifications to the Data Protection Authorities or to data subjects that either party is required to make under Data Protection Laws.

28 Green Procurement Guidelines

- 28.1 Supplier shall comply with NEC's Green Procurement Standards [Ref 3](#).
- 28.2 Any non-compliance shall be deemed a material breach of this Contract and shall entitle the Purchaser to immediately terminate this Contract and Supplier shall indemnify Purchaser against all damages and losses of any nature incurred, caused, or arising out of or in connection to such breach.

29 Applicable Law and Submission to Jurisdiction

- 29.1 The Contract shall in all respects be governed by and construed in accordance with the laws of England.
- 29.2 Supplier and the Purchaser hereby expressly exclude the application of the 1980 United Nations Convention on Contracts for the International Sale of Goods with respect to the sales covered by the Order.
- 29.3 Supplier hereby irrevocably consents to the nonexclusive jurisdiction of the High Court of Justice in England and Wales in connection with any and all suits, actions or other proceedings (collectively, the 'Proceedings') arising out of or in relation to the Order and hereby waives and agrees not to assert, as a defence or otherwise, in any of such Proceedings, any claim that personally subject to the jurisdiction of the above named court, that Proceedings are brought in an inconvenient forum, that the venue of Proceedings is improper or that the subject matter of the Order may not be enforced in or by such courts.
- 29.4 Supplier agrees that proceedings against it may be served by post or email to its registered place of business or registered email address designated from time to time in writing to the Purchaser.

30 Entire Agreement: Modification and Waiver

- 30.1 The Terms and Conditions set forth in the Order, together with Specifications, if any constitute the entire agreement between the Purchaser and Supplier in respect of the subject matter hereof and supersede all prior agreements, written or oral, with respect thereto.
- 30.2 Any alterations or modifications hereof shall be by mutual agreement of the parties and shall not be binding on the Purchaser unless agreed to by the Purchaser in writing.
- 30.3 No claim or right of the Purchaser arising out of a breach of the Order shall be discharged in whole or in part by a waiver of such claim or right unless such waiver is made by the Purchaser in writing.
- 30.4 No delay on the part of the Purchaser in exercising any right hereunder shall operate as a waiver thereof, nor shall any waiver by the Purchaser of any such right, or any single or partial exercise of such right, preclude any further exercise thereof or the exercise of any other such right.

31 References

31.1 *NEC Policy or Guidance document*

1. NEC's Guidelines for Responsible Business Conduct in Supply Chains (CHOUSHI 2022-01).
2. NEC Group Human Rights Policy – CHOUSHI 2022-01, Part III: Human Rights and Labour Practices .
3. NEC Green Procurement Standards – CHOUSHI 2022-01, Part 1 V: Environmental Requirements .

The latest version of all NEC Policy or Guidance documents may be found on the NEC Global web site at [Responsible Procurement: About NEC | NEC](#), follow links to Sustainable Supply Chain. A copy, current at the publication date of these Terms and Conditions, is also provided on the NTML Download Site.