



GENERAL TERMS AND CONDITIONS OF PURCHASE

1. DEFINITIONS

1.1. In these Terms and Conditions, the following words shall have the following meanings –

- 1.1.1. **“Affiliate”** means any corporation, company, or other business entity that, directly or indirectly, controls or is controlled by, or is under common control (i.e., direct or indirect ownership of in aggregate 50% or more in the voting capital) of NEC XON Holdings Proprietary Limited;
- 1.1.2. **“Anti-Corruption Obligations”** means the anti-corruption obligations set out in clause 21 below;
- 1.1.3. **“Buyer”** means NEC XON Holdings Proprietary Limited and/or any of its Affiliates, a limited liability private company incorporated in accordance with the laws of the Republic of South Africa, company registration number 2001/018807/07;
- 1.1.4. **“Confidential Information”** means, in relation to the Buyer, all information (whether disclosed orally or in writing), including, but not limited to, all information concerning the business, business policies, business plans, financial and commercial information, products, services, trade secrets, personnel, customers and suppliers of either party (both existing and potential), IPR, know-how, specifications, models, data, source or object code, technical information, systems, use of technology, machinery, procedures and records (in whatever form, including in electronic format) of the Buyer;
- 1.1.5. **“Defect”** means a material error, omission, failure, inefficiency or inconsistency in the Deliverable(s);
- 1.1.6. **“Delivery Address”** means the delivery address stipulated in the Purchase Order;
- 1.1.7. **“Deliverable(s)”** means Goods and/or Services (as the context may indicate);
- 1.1.8. **“Duly Delivered”** means that the Deliverable(s) have been delivered to the Delivery Address, comply with the Purchase Order and any Specifications (if applicable), and have been inspected by the Buyer without notifying the Seller with any event of disconformity within the term stipulated in these Terms and Conditions;
- 1.1.9. **“Goods”** means the goods to be supplied by the Seller, including software (whether licensed or assigned), in the Purchase Order;
- 1.1.10. **“Intellectual Property”** or **“IPR”** means, in relation to the Buyer, any intellectual property including, but not limited to, patents, trademarks, service marks, rights (whether registered or unregistered) in any design, applications for any of the foregoing, trade or business names, copyright (including rights in computer software) and topography rights, inventions, know-how, internet domain names, rights protecting goodwill and reputation, database rights and all rights and forms of protection of a similar nature under licences and consents in respect of any rights and forms of protection mentioned in this definition;
- 1.1.11. **“NEC Group’s Code of Conduct”** means the Buyer’s code of conduct accessible from the following link: <https://www.nec.xon.co.za/wp-content/uploads/2022/02/Code-of-Conduct.pdf>;
- 1.1.12. **“Parties”** means the Buyer and the Seller, collectively, and **“Party”** means either one of them;
- 1.1.13. **“Purchase Order”** means a valid purchase order received, whether in writing or electronically, by an authorised representative of the Buyer to which these Terms and Conditions apply;
- 1.1.14. **“Sanctions and Export Control Laws”** means all laws, regulations, statutes, prohibitions, including but not limited to, Japan, European Union Member States’ or United States’ export and re-export laws and regulations applicable to goods, services and/or to either Party relating to the adoption, application, implementation and enforcement of sanctions, export controls, trade embargos or any other restrictive measures;
- 1.1.15. **“Seller”** means the seller stipulated in the Buyer’s authorised vendor registration application form;
- 1.1.16. **“Services”** means the services to be provided under the Purchase Order;



- 1.1.17. “**Specifications**” means any statement of work, plans, drawings, data, documents needed for the right use/supply of the Deliverable(s) or other information relating to the Deliverable(s); and
- 1.1.18. “**Terms and Conditions**” means these standard terms and conditions of purchase (as amended from time to time) and, unless the context indicates otherwise, includes any additional terms and conditions agreed to in writing between the Parties in the Purchase Order or Specifications (if any).

2. BASIS OF PURCHASE AND APPLICATION OF THESE TERMS AND CONDITIONS

- 2.1. These Terms and Conditions, including the Purchase Order as well as the Specifications (if any), constitute the entire agreement between the Parties for the purchase of the Deliverable(s) (“**Contract**”), and supersede all prior and subsequent (whether oral or written) agreements between the Parties unless mutually agreed to in writing.
- 2.2. Should a conflict exist between the specific terms and conditions stipulated in a Purchase Order and/or the Specifications (if any) and these Terms and Conditions, the specific terms and conditions stipulated in such Purchase Order and/or Specification (if any) shall prevail.
- 2.3. The Purchase Order consists of an offer by the Buyer to purchase the Deliverable(s) subject to these Terms and Conditions.
- 2.4. Unless otherwise reduced to writing and signed by both Parties, these Terms and Conditions shall apply to the Contract, to the exclusion of any other terms and conditions contained in any quotation provided by the Seller.
- 2.5. Any Purchase Order given by the Buyer to the Seller shall be irrevocably binding on the Seller once accepted by the Seller in writing or deemed to be accepted by Seller as set out in clause 4.3 below.
- 2.6. The Buyer shall not be liable for any Deliverable(s) supplied unless specified in a Purchase Order by an authorised representative of the Buyer, and the Buyer shall not under any circumstances be required to place a minimum number of Purchase Orders.

3. PURCHASE ORDER AND SPECIFICATIONS

- 3.1. The description, quality, quantity, and date and time of the Deliverable(s) shall be specified in the Purchase Order and/or the Specifications (if any) supplied by the Buyer to the Seller.
- 3.2. The Seller agrees to accept any reasonable variation to the Deliverable(s) and/or the Specifications (if any) relating thereto when requested by the Buyer. If such variation adversely affects the time and/or cost of delivery, the Seller shall immediately notify the Buyer of the details thereof and the Buyer shall promptly make an equitable adjustment (within reason) to the price and/or delivery schedule.

4. DELIVERY

- 4.1. The Goods must be marked in accordance with the Buyer’s instructions (if any). In addition, the Goods must be properly packed and secured to ensure that they reach the Delivery Address undamaged and fit for proper use.
- 4.2. Unless otherwise reduced to writing and signed by both Parties, the Deliverable(s) shall be delivered to the Delivery Address at the time and date specified in the Purchase Order.
- 4.3. The delivery of the Deliverable(s) by the Seller shall be deemed to be the Seller’s acceptance of the Purchase Order notwithstanding any failure on behalf of the Seller to acknowledge the Purchase Order in writing.

5. DELAY PENALTY

- 5.1. If the Deliverable(s) are not delivered on the date and time specified in the Purchase Order, the Buyer shall be entitled to deduct from the purchase price or (where the Buyer has already paid the price) claim from the Seller –



- 5.1.1. a delay penalty of 1% (one per centum) of the purchase price for each day (in the case of Goods) or, alternatively, 1% (one per centum) for each week (in the case of Services) delay damages up to a maximum of 10% (ten per centum) of the purchase price of the Purchase Order; or
 - 5.1.2. all costs and expenses reasonably incurred by the Buyer in respect of special arrangements for the transportation of the Deliverable(s) from the Seller to the Buyer; or
 - 5.1.3. accept all or part of the Deliverable(s) whether delivered by the due date and time stipulated in the Purchase Order and claim restitution or refund for any amounts already paid by the Buyer to the Seller in terms of the Purchase Order.
- 5.2. Without limiting any other right that the Buyer has in law or these Terms and Conditions, the Buyer shall be entitled to immediately terminate the Contract or the Purchase Order on written notice to the Seller once the limit on the delay damages claimable by the Buyer has been reached.

6. PRICING AND RATE OF EXCHANGE

- 6.1. The purchase price of the Deliverable(s) shall be specified in the Purchase Order and, unless otherwise reduced to writing and signed by both Parties, shall be –
- 6.1.1. inclusive of Value Added Tax (if applicable); and
 - 6.1.2. inclusive of all charges (including but not limited to labelling, packaging, shipping, handling, carriage, insurance, and delivery to the Delivery Address) as well as any other taxes, import duties or levies.
- 6.2. The Seller acknowledges and agrees that, should the purchase price of the Deliverable(s) be denominated in any other currency other than the South African rand (ZAR), the Buyer shall not be liable for any profit or loss arising out of a fluctuation in foreign exchange rates, and that the Seller hereby waives any right to claim any such profit or loss from the Buyer.
- 6.3. Subject to clause 3.2 above, the Parties acknowledge and agree that under no circumstance shall the purchase price for the Deliverable(s) be subject to a change in price after a Purchase Order has been placed by the Buyer.
- 6.4. The Seller shall promptly notify the Buyer of (and the Buyer shall be entitled to) any discount available for prompt payment and/or volumes of purchase ordinarily granted by the Seller for similar Purchase Orders.

7. TAX INVOICING AND TERMS OF PAYMENT

- 7.1. Payment of all debts due to the Seller will be made by electronic transfer only into the nominated bank account of the Seller (the Seller warrants that the bank account details provided to the Buyer are both true and correct). The Buyer shall not be liable for any outstanding debts paid into the incorrect bank account of the Seller arising out of –
- 7.1.1. the aforesaid; or
 - 7.1.2. the unauthorised alteration of the Seller's bank account details by a malicious actor purporting to be the Seller by way of prima facie communication to the Buyer.
- 7.2. The Seller shall be entitled to invoice the Buyer upon the Deliverable(s) being Duly Delivered. Unless otherwise reduced to in writing and signed by the Parties, each invoice shall be paid 60 calendar days after receipt, by the Buyer, of a tax invoice.
- 7.3. Should the Buyer fail to honour its obligations in terms of clause 7.2 above, the Seller shall, before relying on any other remedy available to the Seller in law or otherwise, provide the Buyer with 30 calendar days' written notice demanding settlement of any outstanding debts.
- 7.4. The Buyer shall be entitled to set-off and/or appropriate any debts owed to the Buyer by the Seller in respect of the Contract or any other indebtedness of the Seller to the Buyer without prior written notice to the Seller.



8. DELIVERY AND INSPECTION

- 8.1. Once the Deliverable(s) have been delivered to the Delivery Address/performed at the Delivery Address, the Goods and/or Services will be subject to inspection and approval by the Buyer to ensure that the Deliverable(s) do not contain any Defect(s). The Deliverable(s) shall be deemed to be Duly Delivered if, upon delivery, installation (when applicable) or performance, they comply with the Purchase Order and the Specifications (if any), and the Buyer has not notified the Seller with an event of nonconformity in respect of the Deliverable(s) within 14 calendar days of delivery, installation, or performance. For the avoidance of doubt, signature by the Buyer's authorised representative on a delivery note will not be construed as Duly Delivered.
- 8.2. In the event of the Seller being notified of an event of nonconformity within the aforesaid timeframe, risk in and to any Goods already delivered will be on the Seller and the Seller shall assume, at its own cost, the return (including collection costs) of the Goods to the Seller.

9. TRANSFER OF RISK AND OWNERSHIP

- 9.1. Risk in and to the Goods shall pass to the Buyer upon the Deliverable(s) being Duly Delivered. The Seller shall be responsible for insuring (if requested), to the satisfaction of the Buyer, the Goods until risk passes to the Buyer.
- 9.2. Ownership in and to the Goods shall pass to the Buyer upon payment thereof, and the Seller hereby explicitly waives any lien of any nature over the Goods upon passing of such ownership.

10. TERMINATION

- 10.1. At any time prior to the delivery of the Deliverable(s), the Buyer shall be entitled to cancel (in whole or in part) the Contract or the Purchase Order for convenience by giving prior written notice to the Seller.
- 10.2. Without limiting from any other rights that the Buyer has in law or these Terms and Conditions, the Buyer shall be entitled to terminate the Contract or the Purchase Order if –
- 10.2.1. the Seller failed to deliver any Deliverable(s) in conformity with the Contract by the time and date specified in the Purchase Order;
- 10.2.2. the Seller committed a breach of any of these Terms and Conditions and failed, within 7 calendar days after receipt of a written request by the Buyer to do so, to remedy the breach; or
- 10.2.3. a Force Majeure Event subsists for the period set out in clause 18.3 below.
- 10.3. Upon termination of this Contract, the Buyer shall be relinquished of all obligations arising out of and in connection with the Contract.
- 10.4. Notwithstanding termination for any reason whatsoever, clauses 11, 12, 15, 16, and 23 through to 29 shall survive termination of the Contract.

11. INDEMNITY

- 11.1. The Seller hereby indemnifies, holds harmless and defends the Buyer and its employees, agents, and representatives from and against any liability, claim, loss, damage, proceedings, or expense which the Buyer may incur on the account of –
- 11.1.1. a breach of any warranty, condition or guarantee (whether express or implied) given by the Seller in respect of these Terms and Conditions and/or the Deliverable(s);
- 11.1.2. breach of the Seller's obligations under the confidentiality, data protection, IPR (including that of third parties), Anti-Corruption Obligations, Sanctions and Export Control Laws, and/or NEC Group's Code of Conduct clauses;
- 11.1.3. injury to or death of persons or damage to or loss of any third-party property arising directly or indirectly out of the errors, acts or omissions of the Seller or its sub-contractors, employees or agents relating to the Deliverable(s); and



- 11.1.4. legal expenses on an attorney and own client basis incurred by the Buyer in enforcing the Buyer's indemnities as set out herein.

12. LIMITATION OF LIABILITY

- 12.1. Neither Party shall be liable to the other party for consequential loss or damage (whether direct or indirect) which may be suffered in connection with the Contract.
- 12.2. The Seller's maximum liability to the Buyer for all claims, actions, proceedings, losses and liabilities or costs (including legal costs) arising out of or in connection with the Contract shall be limited to, in aggregate, 125% (one hundred and twenty five per centum), save where the Seller has breached the Buyer's IPR in which case the maximum liability shall be unlimited, of the purchase price of the Contract in the 12-month period immediately preceding the Buyer's claim.

13. WARRANTY

- 13.1. The Seller warrants to the Buyer that –
- 13.1.1. it, or the agent or representative of the Seller, has the requisite authority to contract on behalf of the Seller and is not subject to any disability in law binding the Seller to these Terms and Conditions;
- 13.1.2. its title to the Goods is free from any encumbrance, has the legal right, power and authority to enter into the Contract, to perform its obligations and to transfer the title of the Goods to the Buyer;
- 13.1.3. the Goods supplied under the Contract are new, unused, of the most recent or current model and are fit for purpose, and the Services performed under the Contract are of the highest industry standard;
- 13.1.4. the Services will be performed with qualified, competent and experienced personnel, and such personnel shall possess the requisite knowledge, training, qualifications and skills to do so (at any given time, the Buyer reserves the right to request, from the Seller, evidence of the aforesaid competencies, and request the replacement thereof, at the cost of the Seller, of such personnel that the Buyer deems to lack the aforesaid competencies);
- 13.1.5. the Goods and Services will conform in all material aspects with the Purchase Order and/or the Specification (if any) and will be free of any Defects (whether patent or latent) for the minimum period of time stated in the Purchase Order or a period of 12 months after the Deliverable(s) have been Duly Delivered, whichever is longer;
- 13.1.6. the Goods (if applicable) incorporates security features reflecting good industry practice, does not contain any known (or ought to have known) computer code that damages, interferes with, or otherwise adversely affects computer program data files or hardware and the latest releases, versions or upgrades will not cause a material diminution in functionality or performance of the Goods; and
- 13.1.7. the use of the Goods or the provision of the Services in accordance with the Specifications (if any) will not breach any laws, statutes, or regulations, Anti-Corruption Obligations, Sanctions and Export Control Laws, NEC Group's Code of Conduct, or any third-party rights (including but not limited to any IPR) in any jurisdiction and under any applicable law.
- 13.2. Without limiting from any other right that the Buyer has in terms of these Terms and Conditions, in the event of a breach of the abovementioned warranties, the Buyer shall be entitled, but not obliged, to request, on written notice to the Seller, that the Seller, at the exclusive cost to the Seller and within the timeframe stipulated therein, shall use reasonable commercial efforts to –
- 13.2.1. repair the Goods; or
- 13.2.2. re-perform the Services; or
- 13.2.3. replace the Goods with other Goods,
- so that the Goods and Services conform with the abovementioned warranties.
- 13.3. If the Seller fails to adhere to the Buyer's written notice as set out in clause 13.2 above, then the Buyer, without prejudice to any other remedies in law or in terms of these Terms and Conditions, may –



- 13.3.1. either source the Goods or re-perform the Services itself or through a third-party and set-off the cost of doing so against any indebtedness owed to the Seller (if any) or recover such amount from the Seller, as a debt; or
- 13.3.2. terminate the Contract and claim restitution or get a refund of any amounts already paid for the Goods or Services.
- 13.4. For the avoidance of doubt, should the Buyer elect to exercise its rights in terms of clause 13.2 above, the warranty period for the Goods and/or Services repaired, replaced or re-performed will run anew for the minimum period specified in the Purchase Order or a period of 12 months from the date that the Goods and/or Services have been repaired, replaced or re-performed and conform in its entirety with the Purchase Order as well as the Specifications (if any), whichever is longer.

14. SOFTWARE

- 14.1. Where applicable, the Seller hereby grants to the Buyer an irrevocable, non-exclusive, perpetual licence to use, copy, install, reproduce, maintain, modify, enhance, and adapt the Goods throughout the world. The Buyer may also assign its licence to use the Goods (or any part thereof) to any of its Affiliates.
- 14.2. The granting of such rights herein shall include the implementation of new releases, versions and upgrades to the Goods, and the Seller shall provide reasonable training in respect of the Goods as is necessary to allow the Buyer and/or its users to use it.

15. CONFIDENTIAL INFORMATION

- 15.1. The Seller shall keep the Buyer's Confidential Information confidential (except such Confidential Information which was in the lawful possession of the Seller prior to disclosure in terms of the Contract, public knowledge or lawfully acquired or independently developed) and shall procure that it, its employees, agents, sub-contractors and representatives –
 - 15.1.1. not disclose or make available any Confidential Information in whole or in part to any third-party, except as expressly permitted in terms of the Contract;
 - 15.1.2. not copy, reduce to writing or otherwise record Confidential Information except as strictly necessary in connection with the Contract; and
 - 15.1.3. apply the same security measures and degree of care to the Confidential Information as it applies to its own Confidential Information.
- 15.2. Upon termination of the Contract for any reason whatsoever, upon written notice, the Seller shall destroy or return the Buyer's Confidential Information, erase all the Buyer's Confidential Information from its computer and communication systems, and certify in writing to the Buyer that it has complied with the requirements contained herein.

16. INTELLECTUAL PROPERTY

Ownership in and to all Intellectual Property which may come into existence during the Contract shall vest in the Buyer and the Seller shall keep all Intellectual Property of the Buyer in the strictest confidence and upon termination of the Contract shall have no rights in or to Intellectual Property.

17. SUB-CONTRACTORS

The Seller shall not be entitled to assign or sub-contract any of its obligations under this Contract without the prior written consent of the Buyer. The Buyer shall, however, be entitled to cede and/or assign any of its rights and obligations to any of the Buyer's Affiliates.

18. FORCE MAJEURE

- 18.1. For the purposes of this Contract, a "Force Majeure Event" means, in respect of a Party, any event or circumstance, or combination of events or circumstances, that is out of the reasonable control (whether directly or indirectly) of a either party and could not have been avoided by taking reasonably appropriate steps by such party acting as a reasonable and prudent operator.



- 18.2. Upon becoming aware of any circumstances that may give rise to a breach of any term or condition stipulated in the Contract due to a Force Majeure Event, that party shall forthwith give written notice to the other party setting out the circumstances that may give rise/give rise to a breach and the likely period within which that party expects the breach to subsist. Upon receipt of such notice, the performance of such obligations stipulated in the notice shall be suspended.
- 18.3. Should a Party be unable to fulfill its obligations under the Contract for a period of more than 30 calendar days due to a Force Majeure Event, then either party shall, in its sole discretion, have the right to terminate the Contract.

19. CODE OF CONDUCT

The Seller hereby acknowledges and agrees that it has read and understood NEC Group's Code of Conduct and shall ensure compliance with same.

20. EXPORT CONTROL

- 20.1. The Seller shall ensure that it as well as its employees, agents, sub-contractors, representatives and suppliers as well as any item, goods, components, materials, spare parts, software and technical data sourced by the Seller for the fulfillment of its obligations in terms of the Contract comply with all applicable Sanctions and Export Control Laws including, but not limited to, ensuring that it as well as its employees, agents, sub-contractors, representatives and suppliers do not engage in any business relationship with a natural or juristic entity that is owned or controlled by a person (including a juristic person) that is identified on a sanction list maintained by the United Nations, by the United States' government, by the European Union or any other applicable sanctions list.
- 20.2. The Seller shall, immediately upon discovery thereof, inform the Buyer, in writing, of any breach in Sanctions and Export Controls Laws.

21. ANTI-CORRUPTION OBLIGATIONS

- 21.1. The Seller shall ensure that it as well as its employees, agents, sub-contractors and representatives shall not offer, give or agree to give any person, or request, accept or agree to accept from any person, whether for itself or on behalf of another any gift, payment, consideration, financial or non-financial advantage or benefit of any kind, which would be linked to the misuse of such person's actual or perceived influence to obtain, for itself or for others, a financial benefit, a job, a contract or any other favorable decision if such action is contrary to the laws of the Republic of South Africa and any other applicable international convention.
- 21.2. The Seller shall monitor itself as well as its employees, agents, sub-contractors, and representatives to ensure compliance with the Anti-Corruption Obligations, and shall, immediately upon discovery of a breach in the Anti-Corruption Obligations, inform the Buyer in writing.

22. DISPUTE RESOLUTION

- 22.1. Should any dispute arise between the Parties in respect of the Contract, then the subject of such dispute shall be referred by written notice to the authorised senior management of both Parties for decision within 7 calendar days (or such longer period as specified in the written notice given the nature of the dispute) of referral by either party, failing which the subject of the dispute shall be referred to arbitration in the manner set out herein.
- 22.2. The arbitrator shall be appointed by the Parties, and failing agreement, shall be nominated by the Arbitration Foundation of Southern Africa ("AFSA").
- 22.3. The arbitration shall be held at Johannesburg, South Africa.
- 22.4. The arbitration shall be held in accordance with the Rules of AFSA, or if AFSA shall not be in existence, in accordance with the formalities and procedures settled by the arbitrator, which shall be in an informal and summary manner, that is, it shall not be necessary to observe or carry out either the usual formalities or



procedure or the strict rules of evidence, and otherwise subject as aforesaid to the Arbitration Act, 42 of 1965, as amended, of the Republic of South Africa and any statutory modification or re-enactment thereof.

22.5. The arbitrator shall be entitled to –

- 22.5.1. investigate or cause to be investigated any matter, fact or thing which he considers necessary or desirable in connection with any matter referred to him for decision;
- 22.5.2. decide the matters submitted to him according to what he considers just and equitable in all the circumstances, having regard to the purpose of these terms and conditions;
- 22.5.3. make such an award, including an award for specific performance, an interdict, damages or a penalty or the costs of arbitration or otherwise as he in his discretion may deem fit and appropriate; and
- 22.5.4. The arbitration shall be held as quickly as possible after it is demanded, with a view to it being completed within 30 calendar days after it has been so demanded and the decision of the arbitrator shall be final and binding on the Parties.

23. PROTECTION OF PERSONAL INFORMATION

All personal data contained in this Contract shall be processed in accordance with the Protection of Personal Information Act, 13 of 2013, as amended.

24. SEVERABILITY

If any provision of the Contract is or becomes invalid, illegal, or unenforceable, then such provision shall be severed from the Contract and the remainder of the Contract shall continue to be in full force and effect.

25. NON-WAIVER

No waiver on the part of any Party or any rights arising from a breach of any provision of this Contract will constitute a waiver of rights in respect of any subsequent breach of the same or any other provision.

26. NOTICES

- 26.1. The Parties choose the physical and e-mail addresses contained in the Purchase Order as its *domicilium citandi et executandi* for all purposes and for the service of all and any documents on either party.
- 26.2. Either Party is entitled to change its *domicilium citandi et executandi* provided that at least 7 calendar days' prior written notice is given to the other party.

27. NO PARTNERSHIP, JOINT VENTURE, AGENT AGREEMENT OR EMPLOYMENT RELATIONSHIP

Nothing in the Contract shall be construed to establish a joint venture, partnership, agent agreement, or employment relationship between the Parties or any third-party, nor shall any rights contained herein be conferred onto any third-party. Unless otherwise stated in the Contract, neither party shall have the authority to act on behalf of or otherwise bind the other party.

28. NON-VARIATION OR AMENDMENT

No variation, amendment, addition or consensual cancellation of the Contract or any provision contained herein shall be binding unless reduced to writing and signed by an authorised representative of both Parties.

29. GOVERNING LAW

The Contract shall be governed by the laws of the Republic of South Africa, and the Parties hereby submit to the exclusive jurisdiction of the Courts where the Buyer has its principal place of business.