

## **TERMS & CONDITIONS OF SALE**

### **1. DEFINITIONS**

- 1.1. *“Conditions”* means these Terms and Conditions as amended from time to time;
- 1.2. *“Contract”* means the contract for the supply of the Goods and/or Services subject to these Conditions;
- 1.3. *“Customer”* means the Customer as described on the Customer Input Sheet;
- 1.4. *“Goods”* means such goods as the Seller is to supply in accordance with the Contract;
- 1.5. *“Parties”* means the Customer and Seller collectively and *“Party”* means any one of them as the context may require;
- 1.6. *“Purchase Order”* means a document confirming the Customer’s intention to purchase Goods and / or Services;
- 1.7. *“Quotation”* means the quotation issued by the Seller to the Customer for Goods (and/ or Services);
- 1.8. *“NEC XON”* means shall mean NEC XON Systems (Proprietary) Limited or any other subsidiary of NEC XON Holdings (Proprietary) Limited or any other entity forming part of the group of companies known as the NEC XON Group whose registered office is situated at 1 Mints Street, Old Mint Park, Louwlandia, Midrand, Gauteng, South Africa.

### **2. BASIS OF SALE AND APPLICATION OF THESE CONDITIONS**

- 2.1. NEC XON shall supply the Services and/or Goods and the Customer shall purchase the Services and/or Goods subject to these Conditions.
- 2.2. These Conditions shall supersede and take precedence over all proposals, quotations, Purchase Orders and/ or any written/ oral communication between the Parties.
- 2.3. This document contains the whole agreement between the parties. No party will have any right or remedy arising from any undertaking, warranty or representation which is not included in these Conditions.
- 2.4. These Conditions or any part of it can only be waived, varied, added to or cancelled by a further written agreement between the Customer and Seller and must accordingly be signed by a duly authorised director of the Seller and Customer.
- 2.5. In the event any of the terms contained in these Conditions is deemed to be void or unenforceable, such determination shall not affect the remainder of these Conditions, which shall continue to be in force.

### **3. CONSENT BY CUSTOMER**

- 3.1. For the purposes of making credit risk management decisions and preventing fraud, the Customer grants hereby warrants that NEC XON has consent to -
  - 3.1.1. Carry out a credit enquiry in respect of the Customer;
  - 3.1.2. Access a Credit Bureau’s database (or any other source of the Customer’s credit behaviour) before granting credit to the Customer;
  - 3.1.3. Where credit is granted, transmit details to the Credit Bureau of how the Customer has performed in terms of meeting its obligations under the account;
  - 3.1.4. In the event the Customer fails to meet its financial obligations to NEC XON , NEC XON may record the Customer’s default with the Credit Bureau.

### **4. PURCHASE ORDERS AND SPECIFICATIONS**

- 4.1. Subject to these Conditions, no agreement shall be concluded or be deemed to have been concluded between NEC XON and the Customer before NEC XON receives an official purchase order from the Customer.
- 4.2. The quantity, quality and description of the Goods shall be set out in the Quotation and subsequent Purchase Order. The Customer is responsible to ensure the information provided is accurate and complete and is provided within a sufficient time to enable NEC XON to perform the Contract in accordance with its terms.

- 4.3. No Purchase Order which has been accepted by NEC XON may be cancelled by the Customer except with the agreement in writing of NEC XON and on the terms that the Customer shall indemnify NEC XON in full against any loss incurred by NEC XON as a result of this cancellation.

## **5. PRICE AND TERMS OF PAYMENT**

- 5.1. NEC XON shall be entitled to invoice the Customer for the price set out in the Quotation. All prices quoted are valid for 30 days only, after which time they may be altered by NEC XON without giving notice to the Customer.
- 5.2. The Customer shall pay the amount set out in the invoice for the Goods supplied accordingly.
- 5.3. All payments shall be made in the currency reflected on the Quotation and accepted by the Parties, into NEC XON's nominated bank account.
- 5.4. The price is exclusive of any applicable tax including, but not limited to, value added, withholding, sales and income tax which the Customer shall be additionally liable to pay to NEC XON.
- 5.5. Only if the Customer has been approved for credit, the Customer shall pay NEC XON's invoice, including all applicable taxes, in full, within 30 (thirty) days from the date of such invoice.
- 5.6. If the Customer fails to make payment on the due date, NEC XON is entitled to, without prejudice to its rights, the following-
  - 5.6.1. Cancel the Contract or suspend any further deliveries to the Customer;
  - 5.6.2. Suspend performance where performance is a Service;
  - 5.6.3. Appropriate any payment made by the Customer to such of the Goods.
- 5.7. NEC XON only accepts payments if generated from the purchaser of our goods or services. If payments are arranged through Third Parties without prior agreement with NEC XON, such agreement being subject to receiving sufficient explanation at NEC XON's discretion, the payment may be blocked, or sums returned to the sender and charges will be at the customers cost. Until payment from an acceptable source is received in clear funds in NEC XON bank account, the customers obligation is not released.

## **6. DELIVERY**

- 6.1. Unless otherwise agreed to in writing, in a Quotation or otherwise, the delivery shall be deemed to take place at the NEC XON warehouse.
- 6.2. The Customer has the responsibility to inspect the Goods delivered upon arrival.
- 6.3. The Customer agrees to ensure that the Customer or an authorised individual shall be present to accept delivery of goods supplied and/or services rendered and sign on the delivery note and warrants the authority of such individual to accept and sign.
- 6.4. The Customer is deemed to have accepted the Goods unless written notice of rejection specifying the reason for rejection is received by NEC XON within 5 (five) calendar days after delivery of the Goods.
- 6.5. Any advice or recommendation given by the Company or its employees or agents to the Customer or its employees or agents as to the storage, application or use of the Goods which is not confirmed in writing by the Company is followed or acted upon entirely at the Customers own risk, and accordingly the Company shall not be liable for any such advice or recommendation which is not so confirmed.
- 6.6. The risk in and to the goods shall pass from NEC XON to the Customer at the time of delivery notwithstanding that ownership will not pass to the Customer until full payment of the purchase price.
- 6.7. All deliveries or despatchers of the Goods must be accompanied by a delivery note stating the official order against which the delivery has been affected and is to be signed by the Customer as acknowledgment of receipt.

## **7. WARRANTIES AND LIABILITY**

- 7.1. NEC XON warrants that the Services will be provided using reasonable care and skill and will correspond in all material respects with the specification.
- 7.2. Any other condition or warranty as to quality or freedom from latent defects of the goods sold or its fitness for any particular purpose or otherwise, whether arising under a statute or otherwise, is hereby excluded. NEC XON shall not be liable, whether in contract, delict or otherwise, in respect of defects in goods delivered or for any injury, damage or loss resulting from such defects.
- 7.3. NEC XON shall be under no liability under the warranty:
  - 7.3.1. In respect of any error in specification, any defect arising from negligence of the Customer or failure to follow NEC XON instruction regarding use and storage;
  - 7.3.2. If the price has not been paid in full by the due date;
  - 7.3.3. If the Customer has not notified the claim to NEC XON within five calendar days from date of delivery in the case of a defect.
- 7.4. Subject to clause 8, NEC XON shall not be liable to the Customer or deemed to be in breach of its obligations due to delay or failure to perform if such failure was caused by reasons outside the reasonable control of NEC XON.
- 7.5. NEC XON undertakes to facilitate valid warranty claims existing between the Customer and Original Equipment Manufacturer (OEM).

## **8. FORCE MAJEURE**

- 8.1. Either party shall be excused from any delay or failure in performance if caused by reason of any occurrence beyond its reasonable control, including, but not limited to, acts of God, acts of war, fire, civil unrest or acts of terrorism, Covid-19 and other mass-health related issue, strikes and lockouts or any other serious labour disputes, riots, earthquakes or other acts of nature, shortage of adequate power of transportation facilities ("force majeure event").
- 8.2. The obligations and rights of the party so excused shall be extended on a day-to-day basis for the time period equivalent to such excusable interruption.
- 8.3. When such events have abated, the Parties respective obligations shall resume.
- 8.4. In the event that the force majeure event continues for a period in excess of sixty business days, either party shall have the right to terminate the Contract without liability, upon thirty calendar days' prior written notice to the other party.

## **9. INTELLECTUAL PROPERTY RIGHTS**

Unless otherwise agreed in writing with NEC XON:

- 9.1. NEC XON shall retain the exclusive property and reserve the copyright in all documents supplied or produced to the Customer in connection with the Contract and it shall be a condition of such supply or production that the contents of such documents or any part thereof shall not be communicated either directly or indirectly to any other person, firm or company without the prior consent of the NEC XON in writing.
- 9.2. The Intellectual Property Rights in or relating to the Goods shall (subject to any existing rights of any third party in any design or invention incorporated or used in the design of the Goods) remain exclusively the property of NEC XON and neither the Customer nor any agent, contractor or other person authorised by the Customer shall at any time make any unauthorised use of such Intellectual Property Rights.

## **10. INSOLVENCY OF CUSTOMER OR BREACH**

- 10.1. Without limiting its other rights or remedies, NEC XON may terminate this Contract with immediate effect by giving written notice to the Customer on the occurrence of any of the following events:
  - 10.1.1. the Customer ceases or threatens to cease, to carry on business; or

- 10.1.2. commits any act of insolvency in terms of the Insolvency Act 24 of 1936; or
  - 10.1.3. the Customer becomes insolvent or goes into liquidation, either compulsory or voluntary (save for the purpose of reconstruction or amalgamation); or
  - 10.1.4. the Customer commits a material breach of any term of the Contract and (if such breach is remediable) fails to remedy the breach within ten (10) calendar days of being notified by NEC XON to do so.
- 10.2. Should this clause 10 be applicable, then, without prejudice to its rights, NEC XON shall be entitled to the following:
- 10.2.1. Terminate the Contract or suspend any further deliveries under the Contract without any liability by NEC XON to the Customer;
  - 10.2.2. If the Goods have been delivered to the Customer but not paid for, the price shall become immediately due and payable notwithstanding any previous agreement or arrangement to the contrary.

#### **11. COMPLIANCE WITH NEC XON'S POLICIES**

- 11.1. The Customer confirms its compliance with the NEC Group's Code of Conduct Policy which can be found at <https://www.nec.xon.co.za/wpcontent/uploads/2022/02/Code-of-Conduct.pdf>.
- 11.2. NEC XON and the Customer shall perform their respective obligations hereunder in strict compliance with export and import control laws, and all other applicable laws, regulations and administrative guidance in terms of the International Trade Administration Act, No. 71 of 2002.
- 11.3. The Customer shall not, and shall procure that its employees and agents shall not, offer, give or agree to give any person, or 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 constitutes an illegal or corrupt practice in terms of the Prevention and Combating of Corrupt Activities Act, 2004, either directly or indirectly in connection with these Conditions.

#### **12. DISPUTE RESOLUTION**

- 12.1. Should any dispute arise between the Parties, the Parties shall attempt to resolve the dispute by negotiation. This entails that one party invites the other in writing to a meeting and attempt to resolve the dispute within seven days from date of the written invitation.
- 12.2. If the dispute has not been resolved by such negotiation within 7 (seven) days of the written invitation, the dispute shall be submitted to mediation, which shall be administered by the Arbitration Foundation of South Africa ('AFSA') in terms of the AFSA Mediation Rules. Any party to this agreement may refer the dispute to mediation.
- 12.3. If the parties are unable to resolve the dispute through mediation, the dispute, if arbitral by law, shall be finally resolved in accordance with the AFSA Commercial Rules.

#### **13. GOVERNING LAW**

- 13.1. These terms and conditions shall be governed and interpreted according to the laws of South Africa and the Parties agree to submit to the non-exclusive jurisdiction of the South African courts.

#### **14. JURISDICTION**

- 14.1. Notwithstanding anything to the contrary contained herein, the Seller shall, in its sole discretion, not be precluded from obtaining relief from a court of competent jurisdiction.
- 14.2. The Customer hereby consents to the jurisdiction of any Magistrate's Court having jurisdiction over the parties. This notwithstanding it shall preclude the Seller from instituting action out of any division of the High Court of South Africa having jurisdiction.

## **15. GENERAL**

- 15.1. In the event of there being any change in the membership, directors, trustees, associates or partners of the Customer, then and in that event the Customer and/or signatories to this agreement shall immediately inform NEC XON of such changes.
- 15.2. Should conflict exist between specific terms appearing on a quotation or proposal from NEC XON to the Customer and these terms and conditions, the specific terms reflected on such quotation or proposal shall prevail.
- 15.3. The Customer chooses the physical and e-mail addresses contained in the above client information portion of this agreement as the as its domicilium citandi et executandi for all purposes and for the service of all and any documents on the Customer.
- 15.4. All personal data contained in this agreement shall be processed in accordance with the Protection of Personal Information Act 13 of 2013 ("POPI")