

# NCS IT Ltd - TERMS AND CONDITIONS

## **INTERPRETATION:**

1. In these conditions: -
  - 'NCS' means NCS IT Ltd (registered in England under number 2913217) of St John's Court, Bacup Road, Rawtenstall, LANCASHIRE BB4 7PA.
  - 'Conditions' means the standard terms and conditions of sale set out in this document and (unless the context otherwise requires) includes any special terms and conditions agreed in writing between the Customer and NCS.
  - 'Contract' means the contract for the sale or supply of goods or services to which the Conditions apply as set out in the Schedule.
  - 'Initial Period' means the agreed initial period for the provision of Services as set out in the Schedule.
  - 'Goods' means any items which NCS are selling to the Customer as specified in the Schedule.
  - 'Price' means the price of Goods as set out in the Schedule.
  - 'Services' means any services which are the subject of this Contract as specified in the Schedule
  - 'Schedule' means the Schedule of goods / services which is part of the Contract.
  - 'Writing' includes telex, cable, facsimile transmission and comparable means of communications, and includes electronic mail or other online messaging as long as there is a read receipt.
2. Any reference in these Conditions to any provision of a statute shall be construed as a reference to that provision as amended, re-enacted or extended at the relevant time.
3. The headings in these Conditions are for convenience only and shall not affect their interpretation.
4. The Customer is referred to as 'it' which should be read as referring to 'he', 'she' or 'they' if relevant.

## **THE TERMS OF THE CONTRACT**

5. The Terms and Conditions contained herein shall govern the Contract and shall apply to the exclusion of any other terms and conditions.
6. These Conditions together with the Schedule constitute the entire Agreement between the Customer and NCS for the support of the items listed in the Schedule. Its terms and conditions shall prevail should there be any variance with the terms and conditions of any order submitted by the Customer for the support of any or all of the items listed in the Schedule.
7. No variation to these Conditions shall be binding unless agreed in writing between the authorised representatives of the Customer and NCS.
8. NCS' employees and agents are not authorised to make any representations concerning any goods or services supplied except as confirmed by NCS in writing in the Schedule.
9. Any typographical clerical or other error or omission in any sales literature, quotation, price list, acceptance of offer, invoice or other document or information issued by NCS shall be subject to correction without any liability on NCS' part.
10. The Customer confirms that any sale or supply of goods or services to it is in the course of its business and that it is not a private consumer.
11. It is an obligation of this Contract that both parties will act with courtesy at all times. In the event that the Customer is abusive or persistently fails to follow NCS' advice or instructions, this shall be considered a breach of the Agreement which shall entitle NCS to terminate this Agreement within clause 66(b) below.

## **A. TERMS FOR SALE OF GOODS**

12. Sale of Goods shall be in accordance with the Schedule which shall specify the Goods, the Price and the date of delivery / collection
13. No order for the sale of goods which has been accepted by NCS may be cancelled by the Customer except with NCS' written agreement and in such an event the Goods will be returned by the Customer unused and undamaged and in their original condition and packaging.

### **DELIVERY**

14. Goods are delivered to the Customer when NCS make them available to the Customer or the Customer's agent at NCS' premises or other delivery point agreed between the Customer and NCS.
15. All times stated for delivery are approximate only and time shall not be of the essence.
16. NCS will not be liable for any penalty loss injury damage or expense arising from any delay or failure in delivery from any cause at all nor will any such delay or failure entitle the Customer to refuse to accept any delivery or repudiate the Contract.

### **TITLE AND RISK**

17. For the purposes of section 12 of the Sale of Goods Act 1979, NCS shall transfer only such title or rights in respect of the Goods as NCS have. Risk in the Goods shall pass to the Customer upon delivery to the agreed delivery point.
18. Notwithstanding that risk in the Goods has already passed to the Customer, NCS will remain the sole and absolute owner of the Goods until such time as NCS have received in cash or cleared funds payment of the Price in full.
19. NCS shall be entitled to maintain an action for the Price notwithstanding that title to those Goods has not passed to the Customer.
20. Until such time as property in the Goods passes to the Customer:
  - 20.1 the Customer shall hold the Goods as NCS' fiduciary agent and bailee;
  - 20.2 the Customer shall keep the Goods (at the Customer's expense) properly stored and insured;
  - 20.3 NCS shall be entitled at any time to require the Customer to deliver up the Goods to NCS and if the Customer fails to do so forthwith to enter upon any premises of the Customer or any third party where the Goods are stored and to repossess the Goods.

### **WARRANTIES AND LIABILITY**

21. Subject to the conditions set out below NCS warrant that the Goods will correspond with their specification at the time of delivery and be of satisfactory quality, subject to the following conditions:
  - 21.1 NCS shall be under no liability in respect of any defect in the Goods arising from any drawing, design or specification supplied by the Customer;
  - 21.2 NCS shall be under no liability in respect of any defect arising from fair wear and tear, wilful damage, negligence, abnormal working conditions, failure to follow NCS' instructions (whether oral or in writing) misuse or alteration or repair of the Goods without NCS' approval:

- 21.3 the above warranty does not extend to parts, materials or equipment not manufactured by NCS, in respect of which the Customer shall only be entitled to the benefit of any such warranty or guarantee as is given by the manufacturer to NCS.
22. NCS shall be under no liability under this or any warranty condition or guarantee if the total Price has not been paid by the due date for payment since under those circumstances the Goods will remain NCS' property.
23. Subject as expressly provided in these conditions, and except whether the goods are sold to a person dealing as consumer (within the meaning of the Unfair Contract Terms Act 1977), all warranties, conditions or other terms implied by statute or common law are excluded to the fullest extent permitted by law.
24. Any claim by the Customer which is based on any defect in the quality or condition of the Goods or their failure to correspond with specification shall (whether or not delivery is refused by the Customer) be notified to NCS within 7 days from the date of delivery or, where the defect or failure was not apparent on reasonable inspection, within a reasonable time after discovery of the defect or failure. If delivery is not refused and the Customer does not notify NCS accordingly, the Customer shall not be entitled to reject the Goods and NCS shall have no liability for such defect or failure, and the Customer shall be bound to pay the Price as if the Goods had been delivered in accordance with the Contract.
25. Where any valid claim in respect of any of the Goods which is based on any defect in the quality or condition of the Goods or their failure to meet specification is notified to NCS in accordance with these Conditions, NCS shall be entitled to replace the Goods (or the part in question) free of charge or, at NCS' sole discretion, refund to the Customer the Price (or a proportionate part of the Price), but NCS shall have no further liability to the Customer.

#### **INTELLECTUAL PROPERTY**

26. If any claim is made against the Customer that the Goods infringe or that their use or resale infringes the patent, copyright, design, trade mark or other industrial or intellectual property rights of any other person, NCS shall indemnify the Customer against all loss, damages, costs and expenses awarded against or incurred by the Customer in connection with the claims or paid or agreed to be paid by the Customer in settlement of the claim, provided that:
- 26.1 NCS are given full control of any proceedings or negotiations in connection with any such claim;
- 26.2 the Customer shall give NCS all reasonable assistance for the purposes of any such proceedings or negotiations;
- 26.3 Except pursuant to a final warning, the Customer shall not pay or accept any such claim, or compromise any such proceedings without NCS' consent (which shall not be unreasonably withheld);
- 26.4 The Customer shall do nothing which would or might vitiate any policy of insurance or insurance cover which the Customer may have in relation to such infringement, and this indemnity shall not apply to the extent that the Customer recovers any sums under any such policy or cover (which the Customer shall use its best endeavours to do);
- 26.5 NCS shall be entitled to the benefit of, and the Customer shall accordingly account to NCS for, all damages and costs (if any) awarded in favour of the Customer which are payable by or agreed with consent of the Customer (which consent shall not be unreasonably withheld) to be paid by any other party in respect of any such claim; and

26.6 Without prejudice to any duty the Customer may have at common law, NCS shall be entitled to require the Customer to take such steps as NCS may reasonably require to mitigate or reduce any such loss, damages, costs or expenses for which NCS are liable to indemnify the Customer under this clause.

## **B. SUPPLY OF SERVICES**

27. The details of the Services are outlined in the Schedule and include support and advice on specified software and/or other items.
28. Tech support Services are provided between 8.00 a.m. and 5.00 p.m., Monday to Friday excluding public holidays. NCS will respond, in accordance with the Schedule, to calls logged. Calls placed outside normal working hours will be treated as being received at 8.00 a.m. on the next working day.
29. Support services requested by the Customer that are provided outside NCS's normal working hours will be subject to additional charges for time and travel expenses.
30. The minimum contract period for all Services is 12 months except for managed firewalls where the minimum contract period is 18 months.
31. Charges shown on the Schedule are fixed for the Initial Period and become payable with immediate effect.
32. After the Initial Period charges maybe subject to change with one month's notice.
33. Charges will be invoiced in advance and are payable on or prior to the first date of cover provided on that invoice.
34. After the Initial Period has expired all contracts for Services may be terminated by either party by serving one month's notice in writing.
35. All monthly support contracts with NCS are to be paid by direct debit.
36. If any sum becomes overdue for payment then NCS may suspend the support and/or Services provided by this agreement until such time as any amount due has been paid. The suspension shall not relieve the Customer of any charges due under this agreement.
37. When the Customer requests service outside the scope of this Agreement, it will be furnished at the sole discretion of NCS upon the terms and rates determined by NCS.
  - 37.1 Support by personnel not previously approved by NCS, which results in expense to NCS, will be charged to the Customer.
  - 37.2 The obligations of NCS under the terms of this Agreement will be cancelled, after consultation with the Customer, if the author, manufacturer, supplier or distributor of a scheduled item or items is unable or unwilling to supply additional support to NCS if necessary and NCS is unable to obtain such support from alternative sources.
38. NCS will make reasonable efforts to support or assist the Customer but do not guarantee to provide a resolution or fix for any support issue.
39. The Customer confirms that the software listed in the Schedule and any other software in respect of which it seeks assistance from NCS is legitimately owned and fully licenced to them, that it is unaltered, and that they possess working copies of original software installation media, licence keys and manuals as appropriate.
40. The Customer shall be required at all times to maintain adequate up-to-date backup procedures. NCS recommend full daily backups wherever possible and that the Customer keep an up-to-date copy of its data securely off-site.
41. The Customer accepts full liability for any data loss and NCS shall have no liability for the destruction or corruption of the Customer's data however that may have been caused. If the

Customer does not have adequate backup available for the restoration of data or applications NCS may charge the Customer for any additional support required to assist with restoring data or applications.

42. The Customer agrees to comply with NCS's reasonable instructions regarding the use of the supported items and to ensure that its employees are adequately trained in the correct use of the supported items.
43. Support agreement charges do not include:
  - a) Support, maintenance or installation of any computer hardware, software, peripherals, consumables or other items not listed on the Schedule.
  - b) Making specification changes to any software.
  - c) The training of Customer's staff.
  - d) Support for third party applications.
44. The Customer shall provide NCS with access to the appropriate computers, hardware, software and other items on the Customer's site where required.

### **C. ADDITIONAL TERMS RELATING TO SPECIFIC SERVICES**

#### C1 Managed firewall services.

45. Where NCS provides managed firewall services, it shall do so by providing all equipment necessary for the provision of a managed firewall, and managing and maintaining such equipment.
46. All such equipment shall remain the property of NCS. The Customer shall take all reasonable care of such equipment and shall be liable to NCS for any damage thereto unless caused by a defect in the equipment itself, the staff of NCS or reasonable wear and tear.
47. NCS will ensure that such equipment is properly maintained and is replaced if it ceases to provide the managed firewall services to a reasonable standard.

#### C2 Managed Off-Site Back Up Services

48. Managed off-site back up services are provided by NCS sourcing and maintaining off-site back up for the Customer's data. We can backup to either private or public cloud services as specified on your schedule.
49. The backups provided by this service are a snapshot (or snapshots) of the customer's data at a specific point in time The Schedule shall specify the frequency, storage quota and scope of back up services provided including an agreed period for the retention of the Customer's data.
50. NCS provides this by sub-contracting to obtain the use of offsite secure data storage facilities. The Customer shall have no direct access to these facilities.
51. Payment shall be made monthly in advance for managed back up services, with the first two months payable on inception and monthly thereafter.
52. In the event of non-payment all backups will be ceased immediately and:
  - 52.1 where the managed off-site backup is provided by use of a private cloud, the Customer will be given 30 days to pay all outstanding monies. If payment is not received access will be denied to the Customer to all data until all outstanding fees have been paid up to date. Such data will be marked for deletion 1 year after termination of the Contract without further warning. Within that 1-year period a copy of any such data can be provided on payment of outstanding fees, plus an administration fee of £50 and the cost of any hardware required to provide the data.

- 52.2 where the managed off-site backup is provided by use of a public cloud, the Customer will be given 30 days to pay all outstanding monies. If payment is not received all data will be deleted without further warning.
53. NCS will take reasonable care to protect the back up data, but does not warrant that the data is intact because NCS has no direct control over the uploading of data and so shall not be liable for any corruption of the Customer's data.
54. In the case of backups made to a private cloud, NCS will undertake a test that each backup is working once a year. This does not verify the data itself, only the backup service. We do not open or test individual files or folders. Backups to a public cloud are not tested.

#### C3 Hosted Desktop Services

55. Hosted desktop Services are provided by NCS via off-site servers. The Customer shall have no direct access to these servers.
56. Hosted desktop Services include a backup of all Customer data on a rolling 30-day basis.
57. Payment shall be made monthly in advance for hosted desktop services, with the first two months payable on inception and monthly thereafter.
58. In the event of non-payment, the Customer will be given 30 days to pay all outstanding monies. If payment is not received access will be denied to the Customer to the hosted desktop Service and all data until all outstanding fees have been paid up to date. Such data will be marked for deletion 1 year after termination of the Contract without further warning. Within that 1-year period a copy of any such data can be provided on payment of outstanding fees, plus an administration fee of £50 and the cost of any hardware required to provide the data.

### **D. GENERAL TERMS**

#### **LIMITATION OF LIABILITY**

59. Unless otherwise stated NCS' entire liability in respect of any cause of action by the Customer, whether based on contract, tort (including negligence) strict liability, statute or otherwise shall be limited as follows:
- 59.1 in respect of any goods sold to the Customer, to the Price;
- 59.2 on any one support call or specified item, to the annual support value of that item;
- 59.3 for managed services e.g. Cloud, Firewall & Backup, to the annual value of the contract for that item.
60. Any complaint regarding Goods must be given to NCS in writing within 7 days of the Goods being delivered. Any complaint regarding Services must be given to NCS in writing promptly and not later than 28 days from the incident complained of.
61. Except in respect of death or personal injury caused by NCS' negligence, NCS shall not be liable to the Customer by reason of any representation or any implied warranty, condition or other term, or any duty or common law, or under the express terms of the Contract, for any consequential loss or damage (whether for loss of profit or otherwise), costs, expenses or other claims for consequential compensation whatsoever (and whether caused by the negligence of NCS, NCS' employees or agent so otherwise) which arise out of or in connection with the supply of Goods or their use or resale by the Customer or supply of Services, except as expressly provided in these Conditions.
62. No action arising out of the services under this Agreement may be brought by the Customer more than one year after the cause of action has occurred.

### **INTEREST ON LATE PAYMENT**

63. If the Customer fail to make any payment due to NCS under this agreement by the due date for payment, then the Customer shall pay interest on the overdue amount at the rate of 4% per annum above Barclays Bank's base rate from time to time. Such interest shall accrue on a daily basis from the due date until the date of actual payment of the overdue amount, whether before or after judgment. the Customer shall pay the interest together with the overdue amount.

### **FORCE MAJEURE**

64. NCS shall not be liable to the Customer or be deemed to be in breach of the Contract by reason of any delay in performing or failure to perform any of NCS' obligations hereunder if the delay or failure were due to any cause beyond NCS' reasonable control. Without prejudice to the generality of the foregoing the following shall be regarded as causes beyond the reasonable control of NCS.
- (a) Act of God, explosion, flood, tempest, fire or accident.
  - (b) War, threat of war, sabotage, insurrection, civil disturbance or requisition.
  - (c) Act, restrictions, regulations, bye-laws, prohibitions or measures of any kind on the part of any governmental, parliamentary or local authority.
  - (d) Import or export regulations or embargoes.
  - (e) Strikes, lockouts or other industrial actions or trade disputes whether involving NCS' employees or those of a third party.
  - (f) Difficulty in obtaining raw material, labour, fuel, parts or machinery.
  - (g) Power failure or breakdown of machinery.

### **TERMINATION**

65. NCS shall be entitled to terminate this agreement with immediate effect by giving written notice to the Customer if:
- (a) the Customer fails to pay any undisputed amount due under this agreement on the due date for payment and remain in default not less than 14 days after being notified in writing to make such payment; or
  - (b) the Customer commits a material breach of the Customer's obligations under this agreement and (if such breach is remediable) fails to remedy that breach within a period of 30 days after receipt of notice in writing requiring it to do so; or
  - (c) the Customer commits a series of persistent minor breaches which when taken together amount to a material breach; or
  - (d) the Customer suspends, or threatens to suspend, payment of the Customer's debts or are unable to pay the Customer's debts as they fall due or admit inability to pay the Customer's debts or are deemed unable to pay the Customer's debts within the meaning of section 123 of the Insolvency Act 1986; or
  - (e) an application is made to court, or an order is made, for the appointment of an administrator or if a notice of intention to appoint an administrator is given or if an administrator is appointed over the Customer; or
  - (f) a floating charge holder over the assets of that Buyer has become entitled to appoint or has appointed an administrative receiver; or
  - (g) any event occurs, or proceeding is taken, with respect to the Customer in any jurisdiction to which it is subject that has an effect equivalent or similar to any of the events mentioned above; or

- (h) any Force Majeure Event prevents NCS from performing the Customer's obligations under this agreement for any continuous period of three months.
66. Termination of this agreement shall not prejudice any of NCS' rights and remedies which have accrued as at termination.
67. In the event that:
- (a) the Customer make any voluntary arrangements with the Customer's creditors or becomes subject to an administration order or becomes bankrupt or goes into liquidation (otherwise than for the purpose of an amalgamation or reconstruction) or;
  - (b) the Customer cease or threatens to cease to carry on business, or;
  - (c) An encumbrancer takes possession or a receiver is appointed of any of the Customer's property or assets;
- then without prejudice to any other remedy or right available to NCS, NCS shall be entitled to cancel the Contract or suspend any further deliveries or performance under the Contract without any liability to the Customer and the Price shall become immediately due and payable notwithstanding any previous arrangement or agreement to the contrary.

#### **GENERAL**

68. Neither this Contract nor any rights or obligations arising under the Contract shall be assigned by the Customer without NCS' prior consent in writing.
69. Any notice required or permitted to be given by either party to the other under these Conditions shall be in writing addressed to that other party at its registered office or principal place of business or such other address as may at the relevant time have been notified pursuant to this provision to the part giving the notice.
70. No waiver by NCS of any breach of the Contract by the Customer shall be considered as a waiver of any subsequent breach of the same or any other provision.
71. If any provision of these Conditions is held by any competent authority to be invalid or unenforceable in whole or in part the validity of the other provisions of these Conditions and the remainder of the provision in question shall not be affected thereby.
72. These terms and conditions, the contract and any agreement are subject to English Law and the Customer consent to the exclusive jurisdiction of the English Courts in all matters regarding the Goods or Services or arising out of the Contract.