

NECHK Standard Terms and Conditions for Quotations

1. Introduction

1.1 Unless otherwise stated in the Quotation, these Terms and Conditions shall govern the Agreement between NECHK and Customer (collectively or individually hereinafter referred to as “Parties” or “Party”). Any terms or conditions of Customer’s order which are in any way inconsistent with or in addition to these Terms and Conditions shall not be binding on NECHK, and shall not be applicable.

2. Definitions

- 2.1 **Agreement** means the Quotation including, but not limited to any attachment of proposal or assumption, issued by NECHK and accepted by Customer, under which NECHK shall provide and Customer shall pay for the Works described therein, comprising these Terms and Conditions.
- 2.2 **Deliverables** means the deliverables arising out of the Works or otherwise supplied to Customer, including the Product, under or in connection with the Agreement.
- 2.3 **Force Majeure Event** means any circumstances beyond either Party’s reasonable control including, but not limited to fire, flood, war, embargo, strike, riot or the intervention of any governmental authority.
- 2.4 **NECHK** means NEC Hong Kong Limited and its Macau Branch. NECHK’s principal place of business is situated at 25th Floor, The Metropolis Tower, 10 Metropolis Drive, Hunghom, Kowloon, Hong Kong.
- 2.5 **UAT** means User Acceptance Test or series of tests, which shall be conducted by NECHK and/or Customer with respect to the Works.
- 2.6 **UAT Period** means a period of five (5) days upon installation of the concerned Works, or a period mutually agreed between the Parties, for carrying out the respective UAT.
- 2.7 **Utilities** means any technologies, program, system, information, data, documentation or other materials brought by NECHK into any engagement for the provision of the Works or which are created or prepared by NECHK in the course of or as a result of providing any of the Works.
- 2.8 **Works** means works to be provided under the Agreement including but not limited to (as the case may be) design, development, supply, delivery, installation, commissioning, implementation, testing, maintenance, training or other related services of Hardware, Software, System or other Equipment (the “Product”).

3. Payment

- 3.1 Customer shall pay NECHK the prices as set out in the Quotation in accordance with the Payment Schedule as set out in the Quotation or within five (5) days from the date of the relevant invoice issued by NECHK.
- 3.2 Unless otherwise specified, all prices shall be calculated in the currency of Hong Kong dollars.
- 3.3 All payment must be made payable to “NEC Hong Kong Limited” or “NEC Hong Kong Limited, Macau Branch” as specified in the Quotation.
- 3.4 All payment to NECHK is non-refundable.
- 3.5 All applicable tariffs and taxes in relation to the Works shall be solely borne by Customer.
- 3.6 If Customer fails to settle any overdue payment within the payment schedule:
 - 3.6.1 Customer shall be liable for payment of interest to NECHK calculated at the rate of two percent (2.0%) per month until the date such overdue payment in full is made;
 - 3.6.2 NECHK reserves the right to remove or uninstall the concerned Works and shall not be obliged to redeliver or reinstall until such overdue payment is settled in full;

- 3.6.3 any cost of removal or uninstallation, redelivery and/or reinstallation of such removed or uninstalled Works shall be solely borne by Customer and NECHK reserves the right to claim all costs or expenses incurred; and
- 3.6.4 NECHK reserves the right to suspend, cancel or terminate the Agreement or any section thereof in accordance with Clause 22 (Termination) herein.

4. Additional Requirements

4.1 Any additional requirement raised by Customer that is not set out in the Quotation shall be subject to further discussion, additional charge and amendment of the Quotation mutually agreed in writing.

5. Delivery

- 5.1 NECHK shall deliver the Deliverables to:
 - 5.1.1 the designated location as specified in the Quotation; or
 - 5.1.2 if no such location is specified in the Quotation, a location that NECHK may reasonably deliver to.
- 5.2 Any cost of relocation shall solely be borne by Customer.
- 5.3 Any delivery location outside Hong Kong shall be subject to additional charge.
- 5.4 NECHK shall use its reasonable endeavor to provide Customer the Works in a timely manner. Delay, however caused, will not entitle the Customer to claim damages from NECHK.

6. Title and Risk

- 6.1 Risk in the Deliverables shall pass to Customer upon delivery of the Deliverables to Customer or its designated receiver pursuant to Clause 5 (Delivery).
- 6.2 Title to the Deliverables shall remain with NECHK until the date of payment in full by Customer to NECHK.

7. Software

7.1 All Software provided shall be subject to the provisions of the license agreement relating to that Software. NECHK shall have no liability for any representations made in respect of such Software.

8. Maintenance

8.1 Any Annual Maintenance Support on the Product shall be subject to the provisions of the maintenance agreement issued by NECHK.

9. Version or Standard Variation

9.1 In case of version or standard variation subject to availability, NECHK reserves the right to upgrade the Works without prior consent from Customer. Shall the version or standard involve any downgrade of the Works, NECHK shall give prior notification to Customer. In any case, NECHK reserves the right to decide on the version or standard.

10. Acceptance

- 10.1 In the event that the price includes UAT and UAT occurs within UAT Period, the concerned Works shall be deemed as being accepted by Customer upon Customer’s signature and/or chop on the certificate of UAT or relevance. In the event that the price includes UAT, but no such UAT occurs within UAT Period, the concerned Works shall be deemed as being accepted by Customer upon expiration of UAT Period.
- 10.2 If the price does not include UAT, the concerned Works shall be deemed as being accepted upon delivery pursuant to Clause 5 (Delivery), unless Customer notifies NECHK to the contrary within five (5) days of delivery.

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11. Intellectual Property Rights

11.1 The Agreement does not transfer from NECHK to Customer any intellectual or industrial property rights and all such rights in all Utilities shall belong to and remain with NECHK. Upon payment in full by Customer for the applicable Works, NECHK shall grant a license to Customer for the use of the Utilities belonging to NECHK or which NECHK is authorized to license that are incorporated as part of the Product developed for Customer pursuant to the Agreement. Unless otherwise specified in any license agreement provided to Customer by NECHK in the course of providing the Works, NECHK shall be deemed to have granted Customer a non-exclusive, perpetual, non-transferable, irrevocable right and license to use those Utilities incorporated into the Works, to the extent the Utilities belong to NECHK or which NECHK is authorized to license, and Customer may include the Utilities as part of any integrated Works that NECHK develops for the purpose stipulated in the Agreement.

12. NECHK Warranty

12.1 Standard Warranty

12.1.1 In the event that the price includes warranty, NECHK warrants that the Works, will be free from defects in materials, workmanship and installation affecting normal use for a period of one (1) year, or a period mutually agreed between the Parties, from the date of acceptance pursuant to Clause 10 – (Acceptance) herein. During this period, if the Works do not meet this Standard Warranty, NECHK shall, as NECHK's sole liability and obligation and Customer's sole remedy, be responsible for the repair, replacement or rectification of such Works that have been returned from Customer to NECHK.

12.1.2 The Standard Warranty does not cover damage, fault, failure or malfunction due to external causes, including accident, abuse, misuse, problems with electrical power, usage and/or storage and/or installation not in accordance with product instructions, failure to perform required preventive maintenance, normal wear and tear, act of God, fire, flood, war, act of violence or any similar occurrence; any attempt by any person other than NECHK's personnel or any person authorised by NECHK, to adjust, repair or support the Works; and problems caused by use of parts and components not supplied by NECHK.

12.1.3 The Standard Warranty does not cover third party goods and services.

12.1.4 In relation to third party goods and services provided to Customer by NECHK, where items are covered by the originating manufacturer's warranty, then such originating manufacturer's warranty shall be the sole warranty in respect of such items and the Standard Warranty shall not extend to such items. Customer shall utilize that originating manufacturer's warranty for such items.

12.2 EXCEPT AS EXPRESSLY STATED, NECHK MAKES NO EXPRESS OR IMPLIED WARRANTIES WITH RESPECT TO THE WORKS, INCLUDING BUT NOT LIMITED TO ANY WARRANTY RELATING TO THIRD PARTY GOODS AND SERVICES, ANY WARRANTY WITH RESPECT TO THE PERFORMANCE OF ANY GOODS AND SERVICES USED IN THE COURSE OF THE AGREEMENT, ANY WARRANTY CONCERNING THE RESULTS TO BE OBTAINED FROM THE WORKS OR THE RESULTS OF ANY RECOMMENDATION NECHK MAY MAKE, INCLUDING WITHOUT LIMITATION ANY IMPLIED WARRANTIES CONCERNING THE PERFORMANCE, MERCHANTABILITY, SUITABILITY, NON-INFRINGEMENT, OR FITNESS FOR A PARTICULAR

PURPOSE OF ANY OF THE WORKS THAT MAY RESULT FROM THE IMPLEMENTATION OF ANY RECOMMENDATION NECHK MAY PROVIDE.

13. Customer Responsibility

13.1 Customer warrants that:

13.1.1 it has full power and capacity to enter into and to perform the Agreement;

13.1.2 its use of Works does not and shall not directly or indirectly infringe any third party's intellectual property rights nor breach any law or regulation in any jurisdiction.

13.1.3 the Product purchased from NECHK under the Agreement is not intended for use as weapons of war or homicide.

13.2 Customer shall promptly obtain and provide to NECHK any required consent, approval and/or permission with respect to Customer's personnel, facilities, equipment, hardware, software, network, system, information or other resources reasonably required by NECHK or necessary for NECHK's performance of the Agreement. Failure to provide such in a timely manner may delay NECHK's performance of its duties and obligations under the Agreement which shall not constitute a breach of the Agreement by NECHK.

13.3 Customer shall be responsible for backing up its data. NECHK will not be responsible for loss of or damage to data or loss of use of any computer or network systems.

14. Limitation of Liability

14.1 NECHK shall not be responsible for any risk, loss or damage caused by events beyond NECHK's control. To the maximum extent permitted by applicable law, NECHK shall not be liable to Customer for any loss of business, loss of profits, loss of data, damage including, but not limited to incidental, special or consequential loss or damage, injury, death, directly or indirectly due to the purchase, use or performance of the Works (including in circumstances where data or software is lost, corrupted, deleted or altered, etc.). At NECHK's option, the liability of NECHK shall be limited to:

14.1.1 repair or replacement of defective Deliverables or the payment for such repair or replacement; or

14.1.2 re-supply of the concerned Works or the payment for such resupply.

14.2 The total payment by NECHK under clause 14.1 shall in no event exceed one hundred percent (100%) of the total of prices paid by Customer to NECHK under the Agreement.

15. Indemnification

15.1 Customer shall indemnify and hold NECHK harmless from any and all liability, damages, claims or proceedings arising out of:

15.1.1 Customer's failure to obtain the appropriate license, intellectual property rights, or any other permissions required to support NECHK's performance of the Agreement, including, but not limited to the right to make any copies or reproductions of any Customer provided materials; or

15.1.2 any use or attempted use of the Works by Customer or any other third party in breach of the Agreement; or

15.1.3 any loss of or damage to any property or injury to or death of any persons caused by any negligent act or omission or willful misconduct of Customer or its personnel or by any breach of its contractual obligations arising out of the Agreement.

16. Notice

16.1 All notices which are required to be given under the Agreement must be in writing and must be sent to the address of the recipient set out in the Agreement or such

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other address as the recipient may designate by notice given in accordance with this clause. Any such notice may be delivered by hand or by prepaid letter or facsimile and will be deemed to have been served by hand when delivered, if by post forty-eight (48) hours after posting, and if by facsimile when dispatched.

17. Assignment/Subcontract

- 17.1 Customer may not assign the Agreement or any section thereof without prior written consent of NECHK.
- 17.2 NECHK may at any time assign, transfer, novate or otherwise dispose of all or any of its benefits, rights, obligations and liabilities under the Agreement to any company and NECHK shall be released from all obligations and liabilities under the Agreement so assigned, transferred or novated upon such assignee, transferee, subcontractor or other party to the novation agreeing in writing to assume such obligations and liabilities in NECHK's place.

18. Severability

- 18.1 If any provision of the Agreement is void or unenforceable, the remainder of the Agreement will remain in full force and will not be terminated.

19. Independent Contractor

- 19.1 The Parties are independent contractor. Neither Party will have any rights, power or authority to act or create an obligation, express or implied, on behalf of the other party except as specified in the Agreement.

20. Non-Solicitation

- 20.1 During the course of the Agreement, Customer shall not hire, recruit, solicit or otherwise employ any employee of NECHK involved in connection with the Agreement without NECHK's consent in writing (which consent may be withheld at NECHK's sole discretion).

21. Force Majeure

- 21.1 Neither party shall be liable to the other party for any failure to perform any of its obligations (except payment obligations) under the Agreement during any period in which such performance is delayed by a Force Majeure Event.
- 21.2 In case of a Force Majeure Event, the delayed party must give written notice to the other party as soon as practicable and the delayed party's time for performance will be excused for the duration of the Force Majeure Event.
- 21.3 If the Force Majeure Event lasts longer than thirty (30) days, the other party may immediately terminate the Agreement by giving written notice to the delayed party.

22. Termination

- 22.1 If Customer is in breach of any of these Terms and Conditions, NECHK may, without prejudice to any other claim or right NECHK may make or exercise, be entitled to immediately:
 - 22.1.1 suspend, cancel or terminate the Agreement; and/or
 - 22.1.2 remove any delivered and/or installed items.
- 22.2 Any other suspension, cancellation or termination of the Agreement by Customer must be in writing of no less than one (1) month to NECHK and shall be subject to acceptance by NECHK.
- 22.3 All outstanding payment to NECHK for any Works provided must be settled by Customer within five (5) days from the day of NECHK's acceptance of such termination of the Agreement. NECHK may, at its sole discretion, recover

from Customer any administration fee incurred due to the termination.

- 22.4 Notwithstanding any provisions in the Agreement, NECHK may, at its sole discretion, terminate the Agreement in writing of no less than one (1) month to Customer without compensation to Customer.

23. Rights of Third Party

- 23.1 The parties hereby expressly acknowledge and agree that save where expressly provided by the Agreement, no person other than the Parties shall derive any rights with respect to the Agreement.

24. Use of Information

- 24.1 Customer consents to NECHK collecting, retaining and using Customer Information for any of the following purposes:
 - 24.1.1 performing the Agreement;
 - 24.1.2 preparing invoice and processing payment instructions;
 - 24.1.3 marketing and promoting NECHK's businesses and its affiliated companies' businesses;
 - 24.1.4 verifying Customer's creditworthiness.
- 24.2 NECHK retains all legal right for the word "NEC" or "NECHK". Customer shall not, without prior written consent of NECHK, make any public statement in relation to the Works or any relationship between Customer and NECHK.
- 24.3 All information and material, including but not limited to visual, verbal, softcopy and hardcopy, exchanged between NECHK and Customer during the Agreement shall be treated as confidential and shall remain the property of the disclosing party at all time and shall be used or disclosed for the execution of the Agreement only.
- 24.4 Customer shall not disclose or make available in any form to any third party or to use any confidential or propriety information or trade secrets and/or materials of NECHK which it acquired in connection with or in the course of execution of the Agreement. This clause shall survive and continue to bind Customer notwithstanding completion or termination of the Agreement.

25. Governing Law

- 25.1 The Agreement shall be governed by and construed in accordance with the laws of Hong Kong and each party hereby submits to the exclusive jurisdiction of the courts of Hong Kong in relation to any dispute arising under or in connection with the Agreement. The parties agree the provisions of the United Nations Convention on Contracts International Sale of Goods (and any amendments or successors thereto), and any conflict of laws provisions that would require application of another choice of law, are expressly excluded.

26. Entire Agreement

- 26.1 The Agreement contains the entire agreement and understanding of the Parties and (without prejudice to either Party's liability for any fraudulent misrepresentation) supersedes all prior understandings and agreements with respect to its subject matter. Unless otherwise mutually agreed by the Parties in writing, any alteration or amendment to or in connection with the Agreement shall be presented in writing and takes effect only after written confirmation by signature of an authorized representative of each Party.