

## **SALES GENERAL TERMS AND CONDITIONS**

### **1. Definitions:**

"Customer" means the person, firm or company placing an Order(s) with NECOMAL.

"Deliverables" means any product(s) and/or service(s) to be provided by NECOMAL pursuant to applicable Order(s) issued by the Customer.

"NECOMAL" means NEC Corporation of Malaysia Sdn Bhd.

"Order(s)" means the purchase order(s) or any form(s) of ordering issued by the Customer or any ordering concluded via contract(s)/agreements on the Deliverables between the Customer and NECOMAL pursuant to the applicable Quotation/Proposal.

"Quotation/Proposal" means the quotation or proposal issued by NECOMAL for the Deliverables requested by the Customer.

### **2. Application:**

The Quotation/Proposal is valid for the Customer only. Unless a separate agreement is entered between NECOMAL and the Customer, this General Sales Terms and Conditions shall apply to any provision of the Deliverables by NECOMAL to the Customer. Except to the extent that this General Sales Terms and Conditions are varied by mutual consent in writing, this General Sales Terms and Conditions together with the Quotation/Proposal shall constitute the entire agreement and contract between both parties after NECOMAL Acceptance Date (as defined below) and shall prevail over the terms and conditions in the Customers' Order(s), if any.

### **3. Pricing and Payment:**

(a) Price/Fee mentioned in the Quotation/Proposal shall be in Ringgit Malaysia (unless otherwise mentioned in the Quotation/Proposal) and all payment shall be made payable to "NEC Corporation of Malaysia Sdn Bhd" into the bank account as advised by NECOMAL from time to time. No cash payment shall be accepted, unless separately negotiated and agreed to by NECOMAL and the Customer in writing.

(b) Price/Fee quoted herein shall remain valid for the Quotation/Proposal's validity period as mentioned in the Quotation/Proposal and NECOMAL reserves the right to revise the Price/Fee quoted if there are changes in market conditions, foreign currency fluctuation, arising from any implementation / variation / amendment / revision of the laws, regulations, by-laws, guidelines, taxes, duties, levies, etc by the Malaysian Government or relevant authority from time to time.

(c) NECOMAL may change credit or payment terms at any time if, in NECOMAL's opinion, the Customer's financial condition, previous or current payment records or the nature of the Customer's relationship with NECOMAL so warrants.

(d) The Customer shall settle all invoices in accordance with the payment term mentioned in the Quotation/Proposal. The Customer shall pay interest on the overdue amount at the rate of eighteen per cent (18%) per annum calculated on a daily basis from the date the amount is due until full settlement of the overdue amount, whether before or after judgment.

(e) The Customer shall not be entitled to deduct, set-off or to withhold payment of any part or all of the amounts due and payable to NECOMAL pursuant to the Quotation/Proposal.

(f) Customer shall indemnify NECOMAL for any and all costs (including legal costs on a full indemnity basis) incurred or suffered as a result of NECOMAL enforcing its rights against the Customer including but not limited to recovering of any overdue amount.

### **4. Tax, Duty, Levy and Other Charges:**

Unless otherwise agreed in writing, the Price/Fee mentioned in the Quotation/Proposal is exclusive of taxes, duties and levies. The Customer shall bear, in addition to the Price/Fee chargeable, (i) the applicable goods and services tax, sales tax, services tax, withholding tax and any other taxes, duties and levies on all supply of goods and/or services (including any increase rate thereto as well as those as may be imposed / implemented by the relevant authority from time to time); and (ii) all logistic, freight, insurance and other shipping expenses as well as expenses for any special packing requested by the Customer.

## 5. **The Order(s):**

- (a) All Order(s) are subject to acceptance by NECOMAL in writing. NECOMAL will provide the Customer with an order acceptance or rejection notice as soon as reasonably possible.
- (b) All Quotation/Proposal and related contract(s) thereto (if any) are for reference only and shall only be binding on NECOMAL subject to the following:
  - (i) NECOMAL is in receipt of the Order(s) within the Quotation/Proposal's validity period or such extension of time granted by NECOMAL;
  - (ii) NECOMAL issued its written acceptance of the Order(s) to the Customer with term(s) and condition(s) acceptable to NECOMAL ("NECOMAL Acceptance Date");
  - (iii) satisfactory outcome of NECOMAL's credit check relating to the Customer at the relevant time(s). NECOMAL reserves the right to undertake credit check(s) at any time prior to counter-signature of the contract(s) by NECOMAL and prior to delivery of any Deliverables by NECOMAL. NECOMAL may reject the Order(s), change credit or payment terms or place the Customer's account on credit hold at any time if, NECOMAL is of the reasonable opinion that the financial condition, previous payment record or the nature of the Customer's relationship with NECOMAL so warrants, in which event, the Customer shall be entitled to make justification to NECOMAL but not entitled to claim on any damages thereto.
- (g) NECOMAL reserves the right to cancel or reject any Order(s) if the term(s) and conditions(s) is not acceptable to NECOMAL, if there are any material errors in the Order(s), or if any further verification of the Customer's credit conditions or records so warrants. For avoidance of doubt, all the terms and conditions herein shall override any inconsistent terms in the Order(s).
- (h) Partial delivery request is only allowed subject to NECOMAL's prior approval in writing (and any attached conditions, if any). NECOMAL may, where it deems fit, do partial delivery and this partial delivery shall not entitle the Customer to treat the Order(s) as a whole as repudiated.

## 6. **Order Cancellation/Termination:**

No cancellation of the Order(s) or any part thereto by the Customer is allowed unless with prior written consent of NECOMAL. Subject to the prior written consent of NECOMAL, any order cancellation / termination by the Customer will be treated in the following manner:

### (a) **Cancellation / termination before the delivery of Deliverables to the Customer**

- (i) Any Order(s) cancellation / termination by the Customer **WITHIN** seven (7) days from NECOMAL Acceptance Date shall be subject to the following:
  - (aa) the Customer shall immediately pay to NECOMAL a cancellation / termination fees which is equivalent to 10% of the Price/Fee; and
  - (bb) the Customer shall immediately reimburse NECOMAL on all fees, costs and expenses incurred and/or suffered by NECOMAL up to the time of cancellation / termination including but not limited to cost of labour, materials, administration and overhead (calculated in accordance with NECOMAL's normal and reasonable accounting practices) and any fees, costs and expenses incurred, paid and/or due to any third (3rd) party vendor(s) / licensor(s) / subcontractors ("Payable Sum").
- (ii) Any Order(s) cancellation / termination by the Customer **AFTER** seven (7) days from NECOMAL Acceptance Date shall be subject to the following:
  - (aa) the Customer shall immediately pay to NECOMAL a cancellation / termination fees which is equivalent to 30% of the Price/Fee; and
  - (bb) the Customer shall immediately reimburse NECOMAL on all Payable Sum,

Provided that the total payable amount by the Customer shall not exceed the Price/Fee.

### (b) **Cancellation / termination after the commencement of delivery of the Deliverables to the Customer**

The Customer shall immediately pay the full Price/Fee mentioned in the Quotation/Proposal to NECOMAL.

Notwithstanding the above, where software(s) and/or software subscription(s) is/are provided as part of the Deliverables, the Customer shall, upon cancellation / termination of the Order(s) for whatsoever reason, pay all Price/Fee to the software(s), software subscription(s) or software support service(s), as the case may be, (i) all due and payable; and (ii) for the remaining unexpired period. If the Price/Fee to the software(s), software subscription(s) or software support service(s), as the case may be, already paid in advance, there shall be no refund.

## 7. Others:

- (a) NECOMAL reserves the right to: (i) increase the quoted Price/Fee in the event that the Customer requests for an increase / variation / modification to the Deliverables; and (ii) substitute an equivalent model should there be an equivalent model change.
- (b) On maintenance / support service(s) purchased (if applicable), NECOMAL reserves the right to revise the maintenance services/support fees based on market situation from year to year.
- (c) Any renewal or option granted to the Customer, if any, shall only be valid provided there is no breach on the part of the Customer.
- (d) Obligation(s) of the Customer: (i) Customer shall ensure site readiness and provide NECOMAL with such information and access to such facilities and personnel as NECOMAL may reasonably require in order to perform or deliver the Deliverables. Customer shall ensure that the Customer's facilities will not pose any risk or hazard to the health and safety of NECOMAL's personnel during the performance or delivery of the Deliverables at the Customer's facilities; (ii) Customer shall also make such decisions and provide such instructions in a timely manner as NECOMAL may require to enable NECOMAL to perform or deliver the Deliverables; (iii) Customer shall ensure that all of its data are adequately backed-up. NECOMAL shall not be responsible for the Customer's failure to do so, nor for the cost of recovery or reconstructing such data lost during the course of performance of the Order(s); or (iv) Customer acknowledges that NECOMAL is dependent on the Customer on the matters stated above in order to perform or deliver the Deliverables and/or to meet any timeframe as agreed.
- (e) Should the Customer breached any of the terms and conditions herein and in the Quotation / Proposal including but not limited to: (i) defaults in paying any sum due under the Quotation/Proposal or under any other business transaction(s) entered with NECOMAL; or (i) refuses/hinders/prevents NECOMAL from performing or delivering the Deliverables or any part thereto for whatsoever reason; (iii) being a natural person or persons commits any act of bankruptcy or being a company, passes any resolution for judicial composition or voluntary winding-up or is faced with winding-up proceedings by its creditors or if a receiver manager or judicial manager is appointed over any of its assets undertakings or businesses, or writ of distress or execution or other process is being levied or enforced upon or sued against any part of its assets undertakings or businesses to be unable to pay its debts, NECOMAL may, in addition to exercising all or any of its rights against the Customer, terminate the Order(s) immediately, suspend any further deliveries and immediately enter premises occupied by the Customer to recover possession of any Deliverables not paid for in accordance with the Order(s) without being liable to the Customer or any person claiming through the Customer. NECOMAL shall have the right at its absolute discretion, without any liability to the Customer and without prejudice to any of its accrued rights to suspend and / or cease any further delivery of the Deliverables to the Quotation/Proposal and under other business transaction(s) entered with NECOMAL until the default be made good and if the Customer continues with its default or refusal/hindrance/prevention after a seven (7) days' notice to the Customer to rectify such default(s), in such event the Quotation/Proposal shall be deemed as terminated by the Customer and Clause 7 shall apply. In case of delay or extension of the work included in the Quotation/Proposal, NECOMAL may charge additional costs if the causes of delay or extension are not attributed to NECOMAL.
- (f) The Customer shall not acquire any right or title to trademarks, design, copyright, patents or other intellectual property rights in the Deliverables. These rights shall remain with NECOMAL or NECOMAL's manufacturer(s) / principal vendor(s) / software principal(s), as the case may be.
- (g) All software(s) and / or hardware(s) sold by NECOMAL to the Customer is / are subject to the terms and conditions of NECOMAL's manufacturer(s) / principal vendor(s) / software principal(s) license / subscription agreement and warranty terms and policy. NECOMAL makes no warranties, whether express or implied, including but not limited to any implied warranties of title, non-infringement, merchantability or fitness for a particular purpose, and all such warranties are expressly excluded to the extent permitted by law.
- (h) The Customer shall not do or authorise or assist, permit or cause any of its employee(s), agent(s), contractor(s) or any persons to do any act which would or might infringe, invalidate or be inconsistent with the intellectual property rights or user license agreement of NECOMAL or NECOMAL's manufacturer(s) / principal vendor(s) / software principal(s). The Customer shall not in any way participate in or assist or permit unauthorised or infringing copies of any software, hardware or parts or items to be used on, with or in relation to the Deliverables.
- (i) If NECOMAL leases or rents any Deliverables to the Customer, NECOMAL will continue to be the owner of such Deliverables and the Customer shall not modify or repair such Deliverables without NECOMAL's prior written consent.
- (j) For Deliverables within warranty, NECOMAL shall have no obligation to repair or replace any alleged defective or lost Deliverables or parts thereof, if such repair or replacement is required due to: (i) normal wear and tear; (ii) any fault or negligence, in whole or in part, of the Customer, its

- employee(s), agent(s) or contractor(s) in the use and/or handling of the Deliverables; (iii) improper use or installation or modification of the Deliverables without NECOMAL's written approval; (iv) incorporation of parts or components not approved by NECOMAL; or (v) Force Majeure Event(s).
- (k) Unless otherwise agreed in writing, (i) title to product(s) shall transfer upon full payment of the Price/Fees; and (ii) risk to product(s) shall transfer upon delivery to the Customer.
  - (l) For products, solution/system and/or services, the Customer shall sign and return the delivery form or acceptance form, as the case may be, within seven (7) days from its receipt from NECOMAL. Upon the lapse of the said seven (7) days or if the solutions/system goes into live environment/ into production, whichever is earlier, without any justifiable ground, the Customer shall be deemed to have accepted the products, solution/system and/or services.
  - (m) NECOMAL shall not be liable for any loss of profits, loss of savings, loss of goodwill, loss of revenue, loss of contracts, downtime costs, loss or damage to data, procurement of substitute goods, product liability (unless NECOMAL is the manufacturer/inventor/developer) etc or for any special, indirect or consequential losses, damages, costs and expenses suffered by the Customer or any third party, whether anticipated or actual, arising under or in connection with the Quotation/Proposal. To the extent permitted by law, NECOMAL's total liability to the Customer arising under or in connection with the Quotation/Proposal, whether arising in contract, tort (including negligence) or any other legal theory, shall be limited to the amounts actually paid to NECOMAL under the Quotation/Proposal, whilst on software subscription or maintenance and support services, shall be limited to the annual fees for the software subscription or maintenance or support, as the case may be, which are actually paid to NECOMAL.
  - (n) Whilst every effort has been made to ensure accuracy in the preparation of the recommendation made by NECOMAL, no responsibility can be accepted for errors and/or omissions, which are caused due to incorrect or inadequate information supplied to NECOMAL by the Customer. Each party acknowledges and agrees that all information or data in whatsoever format disclosed to the other party are confidential in nature. Each party agrees that the obligation of confidentiality shall continue in full force and effect after the expiry of or the termination of this engagement or until the information properly comes into the public domain, save and except on any trade secrets which shall survive and remain confidential on perpetual basis, regardless of any early termination or completion of the performance of the Order(s).
  - (o) The Customer shall not use, supply or re-sell the Deliverables or any part thereof for use as or in connection with military goods or mass-destruction weapons or in violation of any applicable export control laws and regulations which include but not limited to the Malaysia and U.S.A export control laws and regulations and in event of such violation, the Customer shall keep NECOMAL fully indemnified.
  - (p) NECOMAL shall not be liable for any failure to perform its obligations under the Quotation/Proposal if the failure results from events beyond the reasonable control of NECOMAL which shall include, but are not limited to, strikes, lock-outs, restricted movements or other labour disputes, riots, civil disturbances, quarantines or restricted movements, actions or inactions of government authorities or suppliers, shortages of labour or materials or equipment, epidemics, pandemics, wars, embargoes, acts of God or other catastrophes ("Force Majeure Event(s)"). In case of any such Force Majeure Event(s), the time for performance required by NECOMAL shall be extended for any period during which the performance is prevented by the Force Majeure Event(s).
  - (q) Damages for late delivery of Deliverables, where applicable, shall, unless otherwise mentioned in the Quotation/Proposal, in no event exceed five percent (5%) of the Price/Fee of the delayed portion of the Deliverables where the delay is in relation to delivery of products or implementation or court awarded damages, whichever is lower, provided such delay is solely attributable by NECOMAL. The damages herein shall be the Customer's sole remedy for late delivery of the Deliverables.
  - (r) NECOMAL shall be entitled to sub-contract all or any part of the service(s).
  - (s) Any time period indicated in the Quotation/Proposal are mere estimates and cannot be guaranteed.
  - (t) If any term or provision of the Quotation/Proposal and this General Sales Terms and Conditions shall be held to be invalid, illegal or unenforceable, the remainder shall remain in force and effect and such invalid, illegal or unenforceable term or provision shall be deemed not to be part of it.
  - (u) No delay on the part of NECOMAL in exercising any right hereunder shall operate as a waiver thereof, nor shall any waiver by NECOMAL 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. Any and all notices required or permitted under this Quotation/Proposal and this General Sales Terms and Conditions shall be in writing and in the English language and may be given or sent by hand / by registered post / by courier / by facsimile / by email by one party to the other party at their respective addresses or contact numbers as provided by each party (or such other address or contact numbers as may be provided by the parties from time to time).
  - (v) The Customer agrees and authorises that any personally identifiable information provided to NECOMAL in connection with the Quotation/Proposal may be dealt with by NECOMAL in



- accordance with the terms specified in NECOMAL Privacy Policy available at [http://my.nec.com/en\\_MY/support/index.html](http://my.nec.com/en_MY/support/index.html).
- (w) The Quotation/Proposal and this General Sales Terms and Conditions herein shall be governed by the law of Malaysia and subject to the exclusive jurisdiction of the courts of Malaysia.

Prepared by:

NEC Corporation of Malaysia Sdn Bhd  
Legal and Compliance Division

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