



Terms and Conditions for Services NTT Austria GmbH (04/2022)

April 2022

1 DEFINITIONS

- 1.1 “**NTT**” means NTT Austria GmbH.
- 1.2 “**Customer**” means the organization which is requesting and paying for Support Services.
- 1.3 “**Customer Location**” means one or more physical locations associated with one or more address(es) and includes a single building and/or adjoining buildings and/or multiple locations where the services are to be provided.
- 1.4 “**Customer Confirmation Certificate**” means the certificate validated by NTT and provided to the customer and will list and confirm Service(s) purchased and contain the Agreement number
- 1.5 “**Software-Update**” means an official software release which NTT has classified as a release intended as an interim or bug fix release to correct deficiencies and bugs affecting performance of products provided by NTT. It can also include minor enhancements which would normally be found in forthcoming upgraded products.
- 1.6 “**Response Time**” means the period after complete creation of the service ticket by NTT’s service-desk during which NTT starts to provide the services. Response Time is only valid during the agreed upon Service Time.
- 1.7 “**Result Time**” means the period after complete creation of the service ticket by NTT’s service-desk during which NTT finishes to provide the services. Result Time is only valid during the agreed upon Service Time.
- 1.8 “**Service Time**” means the timeframe during which NTT provides services. If not agreed upon otherwise, Service Time means Business Hours,
- 1.9 “**Business Hours**” of NTT means **Mo – Th 8:00 a.m. until 5:00 p.m. and Fr 8:00 a.m. until 3:00 p.m.** (except Austrian public holidays). “**Extended Working Hours**” of NTT exceed Business Hours and will be agreed upon explicitly in the Service Agreement.

2 TERM

- 2.1 **Commencement Date.** Unless otherwise defined in the service agreement the Commencement Date for services within continuing obligation shall be the date of beginning of operation in case of products installed by NTT, otherwise the date of delivery. In case of products already in use the date of acceptance test by NTT shall be the Commencement Date.
- 2.2 **Duration of Contract.** The term of this agreement is effective upon the Commencement Date and shall remain in force and effect for the period specified in the Agreement unless terminated otherwise in accordance with the provisions hereinafter.
- 2.3 **Continuing Obligation.** For services rendered pursuant to a contract with continuing obligation the contract shall remain in force and effect for the duration as agreed upon in the service agreement. The duration of the contract extends for another year unless the agreement is terminated in writing with three (3) months’ prior notice.
- 2.4 **Termination for Cause.** Irrespective of any other provisions of this contract each party has the right of Termination for Cause. Termination for Cause is applicable in particular: (a) if the other party fails to perform any material term or condition of this agreement, and does not remedy the failure within thirty (30) days after receipt of written notice of such default, or (b) the customer becomes incapable to act, files or has filed against it a petition under applicable bankruptcy or insolvency laws which is not dismissed within thirty (30) days or in case of liquidation, or (c) if NTT is not able to fulfil the services as defined in the Service Agreement due to end of support notification by the product’s manufacturer. In the event of Termination for Cause the agreement for services with continuing obligation ends with receipt of the written notice of termination (see Article 8.5).
- 2.5 **Partial Termination.** A Termination can refer to all or part of the products covered by the Service Agreement.

3 ELIGIBILITY FOR SERVICES

- 3.1 **Eligibility for Service.** The product and all software applications must contain a hard- and software version supported by the manufacturer. If the services purchased do not include Software Updates of the product, then upgrading to the most current level shall be at customer’s extra expense. Products which have been modified without NTT’s prior written approval are not eligible for support services.
- 3.2 **Same Product Coverage.** NTT requires that each unit of the same NTT or third party product type located at a customer location(s) where not already covered by a service agreement from any supplier be covered by service. The customer shall notify NTT if any additional product unit(s) of the same type are purchased during the term of this agreement and shall pay a pro-rated price for service of the additional equipment.
- 3.3 In order to be in a position to receive spare parts or 3rd Level Support from manufacturers the Customer shall keep NTT updated about the data of the installed Customer-base. Otherwise the performance of services cannot be guaranteed by NTT. It is therefore necessary that the Customer informs NTT in writing and without any delay of all changes of the location of products and modules to any other installation location different from the original site or to any other chassis. This information shall also state the respective serial number and the new installation site.
- 3.4 If the Customer has entered into a service agreement directly with the manufacturer the Customer must ensure that NTT is enabled to access manufacturer’s services.

4 SERVICE RESPONSIBILITIES

- 4.1 **Service Time.** Services are provided within Business Hours unless Extended Working Hours are agreed in the Service Agreement. If the expected end of the delivery of a service is not possible within the Service Time NTT is entitled to begin delivering the service in the following Service Time period. If the delivery of a service cannot be finished within the Service Time the delivery of the service will be continued in the following Service Time period.
- 4.2 **Software Updates.** Service includes Software-Updates and installation of such Software-Updates only if a respective service module is part of the Service Agreement.
- 4.3 If a Software Update not yet provided by the manufacturer is needed for remedying a malfunction of the Product the final problem solution will be delivered after availability of such Software Update. In such case NTT has to provide a temporary workaround if feasible.
- 4.4 **Parts/Hardware Replacement.** Service includes replacement of parts or a complete hardware unit if expressly stated in the Service Agreement as deemed necessary by NTT. All parts/hardware will be furnished on an exchange basis at no cost to the customer and will be new or reconditioned standard components of equal or higher quality, revision level and functionality. Upon notification, NTT may provide a comparable temporary replacement unit and notify the customer of the estimated date for permanent replacement. Returned or exchanged product will become the property of NTT.
- 4.5 **On-Site or Remote Support Services.** NTT personnel shall comply with all security requirements by customer or public authorities while staying on customer's premises or using the remote access provided by the customer. NTT shall not be responsible for a delay in performing services due to such security requirements or due to the fact that customer does not provide appropriate on-site or remote access. NTT may charge the customer a service fee if NTT responds to customer's request to be on-site and a knowledgeable employee of the customer fails to appear at the designated time and place. NTT reserves the right to use third party service providers to deliver on-site or remote support.
- 4.6 **On-Site Product Modification.** NTT may, at its sole discretion, perform changes on any item of the product to improve its operating condition and performance.
- 4.7 **No Products Malfunction.** If, upon visiting a customer's site, NTT demonstrates that the reported problem is not being caused by a malfunctioning product covered by the Service Agreement, then NTT reserves the right to charge the customer on a time and material basis.

5 SERVICE EXCLUSIONS

- 5.1 In addition to the service exclusions specified in the service description(s), the following services are excluded from the Service Agreement:
- (a) Any work at customer's location, other than specified in the Service Agreement;
 - (b) Any services for hardware which have been out of operation for a period longer than one (1) year, unless NTT at its sole discretion elects otherwise;
 - (c) service calls, replacement of parts and repair of damage or faults resulting from negligence, misuse, configuration or operational errors of the customer, causes other than ordinary use of the product by the customer within normal operating conditions, or any repair, attempt to repair or modification carried out with regard to the product or the software by any person other than an authorized representative of NTT;
 - (d) Any changes to the performance of the hardware or the software beyond those required to make them comply with their specifications;
 - (e) Cleaning or refurbishment of the hardware;
 - (f) Any services in connection with or arising out of relocation of the hardware or the addition, removal or servicing of any third party product, accessories, attachments, cabling or other devices not originally forming part of the hard-/software;
 - (g) Any services to the hard-/software resulting from unusual external causes beyond NTT's control such as, but not limited to, security leaks not publicly known at the time of concluding the Service Agreement, inappropriate operating conditions (e.g.: temperature, humidity, dust), improper input/output signals with regard to the hardware, other software not previously approved by NTT, thunderstorm, excess voltage, power outage, accident, fire, explosion, Act of God, or damage while in transit to NTT.
 - (h) all electrical work
 - (i) Data backup, data recovery and data reassessment and any other operations which have to be carried out by the customer according to the operating instructions (unless covered explicitly by the scope of services in the Service Agreement).
 - (j) Any free of charge provision of consumable supplies and components whose physical lifetime ends during the term of this Service Agreement (e.g.: batteries of all kind).
 - (k) Any initial technical inspection in case of a service agreement for equipment already in operation at time of acceptance of services.

- (l) Any services on hard-/software which become necessary by combination, connection or modification of hardware, software or operating parameters of equipment by the customer or any third party.

6 OBLIGATIONS OF CUSTOMER

- 6.1 **Service request and error notification.** When requesting a service or reporting an error Customer shall provide NTT with the agreement number, location, serial number (if applicable) and with an as detailed as possible error description. All occurring errors and damages have to be notified immediately to NTT's service desk and shall only be fixed by NTT or a company entitled by NTT. Errors with the highest severity level causing a significant disturbance of Customer's business shall be notified via telephone only. This applies to notifications outside Business Hours as well.
- 6.2 **Remote support.** Customer shall at its own cost make available the infrastructure needed for remote services. If NTT cannot access the Customer's system remotely and this inability is caused by a customer's lock or any other customer action an agreed Response Time or Result Time is not applicable and NTT is entitled to charge the additional costs arising thereof.
- 6.3 **On-Site Support.** When on-site Support Services are provided, the customer shall comply with the following additional obligations: provide, free of charge, working space, including heating, lighting, ventilation, electricity and power outlets; provide access to the product, in particular, free of charge, provide required auxiliary means such as ladders, lifting ramps etc.; comply with the duties imposed on the customer by any applicable health and safety legislation and any other statutory provision.
- 6.4 To ensure receipt of appropriate versions of software updates, the customer shall notify NTT of any hardware or software upgrades or parameterizations effected during the term of this agreement.
- 6.5 **NTT access.** Customer shall co-operate with NTT and provide access to all documentation, diagnostics programs, operating systems, utilities and application programs necessary to resolve reported problems.
- 6.6 The customer shall be responsible for obtaining any necessary permission and has to comply with the duties imposed on the customer by applicable statutory provisions concerning the operation of the equipment.
- 6.7 If the products are connected with Customer's network, Customer has to ensure a state of the art security of his infrastructure. This includes, but not limited to, virus- and malware protection, firewall and intrusion prevention systems and compliance with security policies. Customer is responsible for updating any security software delivered by NTT if not agreed upon otherwise.
- 6.8 **Passwords.** If the customer is handed out one or more password/s (at his own request) administration of such passwords, in particular modification, safety and the duty to keep it ready in the event of services is in the customer's sole responsibility. If the customer does not comply with his duty of proper administration and/or safekeeping of the passwords NTT cannot be held liable for any damages arising thereof, including but not limited to data leakage.

7 PAYMENT TERMS

- 7.1 **Taxes.** All prices are exclusive of all VAT, or other government excise, sales, use, or alike taxes now in force or enacted in the future. When applicable, VAT will be added at the then prevailing rate.
- 7.2 **Continuing Obligation.** For services within continuing obligation Customer will be charged a monthly service fee for the term of this agreement which shall be based on the scope of services specified in the respective agreement. Unless otherwise specified in the service agreement the monthly service fee will be charged quarterly in advance. An eventual annual service fee will be charged in advance and each respective service fee per intervention after the supply with a service.
- 7.3 **Stable Value Clause.** The monthly service fee shall be subject to a stable value clause. The minimum salary of the collective treaty for employees in occupation group E in Austrian Electrical and Electronic Industry effective at the time of conclusion of the agreement shall be basis for calculation, unless otherwise agreed. In the event of an increase of the minimum salary and/or ancillary labour costs the service fee shall increase proportionally. The same shall apply to tax increase and introduction of new taxes or public charges which affect the service fee calculation.
- 7.4 **Service Exclusions.** Services excluded from those provided under the service agreement will be charged on a time and material basis according to the then valid service price list.
- 7.5 **Due Dates.** All invoices are strictly net payable upon receipt.
- 7.6 **Delay in payment.** In the event that the Customer should fail to perform his payment obligation and such default is not rectified within 30 days after due date NTT may suspend its services or terminate this agreement without prejudice to other rights. In this case NTT is entitled to charge default interest.
- 7.7 **Offset.** The Customer shall only be entitled to offset claims against NTT which have been approved by court or in written form.
- 7.8 **Price Changes.** NTT reserves the right to change its prices from time to time. However, such price changes will not affect the service prices for the duration of the current term of a purchased service agreement. Where applicable, all future service renewals will use the then current service price unless otherwise agreed in writing. This shall not apply for service agreements with continuing obligations to be performed by NTT

- 7.9 **Manufacturer support.** For renewal of manufacturer's support the following applies in contradiction to clause 7.8: In the event of an increase of the list price for manufacturer's support NTT reserves the right to adjust the service fee in accordance with the initial calculation basis.

8 LIMITED WARRANTY AND DELAY

- 8.1 NTT warrants that any replacement parts are free from defects in material and workmanship and will be replaced for the period of the service agreement. NTT warrants performing services duly.
- 8.2 This limited warranty does not extend to parts replaced by NTT hereunder when the defect is due to any of the following reasons: accident, fire, explosion, thunderstorm, act of God or natural causes, excess voltage or power outage; modification, repair or attempted repair of the product parts by someone other than NTT or its authorized representative; the product in the reasonable opinion of NTT has been used in a negligent manner or for other than its intended use or outside the operating conditions specified by NTT.
- 8.3 The warranty period for software updates ends with the original warranty period calculated from the time of the original implementation.
- 8.4 The warranty period shall be twelve (12) months. With the exception of the limited warranty expressly provided in this section there are no other warranties relating to any of the services covered by this agreement.
- 8.5 The Customer may terminate this agreement with regard to the service concerned without prior notice by registered mail in the event that NTT should fail to perform any of its service obligations within continuing obligation and such default is not rectified within a reasonable grace period. In this case NTT shall refund the corresponding service fee as of the month in which NTT was granted an additional reasonable grace period.

9 LIABILITY

- 9.1 Outside the scope of the Product Liability Act NTT shall be liable only if the damage in question is proved to be due to intentional acts or acts of gross negligence, within the limits of statutory provisions. NTT shall not be liable for damage due to acts of slight negligence nor for consequential damages or damages for pure economic loss, loss of profits, loss of savings or interest or damage resulting from third-party claims against the Customer.
- 9.2 Provided that dial-up connections were configured in coordination with the Customer NTT shall not be liable for any additional costs arising from an unintentional activation.
- 9.3 If data backup is part of the services under the Service agreement, NTT's liability for data loss is limited to the typical expense for restoring the lost data which had occurred when making daily and appropriate backups. If data backup is not part of the services under the Service agreement, any liability for data loss shall be excluded.

10 OWNERSHIP OF SOFTWARE

- 10.1 The ownership of the rights to use the software and associated documentation made available to the customer under this agreement shall remain vested solely in NTT and/or the producer, except from those under Article 10.2.
- 10.2 The Customer shall have a non-exclusive, non-assignable license to use the software and associated documentation made available to him under this agreement. The foregoing license shall cover both the software originally installed by NTT and any upgrades or updates that may be implemented by NTT as part of the service agreement.
- 10.3 The software licensed to the customer under Article 10 shall be used:
- (a) in accordance with the provisions of this agreement and in compliance with the safety, use and operating instructions and requirements contained in the associated documentation; and
 - (b) in accordance with its intended purpose, namely solely for operating the product covered by this agreement and solely on the customer's operating site.
- 10.4 Any use not authorised under this agreement and not in accordance with applicable Intellectual Property laws shall be unlawful.
- Thus, for example, the customer shall be prohibited from:
- (a) reproducing the software by any method whatever, except as necessary for using the software; provided, however, that for security reasons the customer may make one (1) backup copy to be used in the event of failure of the copy delivered to the customer for the utilisation of the product;
 - (b) exhibiting, distributing, marketing or making available of the software and associated documentation, whether free of charge or against payment;
 - (c) using the software in any manner whatever for the purpose of designing, developing, distributing, marketing or making available similar or equivalent or substitute software;
 - (d) leasing, assigning, lending or otherwise making the software available directly or indirectly to any third party;
 - (e) adapting, modifying, transforming or arranging the software, in particular with regard to creating derived or new functions, or derived or entirely new software; and/or
 - (f) reverse engineering or disassembling of the software, except as otherwise provided by law.

- 10.5 The customer shall not have the right to correct any errors in the software.
- 10.6 If, for the use of one or more items of software, NTT requires the customer to sign a specific contract directly with the author or distributor of the software concerned, the customer shall comply with the provisions of such contract and with the provisions of this agreement, it being specified that such contract shall prevail over the provisions of this Article 10.

11 GENERAL

- 11.1 **Assignment of Rights and Obligations.** NTT is authorized to transfer its rights and obligations under this agreement to a third party. Customer shall not assign or transfer its rights or obligations under this agreement without the prior written consent of NTT.
- 11.2 **Transfer of products.** If products to which the Service Agreement refers are transferred to a third party, the Customer's obligations under this agreement persist unless the third party takes over this Service Agreement upon approval by NTT.
- 11.3 **Confidential Information.** Any confidential, technical or commercial information supplied by either party must not be disclosed to any third party without the disclosing party's prior written consent, and shall not be copied or used except as authorized. The information contained in all documents furnished shall remain the disclosing party's property and shall be returned to the disclosing party at their request, and in any case on the termination of this agreement.
- 11.4 **Reference.** Customer agrees to be named as a reference customer and that the current project is named as a reference project. This approval can be revoked any time.
- 11.5 **Non-solicitation.** During the term of this agreement and for twelve (12) months after any termination of this agreement, Customer will not, without the prior written consent of NTT, either directly or indirectly, on Customer's own behalf or in the service or on behalf of others, solicit or attempt to solicit, divert or hire away any person employed by NTT. In case of any breach of this clause Customer has to pay damages to NTT in the amount of one then current gross annual salary of the solicited employee.
- 11.6 **Force Majeure.** If either party is prevented from carrying out any of its obligations under this agreement due to any circumstance beyond its reasonable control including, without limitation, act of government, interruption of power supplies, failure of sources of supply, interference by a third party, industrial disputes or natural disaster the party affected shall be excused for non-performance of such obligation for the duration and the extent of such circumstance.
- 11.7 **Jurisdiction and applicable law.** Any litigations arising under this agreement shall fall within the exclusive jurisdiction of the competent court in Bezirksgericht Innere Stadt, Vienna. The agreement is subject to Austrian law without regard to its conflict of laws rules and excluding the UN Convention on Contracts for the International Sale of Goods.
- 11.8 The Customer declares that he enters into this agreement as an agreement within the business of his company.
- 11.9 **Entire Agreement.** This agreement is the complete statement of the terms of the agreement between the parties relating to the subject matter of this agreement and may not be modified except in writing executed by both parties and supersede all prior agreements or understanding of any kind whatsoever relating to the subject matter of this agreement. The terms and conditions of this agreement shall prevail notwithstanding any conflict with the terms and conditions of any purchase order or other instrument submitted by Customer. In case of inconsistencies between the various instruments forming part of this agreement the following order of precedence will be applicable:
1. Terms and Conditions for Services
 2. Customer Confirmation Certificate
 3. Order Form
 4. Any other exhibits
- 11.10 **Enforcement.** In the event any provision of this agreement is found to be invalid, illegal or unenforceable, the validity, legality and enforceability of any of the remaining provisions shall not be affected. The parties shall then negotiate and agree upon a valid provision coming closest to their intention.