







## NDC TECHNOLOGIES INC. TERMS AND CONDITIONS OF SALE AND SUPPLY

indirect result of the supply of Products or Services being prevented, delayed or rendered uneconomic by reason of circumstances or events beyond the Supplier's reasonable control. If due to such circumstances or events the Supplier has insufficient stocks to meet all its commitments the Supplier may apportion available stocks between its customers at its sole discretion.

17. Confidential Information: Each party undertakes to keep confidential, not use for its own purposes and not without the prior written consent of the other party disclose to any third party, any information of a confidential nature belonging or relating to the other party which may become known to it unless such information is or becomes public knowledge (other than by breach of this Section) or is required to be disclosed by order of a competent authority.
18. Cancellation, Rescheduling and Termination:
- 18.1. Orders for Products accepted by the Supplier may be cancelled or rescheduled by the Buyer only with the written consent of the Supplier (which consent the Supplier may withhold for any reason) and the Buyer shall indemnify the Supplier against the cost of all labour and materials used in connection with the order so cancelled or varied and against all loss, damage cost, charges and expenses suffered or incurred by the Supplier as a result of that cancellation or variation.
- 18.2. Contracts for Services shall commence on the commencement date identified in the relevant Proposal and, subject to earlier termination in accordance with Section 18.3 or 18.4, shall continue in force for the initial term as prescribed in such Proposal and thereafter for any renewal period (if any) set out in the Proposal and thereafter without limit of period unless or until terminated by either party in accordance with Section 18.3 or 18.4.
- 18.3. Without prejudice to Section 18.4, either party may terminate a Contract for Services by giving ninety days (90) written notice to the other party.
- 18.4. Either party may terminate a Contract for Services immediately at any time by written notice to the other party if the other party commits a material breach of the Contract for Services which is incapable of remedy or which it fails to remedy within thirty days (30) of receiving written notice requiring it to be remedied.
- 18.5. Upon termination or expiry of any Contract for Services, each party shall, except to the extent permitted or required to exercise or perform its continuing rights, or obligations hereunder, return to the other party all property of the other party then in its possession, custody or control and shall not retain any copies of the same.
- 18.6. Termination of any Contract in accordance with these Conditions shall not affect the accrued rights or liabilities of the parties at the date of termination.
19. Insolvency of the Buyer: If: (i) the Buyer becomes insolvent, has a receiver, administrative receiver, administrator or manager appointed of the whole or any part of its assets or business, makes any composition or arrangement with its creditors, takes or suffers any similar action in consequence of debt or an order or resolution is made for its dissolution or liquidation (other than for the purpose of solvent amalgamation or reconstruction) or carries out or undergoes any analogous act or proceedings under an applicable foreign law; or (ii) the Buyer ceases, or threatens to cease to carry on business then, without prejudice to any other right or remedy available to the Supplier, the Supplier may treat

any Contract as repudiated and/or withhold any further supply of Products and/or Services without any liability to the Buyer and, if any Products and/or Services have been supplied but not paid for, the price or fees shall become immediately due and payable notwithstanding any previous agreement or arrangement to the contrary.

20. Export: Regardless of any disclosure made by Buyer to Supplier of the ultimate destination of Products, Buyer shall not export either directly or indirectly any Product, or any system incorporating said product either in contravention of any law, statute or regulation or without first obtaining all required licenses and permits from all relevant agencies or departments of the United States government, including the United States Department of Commerce.
21. General:
- 21.1. These Conditions and any Contract shall be governed by the laws of the State of Illinois, without regard to its conflict of laws principles. The parties agree that the United Nations Convention on Contracts for the International Sale of Goods is specifically excluded from application to these Conditions. Where any claim or dispute arising out of or in connection with these Conditions or any Contract is not settled by negotiation, the parties will consider using mediation, in accordance with the American Arbitration Association mediation rules and procedures then in force, before resorting to arbitration. If any party does not wish to use, or continue to use mediation, or mediation does not resolve the dispute, any party may refer the claim or dispute to arbitration, in accordance with the then applicable Commercial Arbitration Rules of the American Arbitration Association. The arbitration process will be commenced by service by one party on the other(s) of a written notice that the dispute is to be referred to arbitration. The parties will then participate in good faith in the arbitration. Unless otherwise agreed between the parties, the arbitrator will be nominated by the American Arbitration Association. Arbitration proceedings shall be held in Chicago, Illinois. Under no circumstances are the arbitrators authorized to render an award inconsistent with the provisions of Sections 12 and 13 of these Conditions. The expenses and fees of any such arbitration proceedings shall be borne equally by the Supplier and the Buyer. The award of the arbitrator or arbitrators shall be final and binding upon the parties, and judgment upon any such award may be entered in any court having jurisdiction. Nothing in this Section 21.1 shall prevent any party from having recourse to a court of competent jurisdiction for the sole purpose of seeking a preliminary injunction or such other provisional judicial relief as it considers necessary.
- 21.2. Failure by the Supplier to exercise or enforce any rights hereunder shall not be deemed to be a waiver of any such right nor operate so as to bear the exercise or enforcement thereof any time or times thereafter.
- 21.3. If any provision or part of a provision of these Conditions is or is held by any court of competent jurisdiction to be unenforceable or invalid, such unenforceability or invalidity shall not affect the enforceability of any other provision.
- 21.4. The Buyer may not assign, transfer, novate or otherwise dispose of all or any of its rights or delegate any of its

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obligations thereunder, in whole or in part, without the prior written consent of the Supplier.

- 21.5. These Conditions and the relevant Contract constitutes the entire agreement and understanding between the parties with respect to its subject matter and supersedes any prior agreement, understanding or arrangement between the parties, whether oral or in writing. No representation, undertaking or promise shall be taken to have been given or implied from anything said or written in negotiations between the parties prior to the date of any Contract except as expressly stated in that Contract. The Buyer shall not have any remedy in respect of any untrue statement made by the Supplier upon which the Buyer relied in entering into a Contract (unless such untrue statement was made fraudulently or was as to a fundamental matter including a matter fundamental to the Supplier's ability to perform its obligations under the Contract) and the Buyer's only remedies shall be for breach of contract as provided for in these Conditions. Misrepresentations as to fundamental matters shall be subject to the terms of Section 13.
- 21.6. Any modification or amendment to any Contract must be in writing and signed by the authorised representatives of the parties.
- 21.7. All notices given under these Conditions shall be sent to the address of the other party set forth in the quotation or to such other address as such party may designate from time to time by such notice. Notice shall be regarded as properly given if sent in writing and shall be deemed to have been served on delivery if sent by hand, 2 days after despatched if sent by mail, and on confirmation of transmission, if sent by facsimile.
- 21.8. The disposal of electrical and electronic equipment (as defined in The Waste Electrical and Electronic Equipment Regulations 2006: Statutory Instrument 2006 No. 3289) of the Buyer which is waste within the meaning of Article 1(a) of Directive 2006/12/EC shall be the obligation of the Buyer who shall carry out all such disposals at the Buyer's expense and in an environmentally sound manner.