

Standard Terms and Conditions for Supply of Goods and Services

1. **APPLICATION**

These conditions shall apply to and be incorporated in each Contract and shall prevail over any inconsistent terms in the Customer's order or other communication or implied by law, practice, course of dealing or otherwise. Where the Customer and NEVION have entered into a contract for the supply of goods or services or a license agreement, the terms of that agreement shall prevail over any inconsistent terms in these conditions unless otherwise expressly agreed in a writing and signed by the Customer and NEVION.

2. **INTERPRETATION**

The following definitions apply to these conditions:

Business Day: a day which is not a Saturday, Sunday or a public or bank holiday, for matters relating to payments, in the place in which payment is to be made and for matters relating to acceptance, the place of delivery;

Contract: the Customer's order and NEVION's acceptance of it in accordance with condition 3, together with any special conditions or amendments agreed in writing by NEVION;

Customer: any company, firm, partnership or any other entity or person placing an order with NEVION for the delivery of Equipment or supply of Services;

Equipment: equipment (including, where applicable, Software) to be purchased by the Customer in accordance with a Contract;

Intellectual Property Rights: patents, rights to inventions, copyright and related rights, trademarks, trade names, domain names, rights in get-up, rights in goodwill or to sue for passing off, unfair competition rights, rights in designs, rights in computer software, database rights, topography rights, moral rights, rights in confidential information and any other intellectual property rights, whether registered or unregistered and including all applications for renewals and extensions of such rights and all similar or equivalent rights or forms of protection in any part of the world;

NEVION: Nevion Europe AS and any company controlling, controlled or under common control with Nevion Europe AS, including its wholly owned subsidiary NEVION USA, INC., which supplies Equipment or Services pursuant to a Contract incorporating these conditions;

Services: services to be performed by NEVION pursuant to a Contract;

Software: any computer program, firmware or other software to be supplied to the Customer in accordance with a Contract.

3. **CONTRACTS**

3.1. Quotations from NEVION are valid for 30 days unless otherwise stated.

3.2. Quotations are not offers to supply. A binding Contract shall only exist when the Customer places an order which NEVION accepts, being the earlier of the date of (i) a written order confirmation from NEVION; or (ii) delivery of the Equipment or Services by NEVION to the Customer pursuant to the order.

3.3. NEVION's order confirmation terms shall prevail over any inconsistent terms in the Customer's order and shall be deemed to have been accepted by the Customer unless it objects in writing within 48 hours.

3.4. NEVION shall be under no obligation to supply Equipment or Services which require bespoke design or development unless and until agreed in a written specification signed by NEVION and the Customer and attached to the order confirmation from NEVION.

3.5. Contracts cannot be cancelled without the prior written agreement of NEVION and against indemnification in full by the Customer of NEVION's loss (including loss of

profit), costs (including the cost of all labor and materials used), damages, charges and expenses.

3.6. Change requests are subject to written acceptance by NEVION in its discretion, to be recorded in a new confirmation which then forms part of the Contract and supersedes the previous confirmation.

3.7. Cancellation or termination of a Contract shall not affect any other Contract.

4. **PRICE AND PAYMENTS**

4.1. Prices are as stated in NEVION's acknowledgement. All quotations are on ex works (factory) terms (as defined in INCOTERMS ®2010) or FOB Carrier (factory) as defined in the Uniform Commercial Code) and are exclusive of carriage, insurance, VAT, sales tax or other charges and duties and also exclude any applicable fees or royalties. The price will include the license fee for the Customer's right to use any Software where a software licence is included with the Equipment unless otherwise stated in a quote or license agreement.

4.2. The Customer is responsible for arranging transport and providing NEVION with timeous transport instructions.

4.3. Unless expressly stated in the order confirmation, receipt of payment in full in cleared funds is a condition precedent to NEVION's obligation to ship Equipment or supply Services under a Contract.

4.4. Where payment terms require a letter of credit to be issued in favor of NEVION, the Customer shall arrange for an unconditional irrevocable letter of credit to be issued, and if required by NEVION, confirmed, by a first class bank or financial institution approved by NEVION and otherwise on terms as NEVION shall specify.

5. **DELIVERY, ACCEPTANCE AND PROPERTY**

5.1. Shipment or delivery dates stated in a Contract are estimated dates only and are not guaranteed by, nor are they binding on, NEVION.

5.2. NEVION reserves the right to supply in installments.

5.3. Where a shipment date for Equipment or a delivery date for Services is expressly agreed by NEVION in a Contract as being time critical, NEVION shall use its reasonable endeavors to deliver the Equipment on or before the date(s) specified in the Contract. If delivery is not achieved within one week of such agreed date, the Customer shall have the right to claim liquidated damages in the amount of 0.2% of the price of the delayed Equipment or Services for each complete Business Day of delay, up to a maximum of 10% of the price for such Equipment or Services. The Customer acknowledges and agrees that this is a genuine pre-estimate of the loss it would incur in the event of such delay and that it shall not be entitled to terminate a Contract on grounds of delay unless and until the maximum amount payable under this condition 5.3 has become payable.

5.4. Before dispatch, Equipment is carefully inspected by NEVION, and, where practical, submitted to standard tests, without additional cost to the Customer.

5.5. Any special factory or site acceptance tests are required or requested by the Customer must be specified in the order and agreed in the NEVION confirmation, at a price to be specified by NEVION.

5.6. Unless expressly agreed in writing, no installation or commissioning of Equipment is included in the Equipment price and all installation, commissioning and integration is the sole responsibility and risk of the Customer.

5.7. The Customer shall be deemed to have accepted the Equipment or Services unless it gives written notice of rejection (with detailed reasons) within the earlier of the date falling (i) 5 Business Days after actual receipt by the Customer and (ii) 15 Business Days after delivery.

5.8. Equipment shall be at Customer's risk from delivery at the NEVION factory as implied by the delivery term referred

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- to in condition 4.1. . In the event of any loss or damage to any Equipment during shipment, Customer should make a claim against the carrier.
- 5.9. Ownership of the Equipment shall pass to the Customer when all sums owed by Customer to NEVION under the Contract have been paid in full. If credit terms have been agreed and delivery takes place before payment in full, should the Customer fail to make payment in full by the due date (and without prejudice to any other right or remedy available to NEVION) from the delivery point, NEVION shall have a purchase money security interest in the Equipment until payment in full by the Customer and satisfaction of all other obligations of Customer hereunder. The Customer hereby (i) authorizes NEVION to file (and Customer shall promptly execute, if requested by NEVION) and (ii) irrevocably appoints NEVION its agent and attorney-in-fact to execute in the name of Customer and file, with such authorities and at such locations as NEVION may deem appropriate, any Uniform Commercial Code financing statements with respect to the Equipment and/or these conditions. The Customer agrees that a copy of these conditions (including any addenda, attachments and amendments hereto) shall constitute a security agreement and may be filed by NEVION as a Uniform Commercial Code financing statement. The Customer further represents and covenants that (a) it will keep the Equipment in good order and repair until the purchase price has been paid in full, (b) it will promptly pay all taxes and assessments upon the Equipment or the use thereof, (c) it will not attempt to transfer any interest in the Equipment until the purchase price has been paid in full, and (d) it is solvent and financially capable of paying the full purchase price for the Equipment.
6. **SOFTWARE LICENSE**
- 6.1. If the Customer is provided with a software license agreement in respect of any Software, the Customer shall sign and return it to NEVION prior to delivery.
- 6.2. If no software license agreement is provided to the Customer, the Customer hereby accepts a non-exclusive, non-transferable license to use the Software on the following conditions:
- (a) the Customer shall not copy (except to the extent permissible under applicable law which is not capable of exclusion by agreement) or for normal operation of the Equipment), reproduce, translate, adapt, reverse engineer, decompile, disassemble, vary or modify the Software, nor make derivative works of any Software in whole or in part nor communicate it or sub-license to any third party, without NEVION's prior written consent;
 - (b) the Customer shall not use the Software on any equipment other than the equipment (being Equipment or equipment not supplied by NEVION) it has been licensed for and shall not remove, adapt or otherwise tamper with any copyright notice, legend or logo which appears in or on the Software on the medium on which it resides;
 - (c) the license shall be terminable by NEVION if the continued use or possession of the Software by the Customer infringes a third party's rights, or NEVION is compelled to do so by law, or if the Customer has failed to comply with any term of the Contract.
- 6.3. The Customer agrees that neither NEVION nor its third party licensors are liable in whole or in part for any claims or damages arising from any use of Software other than normal application (as determined by NEVION) and the Customer shall indemnify and hold NEVION and its third party licensors harmless (on a full indemnity basis) in respect of any claim for loss, cost, damages, expenses or other liability whatsoever arising out of or in connection with any such use.
7. **EXPORT TERMS AND LOCAL TAXES**
The Customer shall be responsible for complying with, and shall hold NEVION harmless (on a full indemnity basis) in respect of any costs incurred in relation to, any legislation or other applicable rules governing the import/export of the Equipment or supply of Services and for the payment of any and all duties.
8. **THE NEVION WARRANTY**
- 8.1. NEVION undertakes, on the terms of this condition 8, to repair or replace (at NEVION's option) Equipment or remedy Services or provide a credit where NEVION determines that there is a material defect in materials or workmanship covered by the terms of this warranty.
 - 8.2. NEVION shall not be liable under this NEVION warranty unless it receives written notice of the defect, which notice must be given direct to NEVION (not through a dealer or other third party) within the relevant warranty period set out below and within 14 days of the date the Customer discovered, or ought to have discovered, the defect.
 - 8.3. Prior to any return, Customer must provide any proof of warranty eligibility requested by NEVION and receive a written return authorization. Upon receipt of the return authorization, the Customer shall return, at its own cost and risk and within 30 days, the relevant Equipment, properly packed, to a service facility designated by NEVION. NEVION reserves the right to return Equipment at Customer's expense if return authorization was not issued prior to return.
 - 8.4. If the repaired or replacement Equipment is to be shipped to a location which is not in the same country as the designated service facility, the cost and risk, including an duties and taxes, of shipment are for the Customer.
 - 8.5. All other costs are for NEVION unless the claim is found to be outside the scope or duration of the warranty, when costs of transportation, investigation and repair are for the Customer.
 - 8.6. Warranty periods are as follows, commencing on the date of delivery:
 - (a) Two years for all NEVION hardware products.
 - (b) Six months for Software unless licensed separately, in which case the applicable license terms apply.
 - (c) Ninety days for NEVION parts, assemblies and supplies to support hardware products previously sold to Customers, where the standard warranty period has expired.
 - (d) Ninety days for Services.
 - 8.7. Repairs and replacements shall be carried out in accordance with the reasonable procedures advised to Customer by NEVION.
 - 8.8. Hardware and Software products manufactured by third parties that are sold by NEVION as components of Equipment or otherwise will carry the original manufacturer's warranty only to the extent rights thereunder are available to the Customer.
 - 8.9. Warranty support for NEVION Software constituting or included in any Equipment or Services is limited to the version or release of the Software currently being provided by NEVION to the Customer at the time service is requested, and the next version or release of the Software.
 - 8.10. The benefit of this NEVION warranty may not be assigned or transferred in whole or in part under any circumstances.
 - 8.11. Repaired and replacement Equipment shall have the benefit of a warranty on the terms of this NEVION warranty for the unexpired period of the original NEVION

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- warranty or 3 months from provision of the repair or replacement, whichever is longer.
- 8.12. The NEVION warranty set out above represents the sole remedy of NEVION in respect of defective Equipment or Services and NEVION has no other obligation to the Customer, and the Customer waives any rights it may otherwise be entitled to, by virtue of any warranties or conditions expressed or implied by operation of law or otherwise. No statement or recommendation made or assistance given by NEVION to the Customer in connection with the Equipment or Services shall constitute or be construed as a representation or warranty of any kind. All product demonstrations are for illustrative purposes only.
- 8.13. NEVION does not authorize any of its dealers, system integrators or sales representatives, or any other third party, to change, modify, supersede or supplement the contents of condition 8.
- 8.14. NEVION reserves the right to discontinue or modify its list of products without notice to the Customer If NEVION replaces Equipment under the NEVION warranty, NEVION may substitute the Equipment with products determined by NEVION to be of comparable quality and functionality in the event the original Equipment purchased are no longer available. In no event will NEVION be liable to the Customer as a result of any discontinuance or modification of any product, or variance of any replaced product from Equipment supplied under a Contract.
9. **INTELLECTUAL PROPERTY RIGHTS**
- 9.1. All Intellectual Property Rights used by or subsisting in or relating to the Equipment are and shall remain the sole property of NEVION or (as the case may be) the third party owner. The Customer shall not make any unauthorized use of such Intellectual Property Rights nor authorize nor permit any other person to do so.
- 9.2. Nothing in any Contract shall be construed as an assignment of any Intellectual Property Rights in any Equipment, Software, user manuals or other documentation supplied to the Customer.
- 9.3. The Customer shall be subject to the rights and restrictions imposed by the owner of the Intellectual Property Rights in the Software and user manuals and shall comply with all relevant license agreements, terms of use and registration requirements. Other than use as part of instruction by the Customer or in connection with advertising NEVION's products or services, information in relation to the Equipment and Services and their operation remains the property of NEVION and may not be copied, reproduced, transmitted or communicated to any third party without NEVION's written consent.
- 9.4. Illustrations, catalogues, drawings, statements of weight, MTBFs and other measurements made available by NEVION as printed information are given by way of indication only and are not binding representations or warranties nor part of the product specification and do not create any obligations on the part of NEVION.
10. **LIMITATION OF LIABILITY**
- 10.1. NEVION is not liable under the NEVION warranty or otherwise for any damage or defect to Equipment or Services caused, or contributed to by any of the following:
- (a) improper use, neglect, accident, alteration;
 - (b) failure to follow NEVION's instructions;
 - (c) any integration issues related to use with third party equipment including connection to incompatible equipment, improper, faulty or inadequate installation, operation, maintenance or care;
 - (d) use of the Equipment or Services in combination with equipment or software not provided or specifically authorized by NEVION in writing for use with such Equipment;
 - (e) damage to or deterioration of any Equipment during shipping or storage, or while in the possession or custody of any party other than NEVION;
 - (f) use or operation of any Equipment that is inconsistent with or outside of its usual use or service or NEVION's published specifications, or in a "hostile" (caustic or abrasive) environment;
 - (g) power surges or improper line voltage or software viruses;
 - (h) actual or attempted correction, repair, service, modification or alteration of or to any Equipment or Services by personnel other than NEVION representatives.
- 10.2. The NEVION warranty and the terms of this condition 10 set out the entire liability of NEVION (including any liability for the acts or omissions of its employees, agents and sub-contractors) in respect of any breach of a Contract and any representation, statement or tortious act or omission (including negligence) arising out of or in connection with a Contract or any indemnity (express or implied).
- 10.3. All warranties, conditions and other terms implied by statute or common law are excluded from the Contract to the fullest extent permitted by law.
- 10.4. Nothing in the Contract excludes or limits the liability of NEVION for (i) death or personal injury caused by NEVION's negligence or (ii) fraud or fraudulent misrepresentation.
- 10.5. Subject to conditions 10.3 and 10.4, NEVION shall not be liable whether in tort (including for negligence or breach of statutory duty), contract, under an indemnity, misrepresentation, restitution or otherwise for any (i) actual or anticipated loss of profits; (ii) actual or anticipated loss of compensation; (iii) actual or anticipated loss of business; (iv) actual or anticipated loss of contract; (v) loss of use (vi) depletion of goodwill or similar; (vii) loss of, or loss of the use of or corruption of, any software or data; (viii) loss due to disruption of service or other disruption; (ix) indirect, special, punitive or consequential or pure economic loss, costs, damages, charges or expenses.
- 10.6. Subject to conditions 10.4 and 10.5, NEVION's total liability in tort (including negligence or breach of statutory duty), contract, under an indemnity, misrepresentation, restitution or otherwise shall be limited to general money damages in an amount not to exceed the amount of money paid by the Customer to NEVION under the Contract in respect of which the liability arises.
11. **TERMINATION**
- 11.1. Without prejudice to any other right or remedy available at law, either party may terminate a Contract and NEVION may suspend any further deliveries to the Customer without liability (and, if Equipment has been delivered but not paid for, the price shall become immediately due and payable) if:
- (a) an order is made/a resolution is passed to make/ circumstances arise which entitle a court of competent jurisdiction to make, a winding-up order in relation to the other party; or
 - (b) a notice of intention is given/ documents are filed for/ an order is made, for the appointment of, an administrator, receiver, manager or any other person to manage the affairs, business and property of the other party; or
 - (c) the other party makes any arrangement or composition with its creditors, or makes an application for the protection of its creditors, or becomes bankrupt;
 - (d) the other party ceases, or threatens to cease, to trade; or

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- (e) the other party takes or suffers any action similar or analogous to those listed above in any jurisdiction in consequence of debt; or
 - (f) the other party commits a material breach of a Contract which it fails to remedy within 7 days in the case of payment breaches, and otherwise, 30 days, of the date of notice requiring remedy
- 11.2. Termination of a Contract, however arising, shall not affect or prejudice the accrued rights of the parties as at termination or the continuation of any of conditions 4, 5, 6 or 8-16 inclusive or any provision implicitly surviving termination.
12. **FORCE MAJEURE**
Neither party shall be liable for any loss or damage suffered or incurred by the other as a result of acts, events, omissions or accidents beyond its reasonable control, including without limitation strikes, lock-outs or other industrial disputes (other than disputes involving the workforce of the party relying on this condition), failure of a utility service or transport network, act of God, war, riot, civil commotion, malicious damage, compliance with any law or governmental order, rule, regulation or direction, accident, breakdown of plant or machinery, fire, flood, storm or default of suppliers or sub-contractors. Each party undertakes to notify the other party immediately it becomes aware of any such event on which it intends to rely and to use commercially reasonable efforts to avoid any breach of a Contract as a result of such event. NEVION may defer the date of delivery or reduce the amount of Equipment ordered if it is prevented from or delayed in carrying on its business by such an event and if an event continues to prevent performance by either party for a continuous period of 30 days, either party may terminate all or part of the affected Contract.
13. **SEVERANCE**
If any provision or part of a Contract is found to be invalid, unenforceable or illegal, the other provisions shall remain in force.
14. **NO RELIANCE**
The Customer agrees that it does not rely on any undertaking, promise, assurance, statement, representation, warranty or understanding (in writing or not) whatsoever relating to the subject matter of a Contract other than as expressly stated in a Contract.
15. **ASSIGNMENT**
The Customer shall not, without the prior written consent of NEVION, assign, transfer, charge, sub-contract or deal in any other manner with all or any of its rights or obligations under a Contract. NEVION may at any time assign or transfer a Contract or any of its rights or obligations under a Contract to any other company which, at the time of such assignment or transfer, is an associated company and/or on any transfer of its business or undertaking and/or, in the case of a transfer or assignment of NEVION's rights to accounts receivables for financing purposes, to any reputable bank or other financial institution, subject only to giving notice to the Customer.
16. **GOVERNING LAW AND JURISDICTION**
- 16.1. Each Contract and all matters arising out of or in connection with it or its subject matter or formation (including non-contractual disputes or claims) shall be governed by and construed in accordance with the law of the State of California without giving effect to any choice or conflict of law provision or rule (whether of the State of California or otherwise) that would cause the application of any law other than the law of the State of California.
- 16.2. Any legal suit, action or proceeding arising out of or based upon or relating to a Contract or the transactions contemplated thereby shall be instituted in the federal courts of the United States of America or the courts of the State of California in each case located in the Ventura County, California. For the benefit of the Supplier, the Customer irrevocably submits to the exclusive jurisdiction of such courts in any such suit, action or proceeding. Service of process, summons, notice or other document by certified mail to such party's last known address shall be effective service of process. Nothing in this clause shall limit the right of the Supplier to take proceedings against the Customer in any other court of competent jurisdiction, nor shall the taking of proceedings in any one or more jurisdictions preclude the taking of proceedings in any other jurisdictions, whether concurrently or not, to the extent permitted by the law of such other jurisdiction. The Customer irrevocably and unconditionally waives any objection to the laying of venue of any suit, action or proceeding in such courts and irrevocably waives and agrees not to plead or claim in any such court that any such suit, action or proceeding brought in any such court has been brought in an inconvenient forum.
- 16.3. Each party acknowledges and agrees that any controversy which may arise under a Contract is likely to involve complicated and difficult issues and, therefore, **EACH SUCH PARTY IRREVOCABLY AND UNCONDITIONALLY WAIVES ANY RIGHT IT MAY HAVE TO A TRIAL BY JURY IN RESPECT OF ANY LEGAL ACTION ARISING OUT OF OR RELATING TO A CONTRACT OR THE TRANSACTIONS CONTEMPLATED THEREBY.**