

NATIONAL INSTRUMENTS TERMS AND CONDITIONS OF SALE

1. IMPORTANT NOTICES

- 1.1. The terms and conditions of sale ("**Terms and Conditions**") contained in this document contain the terms and conditions on which NI provides Hardware, Software licenses, Non-NI Branded Products and Services (collectively, the "**Products**") to all its Customers.
- 1.2. The provision of Products will be on these Terms and Conditions (including any terms incorporated herein by reference) to the exclusion of all other terms and conditions (including any terms or conditions which the Customer purports to apply under any purchase order, confirmation of order, specification or other document). By placing an order the Customer agrees to be bound by these Terms and Conditions. No terms or conditions endorsed on, delivered with or contained in the Customer's purchase order, confirmation of order, specification or other document will form part of the order/contract. Subject to any variation agreed by NI in writing, these Terms and Conditions are the only conditions upon which NI will deal with the Customer and they will govern the contract/order to the entire exclusion of all other terms or conditions.
- 1.3. Certain provisions in these Terms and Conditions apply only to Customers who are natural persons (being living, identifiable individuals acting in their own name) and who are therefore consumers for the purposes of the Consumer Protection Act, No 68 of 2008, as amended ("**CPA**") or juristic persons who otherwise qualify as consumers for the purposes of the CPA. The CPA provisions apply either in the alternative or additionally to these Terms and Conditions. If the Customer is not a consumer for the purposes of the CPA, some these terms and conditions will not apply to such Customer.
- 1.4. **These Terms and Conditions contain provisions which appear in similar bold text style to this clause and which:**
 - 1.4.1. may **limit the risk or liability of NI or a third party; and/or**
 - 1.4.2. **may create risk or liability for the Customer; and/or**
 - 1.4.3. **may compel the Customer to indemnify NI or a third party; and/or**
 - 1.4.4. **serve as an acknowledgement, by the Customer, of a fact.**
- 1.5. The **Customer's attention is drawn to these Terms and Conditions because they are important and should be carefully noted.**
- 1.6. **If there is any provision in these Terms and Conditions that the Customer does not fully understand, the Customer should request NI to explain same before transacting.**
- 1.7. Nothing in these Terms and Conditions is intended to or must be understood to unlawfully restrict, limit or avoid any rights or obligations, as the case may be, created for either the Customer or NI in terms of the CPA and therefore all applicable provisions of these Terms and Conditions must be treated as being qualified, if necessary, to ensure that the provisions of the CPA are complied with.
- 1.8. These Terms and Conditions will apply irrespective of whether or not the Customer has signed them.
- 1.9. These Terms and Conditions apply to the entire relationship between the Customer and NI, including all offers

(including offers by means of pro forma invoices), acceptances of purchase orders, sales, and deliveries by NI.

2. DEFINITIONS

- 2.1. In these Terms and Conditions, the words defined below will have the meanings given to them and similar words or expressions will have corresponding similar meanings unless the context requires otherwise:
- 2.1.1 **"Customer"** means the Party whom NI contracts for the sale of its Hardware, Software, Non-NI Branded Products and Services, as amplified by any relevant invoice;
- 2.1.2 **"Hardware"** means hardware sold by NI which carries an NI mark and purchased by the Customer;
- 2.1.3 **"NI"** means National Instruments or the affiliate identified in the Quote, order acknowledgment or invoice or in the absence of an identified National Instruments affiliate, then the National Instruments Corporation;
- 2.1.4 **"Non-NI Branded Product(s)"** means any third-party hardware, software, or services that NI sells but does not carry an NI mark;
- 2.1.5 **"Parties"** means the Customer and NI, and **"Party"** means either of them as the context may require;
- 2.1.6 **"Services"** means training, services, and support related to Hardware and Software provided by NI to the Customer; and
- 2.1.7 **"Software"** means the NI software licensed by NI to the Customer.

3. PRICES AND ORDERS

- 3.1. Prices are set out in the quotation issued by NI to the Customer ("**Quote**").
- 3.2. All Quotes expire thirty (30) days from date of issuance, unless otherwise stated in the Quote. All orders are subject to acceptance at the sole discretion of NI. Orders will only be considered accepted once NI books an order and sends a sales order acknowledgement to the Customer.
- 3.3. NI shall not be bound by changes to an order unless agreed by NI in writing. NI reserves the right to cancel any order without any liability to Customer if any information provided by the Customer to NI is inaccurate. NI reserves the right to suspend or cancel any order without any liability to Customer if Customer has any outstanding payments due to NI or is not in good standing.

4. PAYMENT AND INVOICING

- 4.1. Payment is due at the time the order is placed. If the Customer is approved for credit by NI, payment shall be due within thirty (30) days from the date of invoice.
- 4.2. Payment shall be in the currency listed on the NI invoice. All outstanding amounts not paid by the Customer when due shall accrue interest daily, at a monthly rate of the lesser of one and a half percent (1.5%) or the highest rate permissible by applicable law. Interest shall be compounded monthly in arrears. If there are multiple units in an order, each unit will be invoiced when shipped. Invoice processes requested by Customer that are non-standard for NI may be subject to the payment of a five percent (5%) processing fee and any amounts NI is required to pay to government authorities on behalf of customers (if applicable).
- 4.3. Payment of all amounts due by the Customer to NI must be made timeously on the due date either by way of electronic

funds transfer directly into NI's nominated bank account or by cash deposited into NI's nominated bank account.

5. DELIVERY, TITLE AND RISK OF LOSS

- 5.1. **Title and risk of loss to Products (for Software, the media) shall pass to Customer upon shipment from NI, its warehouses, or its affiliated companies; provided however, that NI retains a security interest and right of possession in the Products until Customer makes payment to NI in full.**
- 5.2. **If NI has notified the Customer that the Products are ready to be shipped, the Customer shall take delivery without delay. To the extent that the Customer is unable to do so, all costs for storage and risk of loss or damage shall be borne by the Customer.**
- 5.3. For orders to be delivered within the same country as the NI entity accepting the order, NI will be responsible for arranging the shipping but the Customer shall be responsible for all shipping and handling fees set forth in the invoice, if any.
- 5.4. If the Customer chooses to arrange for shipping or if the order is placed with an NI entity outside the country of the applicable shipping destination, the Customer is responsible for all shipping and handling, including fees, customs, formalities and clearance.
- 5.5. **Shipment dates provided by NI are estimates only and NI shall have no liability for losses or claims resulting from late delivery of the Products. Claims for shipment shortage shall be deemed waived unless presented to NI in writing within forty-five (45) days of the invoice date.**

6. TAXES

- 6.1. Prices reflected on the Quotes and invoices exclude VAT ("**Value-Added Tax**"), and any applicable taxes and/or charges (collectively referred to as "**Taxes**"), which Taxes shall be borne by the Customer. **It is the Customer's responsibility to ensure that it is aware of the specific taxes, duties and related costs which may apply in respect of each Quote.**
- 6.2. To the extent that the Customer is exempt from paying any of the aforementioned Taxes, and if NI is under a legal obligation to charge such Taxes, the Customer must provide NI with the appropriate tax exemption documentation at the time when the order is placed.

7. SOFTWARE

- 7.1. Software is licensed pursuant to the specific software license agreements provided with the Software.
- 7.2. In the absence of specific software license agreements, the National Instruments Software License Agreement available at <http://www.ni.com/legal/license/> at the time of order will apply to the Software.
- 7.3. All Software is licensed to the Customer, not sold and title to the software (including all intellectual property rights therein) remains with the applicable licensor(s) of the Software.

8. NON-INFRINGEMENT OF CONSUMER RIGHTS

NI acknowledges that it may potentially be subject to the provisions of the CPA as a supplier of goods to consumers and clauses 9, 11, 12, 13, 14, 15 and 18 below must not be interpreted as unlawfully restricting the rights of those Customers which are consumers as defined in the CPA to seek assistance from suppliers of

goods in circumstances where they have a lawful right to do so.

9. NON-NI BRANDED PRODUCTS

- 9.1. Non-NI Branded Products that NI resells may not be testable or repairable by NI, and it may be necessary to contact the manufacturer or the publisher for assistance or any warranty or guarantee claims or for further support.
- 9.2. **NI does not provide any warranties, has no obligation to support, and shall have no liability for Non-NI Branded Products. The limited warranty and NI intellectual property liability sections of these Terms and Conditions do not apply to the sale and purchase of Non-NI Branded Products.**

10. SERVICES

In addition to the provisions of these Terms and Conditions, Services provided by NI are subject to separate service agreements or statements of work as are agreed to in writing by the Parties or, in the absence of any written service agreements or statements of work, to the NI service Terms and Conditions, available at ni.com/legal/serviceterms.

11. RETURN POLICY

- 11.1. Subject to the requirements contained in these Terms and Conditions, the Customer may return standard Hardware and Software within thirty (30) days of the invoice date.
- 11.2. NI reserves the right to charge the Customer a fifteen percent (15%) restocking fee for any Products returned to NI. No returns will be accepted after the thirty (30) day period has expired. A Return Material Authorization ("RMA") number is required for the Customer to return any Products.
- 11.3. The acceptance of the return of customized Products and Non-NI Branded Products shall be at the sole discretion of NI.
- 11.4. **The Product return policy contained in clause 11 is not intended to unlawfully restrict the rights of those Customers who are entitled to return goods in terms of the CPA in circumstances where they have a lawful right to do so. For the avoidance of doubt this clause 11.4 is not intended to be a waiver of any right or defense which NI may have in terms of the CPA or any other applicable law.**

12. LIMITED WARRANTY

- 12.1. **For a period of one (1) year from the invoice date, NI warrants that its Hardware will be free of material defects in materials and workmanship that cause the Hardware to fail to substantially conform to the then applicable NI published specifications.**
 - 12.1.1. **For a period of ninety (90) days from the invoice date, NI warrants that the Software -**
 - 12.1.1.1. **Will perform substantially in accordance with the applicable documentation provided with the Software when properly installed; and**
 - 12.1.1.2. **the Software media will in the form received from NI be free from material defects in materials and workmanship under normal use.**
 - 12.1.2. **NI warrants that the Services will be performed in a good and workmanlike manner.**

- 12.2. If NI receives notice of a defect or non-conformance during the applicable warranty period, NI will, in its sole discretion, and unless otherwise required by law -
- 12.2.1. repair or replace the affected Hardware or Software;
 - 12.2.2. re-perform the affected Services; and/or
 - 12.2.3. refund the fees paid for the affected Hardware, Software or Services subject to any reasonable deductions NI is entitled to make. The repaired or replaced Hardware or Software will be warranted for the remainder of the original warranty period or ninety (90) days, whichever is longer.
- 12.3. If NI elects to repair or replace Hardware, NI may use new or refurbished parts or products that are equivalent to new in performance and reliability and are at least functionally equivalent to the original part or Hardware. The Customer must obtain an RMA number from NI before returning any Hardware under warranty to NI. Unless otherwise agreed to with NI prior to returning the goods, the Customer will pay shipping expenses to send the affected Hardware to NI and NI will pay shipping expenses to return the Hardware to the Customer.
- 12.4. If however, NI concludes, after examining and testing returned Hardware, that it is not under warranty, NI will notify the Customer and return the Hardware at the Customer's expense.
- 12.5. NI reserves the right to charge a fee for examining and testing Hardware not under warranty.
- 12.6. Goods will not be covered under warranty if the defect in the Hardware or Software is not material or resulted from improper or inadequate maintenance, failure to follow any instructions provided with the goods, installation, repair, or calibration (performed by a party other than NI); unauthorized modification; improper use environment; use of an improper hardware or software key; improper use or operation outside of the specifications for the Hardware or Software; improper voltages; accident, abuse, or neglect; or a hazard such as lightning, flood, or other act of nature.
- 12.7. To the extent that it is lawful to do so, the remedies described in this section are exclusive and represent the Customer's sole remedies, and shall apply even if such remedies fail of their essential purpose.

13. GOODS PROVIDED "AS IS"

- 13.1. Except as expressly set forth in these Terms and Conditions, Products and Services are provided "as is" without warranty of any kind and NI disclaims all expressed or implied statutory or otherwise (with respect to all Products and Services) warranties of merchantability, fitness for a particular purpose, title or non-infringement, and any similar warranties that may arise from usage of trade or course of dealing.
- 13.2. Unless it has done so in writing expressly, NI does not warrant, guarantee, or make any representations regarding the use of or the results of the use of the Products or Services in terms of correctness, accuracy, reliability, or otherwise. NI does not warrant that the operation of the Products will be uninterrupted or error free or that the operation of the Products or Services will meet the Customer's unique requirements.

14. WARNING AND CUSTOMER INDEMNITY

- 14.1. The Customer understands and acknowledges that Products and Services are not designed, manufactured, or tested for use in life or safety critical systems, hazardous environments or any other environments requiring fail-safe performance, including in the operation of nuclear facilities; aircraft navigation; air traffic control systems; life-saving or life sustaining systems or such other medical devices; or any other application in which the failure of the Product or Service could potentially lead to death, personal injury, severe property

damage or environmental harm (collectively referred to as "high-risk uses").

- 14.2. **The Customer must take reasonably prudent steps to protect against Product and Service failures, including providing back-up and shut-down mechanisms. To the fullest extent permitted by law, NI expressly disclaims any and all liability of whatever nature of the products or services for high-risk uses.**
- 14.3. **To the fullest extent permitted by law, and save to the extent attributable to the gross negligence of NI or any person acting for or under NI's control, the Customer shall defend, indemnify, release and hold NI harmless from any and all claims, losses, damages, actions, including, lawsuits, arbitrations, and/or administrative actions, and expenses (including reasonable attorneys' fees) arising out of the Customer's use of the Products and Services for any high-risk uses, regardless of whether such claims are founded in whole or in part upon alleged or actual negligence of NI.**

15. SYSTEM AND APPLICATION RESPONSIBILITY AND ADDITIONAL INDEMNITY

- 15.1. **The Customer acknowledges that it is ultimately responsible for verifying and validating the suitability and reliability of the Products or Services whenever the Products or Services are incorporated in Customer's system or application, including the appropriate design, process, and safety level of such system or application.**
- 15.2. **The Customer must take reasonably prudent steps to protect against product and service failures when Products and Services are incorporated in a system or application, including providing back-up and shut-down mechanisms.**
- 15.3. **To the fullest extent permitted by law, and save to the extent attributable to the gross negligence of NI or any person acting for or under NI's control, the Customer shall defend, indemnify, release and hold NI harmless from any and all claims, losses, damages, actions, including lawsuits, arbitrations, and/or administrative actions, and expenses (including reasonable attorneys' fees) arising out of the Customers' incorporation of the Products or Services into Customer's system or application, regardless of whether such claims are founded in whole or in part upon alleged or actual negligence of NI.**

16. INTELLECTUAL PROPERTY LIABILITY

- 16.1. NI agrees to defend any third-party claim that alleges the Hardware, Software or Services infringe any patent, copyright, or trademark ("**Claim**"), **provided that the Customer**
 - 16.1.1. **notifies NI immediately upon learning of any Claim, or any allegation that the grounds for a Claim may exist;**
 - 16.1.2. **grants NI sole control over the defense and settlement of the Claim; and**
 - 16.1.3. **co-operates fully with NI in preparing a defense for any Claim.**
- 16.2. NI agrees to pay any final judgment or settlement resulting from any Claim, provided that the settlement is entered into in accordance with this clause. NI shall not be liable for a settlement made without its prior written consent.
- 16.3. Notwithstanding the foregoing, NI shall have no obligation under this clause for any Claim relating to or arising from;
 - 16.3.1. **the Customer's modification of Hardware, Software or Services;**

- 16.3.2. **the failure to use Hardware, Software or Services in accordance with the applicable documentation provided by NI;**
- 16.3.3. **the combination, operation, or use of Hardware, Software or Services with any hardware, software or service not provided by NI;**
- 16.3.4. **the compliance of NI with the Customer's specifications or directions, including the incorporation of any software or other materials provided by or requested by the Customer.**
- 16.4. **The foregoing states the Customer's sole remedy for, and the entire liability and responsibility of NI for, infringement of any patent, trademark, or copyright or other intellectual property rights. This limited indemnity is in lieu of any other statutory or implied warranty against infringement.**
- 16.5. In any event, to the extent that NI believes in its reasonable opinion the Hardware, Software, or Services may be alleged to be infringing, for the purposes of mitigating any potential damages, NI may, at its sole discretion -
 - 16.5.1. **procure for the Customer the right to continue to use the Hardware, Software, or Services;**
 - 16.5.2. **replace them with comparable Hardware, Software or Services that are free of such infringement; or**
 - 16.5.3. **refund the fees paid by the Customer,**

and in the event of either 16.5.2. or 16.5.3. the Customer shall promptly return the Hardware to NI and/or terminate the use of the Software or Services.

17. PROPRIETARY RIGHTS

- 17.1. **All right, title, and interest including any intellectual property rights contained or embodied in Products, or resulting from the Services, including any custom developments created or provided by NI under these Terms and Conditions shall vest in NI (or its applicable licensors as the case may be).**
- 17.2. **Nothing in these Terms and Conditions will be deemed to grant to the Customer any ownership rights, title in or license rights to such intellectual property unless as specifically set out herein.**

18. LIMITATION OF LIABILITY

- 18.1. **NI shall not be liable for -**
 - 18.1.1. **special, indirect, incidental, punitive, exemplary, or consequential damages arising out of or in connection with these Terms and Conditions or the Products or Services; or**
 - 18.1.2. **any damages arising out of or in connection with -**
 - 18.1.2.1. **Products or Services not being available for use, including any costs of obtaining substitute Products or Services;**
 - 18.1.2.2. **Loss of or damage to Customer's or a third party's data;**
 - 18.1.2.3. **loss of, corruption of, or loss of use of any Products, Hardware, Software or data;**
 - 18.1.2.4. **loss of revenue, profit, or business opportunity;**

- 18.1.2.5. **business interruption or downtime; and/or**
- 18.1.2.6. **inability to achieve a particular result, even if it is at a suggestion made by NI, to the extent permitted by applicable law, the total liability of NI arising out of, or in connection with these Terms and Conditions or the Products or Services, shall not exceed the amount of the fees paid by the Customer for the specific Product or Service giving rise to such Claim.**
- 18.2. **This clause -**
- 18.2.1. **applies to NI, its group companies, affiliates and its licensors, distributors, and suppliers (including its and their directors, officers, employees, and agents);**
- 18.2.2. **reflects an allocation of risk between NI and the Customer in view of the purchase price of the Products and Services;**
- 18.2.3. **applies even if NI has been advised of the possibility of the damages and regardless of whether such claims are founded in whole or in part upon alleged or actual negligence of NI; and**
- 18.2.4. **applies regardless of whether such damages are based in contract, delict, warranty, strict liability, negligence, or otherwise.**
- 18.2.5. **The total liability of NI to the Customer for all direct claims arising out of these Terms and Conditions, whether in contract, delict or otherwise shall be limited to the amount in South African Rands that equals to 50,000 (fifty thousand) USD which amount shall be calculated at the date of payment of such claim.**
- 18.2.6. **Nothing in this clause shall be interpreted as limiting either Party's liability for death or personal injury or any matter which would be illegal to exclude or attempt to exclude.**

19. **BREACH**

- 19.1. In the event that any Party commits a breach ("**the defaulting Party**") of any material term or condition of these Terms and Conditions and fails to remedy such breach within 14 (fourteen) days of receipt of a written notice to that effect from the other Party ("**the non-defaulting Party**"), then and in such event the non-defaulting Party shall be entitled, without prejudice to any other rights which it may have in terms of these Terms and Conditions or in law, to cancel such Terms and Conditions.
- 19.2. The Parties agree that all terms of these Terms and Conditions shall be deemed material.

20. **TERMINATION**

- 20.1. These Terms and Conditions may be terminated by either Party with immediate effect:-
- 20.1.1. **if either Party fails to fulfill its obligations in terms of these Terms and Conditions at the due dates;**
- 20.1.2. **if the other Party is in material breach of any other term or condition of these Terms and Conditions including any related agreement and has not remedied such breach within 14 (fourteen) days of having been notified to remedy such breach;**
- 20.1.3. **if the other Party shall be or becomes insolvent or if there are any proceedings instituted by or against it in respect of declaring such Party as insolvent; or**

20.1.4. **in the event of an application or order for business rescue, liquidation, dissolution or in the event of change of ownership.**

21. CIRCUMSTANCES BEYOND THE PARTIES CONTROL

NI shall not be responsible for any delay or failure to perform due to any cause beyond its reasonable control, including but not limited to acts of terrorism, nature or governments; interruptions of telecommunications, power or transportation; failure of contractors or suppliers; or inability to obtain necessary labour or materials. In the event of such circumstances or cause arising, NI reserves the right to cancel the applicable order without any liability to the Customer.

22. EXPORT AND SANCTIONS LAWS AND COMPLIANCE

- 22.1. Products (which for purposes of this clause, shall include the software and technology incorporated in or supplied with a Product and Service) purchased from NI are subject to control under the U.S. Export Administration Regulations (15 CFR Part 730 et. seq.) administered by the U.S. Department of Commerce's Bureau of Industry and Security ("BIS") (www.bis.doc.gov) and other applicable U.S. export control laws and sanctions regulations, including those administered by the U.S. Treasury Department's Office of Foreign Assets Control ("OFAC") (www.treas.gov/ofac).
- 22.2. In addition, Products distributed from NI's distribution center in Europe are subject to control under the European Union ("EU") Council Regulation No. 428/2009 and their export or intra-EU transfer may also be subject to additional licensing requirements
- 22.3. under European Union Council Regulation No. 428/2009 and its implementing regulations. Products may not be exported or re-exported to any country where sanctions are imposed by the U.S. government (which currently includes Cuba, Iran, North Korea, Republic of Sudan and Syria but which may be modified by the U.S. government from time to time).
- 22.4. The Customer agrees that it will comply with the export laws and trade sanctions of all applicable countries and will not export, re-export or transfer Products purchased from NI without the required authorization, including an export or re-export license issued by the U.S. authorities, or to any prohibited destination or for a prohibited end-use.
- 22.5. Products may also require export license(s) issued by the applicable authorities before being returned to NI. The issuance of a Quote, a sales order acknowledgment, or a Return Material Authorization ("RMA") by NI does not constitute export authorization.
- 22.6. The Customer represents and warrants that it is not ineligible or otherwise restricted by U.S. or applicable law to receive Products and it will not export, re-export, or provide Products to any person or entity on OFAC's List of Specially Designated Nationals or on BIS's Denied Persons List, Entity List or Unverified List or any other applicable restricted party list.
- 22.7. NI reserves the right to refuse and/or cancel any order without any liability to Customer if, at any time, NI believes that any export controls or trade sanctions laws may be violated. See www.ni.com/legal/export-compliance for more information and to request relevant import classification codes (e.g. HTS), export classification codes (e.g. ECCN) and other import/export data.

23. GOVERNING LAW AND FORUM

- 23.1. These Terms and Conditions shall be governed by the laws of South Africa, without regard to principles of conflicts of laws.

- 23.2. The Parties submit to the non-exclusive jurisdiction of the High Court of South Africa.
- 23.3. The Parties further expressly agree that the provisions of the United Nations Convention on Contracts for the International Sale of Goods will not apply to these Terms and Conditions or any agreement governed by these Terms and Conditions.

24. **LIMITATION PERIOD**

NI shall not be liable for any Claim, arising from and/or concerning this Agreement and/or its subject matter, brought more than two years or any such minimum period of time allowed by the law after the occurrence causing the loss and/or damage giving rise to such claim (regardless of whether such occurrence was discoverable at the time).

25. **UPDATES**

- 25.1. NI reserves the right to update these Terms and Conditions at any time, effective upon posting an updated version at www.ni.com/legal/termsofsale.
- 25.2. Notwithstanding NI's right to update these Terms and Conditions, the Terms and Conditions in effect at the time of purchase shall apply to the said purchase of Hardware, Software, Non-NI Branded Products or Services.

26. **GENERAL TERMS**

26.1. **Whole Agreement**

- 26.1.1. These Terms and Conditions, and any terms incorporated herein by reference, constitutes the entire agreement between the Parties with respect to the subject matter hereof and supersedes all prior understandings or agreements, whether written or oral, with respect to that subject matter.
- 26.1.2. These Terms and Conditions shall apply unless the Customer and NI have entered into a separate signed agreement applicable to the purchase of the Products or Services. By placing an order with NI, the Customer agrees to be bound by the terms of these Terms and Conditions.

26.2. **Variation of General Terms**

- 26.2.1. No addition to or variation or agreed cancellation of these Terms and Conditions shall be of any force or effect unless agreed in writing by NI.
- 26.2.2. NI expressly objects to and rejects any terms and conditions in the Customer's purchase order or other similar document. Should the Customer disagree with these Terms and Conditions, NI must be promptly notified and the Product must be returned unused in its original packaging to NI.

26.3. **No Waiver**

- 26.3.1. **No delay or failure by NI to enforce any provision of these Terms and Conditions shall constitute a waiver of such provisions or affect in any way such NI's rights to require the performance of such provision at any time in the future, nor shall a waiver of a subsequent breach nullify the effectiveness of the provision itself.**
- 26.3.2. Any waiver of any provision of these Terms and Conditions by NI must be in writing and shall not be construed as a waiver or modification of any other term hereof, or as a continuing waiver of any provision.

26.4. **Provisions Severable**

26.4.1. All provisions of these Terms and Conditions are severable from each other, despite the manner in which they have been grouped together or linked grammatically.

26.4.2. If any provision of these Terms and Conditions is or becomes unenforceable, whether due to voidness, invalidity, illegality, unlawfulness or for any other reason, then –

26.4.2.1. the illegal, unenforceable or conflicting part, term or provision shall be reformed by a court of law with binding authority to the maximum extent possible to reflect the intent of this Agreement and

26.4.2.2. the remaining provisions of these Terms and Conditions shall remain of effect.

26.5. **No Cession**

Save as clearly otherwise stated in these Terms and Conditions, the Customer may not cede, delegate, assign or otherwise transfer any rights or obligations under these Terms and Conditions without the prior written consent of NI.

26.6. **Independent Contractors and Power to Bind**

26.6.1. The Parties are independent contractors. These Terms and Conditions are not interpreted to put the Parties in any other relationship, specifically not in any partnership, agency, joint venture or employment relationship.

26.6.2. Save as clearly otherwise stated in these Terms and Conditions, a Party has no power to bind the other Party, incur any liability on behalf of the other Party, act on behalf of the other Party or represent the other Party.

26.7. **Interpretation**

26.7.1. The term "including" as used in these Terms and Conditions should be construed as "including without limitation". For the avoidance of doubt, whenever the term "purchase" is used herein with respect to Software, it shall mean the purchase of a license for Customer to use the applicable software.

26.7.2. The doctrine that any ambiguity contained in a contract shall be construed against the Party whose counsel has drafted the contract is expressly waived by each of the Parties with respect to these Terms and Conditions.

We / I [Note: Insert Customer name] agree to be bound to these Terms and Conditions. Signature:

Title:

Date: