



TERMS AND CONDITIONS RELATING TO THE SUPPLY OF PRODUCTS AND/OR SERVICES TO, OR ON BEHALF OF, NEXIO

1. GENERAL

All Goods supplied to, or on behalf of, Storage Technology Services (Pty) Ltd and/or any of its subsidiaries ("**Nexio**") shall be made and supplied in accordance with the following terms and conditions ("**Terms and Conditions**") unless another agreement exist in writing.

2. INTERPRETATION AND DEFINITIONS

In these Terms and Conditions unless the context indicates a contrary intention:

- 2.1. clause headings are for convenience only and shall not be used in its interpretation;
- 2.2. an expression which denotes any gender includes the other genders and a natural person includes an artificial person and *vice versa*;
- 2.3. the singular includes the plural and *vice versa*;
- 2.4. the rule of construction that these Terms and Conditions shall be interpreted against the party responsible for the drafting, shall not apply;
- 2.5. unless inconsistent with the context, the following words shall bear the following meanings:
 - 2.5.1. "**Customer**" means Nexio and any customer of Nexio, whether existing or new, which places an order on Nexio for Goods;
 - 2.5.2. "**Goods**" means the Products or the Services, as may be applicable in the context;
 - 2.5.3. "**Purchase Order**" means the purchase order issued by Nexio to the Supplier for the provision of Goods;
 - 2.5.4. "**Products**" means any products supplied by the Supplier which include but are not limited to, hardware, cabling, consumables, software;
 - 2.5.5. "**Services**" means any support and maintenance, installation or professional services, or such other services, as may be required by the Customer; and
 - 2.5.6. "**Supplier**" means the entity that provides the Customer with Goods;
 - 2.5.7. "**VAT**" means value-added tax payable in terms of the Value-Added Tax Act, 1991.

3. ORDER AND SUPPLY

- 3.1. Nexio shall, from time to time, issue a Purchase Order to the Supplier for the supply of Goods. The Supplier agrees to supply the Goods in accordance with these Terms and Conditions and the Purchase Order.

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Registered Address
Vodacom Corporate Park
082 Vodacom Boulevard
Vodavally
Johannesburg
1685

Board of directors:

VHT Kathan (Chairman), CWJ Volschenk (CEO), TL Mavhunga (CFO), CL du Bourg, M Lamola, MM Mashale, TM Mokgosi-Mwantembe, T Mokoteli, W Stegmann, Y Surtee.

3.2. To the extent that the Supplier provides any Goods to the Customer without having received a valid Purchase Order ("**Unordered Goods**"), the Supplier acknowledges and agrees that Nexio shall not:

3.2.1. be required to issue a Purchase Order for the Unordered Goods; and

3.2.2. be liable to the Supplier for any amounts invoiced to Nexio for the Unordered Goods.

4. **PRICE, INVOICES AND PAYMENT**

4.1. The prices payable by Nexio to the Supplier for the Goods, which includes the costs for all packing, storage and delivery, shall be listed on the Purchase Orders.

4.2. The Supplier shall, from time to time, provide Nexio with a valid tax invoice, together with an acceptance certificate signed by the Customer confirming delivery of the Goods ("**Acceptance Certificate**"). Any invoices submitted to Nexio by the Supplier must bear the corresponding Purchase Order number.

4.3. Nexio shall make payment of the amount detailed in the invoice within 30 (thirty) days of receipt of same provided that the Customer has paid Nexio for the associated Goods unless otherwise agreed in writing.

4.4. All payments to be made in terms of these Terms and Conditions shall be made by electronic transfer into such account as the Supplier may reasonably designate. Unless otherwise stated, all amounts payable by Nexio to the Supplier are inclusive of VAT. Any other taxes and duties arising from the supply of Goods shall be borne by the Supplier.

5. **DELIVERY**

5.1. The Goods shall be delivered by the Supplier to the Customer's delivery site set out in the relevant Purchase Order (the "**Designated Site**"). Subject to clause 5.3 below, all risk in and to the Goods shall pass to the Customer upon delivery at the Designated Sites by the Supplier and signature of the Acceptance Certificate by the Customer.

5.2. The Supplier shall deliver the Goods at the Designated Site on the dates set out in the Purchase Order, failing which, Nexio shall be entitled to cancel the relevant Purchase Order, on notice to the Supplier, without any liability to Nexio.

5.3. In the event that the Goods delivered to the Customer are damaged, faulty, defective or of a quality is not to the Customer's satisfaction, the Supplier undertakes to rectify such defect and/or replace the defective Goods within 3 (three) business days of being notified of such defects. All risk in and to the Goods shall remain with the Supplier until such time as the Customer has signed an Acceptance Certificate.

5.4. Any extension of time granted by Nexio in respect of the time period for delivery of Goods shall only be valid if reduced to writing.

5.5. Nexio may, on instruction from the Customer, add to or vary the Designated Sites on written notice to the Supplier and without any further costs, unless otherwise agreed by Nexio and the Customer.

6. **SUPPLIER OBLIGATIONS**

The Supplier shall:

6.1. ensure that all Goods are supplied in accordance with the provision of the Purchase Order;

- 6.2. ensure that it provides the Goods with promptness, diligence and in a workmanlike manner;
- 6.3. use staff with suitable training, expertise, education, experience and skills necessary in order to provide the Goods;
- 6.4. be responsible for all labour related benefits that its employees, contractors and/or representatives become entitled to in providing the Goods;
- 6.5. comply with all laws, rules, regulations and requirements of any governmental body and all applicable codes of conduct and other similar principles laid down by any representative body of the industry;
- 6.6. ensure the availability of Goods for delivery; and
- 6.7. not do anything or omit the doing of anything, which is likely to adversely affect or reflect on the name or business or goodwill of Nexio.

7. **LIABILITY AND INDEMNITY**

- 7.1. To the extent permitted by law, Nexio shall not be liable to the Supplier for any loss, cost and/or damages including, but not limited to, direct, indirect, special, punitive and/or consequential loss, howsoever arising from these Terms and Conditions.
- 7.2. The Supplier hereby irrevocably and unconditionally indemnifies Nexio against any claims that may be made against by the Customer or by any third party in connection with the Goods, whether such claims are in respect of damage to property, consequential loss, personal injury or death.

8. **OWNERSHIP**

Ownership to and benefit in the Goods shall pass to the Customer upon payment of the Supplier's associated invoice in accordance with the terms of clause 4 above.

9. **INTELLECTUAL PROPERTY**

- 9.1. Unless otherwise agreed between the Supplier and Nexio, all right and title in and to any intellectual property used or embodied in or in connection with the Goods shall remain the property of the Supplier.
- 9.2. The Supplier indemnifies and shall keep Nexio and the Customer indemnified against any claim for infringement of intellectual property rights in connection with the Goods supplied by the Supplier and against any and all costs, expenses and damages which Nexio and/or the Customer may incur or become liable for as a result of such infringement.
- 9.3. Nexio shall give the Supplier prompt notice in writing of any claim being made or action threatened or brought against Nexio or the Customer and will permit the Supplier, at the Supplier's own expense, to conduct any litigation that may ensue and all negotiations for a settlement of the claim.

10. **TRADE CONTROL AND SANCTION**

- 10.1. Each Party shall, in the context of the Services:

- 10.1.1. comply with all economic, trade and financial sanctions laws, regulations, embargoes or restrictive measures administered ("Sanctions"), as well as all trade control laws and regulations ("Trade Control Laws") enacted or enforced by the governments of the United Kingdom, European Union, United States of America and any other relevant country
- 10.1.2. not knowingly do anything which may cause the other Party or members of its Group to breach Sanctions;
- 10.1.3. provide such assistance, documentation and information to the other party as that Party may reasonably request, including but not limited to, end customer information, destination and intended use of goods or services;
- 10.1.4. notify the other Party in writing as soon as it becomes aware of an actual or potential investigation/breach in relation to the Applicable Laws or any material change in the status of any of the parties to this agreement in respect of;

Sanctions status e.g. the inclusion on a Sanctions list in any applicable jurisdiction (as stated in (i) above);

Licence or authorisation status e.g. a loss of licence/authorisation in respect of Sanctions or Trade Controls;
- 10.1.5. have the right to terminate this agreement if any of the provisions of this clause 10 are breached
- 10.1.6. have the right to seek indemnities from the Party which has breached the relevant provisions for any direct losses incurred.

11. **CORRUPTION, TERRORISM AND MONEY LAUNDERING**

- 11.1. The Supplier shall comply with all applicable laws relating to the combating of corruption, money laundering and terrorism ("**CMT laws**"). Nexio shall be entitled to perform an audit on the Supplier at any time, to ensure the Supplier's compliance with any CMT laws.
- 11.2. The Supplier shall comply with all of Nexio's instructions during the audit and provide all necessary support and information to Nexio's representatives during the audit, including but not limited to providing any requested documentation.
- 11.3. Notwithstanding any other provision in these Terms and Conditions and without prejudice to its right to claim damages under these Terms and Conditions or in law, Nexio shall be entitled to immediately terminate a Purchase Order if it concludes, acting in its sole discretion, that the Supplier has not complied with any CMT laws.
- 11.4. Nexio confirms that it is its stated policy not to transact, directly or indirectly, with any person involved in or generally associated with corruption, organised crime, bribery, money-laundering, terrorism or any other criminal activity ("**Prohibited Activity**").

To this effect, the Supplier (and any natural person or legal persons the Supplier uses for the supply of products or performance of services in connection with this Agreement, including employees, agents, consultants, contractors and subcontractors) shall

- 11.4.1. comply with all Applicable Law relating to bribery and corruption including:
 - 11.4.1.1. The SA Prevention and Combating of Corrupt Practices Act 2004
 - 11.4.1.2. The UK Bribery Act 2010
 - 11.4.1.3. The US Foreign Corrupt Practices Act
 - 11.4.2. not do or omit to do anything likely to cause Nexio to be in breach of any such Applicable Law;
 - 11.4.3. not give, offer, promise, receive, or request any bribes, including in relation to any public official;
 - 11.4.4. maintain throughout the term of this Agreement a programme designed to ensure compliance with the Applicable Law by the Supplier, including an education and training programme and measures reasonably calculated to prevent and detect violations of the Applicable Law;
 - 11.4.5. allow Nexio, whether itself or through an agent, to conduct an audit of records and information held by the Supplier or its sub-contractors or any other relevant person in relation to the performance by the Supplier of its obligations under this Agreement;
 - 11.4.6. if requested and at Nexio's reasonable cost, provide Nexio sufficient reasonable assistance to enable Nexio to perform any actions required by any government or agency in any jurisdiction for the purpose of compliance with any Applicable Law or in connection with any investigation relating to the Applicable Law;
 - 11.4.7. maintain adequate internal accounting controls and reasonably detailed books, records and accounts in respect of the supply of products or performance of services to Nexio;
 - 11.4.8. only be paid by Nexio, for goods delivered or services performed, by wire transfer or other traceable instrument to a bank account in the Supplier's name;
 - 11.4.9. promptly notify Nexio of any allegation of fraud, bribery or corrupt or unlawful practices made against the Supplier in court, arbitration or administrative proceedings, or any investigation is commenced in respect of such allegations; at any time during the term of this Agreement;
 - 11.4.10. ensure that any natural or legal person external to the Supplier who is performing services in connection with this Agreement does so only on the basis of a written contract which secures from such persons terms equivalent to those imposed on the Supplier in this clause. The Supplier shall be responsible for the observance and performance by such persons of these terms, and shall be directly liable to Nexio for any breach.
- 11.5. The Supplier hereby indemnifies Nexio and its directors, officers, employees, agents and affiliates against all losses which they have suffered as a result of breach of this clause by the Supplier.

- 11.6. If Nexio (acting in good faith) determines that there has been a breach by the Supplier of this clause, such a breach shall be deemed a material breach of this Agreement, and Strortech shall have the right to terminate this Agreement without prejudice to Nexio's rights under this Agreement or at law.

12. **CREDIT CONSENT**

The Supplier consents to Nexio making enquiries and searches about the Supplier's credit record with any credit reference agency and any other party when assessing the Supplier. Nexio may also provide credit reference agencies with regular updates regarding how the Supplier manages its account, including any information concerning the Supplier's creditworthiness.

13. **ASSIGNMENT AND SUB-CONTRACTING**

The Supplier shall not be entitled to cede, transfer or assign, partially or entirely, any of its rights or obligations under these Terms and Conditions to a third party without the prior written consent of the Customer.

14. **WARRANTY**

- 14.1. The Supplier warrants that the Goods will comply with the specification contained in the Purchase Order and further warrants the Goods against defective materials and workmanship.
- 14.2. The warranties contained in clause 14.1 shall apply for a period of in line with the OEM terms or if no OEM terms 6 months after the date of the Acceptance Certificate ("**Warranty Period**") and the Supplier agrees to repair or replace all Goods, without any additional cost to Nexio, which are or become defective during the Warranty Period.
- 14.3. Repairs and replacements Goods shall themselves be subject to the foregoing warranties and obligations for a period of 6 months from the date on which the Acceptance Certificate relating to the repaired and replaced Goods is signed by the Customer.

15. **CONFIDENTIALITY**

The Supplier undertakes that it and the Supplier's personnel, agents and subcontractors will fully respect the confidentiality of the Customer's business affairs. The Supplier hereby undertakes to treat as confidential all information obtained from Nexio and/or the Customer or communicated to the Supplier pursuant to these Terms and Conditions (or through discussions or negotiations prior to the relevant Purchase Order being placed by Nexio) or acquired in the performance of the Purchase Order, and will not divulge such information to any person and will use such information solely in connection with performing its obligations under these Terms and Conditions and not for its own benefit or for the benefit of any third party, provided that this clause shall not extend to information:

- 15.1. which is already public knowledge or becomes so at a future date (other than as a result of breach of this clause); or
- 15.2. which is communicated or disclosed to the Supplier by a third party lawfully in possession thereof and entitled so to disclose it.

16. **BREACH**

If the Supplier commits any breach of these Terms and Conditions and fails to remedy the breach within 5 (five) business days after receipt from Nexio of written notice calling upon the Supplier to remedy the breach, then Nexio shall be entitled to cancel any Purchase Order or to claim specific performance, in either event without prejudice to Nexio's rights to claim damages.

17. **SUSPENSION OR TERMINATION**

17.1. Nexio reserves the right to suspend, delay or cancel any Purchase Order if:

- 17.1.1. the Supplier is insolvent or is unable to pay its debts, or seeks to effect any compromise with any of its creditors or compound any of its debts;
- 17.1.2. the Supplier is placed under an order of sequestration, judicial management or liquidation, whether such order be provisional or final;
- 17.1.3. the Supplier is the subject of any resolution passed to enable it to be wound up or dissolved;
- 17.1.4. any judgement is given against the Supplier in any court of law and, if appealable, is not appealed against within the period allowed for the lodging of such an appeal or if not subject to an appeal, remains unsatisfied for a period of 10 (ten) days; or
- 17.1.5. the Supplier is in breach of any of its obligations and fails to remedy same in accordance with the provisions of clause 16.

17.2. Each Purchase Order shall be deemed to be a separate agreement and termination of any specific Purchase Order shall not be deemed to constitute a termination of any other Purchase Order, all of which shall continue to be of full force and effect.

18. **GOVERNING LAW AND JURISDICTION**

These Terms and Conditions shall be governed and interpreted in accordance with the laws of the Republic of South Africa. The Supplier hereby consents and submits to the non-exclusive jurisdiction of the High Court of South Africa, Gauteng Division, (Johannesburg) in any dispute arising from or in connection with these Terms and Conditions.

19. **NOTICES**

19.1. The parties choose as their *domicilium citandi et executandi* ("**Nominated Address**") for all purposes relating to these Terms and Conditions, including the giving of any notice, the payment of any sum, and the serving of any process, as follows:

- 19.1.1. **Nexio:**
Physical: Storage Manor,
Rivonia Road,
Rivonia
Johannesburg.
- 19.1.2. **The Supplier:**
Physical: the registered office.

19.2. Each party shall be entitled from time to time, by giving written notice to the other party, to vary its Nominated Address to any other physical address, not being a post office box or *poste restante*, within the Republic of South Africa.

19.3. Notwithstanding anything to the contrary contained in these Terms and Conditions, a written notice or communication actually received by one of the parties from another, including by way of fax transmission, shall be adequate written notice or communication to such party.

20. **GENERAL**

20.1. These Terms and Conditions, read together with the Purchase Order, constitutes the sole agreement between the parties and shall supersede all other agreements and/or representations whether written, oral and/or implied between the parties.

20.2. Neither party shall be bound by any express or implied term, representation, warranty, promise or the like not recorded herein.

20.3. Nexio may, in its absolute and sole discretion, change, amend or vary these Terms and Conditions at any time and on notice to the Supplier. The amended Terms and Conditions will apply to the Supplier if it accepts another Purchase Order following such notification.

20.4. For purposes hereof "in writing" shall exclude any written document that is in the form, either wholly or partly, of a data message as defined in the Electronic Communications and Transactions Act 25 of 2002, and "signed" shall mean a signature executed by hand with a pen and without any electronic process or intervention.

20.5. No indulgence which either party (the "**Grantor**") may grant to the other (the "**Grantee**") shall constitute a waiver of any of the rights of the Grantor, who shall not thereby be precluded from exercising any rights against the Grantee which may have arisen in the past or which might arise in the future.

20.6. Nothing in these Terms and Conditions shall constitute a partnership, joint venture, agency or employment between the parties hereto, and neither party shall have the authority or power to bind, or contract in the name of, or to create a liability against, the other in any way for any purpose.

21. **CONFLICTS**

21.1. In the event of a conflict between these Terms and Conditions and the terms and conditions contained in the Purchase Order, to the extent that they cannot be reconciled, then the terms and conditions contained in the Purchase Order shall prevail.

21.2. In the event of a conflict between these Terms and Conditions and any other terms and conditions provided to Nexio by the Supplier, including its invoice, to the extent that they cannot be reconciled, then these Terms and Conditions shall prevail.

21.3. In the event of the Supplier having a written agreement with Nexio, the terms of the written agreement will apply and shall prevail.