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## Standard Terms and Conditions of Sale Goods, Services and Software

### Vertiv Integrated Systems GmbH

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#### 1. DEFINITIONS:

In these Terms and Conditions of Sale:

**"Affiliates"** means any direct or indirect subsidiary of Seller, or any other entity which is controlled by Seller or which controls Seller. The term control as used herein shall mean possession, directly or indirectly of at least fifty percent (50%) of the voting equity of another entity.

**"Buyer"** means the legal entity purchasing the Goods, Services and/or Software licenses in accordance with the Contract;

**"Contract"** means the agreement made between Buyer and Seller for the supply of the Goods, Software and/or Services concluded on the Effective Date in accordance with Seller's order acknowledgment, if any, Seller's quotation, and these terms and conditions together with all other documents contained or expressly referred to therein;

**"Contract Price"** means the price for the supply of the Goods, Services and/or Software agreed between the parties in the Contract;

**"Effective Date"** means the date of Seller's acceptance of Buyer's order on Seller's order acknowledgment or as otherwise defined within the Contract;

**"Goods"** means the goods, including spare parts ("Parts") (except as set out in Clause 10), and documentation to be supplied by Seller in accordance with the Contract;

**"Intellectual Property Rights"** all (i) rights in intellectual property, including patents, trade and service marks, trade names, right in designs, copyrights, moral rights, topography rights, and rights in databases [in all cases whether or not registered or able to register in any country for the full term of such rights including any extension to or renewal of the terms of such rights and including registrations and applications for registration of any of these and rights to apply for the same] and all rights and forms of protection of a similar nature or having equivalent or similar effect to any of these anywhere in the world; and (ii) all trade secrets, confidentiality and other proprietary rights including all rights to knowhow and other technical information;

**"Seller"** means Vertiv Integrated Systems GmbH or its Affiliates referring to these Terms and Conditions.

**"Service"** means the work(s) as defined in the Seller's quotation and/or scope/statement of work;

**"Software"** means computer Software which may include associated media, printed materials and online or electronic documentation.

**"Trade Compliance Laws"** means applicable import, export control and sanctions laws, regulations, orders and requirements, including without limitation those of the United States, the European Union and the jurisdictions in which Seller and Buyer are established, or from which Goods, Software, Services and technology may be supplied.

#### 2. THE CONTRACT:

**2.1** These standard Terms and Conditions of Sale apply to all Contracts. Buyer's terms or conditions shall not apply. Seller shall only be bound by statements, warranties and representations expressly referred to in the Contract.

**2.2** Seller's order acknowledgement shall always prevail over any conflicting terms or provisions.

**2.3** No alteration or variation to the Contract shall apply unless agreed in writing by both parties.

### **3. PRICES:**

**3.1** Prices are those agreed between the parties in the Contract.

**3.2** Prices are for Goods delivered EXW Incoterms 2010 (or such later version as amended) and are exclusive of packing. Packing materials are non-returnable. Additional charges as agreed or otherwise at Seller's standard rates shall apply for any of the following: a) any Services not specified in the Contract; b) any Services performed at times other than Seller's standard office hours; c) if reasonable site and/or equipment access is denied or delayed to Seller; d) any cancelled, aborted, delayed or prevented visits arising from the actions or omissions of the Buyer. If any special delivery arrangements are requested by the Buyer and agreed to by the Seller, the related transport and insurance costs shall be agreed in advance and borne by the Buyer.

**3.3** Prices are exclusive of Value Added Tax and any other taxes, duties, levies or other like charges.

### **4. PAYMENT:**

**4.1** Unless otherwise agreed in writing:

- a) Goods and Software will be invoiced at any time after their readiness for dispatch has been notified to Buyer,
- b) Annual Services will be invoiced yearly in advance
- c) Non Annual Services will be invoiced upon completion.

**4.2** Unless otherwise agreed, Buyer shall pay invoice(s) in full, within 30 days of the date of invoice, in the account and currency specified in the Contract or in the invoice. Payments can only be made from bank accounts in the country of Buyer's incorporation and from bank accounts in its own name

**4.3** Without prejudice to Seller's other rights, Seller reserves the right to: (i) charge interest at a minimum rate of 8% per year on any overdue sums or at a higher rate in accordance with the applicable law during the period of delay; (ii) withhold shipment or otherwise suspend performance of the Contract, in the event that Buyer fails or in Seller's reasonable opinion it appears that Buyer is likely to breach an obligation under the Contract or under any collateral contract between the parties ; and/or (iii) require at any time full payment of the invoice; and/or (iv) terminate the Contract for non-payment or late payment pursuant to Clause 16.1.

**4.4** Buyer is not entitled to set off any claim against Seller that is due and payable against any debt to the Seller that is due and payable (e.g. invoices).

### **5. DELIVERY, TITLE AND RISK:**

**5.1** Goods will be delivered CPT Incoterms 2010 (or such later version as amended) to the destination named in the Contract; freight, packing and handling will be charged separately at Seller's rates then in effect at the time of delivery and shall be added to the purchase price. Seller shall be entitled to make partial deliveries. Claims for shortfalls in Contract deliveries shall be void if made more than 7 days after the delivery in cause.

**5.2** Subject to Clause 8, title and risk to the Goods shall pass to Buyer at the time of delivery of the Goods to the carrier at the place agreed in the Contract.

**5.3** Dates for delivery of the Goods and Software or completion of Services are only estimated forecasts and apply from the Effective Date. Exceeding such dates shall not result in Seller's default and dates shall be postponed and /or adjusted if Buyer's acts and/or omissions impacts, delays or prevents Seller's performance, and price shall be adjusted accordingly. If delivery is so prevented, storage charges and associated costs shall apply, title and risk shall pass to Buyer, and Seller shall be deemed to have performed delivery and/or completed work(s).

## **6. FORCE MAJEURE:**

**6.1** The Contract shall be suspended, without liability, in case of a Force Majeure Event. A Force Majeure Event is any circumstance beyond reasonable control of the party affected which delays or prevents its performance of the Contract, including but not limited to: Acts of God, war, armed conflict or acts of terrorism, civil unrest, fire, explosion, accident, flood, sabotage, governmental decisions, actions (including but not limited to prohibition of exports or re-exports or the failure to grant or the revocation of applicable export licenses) strike, lockout or injunction. This shall not apply to Buyer's obligation to pay any invoices due. If due to a Force Majeure Event either party is delayed or prevented from performance of its obligations for more than 180 calendar days, either party may terminate the then unperformed portion of the Contract by written notice to the other party, without liability provided that Buyer shall be obliged to pay the reasonable cost and expense of any work in progress and to pay for all Goods and Software delivered and Services performed as at the date of termination.

## **7. INSPECTION(S) AND TESTING:**

**7.1** Seller shall inspect and test Goods and Software in accordance with Seller's standard inspection and test procedures. Additional inspection(s) or test(s) requested by the Buyer will be charged separately. In the event it is agreed Buyer shall attend such inspection(s) or test(s), and should Buyer fail to attend such inspection(s) or test(s), they shall be deemed to have taken place in the presence of Buyer.

## **8. WARRANTY AND DEFECTS:**

### **8.1 WARRANTY ON GOODS**

**8.1.1** Seller warrants subject to the other provisions of the Contract, (i) good title to and the unencumbered use of the Goods and (ii) that Goods manufactured by Seller shall conform to Seller's specification(s), comply with all applicable statutory requirements and be free of defects in materials and workmanship. If prior to the expiry of the Warranty Period ( as defined in section 8.1.3) and in any case within thirty (30) days after Buyer's discovery of any warranty defects within the Warranty Period, Buyer notifies Seller thereof in writing, Seller shall, at its option, and as Buyer's exclusive remedy, repair, correct or replace or refund the purchase price for that portion of the Goods found by Seller to be defective. Failure by Buyer to give such written notice within the applicable time period shall be deemed an absolute and unconditional waiver of Buyer's claim for such defects.

**8.1.2.** Consumables, including, without limitation, glass parts and electrodes, membranes, liquid junctions, electrolytes and reagents, O-rings, plastic tubes, elastomers, etc. are warranted to be free from defects in material and workmanship under normal use and service for a period of ninety (90) days from the date of shipment by Seller.

**8.1.3** Except as otherwise expressly stated in Seller's applicable specification(s), the warranty period for Goods is 12 calendar months from putting Goods into operation or 18 calendar months after their delivery, whichever is sooner ("Warranty Period"). Goods repaired or replaced shall be subject to the unexpired portion of the Warranty Period or for ninety (90) days from the date of their return to Buyer, whichever expires later.

### **8.2. WARRANTY ON SERVICES**

**8.2.1** Seller warrants subject to the other provisions of the Contract that it will perform the Services as described by the Seller and subject to the scope of work and perform the Services with all reasonable skill and care applicable to Seller's industry. Seller warrants that all Services performed shall be free from defects in workmanship for a period of ninety (90) days from completion of Services. Except for warranty provided by the

Parts manufacturer, the Parts furnished hereunder are furnished as-is, with no warranty whatsoever. The sole and exclusive remedy for breach of any warranty hereunder shall be limited to, at Seller's sole option, either correct performance for that portion of the Services found by Seller to be defective or refund of the price paid for the defective Services.

### **8.3 WARRANTY SCOPE AND EXCLUSION**

**8.3.1** Goods and spare parts sourced by Seller from a third party for resale to Buyer shall carry only the warranty extended by the original manufacturer.

**8.3.2.** No other representations, warranties or conditions of any kind, express or implied, shall apply as to satisfactory quality, merchantability, fitness for any particular purpose or any other matter with respect to any of the Goods or Services except for those described within the Seller's scope of work and for those particular purposes which have been clearly disclosed by Buyer and specifically accepted by Seller to fit specific Buyer's requests. These warranty terms represent Buyer's exclusive remedy for defects.

**8.3.3.** Notwithstanding Sub-clauses 8.1. and 8.2 Seller shall not be liable for any non-conformances caused by (i) fair wear and tear, (ii) accident, (iii) materials or workmanship as made, furnished or specified by Buyer, (iv) non-compliance with Seller's storage, installation, or operation instructions or environmental specifications, (v) unsuitable power sources, (vi) lack of proper maintenance, (vii) misuse, (viii) any modification or repair not previously authorized by Seller in writing (ix) the use of non-authorized Software or spare or replacement parts (x) nor any other cause not the fault of Seller. Seller's costs incurred in investigating and rectifying such non-conformances shall be paid by Buyer upon Seller's demand.

### **9. SUPPLEMENTARY WARRANTY APPLICABLE TO SOFTWARE**

**9.1** Warranty for Software is set out in the appropriate Software license agreement(s) applicable to the Software.

### **10. SOFTWARE:**

**10.1** Notwithstanding any other provision herein to the contrary, Seller or applicable third party owner shall retain all rights to the respective Software, including all Intellectual Property Rights relating to such Software and all copies of such Software. Software is licensed, not sold. Except as otherwise provided herein, Seller grants end-user a non-exclusive, royalty-free license to use Software. End user's use of certain Software shall be governed exclusively by Seller's and/or third party owner's applicable license terms. Use of Software by any individual or organization not authorized in writing by Seller is strictly prohibited.

### **11. LIMITATION OF LIABILITY:**

**11.1** Unless otherwise agreed in writing Seller's exclusive combined maximum aggregate liability for any and all losses, liabilities, expenses - including legal expenses, damages, claims or actions incurred under or in connection with the Contract or any collateral contract between the parties, arising in or by virtue of breach of contract, tort - including negligence, misrepresentation, infringement of Intellectual Property Rights or otherwise, shall not exceed the Contract Price, however liability in accordance with the above clauses shall be limited to the typical foreseeable damages.

**11.2** Seller shall not be liable to Buyer in any circumstances for any loss of profits, loss of contracts, loss of use, loss of data or consequential or indirect loss nor, save as set out in Section 12 and in the preceding provisions of this Section, for any loss or damage of any kind whatsoever, howsoever arising, claimed against or suffered by Buyer.

**11.3.** Nothing in the Contract or any collateral contract shall exclude or in any way limit Seller's liability for (i) intent, (ii) gross negligence, (iii) willful misconduct, (iv) death or personal injury, (v) infringement of material

contractual duties or (vi) any liability to the extent that such liability may not be limited or excluded as a matter of law.

## **12. INTELLECTUAL PROPERTY:**

**12.1** All Intellectual Property Rights regarding Goods, Services and Software remain with Seller. Seller shall also retain the Intellectual Property Rights of all inventions, designs and processes made or developed by Seller in the context of performance under the Contract. Commercial exploitation of Seller's Intellectual Property Rights and third party rights is strictly prohibited.

**12.2** Subject to the limitations contained in Clause 11, in the event of any third party claim for infringement of Intellectual Property Rights existing at the Effective Date and arising from the use or sale of the Goods, Services and Software, Seller shall indemnify Buyer against all reasonable costs and damages awarded against Buyer in any action for such infringement, or for which Buyer may become liable in any such action, provided always that Seller shall not be liable to so indemnify Buyer in the event that:

(i) such infringement arises as a result of Seller having followed a design or instruction furnished or given by Buyer, or the Goods and Software having been used in a manner or for a purpose or in a country not specified in the Contract or in association or combination with any other equipment or Software, or the Goods and Software having been modified other than in accordance with Seller's written instructions, or

(ii) Seller has at its expense procured for Buyer the right to continue to use the Goods and Software or has modified or replaced the Goods or Software so that they no longer infringe, or

(iii) Buyer has failed to give Seller the earliest possible notice in writing of any claim made or to be made or of any action threatened or brought against Buyer and/or Buyer has failed to permit Seller, at Seller's expense, to conduct and control any litigation that may ensue and all negotiations for a settlement of the claim and/or Buyer has failed to cooperate with Seller in the defense of any such claim and/or action, or

(iv) Buyer has made without Seller's prior written consent any admission which is or may be prejudicial to Seller in respect of any such claim or action.

**12.3** Buyer warrants that any design or instructions furnished or given by it shall not cause Seller to infringe any Intellectual Property Rights in the performance of Seller's obligations under the Contract and shall indemnify Seller against all reasonable costs and damages which Seller may incur as a result of any breach of such warranty.

## **13. DOCUMENTATION**

**13.1** Notwithstanding any other provision herein to the contrary, Seller or applicable third party licensor to Seller shall retain all rights of ownership and title in its respective documentation (including but not limited to, pricing, and quote, and Seller's insurance terms and programs) supplied with the relevant Goods (Documentation), including without limitation all rights of ownership and title in its respective copies of such Documentation. The Documentation is deemed as Seller's confidential and proprietary information and may not be used, reproduced, licensed, sold or publicly disseminated by Buyer outside of the purchase process or for operation and maintenance of the Goods. Buyer shall immediately return all such materials to Seller upon request. All information provided to Seller from Buyer shall be non-confidential unless the parties execute a separate confidentiality agreement

## **14. STATUTORY AND OTHER REGULATIONS**

**14.1** If Seller's obligations under the Contract shall be increased or reduced by reason of the making or amendment after the date of Seller's quotation of any law, order, regulation or by-law that shall affect the performance of Seller's obligations under the Contract, the Contract Price and delivery period shall be adjusted accordingly and, at Seller's option, performance of the Contract shall be adjusted, suspended and/ or terminated.

**14.2** Except to the extent otherwise required by applicable law, Seller shall have no responsibility for the collection, treatment, recovery or disposal of (i) the Goods or any part thereof when they are deemed by law to be 'waste' or (ii) any items for which the Goods or any part thereof are replacements. If Seller is required by applicable law, including waste electrical and electronic equipment legislation, European Directive 2012/19/EU (WEEE) and related legislation in EU Member States, to dispose of 'waste' Goods or any part thereof, Buyer shall, unless prohibited by applicable law, pay Seller, in addition to the Contract Price, either (i) Seller's standard charge for disposing of such Goods or (ii) if Seller does not have such a standard charge, Seller's costs, including all handling, transportation and disposal costs and a reasonable mark-up for profit which shall not exceed 8%, incurred in disposing of such Goods.

## **15. EXPORT CONTROLS AND COMPLIANCE**

**15.1** Buyer agrees that Trade Compliance Laws, and the requirements of any necessary import or export licenses will apply to its receipt and use of Goods, Software, Services and technology. In no event shall Buyer use, transfer, release, export, or re-export any such Goods, Services, Software, or technology in violation of Trade Compliance Laws or the requirements of any import or export licenses. Buyer agrees furthermore that it shall not engage in any activity that would expose the Seller to a risk of non-compliance and liabilities under laws and regulations of any relevant jurisdiction prohibiting improper payments, including but not limited to bribes, to officials of any government or of any agency, instrumentality or political subdivision thereof, to political parties or political party officials or candidates for public office, or to any employee of any customer or supplier. Buyer and Seller agree to comply with all applicable legal, ethical and compliance requirements. Unless otherwise agreed in writing with the Seller, Buyer shall provide information in a format requested by Seller regarding end-user, end use and final destination of the Goods, Software and or Services.

**15.2** Seller shall have no obligation to supply any Goods, Software, Services, or technology unless and until it has received any necessary import or export licenses if any, and all the above listed information. If for any reason any such import or export licenses are denied or revoked, or if there is a change in any Trade Compliance Laws that would prohibit Seller from fulfilling the Contract, or should the execution of this contract, in Seller's the reasonable judgment, affect Seller's reputation or otherwise expose Seller to a risk of liability under Trade Compliance Laws, Seller shall be relieved without liability of all obligations under the Contract.

## **16. DEFAULT, INSOLVENCY AND CANCELLATION:**

**16.1** Seller shall be entitled, without prejudice to any other rights it may have, to cancel the Contract forthwith, wholly or partly, by notice in writing to Buyer, if (a) Buyer is in default of any of its obligations under the Contract and fails (where such default is remediable), within 10 (ten) working days of the date of Seller's notification in writing of the existence of the default, either to rectify such default if it is reasonably capable of being rectified within such period or, if the default is not reasonably capable of being rectified within such period, to take and thereafter continue diligently to take action to remedy the default or (b) on the occurrence of an Insolvency Event in relation to Buyer. "Insolvency Event" in relation to Buyer means any of the following: (i) a meeting of creditors of Buyer being held or an arrangement or composition with or for the benefit of its creditors being proposed by or in relation to Buyer; (ii) a charge holder, receiver, administrative receiver or similar person taking possession of or being appointed over or any distress, execution or other process being levied or enforced and not being discharged within seven days on the whole or a material part of the assets of Buyer; (iii) Buyer ceasing to carry on business or being unable to pay its debts; (iv) Buyer or its directors or the holder of a qualifying floating charge giving notice of their intention to appoint, or making an application to the court for the appointment of, an administrator; (v) a petition being presented and not being discharged within 28 days or a resolution being passed or an order being made for the administration or the winding-up, bankruptcy or dissolution of Buyer; or (vi) the happening in relation to Buyer of an event analogous to any of the above in any jurisdiction in which it is incorporated or resident or in which it carries on business or has assets. Seller shall be entitled to recover from Buyer all costs and damages incurred by Seller as a result of such cancellation, including a reasonable allowance for overheads and loss of profit.

## **17. MISCELLANEOUS:**

**17.1** GOODS, SOFTWARE AND SERVICES PROVIDED HEREUNDER (i) MAY NOT BE USED IN APPLICATIONS INVOLVING LIFE-SUSTAINING OR LIFE-SUPPORTING DEVICES OR WITHIN PROXIMITY OF SUCH DEVICES WITHOUT PRIOR NOTICE AND WRITTEN APPROVAL OF THE SELLER AND (ii) ARE NOT FOR USE IN CONNECTION WITH ANY NUCLEAR, AND RELATED APPLICATIONS. Buyer (i) accepts Goods, Software and Services in accordance with the foregoing restriction, (ii) agrees to communicate such restriction in writing to any and all subsequent purchasers or users and (iii) agrees to defend, indemnify and hold harmless Seller from any and all claims, losses, liabilities, suits, judgments and damages, including incidental and consequential damages, arising from use of Goods, Software and Services in any restricted applications, whether the cause of action be based in tort, contract or otherwise, including allegations that the Seller's liability is based on negligence or strict liability.

**17.2** The Contract and these terms and conditions constitute the complete agreement between the parties and supersede all previous, oral and written agreements between the parties. If any clause, sub-clause or other provision of the Contract is found by any court to be invalid under any statute or rule of law, such provision, to that extent only, shall be deemed to be omitted without affecting the validity of the remainder of the Contract

**17.3** The Contract shall in all respects be construed in accordance with and shall be subject to the laws and jurisdiction of the courts of Germany, excluding the 1980 Vienna Convention on Contracts for the International Sale of Goods.

**17.4** The Buyer shall not be entitled to assign or novate the Contract or any part thereof without the prior written consent of the Seller which shall not be unreasonably withheld or delayed.