

TERMS AND CONDITIONS OF SERVICE

These General Terms and Conditions contain terms governing the relationship between Netcom Africa and its Customers for the provision of Netcom's Service(s). Terms and Conditions are deemed accepted upon issuance of Netcom's invoice(s) and or Sales Order (SO) to the Customer and the receipt of payment thereof.

1. **Term:** The term of each Service Contract shall begin as of the Effective Date of such Service Contract and will remain in force for twelve (12) months certain. Either Party shall give notice of renewal two (2) months prior to the expiration of fixed and or mutually agreed renewed terms in writing

Where there is no executed Service Contract Netcom's issued invoice shall be binding on the Customer upon making payments of the invoiced sum. In such instance, Netcom's issued invoice shall serve the purpose of a Service Contract having its effective date from the date of issuance and will remain in force for twelve (12) months certain and renewable for other terms of twelve (12) months as agreed to by the Parties.

During the term of each Service Contract, Customer will not be allowed to suspend its service and will remain for the term of the Service Contract, except in the case of a breach of the service contract or the terms and conditions of this agreement.

2. **Services:** During the term of each Service Contract Netcom shall provide to the Customer such services applicable in the service description and as described in the Service Contract together with all the appendixes such as invoices and proposal. Except as otherwise provided in the Service Contract, Customer shall be responsible for providing the information and access to Customers facility as are necessary for Netcom to render the services.

From time to time, Customer may request that Netcom provide additional or amended services. At such times Parties will be required to agree and submit a Change Order Form. Such Change Order will specify the services to be provided by Netcom including but not limited to price terms as issued on Netcom's invoice. All Change Orders are governed by Netcom's Terms and Conditions.

3. **Payments:** Customer shall make all payments in accordance with the terms and schedule set forth in Netcom's issued invoice, and Service Contract together with the Customer's Agreement endorsed by the Parties. All payments shall be made in full in Naira upon receipt of Netcom's invoice.

Commencing on or before the effective date, the Customer shall pay in full upon confirmation of order and issuance of Netcom's invoice the cost of equipment. Title to equipment shall pass to the Customer upon full payment where it is not on lease.

Payments to Netcom for services shall be monthly/quarterly/half yearly or yearly as may be described in Netcom's invoice to the Customer. Netcom's invoices will itemize any reimbursable expenses where required to perform services.

Parties will pay their respective taxes or charges as may be imposed by any government entity for the sale, use and receipt of the services.

Late payments shall accrue when the Customers service is due for payment and Netcom's invoice is not settled. If the invoice is not settled within time specified on Netcom's invoice, Netcom will include interest at the Central Bank of Nigeria rate per month or the maximum applicable rate on the amount due.

Netcom may make changes to all charges stipulated in any Service Contract/Sales Order/Invoice after the initial twelve (12) months term: (i) in compliance with legislative or executive increase in Value Added Tax (VAT) and or other lawful taxes/deductions during the term of a Service Contract/Sales Order/Invoice; or (ii) by reference to market forces and prevailing economic and business conditions; provided that Netcom shall notify the Customer of any price change thirty (30) days prior to implementation or such price change becoming effective. Price changes shall be in the agreed currency of the Service Contract/Sales Order/Invoice.

For price changes purpose, Netcom may, in making price changes, rely on prevailing economic and business conditions, deflation and Inflation Report of the National Bureau of Statistics, as well as other Inflation/Deflation factors prevalent in Nigeria.

In exceptional circumstances, the Customer, upon being served with the one (1) month's prior notice of any price change, is entitled to negotiate with Netcom the application of the price change (i.e., increases or reductions) to the Charges.

In the event that Netcom is forced to terminate a contract due to non-payment, Netcom will, in addition to all of other rights and remedies, have the right to declare immediately due and payable the service fee for each month that would have remained in your balance service term.

3.1 Sale of Goods (Equipment) and or Related Non-Recurring Businesses: Due to the peculiarity and dependency connected with sale of goods and or related non-recurring businesses of Netcom, the following terms shall specifically apply:

TERMS AND CONDITIONS OF SERVICE



3.1.1 Payment Terms: Except as may be otherwise agreed with the Customer in writing, payments for the Goods shall be made in two (2) instalments of seventy percent (70%) upon execution of the relevant Agreement or acceptance of Netcom's Sales Order (SO) whichever shall occur first and thirty percent (30%) upon delivery and installation of the Goods to the order of the Customer or at its designated location.

3.1.2 Property and title in the Goods shall not pass to the Customer until full payment has been received by Netcom and the Customer shall only hold the Goods as fiduciary agent and bailee, and shall keep the Goods separate from those of the Customer and third parties and properly stored, protected and insured for no less than the invoiced value of such Goods and identified as Netcom's property, and shall only be entitled to resell or use the Goods with Netcom's consent and provided always that the proceeds of any such resale or, if less, such part of the proceeds as is equal to the amount of Netcom's invoice and the proceeds of insurance on the Goods shall be held on trust by the Customer for Netcom until such time as Netcom has received payment in full in respect of all amounts owing by the Customer to Netcom in respect of such Goods.

3.1.3 Notwithstanding that title in any Goods has not passed to the Customer, Netcom shall be entitled to sue the Customer for the price of such Goods if not paid by the due date. Netcom shall be entitled at any time to repossess the Goods which remain the property of Netcom and the Customer hereby grants Netcom, its agents and servants an irrevocable license to enter upon any premises where such Goods are stored for the time being for the purpose of repossessing the same and agrees to give Netcom such assistance as Netcom may require for such purpose.

3.2 Netcom reserves the right to re-quote and or increase the price of the Goods to reflect an increase in cost to Netcom which is due to any factor beyond Netcom's control, any change in delivery and or installation dates, quantities or specifications for the Goods which is requested by the Customer, or any delay caused by any instructions of the Customer or failure by the Customer to give Netcom adequate information or instruction.

3.3 Delivery, Delays, Demurrage and Consequences: Payment of the thirty percent (30%) of the SO value shall become due and payable by the Customer upon delivery of the Goods. Where however, the Goods are delivered and the Customer and or the Customer site/location is not ready or available for the installation activity within thirty (30) days of such delivery, the Customer shall be obliged to pay:

- a. All balance due on the Goods to Netcom in exchange for a Performance Bond issued by a reputable Financial Institution and provided by Netcom for the performance of its obligations under the Contract to the Customer (see below schedule), or
- b. Payment of twenty percent (20%) and continued retention of ten percent (10%) of Netcom's SO value by the Customer until completion of installation and execution of the relevant Acceptance Form by the Customer.

Where the Goods have not been delivered to the Customer for any reason or fault of the Customer sixty (60) days after the Customer has been given notice that the Goods are available and ready for delivery, then the Customer shall be obliged to:

- c. Pay a daily demurrage charge of N100,000.00 (One Hundred Thousand Naira) compounded monthly until delivery to the Customer effective from the sixty-first (61st) day after notice of delivery had been given to the Customer.
- d. Forfeit the Goods, be liable for the disposal of the Goods and or liable for the payment of the full contract sum or any sum outstanding on the contract from the ninety-first (91st) day after notice of delivery had been given to the Customer and or
- e. Pay the balance due on the Goods to Netcom in exchange for a Performance Bond issued by a reputable Financial Institution and provided by Netcom for the performance of its obligations under the Contract to the Customer (see below schedule), or
- f. Payment of twenty percent (20%) and continued retention of ten percent (10%) of Netcom's SO value by the Customer until completion of delivery, installation and execution of the relevant Acceptance Form by the Customer.

3.4 If the Customer fails to make any payment on the due date, then, without prejudice to any other rights of remedy available to Netcom, Netcom shall be entitled to the following:

- (a) Cancel the contract or suspend any further deliveries, to the Customer;
- (b) Daily demurrage charge of N100,000.00 until delivery to the Customer.
- (c) Appropriate payment made by the Customer to such of the Goods (or the Goods supplied under any other contract between the Customer and Netcom) as Netcom may think fit (notwithstanding any purported appropriation by the Customer);
- (d) Forfeiture of the Goods and disposal by Netcom without prejudice to its claims for the balance due on the contract/SO as specified in this Terms and Conditions.
- (e) Take immediate action to recover the whole of the amount that is due; and
- (f) Charge the Customer interest (both before and after any judgment) on the amount unpaid, at the rate of 25% per month compounded monthly on the outstanding balance until payment in full has been settled.

TERMS AND CONDITIONS OF SERVICE



3.5 Performance Bond (PB) Schedule

Pursuant to paragraphs 3.3 (a) and (e) above, Netcom shall only provide where required, a Performance Bond on the following terms to the Customer in exchange for the Customer paying the balance of the SO value:

S/N	Value of SO to Customer	Rate of PB to be provided
1	<50,000,000.00	5% of SO value
2	>50,000,000.00	2% of SO value

- 4. **Termination:** In the event of either Party wishing to terminate the Service Contract, it shall give at least two (2) month written notice prior to expiration of the Service Contract to the other. Where Customer fails to provide the two (2) months' notice to Netcom, contract is automatically renewed with these Terms and Conditions for a further 12 (twelve) month term.

During the notice period Parties will however, continue to abide by and fulfill all terms of the Service Contract until the expiration of the term herein granted and in so doing remain in current account status without any outstanding arrears.

Payment on Termination: Where Customer wishes to terminate service before expiration of Service Contract for any cause, except in the case of a breach of the service contract or the terms and conditions of this agreement, Netcom will continue to be paid up to the effective date of termination for any fees or expenses due for services delivered up to date in an amount equal to 100% of the charges which would have been incurred by the Customer for the remainder of the term commitment due to Netcom.

- 5. **Forfeiture of Payments:** Payments made for services which not activated six (6) months from the date of payment or the date of actual confirmation in Netcom's designated account and caused by Customers delay, default, unpreparedness or any other reason by the Customer **SHALL BE FORFEITED.**
- 6. **Suspension:** Netcom will in all cases give the Customer reasonable and prior notice of plans to, suspend Service in order to perform testing, maintenance or adjustment works to the Services. Netcom shall seek to minimize any interruption to Services and shall use reasonable efforts to minimize any such interruptions.

Netcom, will notify the Customer prior to the suspension or termination of Services required to comply with any applicable law(s), regulation(s) or government order(s).

- 7. **Customer's Liability:** To the extent that any equipment, product or materials are to be installed by Netcom, Netcom shall install such equipment, product or material as specified in the Service Agreement. Customer shall be responsible for preparation of the site including but not limited to providing necessary electrical power and or access to site.
- 8. **Acceptable Use Policy ("AUP")** - The Customer shall be bound by Netcom's Acceptable Use Policy ("AUP"). Customer shall not use the Service for any purpose prohibited under applicable law. Customer understands that transmission of any material in violation of Nigerian law and/or applicable regulations is prohibited, including without limitation, any copyright material, threatening or obscene material and material protected by trade secret. Furthermore, Customer shall not use the service to commit acts of impersonation or forgery or for any "network unfriendly activity". Customer agrees to indemnify and hold harmless Netcom from any claims, costs, fines, penalties, damages, fees and other expenses resulting from Customer's misuse of the Equipment and Service for illegal, infringing, or unauthorized purposes. In addition, Customer agrees that if its use of the Service does not conform to the Acceptable Use Policy set forth by Netcom, Netcom may, in its sole discretion, immediately terminate the Service line with Nigerian Communications Commission approval of Netcom's Consumer Code of Practice.
- 9. **Disclaimer of Warranties** - Except for warranties expressly made by the Manufacturer and/or as contained in these Terms and Conditions, to the extent permitted by law, Netcom makes no warranties or representation expressed or implied, either in fact or by operation of law, statutory or otherwise, including warranties of merchantability, a satisfactory quality and fitness for a particular use. All purchased hardware equipment are covered by a twelve (12) months products warranty as provided by the manufacturers with effect from the date of purchase.

Warranties however, do not extend to equipment stolen, damaged due to unstable power supply conditions or unsuitable environmental conditions, weather, fire and other such risks. Customer shall bear the entire risk of such loss and damage as mentioned. No loss or damage to the equipment or any part thereof shall impair any obligation of the Customer under these Terms and Conditions which shall continue in full force and effect throughout the term of this agreement. Should the equipment be on lease to the Customer, Netcom will provide an all-risk insurance policy to cover any and all loss or damage.

- 10. **Limitation of Liability** - Neither Netcom, nor its employees, shareholders, directors, officers or agents shall be liable for any act or omission to the extent not directly attributable to Netcom's personnel or equipment. To the maximum extent permitted by applicable law, the aggregate liability of Netcom and its employees, shareholders, directors, officers or agents for any losses or damages suffered or incurred in connection with the Service or these Terms and Conditions, whether such losses or damages are incurred through breach of these Terms and Conditions, negligent or grossly negligent act or omission resulting in any interruption, delay, defect or error in Service, or on any other basis, shall in no event exceed the amount paid to Netcom by Customer for the Service during the month immediately

TERMS AND CONDITIONS OF SERVICE



before the event resulting in such liability.

11. **Notices:** All notices, demands and communications required or permitted in connection with each Service Contract shall be in writing and shall be deemed effectively given in all respects upon personnel delivery or if mailed by registered or certified mail, the receipt of which is confirmed.
12. **Force Majeure:** Neither Netcom or the Customer shall be deemed in default of any Service Contract or these General Terms and Conditions to the extent that performance of its obligations (other than an obligation of payment) or attempts to cure any breach are delayed or prevented by reason or any act of God, fire, natural disaster, civil disturbance, terrorism, act of government, strikes or any other cause beyond the reasonable control of such party (each, a "Force Majeure Event"). Provided either party may give notice of termination to the other where such has negative effects on its operations.
13. **Governing Law:** Each Service Contract and these Terms and Conditions shall be governed and construed in accordance with the laws of Nigeria and both Netcom and Customer shall submit to arbitration in the first instance and to the jurisdiction of courts in Nigeria any dispute that may arise under this Agreement.
14. **Severability:** In the event that any of the provision of any of the services or Terms and Conditions or any word, phrase, clause, sentence or other provision thereof, should be held to be unenforceable or invalid for any reason, such provision or portion thereof shall be modified or deleted in such manner so as to make such Service Contract or Terms and Conditions as modified legal and enforceable to the fullest extent permitted under applicable laws.
15. **Entire Agreement:** Terms and Conditions, each Service Contract, Change Order Form, appendixes and invoices constitute the entire agreement between the parties hereto with respect to the subject matter hereof and supersedes all prior agreements, purchase orders, understandings and negotiations, whether oral and or written between the parties hereto with respect to such subject matter.