

# KT RWANDA NETWORKS [KTRN]

## General Terms and Conditions of Purchase

### 1. Object

- Unless otherwise agreed and stated in writing between KT RWANDA NETWORKS Ltd [hereinafter referred to as "**KTRN**" or "**Purchaser**" as applicable] and the Supplier (hereinafter referred to as "**Supplier**" or "**Contractor**" as applicable) in the purchase order or contract, these Terms and Conditions of Purchase (hereafter referred to as the "**Terms**") shall regulate conclusion, contents and handling of contracts for the purchase of goods, licensing of software as well as the rendering of services, support services and training, which, in particular, include the sector of telecommunications and information technology and any other relevant sector KTRN shall be engaged in with the Contractor.
- 1.1. Contracts shall be concluded on the basis of an offer made by the potential Contractor pursuant to the present Terms and Acceptance of the offer by means of a fully approved written order issued by Purchaser. These Terms are applicable on all purchases and/or licensing. Deviating conditions of a potential Contractor shall not apply. Contractor shall accept Purchaser's order in a written order confirmation.
- 1.2. Contracts shall be concluded on the basis of an offer made by the potential Contractor pursuant to the present Terms and Acceptance of the offer by means of a fully approved written order issued by Purchaser. These Terms are applicable on all purchases and/or licensing. Deviating conditions of a potential Contractor shall not apply. Contractor shall accept Purchaser's order in a written order confirmation.

### 2. Offers

- 2.1. All offers shall be in writing, be duly signed by the Contractor and be submitted to the Purchaser within the respective time limit described in each case.
- 2.2. The offers shall be binding for at least three months.
- 2.3. The offers (including any demonstration or presentation) shall be prepared without charge to the Purchaser. Purchaser does not assume any obligation whatsoever by receiving the offers.

### 3. Quality

- 3.1. Contractor warrants that the goods and hardware supplied are new, original and of standard quality, comply with applicable safety requirements, comply with national standards and laws and/or harmonized regional and/or international standards, laws and regulations. The respective declaration of conformity including the respective documentation shall be part of the delivery.
- 3.2. For the supply of services, Contractor warrants careful, lawful and prudent rendering of its services and in case of provision of staff, Contractor warrants prudent and careful selection of the same (special skills and personal qualification) and instruction of the staff made available to Purchaser.

### 4. General

- 4.1. **Obligations to inform:** Notwithstanding statutory instruction obligations, Contractor shall provide Purchaser with all necessary and useful information about the hardware and goods to be supplied, software to be licensed or services to be rendered, in particular information on adequate storage as well as documentary evidence of origin.
- 4.2. **Declaration of material, disposal:** Contractor shall inform Purchaser about the possibility of hazardous waste or waste oil in connection with the hardware or goods supplied by Contractor and in doing so shall, in particular, indicate the kind and possible ways of disposal.
- 4.3. **Documentation:** Contractor shall provide Purchaser with complete documentation of the hardware, goods or software (e.g. instructions for use, manual). Purchaser is entitled to

reproduce and use the documentation pursuant to these Terms.

- 4.4. **Training:** Contractor shall be responsible for the initial instruction of the Purchaser staff. The scope of the initial instruction shall be described in more detail in the offer or separate request from the Purchaser.
- 4.5. **Realization:** Contractor shall inform Purchaser about the progress of the work on a regular basis and shall immediately notify Purchaser of any and all circumstances which put the agreed performance at risk.
- 4.6. **Use of staff:** Contractor undertakes to, and shall obligate its staff to, comply with Purchaser's operational rules, in particular with the safety provisions, the regulation of working time as well as general working rules. Contractor shall only use carefully selected and well-trained staff members for the services to be performed. Upon request by Purchaser, Contractor shall replace staff members that Purchaser deems not to be suitable for their tasks.
- 4.7. **Location:** The place stated by Purchaser (as stated in the order or as otherwise agreed) shall be the place of performance for the deliveries and/or services of Contractor. Transport, delivery, receipt of all documents required and the payment of fees and charges, if any, shall be effected at the cost and risk of Contractor.

## 5. Licenses

- 5.1. Purchaser is hereby granted a perpetual, non-exclusive, restricted license to use the delivered software and documentation, but only for Purchaser's use in accordance with the Terms, and not otherwise.
- 5.2. Except as stated below in this article 5, Purchaser does not receive title or ownership rights to the software or documentation, and all such rights shall, unless otherwise agreed, remain with Contractor or its sub-contractors.
- 5.3. Purchaser shall not provide or make the software or any portions or aspects thereof available to any person except to its employees on a "need to know" basis. Purchaser shall not, unless permitted by law, modify, adjust, disassemble, arrange, decompile, reverse engineer or error correct the software without the prior written consent of Contractor. Purchaser shall not make any copies of the software or part thereof, except for archival purposes, without the prior written consent of Contractor.
- 5.4. If Contractor modifies or changes the software to permit additional features or services which are then released for general delivery to customers, such software shall be made available to Purchaser at Purchaser's request. In the event those changes aim at correcting the software used by Purchaser, then such corrections shall be made available to Purchaser free of charge.
- 5.5. Notwithstanding the above, Purchaser shall hold title to all intellectual property rights resulting from the rendering of services by Contractor.
- 5.6. Purchaser shall acquire all rights to use individual software components and individually developed software adaptations. When carrying out software orders for third parties, Contractor shall neither copy all of or part of the work results created in the course of performing services for Purchaser. Purchaser shall acquire title to and the rights to use any and all documentation and software of whatsoever kind relating to individual software components upon their development, however, without this causing Acceptance pursuant to article 12. In case of bankruptcy or composition proceedings against Contractor, Purchaser shall have a right of separation and recovery with respect to the said documentation and software.

## **6. Confidentiality**

- 6.1. The Parties and its staff members shall treat all facts and information which are neither obvious nor accessible by the public in a confidential manner. In case of doubt, the facts and/or information (including oral and visual facts and information) shall be treated as confidential. The Parties may not disclose confidential information to any third party, except as authorized by the original disclosing Party in writing. This obligation to maintain secrecy shall already exist prior to conclusion of the contract as well as up to three years after termination of the contractual relationship. Statutory obligations to disclose information shall be exempted; however, the disclosing Party shall inform the other Party prior to such disclosure in order to enable Purchaser to take appropriate measures.
- 6.2. Contractor's advertising and publication in regard to Purchaser as well as including Purchaser in Contractor's reference list require the prior written consent of Purchaser.

## **7. Prices**

- 7.1. All prices shall be broken down into individual items or per service, respectively. All prices shall be stated exclusive of VAT, in Rwandan Francs (RWF) for all local transactions and in United States Dollars (USD) for international transactions.
- 7.2. All services are set at fixed prices unless otherwise agreed. The agreed fixed prices shall include all services required for the proper performance of the order, in particular costs of installation and documentation, costs for the initial instruction, license fees, if any, costs of packaging, transport, insurance as well as unloading charges, public fees, charges, social security contributions and expenses, if any.
- 7.3. Contractor shall be responsible for transport insurance for the hardware and goods and proper packaging.

## **8. Invoicing**

- 8.1. All invoices shall be addressed to Purchaser. All relevant and required enclosures and evidence needed for Purchaser to review the invoice shall be attached with the invoice (e.g. copy of the purchase order, delivery note, etc.).
- 8.2. All invoices shall contain all information required under national laws and regulations, including legal names of Contractor, registration Number, VAT/TIN number, registered address, details of the legal representative, etc.).
- 8.3. Contractor shall have the right to issue the invoice upon Acceptance by Purchaser pursuant to article 12.

## **9. Terms of payment**

- 9.1. All payments are to be effected by means of bank remittance into a bank account to be advised by Contractor or by Cheque.
- 9.2. Unless otherwise contractually agreed upon, Purchaser shall effect payments within 30 days from the date of receipt of the correct and full invoice by Contractor.

## **10. Delays and liquidated damages**

- 10.1. If Contractor realizes that they will be in default with any delivery and/or service, they shall immediately notify Purchaser thereof in advance.
- 10.2. In case Acceptance for the hardware, goods, software and/or services, as relevant, has not

occurred on the agreed date (as stated in the order or as otherwise agreed), Purchaser shall be entitled to liquidated damages in the amount of 0.5% of the total order value per commenced day of delay, however, limited to a maximum of 20% of the total order value, regardless whether partial delivery or partial Acceptance is made.

## **11. Termination**

- 11.1. Purchaser shall have the right to terminate the contract or relevant order, as Purchaser wishes, if:
- 11.1.1. Contractor exceeds any of the agreed delivery or performance dates, as relevant, with thirty (30) days or more; or
- 11.1.2. Contractor has directly or indirectly promised or granted staff members of Purchaser benefits which are contra bonos mores or if Contractor has threatened or caused disadvantages to them, respectively or generally Contractor has breached any of Purchaser's code of ethics; or
- 11.1.3. Purchaser is entitled to maximum liquidated damages; or
- 11.1.4. Purchaser's license to operate a telecommunications network or any relevant service has been dramatically altered or withdrawn by the national authorities.
- 11.2. Either Party shall have the right to terminate the contract without liability to the other Party, by written notice to the other Party, if the other Party goes into liquidation, enters into composition proceedings with its creditors, becomes insolvent or is unable to pay its major debts or the majority of its debts or fails or admits in writing its inability to pay its major debts or the majority of its debts as they become due, makes a general assignment for the benefit of creditors or if a petition under bankruptcy or under any insolvency law is filed by or against the other Party and such petition filed by a third party is not dismissed within sixty (60) days (or such longer period agreed upon between the Parties) after it has been filed or a secured part takes possession of all or substantially all of its assets and such process is not dismissed or restrained within thirty (30) days.
- 11.3. Either Party shall have the right to terminate the contract and/or the relevant order without liability to the other Party, by written notice to the other Party, if the other Party commits a material breach of its obligations hereunder provided, however, that in case of any breach which is capable of being cured, neither Party shall terminate the contract or the relevant order unless and until the other Party shall have failed to cure such breach within thirty (30) days after it shall have been served with a notice requiring that such breach be cured and stating the sending Party's intention to terminate the contract or the relevant order if compliance with the notice to cure is not met.
- 11.4. Either Party shall have the right to terminate the contract and/or the relevant order without liability to the other Party, by serving sixty (60) days' written notice to the other Party stating the sending Party's intention to terminate the contract or the relevant order.
- 11.5. If Purchaser terminates the contract or the relevant order in accordance with this article 11, Purchaser shall in such case have a right, in addition to any other remedies available to Purchaser, in its option, to keep all or any part of the hardware, goods, software and documentation delivered under the terminated contract or order(s), or to return it to Contractor. Purchaser shall compensate Contractor for the hardware, goods, software and documentation kept and the services already performed by paying the price agreed in the order which is attributable to such hardware, goods, software, documentation and services and Contractor shall, when applicable, repay to Purchaser any amounts paid for the hardware, goods, software and documentation returned and services not performed, as relevant.
- 11.6. In the event of termination by Contractor of the contract or any order(s) pursuant to the articles above, Purchaser shall, in addition to any other remedies available to Contractor, pay to Contractor sums owing for hardware, goods, software and documentation already delivered and services already performed according to the contract or the relevant order(s) subject to termination, as relevant, at the date of termination.

11.7. The expiration or termination of the contract or any order shall not affect or prejudice any provisions of the contract, which are expressly or by implication provided to continue in effect after such expiration or termination.

## 12. Acceptance

12.1. For hardware, goods and software, Purchaser has a right to choose between a test acceptance procedure and a delivery acceptance procedure. Purchaser shall state in each order which acceptance procedure is chosen. If the acceptance procedure is not stated in the order, the delivery acceptance procedure shall be applied by default.

12.2. Test acceptance procedure:

12.2.1. Upon completion of training, delivery, installation and/or successful carrying out of all required installation tests for the hardware, goods and software components as well as written notification of readiness for acceptance by Contractor and upon delivery of the complete documentation, agreed acceptance tests shall be carried out by Contractor.

12.2.2. Operational use of the hardware, goods and software prior to carrying out the formal acceptance does in no case replace such formal acceptance and does not constitute an implied declaration of Acceptance.

12.2.3. The acceptance tests shall be repeated if they are not successful (i.e. if defects in the hardware, goods or software exist).

12.2.4. When the acceptance tests are successful, Purchaser shall send Contractor a written and duly signed acceptance certificate. The hardware, goods and software shall be considered accepted (referred to as "**Acceptance**") upon Purchaser's issuance of such acceptance certificate.

12.3. Delivery acceptance procedure:

12.3.1. The delivery acceptance procedure consists of two (2) steps; (i) a delivery inspection, and (ii) at Purchaser's option, delivery tests. Both steps are carried out by Purchaser without the participation of Contractor, unless the Parties agree otherwise.

12.4. Delivery inspection:

12.4.1. In order to verify the full (i.e. consistent with the relevant order) and proper delivery, a visual inspection ("**Delivery Inspection**") of the quantities and condition of hardware and/or goods delivered, shall be carried out. At each such delivery inspection, Purchaser shall visually inspect: (i) that the hardware and/or goods delivered, as well as the related consignment note, are fully consistent with the hardware and/or goods included in the relevant order, and (ii) that the hardware and/or goods appears to be intact and non-damaged.

12.5. Delivery Tests:

12.5.1. In order to verify the proper functioning of the hardware, goods and software delivered, and that the hardware, goods and software delivered, as relevant, conform to the contract documents, Purchaser may, at the time of installation, carry out tests ("**Delivery Tests**") in order to verify proper functioning of the hardware, goods and/or software and that the hardware, goods and/or software delivered conform to the contract documents.

12.6. Letter of Non-conformity:

12.6.1. Any discrepancies found during the delivery inspection and/or the delivery tests, shall be duly

documented and within thirty (30) days from delivery of the hardware, goods and/or software, as relevant, be reported to Contractor in writing ("**Letter of Non-conformity**").

12.6.2. In the event Purchaser does not submit a Letter of Non-conformity, within the time frame stipulated in this article 12.6, the hardware, goods and/or software shall be deemed to be subject to Acceptance.

12.6.3. In the event Purchaser submits a Letter of Non-conformity, Contractor shall, at its own cost, investigate and rectify any discrepancies found. Once all items listed in the Letter of Non-conformity have been rectified and accepted by Purchaser, Purchaser shall without undue delay and within fourteen (14) business days, in writing, acknowledge that fact, and at which time the hardware, goods and software, as relevant, shall be subject to Acceptance.

12.6.4. For the avoidance of doubt, any submission of a Letter of Non-conformity, or the lack thereof, shall in no way limit the warranties described in article 13.

12.6.5. Purchaser shall, when the hardware, goods and software, as relevant, is subject to Acceptance, without undue delay issue an acceptance certificate

12.6.6. Operational use of the hardware, goods and software prior to carrying out the formal acceptance does in no case replace such formal acceptance and does not constitute an implied declaration of Acceptance.

12.7. Services:

12.7.1. Unless otherwise contractually agreed upon, services are considered accepted when the services are completed by Contractor and the result of the services has been accepted in writing by Purchaser.

### **13. Warranties**

13.1. Contractor warrants that the hardware, goods and software, for a period of twelve (12) months from the respective date of Acceptance, shall conform with and perform the functions set forth in the contract documents and be free from defects in design, material and workmanship.

13.2. In the event that the hardware, goods and/or software fails to perform as stated in the contract documents or is defective and such non-conformity or defect appear within the warranty period above, Contractor shall at its own expense and without undue delay repair, correct or replace such defective hardware, goods and/or software.

13.3. Any repaired, corrected or replaced hardware, goods and/or software shall be subject to the warranty set forth in article 13.1 either until the expiration of the twelve (12) month period stipulated above or for a period of six (6) months from the reparation, correction or replacement, whichever period is longer.

13.4. Contractor warrants, for a period of twelve (12) months from the respective date of Acceptance, that the services purchased under the contract have been performed (i) with due care, (ii) in a professional manner, and (iii) in accordance with the contract documents and Contractor's standard procedures and practices. In the event that the services have not been performed in accordance with (i) to (iii) above, the performance of the service(s) shall be deemed defective. If such defects appear within the warranty period above, Contractor shall at its own expense remedy such defect without undue delay.

13.5. Any remedied service(s) shall be subject to the warranty set forth in article 13.4 either until the expiration of the twelve (12) month period stipulated above or for a period of six (6) months from the completion of the remedial work, whichever period is longer.



- 13.6. Contractor warrants, during a period of three years from the date of Acceptance of the last order, that Contractor shall make and provide to Purchaser hardware and software that will permit normal expansion by Purchaser of the purchased hardware and licensed software.
- 13.7. The following warranty is applicable in the event Contractor delivers both hardware and/or software;
- 13.8. Contractor warrants, during a period of three years from the date of Acceptance of the last order, that any hardware products purchased and any software products licensed for expansions, enhancements or replacements of the system or part thereof, will be fully compatible, without any need for replacement or major corrections or upgrades of the software, with the software licensed under the contract (i.e. the current software load and future Software loads) as well as with hardware previously purchased under the contract. Any replacements or major corrections or upgrades of the software and/or hardware necessary shall be the responsibility of Contractor.

#### **14. Liability and risk**

- 14.1. Contractor shall bear all risks (e.g. damage or loss of hardware, goods and/or software) until Acceptance. Contractor shall be responsible for covering the risks to be borne until Acceptance by insurance.
- 14.2. Contractor shall be liable for personal injuries and damage to property caused by Contractor or Contractor's agents in the course of performance of the contract.
- 14.3. Except as expressly provided for elsewhere, neither Party shall be liable to the other Party under the contract for any indirect or consequential damages. However, this does not apply in relation to breaches of articles 6 or 14.5.
- 14.4. A Party suffering loss or damages shall take reasonable measures to limit such loss or damage.
- 14.5. Contractor shall at its own cost settle and/or defend Purchaser against any claims for infringement of third party patents, copyrights, registered designs or any other intellectual property rights by reason of the delivery or proper use of the hardware, goods, software and/or documentation. Contractor shall fully indemnify Purchaser and keep Purchaser fully indemnified against (i) any costs, expenses, damages and/or losses related to any claims for infringement(s) and (ii) any final judgments(s) or settlement(s) made by Contractor in relation to any infringement(s) or alleged infringement(s).

#### **15. Force Majeure**

- 15.1. Neither Party shall be liable for non-performance or defective nor late performance of any of their obligations hereunder to the extent and for such periods of time as such non-performance, defective or late performance is due to causes and/or conditions outside of the performing Party's reasonable control.
- 15.2. Causes and/or conditions outside of a Party's reasonable control shall include, but not be limited to general strikes and other general labour disputes, fire, explosions, floods, earthquakes, typhoons, epidemics, wars (whether declared or undeclared), government acts, riots, revolutions, sabotage or severe weather conditions which the Party claiming excuse could not have reasonably foreseen the effects of or made alternative arrangements for.
- 15.3. In case of a situation beyond the affected Party's reasonable control, the affected Party shall promptly notify the other Party in writing and furnish all relevant information thereto.
- 15.4. Should a delay caused by causes and/or conditions outside of a Party's reasonable control continue for more than thirty days, the unaffected Party shall then, in relation to any order, have a right to terminate such order, upon reasonable advance notice to the affected Party.

## **16. Miscellaneous**

- 16.1. All fees and charges incurred in connection with the execution, conclusion and performance of the contract to be entered into on the basis of these Terms as well as all costs incurred in connection with the conclusion of subsequent agreements as well as for various confirmations of receipt shall be fully borne by Contractor.
- 16.2. Contractor may not without Purchaser's prior written consent assign any rights and/or duties that Contractor has under these Terms.
- 16.3. The contract or order based on the present Terms shall accrue to the benefit of and be binding upon the Parties hereto and any successor entity into which either Party shall have been merged or consolidated or to which either Party shall have sold or transferred all or substantially all its assets, but it shall not be otherwise assigned by either Party without the prior written consent of the other Party. The Parties agree that any consent to a requested assignment shall not be unreasonably withheld or delayed.
- 16.4. Contractor shall not be entitled to set off any claims to which they are entitled vis-à-vis Purchaser against claims by Purchaser vis-à-vis Contractor under the contract.
- 16.5. Contractor shall remain responsible to Purchaser for the performance by any subcontractor, as if the undertaking(s) was/were performed by Contractor itself.
- 16.6. The contract (and these Terms) shall be subject to Rwandan law, unless otherwise agreed by the Parties.
- 16.7. Any dispute, controversy or claim arising out of or in connection with the contract or order to be entered into on the basis of the present Terms, shall be finally settled through arbitration under the Rules of the Arbitration in Rwanda. The place of the arbitration proceedings shall be Kigali, unless otherwise agreed, and the language of the proceeding shall be English, unless otherwise agreed. However, this article shall not prevent either Party from obtaining injunctive relief from a court of competent jurisdiction to preserve the status quo, while it seeks to enforce its rights under this article 16.7.
- 16.8. In case of any disputes between Purchaser and Contractor, Contractor shall not be entitled to delay in whole or in part or to cease delivery and/or performance under the contract.
- 16.9. Amendments to and modifications of the contract as well as the waiver of claims under the contract shall be made in writing and be signed by authorized persons in order to be valid. No side agreements exist.
- 16.10. If individual provisions of the contract to be entered into on the basis of these Terms should be or become invalid, the remaining provisions shall not be affected thereby. The provision which is or has become invalid shall be replaced by a provision which, with respect to its economic purpose, comes as close as Possible to the provision being replaced.