

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) 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. The term of each Service Contract shall automatically renew for another term of twelve (12) months.

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 renewable for another term of twelve (12) months.

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 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. All payments shall be made in full 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, if any, and such payment in full shall be made by bank draft or wire transfer. Title to equipment shall pass to the Customer upon full payment where it is not on lease.

All payments shall be in line with the Netcom's issued invoice. Payments to Netcom for services may 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.

Customer will pay all taxes or charges 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.

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

4. **Termination:** In the event of Customer wishing to terminate the Service Contract, Customer shall give at least three (3) month written notice prior to expiration of the Service Contract to Netcom. Where Customer fails to provide the three (3) months notice to Netcom, contract is automatically renewed with these Terms and Conditions for a further 12 (twelve) month term.

During the notice period Customer 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 to Netcom.

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 may, without notice in Urgent Operational Cases and by giving the Customer reasonable notice in all other cases, 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.

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Netcom, may without notice, suspend or terminate Services as required to comply with any applicable laws, regulations or government orders.

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 equipments 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 equipments 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 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 the jurisdiction of courts in Nigeria.
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.