

Standard Terms and Conditions for Supply of Goods and Services

Rev.: 2023-05-15

1. **APPLICATION**

These conditions shall apply to and be incorporated in each Contract and shall prevail over any inconsistent terms in the Customer's order or other communication or implied by law, practice, course of dealing or otherwise. Where the Customer and NEVION have entered into a contract for the supply of goods or services or a licence agreement, the terms of that agreement shall prevail over any inconsistent terms in these conditions unless otherwise expressly agreed in a writing and signed by the Customer and NEVION.

2. **INTERPRETATION**

The following definitions apply to these conditions:

Business Day: a day which is not a Saturday, Sunday or a public or bank holiday, for matters relating to payments, in the place in which payment is to be made and for matters relating to acceptance, the place of delivery;

Contract: the Customer's order and NEVION's acceptance of it in accordance with condition 3, together with any special conditions or amendments agreed in writing by NEVION;

Customer: any company, firm, partnership or any other entity or person placing an order with NEVION for the delivery of Equipment or supply of Services;

Equipment: equipment (including, where applicable, Software) to be purchased by the Customer in accordance with a Contract;

Intellectual Property Rights: patents, rights to inventions, copyright and related rights, trademarks, trade names, domain names, rights in get-up, rights in goodwill or to sue for passing off, unfair competition rights, rights in designs, rights in computer software, database rights, topography rights, moral rights, rights in confidential information and any other intellectual property rights, whether registered or unregistered and including all applications for renewals and extensions of such rights and all similar or equivalent rights or forms of protection in any part of the world;

NEVION: Nevion AS and any company controlling, controlled or under common control with Nevion AS, including its wholly owned subsidiary NEVION ASIA PTE. LTD., which supplies Equipment or Services pursuant to a Contract incorporating these conditions;

Services: services to be performed by NEVION pursuant to a Contract;

Software: any computer programme, firmware or other software to be supplied to the Customer in accordance with a Contract.

3. **CONTRACTS**

- 3.1. Quotations from NEVION are valid for 30 days unless otherwise stated.
- 3.2. Quotations are not offers to supply. A binding Contract shall only exist when the Customer places an order which NEVION accepts, being the earlier of the date of (i) a written order confirmation from NEVION; or (ii) delivery of the Equipment or Services by NEVION to the Customer pursuant to the order.
- 3.3. NEVION's order confirmation terms shall prevail over any inconsistent terms in the Customer's order and shall be deemed to have been accepted by the Customer unless it objects in writing within 48 hours.
- 3.4. NEVION shall be under no obligation to supply Equipment or Services which require bespoke design or development unless and until agreed in a written specification signed by NEVION and the Customer and attached to the order confirmation from NEVION.
- 3.5. Contracts cannot be cancelled without the prior written agreement of NEVION and against indemnification in full by the Customer of NEVION's loss (including loss of profit), costs (including the cost of all labour and materials used), damages, charges and expenses.
- 3.6. Change requests are subject to written acceptance by NEVION in its discretion, to be recorded in a new confirmation which then forms part of the Contract and supersedes the previous confirmation.
- 3.7. Cancellation or termination of a Contract shall not affect any other Contract.

4. **PRICE AND PAYMENTS**

- 4.1. Prices are as stated in NEVION's acknowledgement. All quotations are on ex works (factory) terms (as defined in INCOTERMS®2010) and are exclusive of carriage, insurance, VAT or other charges and duties and also exclude any applicable fees or royalties. The price will include the licence fee for the Customer's right to use any Software where a software licence is included with the Equipment unless otherwise stated in a quote or licence agreement.
- 4.2. The Customer is responsible for arranging transport and providing NEVION with timeous transport instructions.
- 4.3. Unless expressly stated in the order confirmation, receipt of payment in full in cleared funds is a condition precedent to NEVION's obligation to ship Equipment or supply Services under a Contract.
- 4.4. Where payment terms require a letter of credit to be issued in favour of NEVION, the Customer shall arrange for an unconditional irrevocable letter of credit to be issued, and if required by NEVION, confirmed, by a first class bank or financial institution approved by NEVION and otherwise on terms as NEVION shall specify.
- 4.5. Where credit terms have been agreed, should the Customer fail to make payment in full by the due date, without prejudice to any other right or remedy available to NEVION, NEVION may:
 - (a) terminate the Contract or suspend any further deliveries (whether under the same Contract or not) in accordance with condition 12;
 - (b) appropriate any payment made by the Customer as it sees fit;
 - (c) charge a monthly fee of 1.5%;
 - (d) charge storage for any undelivered Equipment at its current rates;
 - (e) stop any Equipment in transit; and/or
 - (f) exercise a general lien on all Equipment and property of the Customer, to dispose of it as it sees fit on the expiry of 14 days' written notice and to apply the proceeds to amounts outstanding.

5. **DELIVERY, ACCEPTANCE AND PROPERTY**

- 5.1. Shipment or delivery dates stated in a Contract are estimated dates only and are not guaranteed by, nor are they binding on, NEVION.
- 5.2. NEVION reserves the right to supply in installments.
- 5.3. Where a shipment date for Equipment or a delivery date for Services is expressly agreed by NEVION in a Contract as being time critical, NEVION shall use its reasonable endeavours to deliver the Equipment on or before the date(s) specified in the Contract. If delivery is not achieved within one week of such agreed date, the Customer shall have the right to claim liquidated damages in the amount of 0.2% of the price of the delayed Equipment or Services for each complete Business Day of delay, up to a maximum of 10% of the price for such Equipment or Services. The Customer acknowledges and agrees that this is a genuine pre-estimate of the loss it would incur in the event of such delay and that it shall not be entitled to terminate a Contract on grounds of delay unless and until the maximum amount payable under this condition 5.3 has become payable.
- 5.4. Before dispatch, Equipment is carefully inspected by NEVION, and, where practical, submitted to standard tests, without additional cost to the Customer.
- 5.5. Any special factory or site acceptance tests are required or requested by the Customer must be specified in the order and agreed in the NEVION confirmation, at a price to be specified by NEVION.
- 5.6. Unless expressly agreed in writing, no installation or commissioning of Equipment is included in the Equipment price and all installation, commissioning and integration is the sole responsibility and risk of the Customer.
- 5.7. The Customer shall be deemed to have accepted the Equipment or Services unless it gives written notice of rejection (with detailed reasons) within the earlier of the date falling (i) 5 Business Days after actual receipt by the Customer and (ii) 15 Business Days after delivery.

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- 5.8. Equipment shall be at Customer's risk from delivery at the NEVION factory as implied by the delivery term referred to in condition 4.1.
- 5.9. Ownership of the Equipment shall pass to the Customer when all sums owed by Customer to NEVION under the Contract have been paid in full. Until ownership has passed, the Customer shall hold the Equipment, as NEVION's bailee, separately from all other equipment and readily identifiable as NEVION's property. The Customer shall keep the Equipment insured against all risks and hold the proceeds of any insurance claim on trust for NEVION, readily identifiable as NEVION's money. The Customer grants NEVION and its nominees an irrevocable licence to enter any premises to inspect or remove the Equipment. All costs of repossession are for the Customer.
6. **SOFTWARE LICENSE**
- 6.1. If the Customer is provided with a software licence agreement in respect of any Software, the Customer shall sign and return it to NEVION prior to delivery.
- 6.2. If no software licence agreement is provided to the Customer, the Customer hereby accepts a non-exclusive, non-transferable licence to use the Software on the following conditions:
- (a) the Customer shall not copy (except to the extent permissible under applicable law which is not capable of exclusion by agreement) or for normal operation of the Equipment), reproduce, translate, adapt, reverse engineer, decompile, disassemble, vary or modify the Software, nor make derivative works of any Software in whole or in part nor communicate it or sub-licence to any third party, without NEVION's prior written consent;
 - (b) the Customer shall not use the Software on any equipment other than the equipment (being Equipment or equipment not supplied by NEVION) it has been licensed for and shall not remove, adapt or otherwise tamper with any copyright notice, legend or logo which appears in or on the Software on the medium on which it resides;
 - (c) the licence shall be terminable by NEVION if the continued use or possession of the Software by the Customer infringes a third party's rights, or NEVION is compelled to do so by law, or if the Customer has failed to comply with any term of the Contract.
- 6.3. The Customer agrees that neither NEVION nor its third party licensors are liable in whole or in part for any claims or damages arising from any use of Software other than normal application (as determined by NEVION) and the Customer shall indemnify and hold NEVION and its third party licensors harmless (on a full indemnity basis) in respect of any claim for loss, cost, damages, expenses or other liability whatsoever arising out of or in connection with any such use.
7. **EXPORT TERMS AND LOCAL TAXES**
- The Customer shall be responsible for complying with, and shall hold NEVION harmless (on a full indemnity basis) in respect of any costs incurred in relation to, any legislation or other applicable rules governing the import/export of the Equipment or supply of Services and for the payment of any and all duties.
8. **THE NEVION WARRANTY**
- 8.1. NEVION undertakes, on the terms of this condition 8, to repair or replace (at NEVION's option) Equipment or remedy Services or provide a credit where NEVION determines that there is a material defect in materials or workmanship covered by the terms of this warranty.
- 8.2. NEVION shall not be liable under this NEVION warranty unless it receives written notice of the defect, which notice must be given direct to NEVION (not through a dealer or other third party) within the relevant warranty period set out below and within 14 days of the date the Customer discovered, or ought to have discovered, the defect.
- 8.3. NEVION shall not be liable under this NEVION warranty for issues caused by modifications to our products or solutions done by the customer or others not authorized by NEVION.
- 8.4. Prior to any return, Customer must provide any proof of warranty eligibility requested by NEVION and receive a written return authorization. Upon receipt of the return authorization, the Customer shall return, at its own cost and risk and within 30 days, the relevant Equipment, properly packed, to a service facility designated by NEVION. NEVION reserves the right to return Equipment at Customer's expense if return authorization was not issued prior to return.
- 8.5. If the repaired or replacement Equipment is to be shipped to a location which is not in the same country as the designated service facility, the cost and risk, including any duties and taxes, of shipment are for the Customer.
- 8.6. All other costs are for NEVION unless the claim is found to be outside the scope or duration of the warranty, when costs of transportation, investigation and repair are for the Customer.
- 8.7. Warranty periods are as follows, commencing on the date of delivery:
- (a) Two years for all NEVION hardware products.
 - (b) Six months for Software unless licensed separately, in which case the applicable license terms apply.
 - (c) Ninety days for NEVION parts, assemblies and supplies to support hardware products previously sold to Customers, where the standard warranty period has expired.
 - (d) Ninety days for Services.
- 8.8. Repairs and replacements shall be carried out in accordance with the reasonable procedures advised to Customer by NEVION.
- 8.9. Hardware and Software products manufactured by third parties that are sold by NEVION as components of Equipment or otherwise will carry the original manufacturer's warranty only to the extent rights thereunder are available to the Customer.
- 8.10. Warranty support for NEVION Software constituting or included in any Equipment or Services is limited to the version or release of the Software currently being provided by NEVION to the Customer at the time service is requested, and the next version or release of the Software.
- 8.11. The benefit of this NEVION warranty may not be assigned or transferred in whole or in part under any circumstances.
- 8.12. Repaired and replacement Equipment shall have the benefit of a warranty on the terms of this NEVION warranty for the unexpired period of the original NEVION warranty or 3 months from provision of the repair or replacement, whichever is longer.
- 8.13. The NEVION warranty set out above represents the sole remedy of NEVION in respect of defective Equipment or Services and NEVION has no other obligation to the Customer, and the Customer waives any rights it may otherwise be entitled to, by virtue of any warranties or conditions expressed or implied by operation of law or otherwise. No statement or recommendation made or assistance given by NEVION to the Customer in connection with the Equipment or Services shall constitute or be construed as a representation or warranty of any kind. All product demonstrations are for illustrative purposes only.
- 8.14. NEVION does not authorize any of its dealers, system integrators or sales representatives, or any other third party, to change, modify, supersede or supplement the contents of condition 8.
- 8.15. NEVION reserves the right to discontinue or modify its list of products without notice to the Customer. If NEVION replaces Equipment under the NEVION warranty, NEVION may substitute the Equipment with products determined by NEVION to be of comparable quality and functionality in the event the original Equipment purchased are no longer available. In no event will NEVION be liable to the Customer as a result of any discontinuance or modification of any product, or variance of any replaced product from Equipment supplied under a Contract.
9. **INTELLECTUAL PROPERTY RIGHTS**
- 9.1. All Intellectual Property Rights used by or subsisting in or relating to the Equipment are and shall remain the sole property of NEVION or (as the case may be) the third party owner. The Customer shall not make any unauthorized use of such Intellectual Property Rights nor authorize nor permit any other person to do so.
- 9.2. Nothing in any Contract shall be construed as an assignment of any Intellectual Property Rights in any Equipment,

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Software, user manuals or other documentation supplied to the Customer.

- 9.3. The Customer shall be subject to the rights and restrictions imposed by the owner of the Intellectual Property Rights in the Software and user manuals and shall comply with all relevant licence agreements, terms of use and registration requirements. Other than use as part of instruction by the Customer or in connection with advertising NEVION's products or services, information in relation to the Equipment and Services and their operation remains the property of NEVION and may not be copied, reproduced, transmitted or communicated to any third party without NEVION's written consent.
- 9.4. Illustrations, catalogues, drawings, statements of weight, MTBFs and other measurements made available by NEVION as printed information are given by way of indication only and are not binding representations or warranties nor part of the product specification and do not create any obligations on the part of NEVION.
10. **DATA PROTECTION AGREEMENT**
In this condition 10, the following definitions apply:
Data Protection Agreement: the terms and conditions set out in this condition 10.
Data Protection Legislation: the General Data Protection Regulation ((EU) 2016/679) and any other directly applicable European Union regulation relating to privacy and Local Protection Legislation.
Local Protection Legislation: any data protection legislation from time to time in force in a relevant jurisdiction being the place of incorporation of the Customer or NEVION, a place in which goods or services are delivered and the jurisdiction whose law is the governing law of this Data Protection Agreement.
- 10.1. Each of NEVION and the Customer will comply with all applicable requirements of the Data Protection Legislation. This Data Protection Agreement is in addition to, and does not relieve, remove or replace, any obligations under the Data Protection Legislation.
- 10.2. Each of NEVION and the Customer acknowledge that for the purposes of the Data Protection Legislation, the Customer is the data controller and NEVION is the data processor (where Data Controller and Data Processor have the meanings as defined in the Data Protection Legislation).
- 10.3. On behalf of the Customer NEVION will process Personal Data in the form of information regarding the Customer's contact persons. This may typically include names, contact details, photos, IP addresses and cookies. Such data will be processed in order to fulfil existing contractual obligations and to enable efficient information exchange between the parties, such as presenting offers, invitations and news. To be able to fulfil its obligations towards the Customer NEVION may submit such contact details to relevant third parties such as transport companies, insurers, agents and business partners.
- 10.4. Without prejudice to the generality of condition 10.1, the Customer will ensure that it has all necessary appropriate consents and notices in place to enable lawful transfer of the Personal Data to NEVION for the duration and purposes of the Contracts.
- 10.5. Without prejudice to the generality of condition 10.1, NEVION shall, in relation to any Personal Data processed in connection with the performance by NEVION of its obligations under a Contract or license agreement:
 - (a) process that Personal Data only on the written instructions of the Customer unless NEVION is required by Applicable Laws to otherwise process that Personal Data. Where NEVION is relying on laws of a member of the European Union or European Union law as the basis for processing Personal Data, NEVION shall promptly notify the Customer of this before performing the processing required by the Applicable Laws unless those Applicable Laws prohibit NEVION from so notifying the Customer;

- (b) ensure that it has in place appropriate technical and organisational measures to protect against unauthorised or unlawful processing of Personal Data and against accidental loss or destruction of, or damage to, Personal Data, appropriate to the harm that might result from the unauthorised or unlawful processing or accidental loss, destruction or damage and the nature of the data to be protected, having regard to the state of technological development and the cost of implementing any measures (those measures may include, where appropriate, encrypting Personal Data, ensuring confidentiality, integrity, availability and resilience of its systems and services, ensuring that availability of and access to Personal Data can be restored in a timely manner after an incident, and regularly assessing and evaluating the effectiveness of the technical and organisational measures adopted by it);
 - (c) ensure that all personnel who have access to and/or process Personal Data are obliged to keep the Personal Data confidential;
 - (d) delete the Personal Data processed under this Data Protection Agreement when the Contracts and all obligations between the parties have been fulfilled; and
 - (e) only transfer Personal Data to third parties mentioned in condition 10.3 located outside of the European Economic Area when the following conditions are fulfilled:
 - (i) the Customer or NEVION has provided appropriate safeguards in relation to the transfer;
 - (ii) the data subject has enforceable rights and effective legal remedies;
 - (iii) NEVION complies with its obligations under the Data Protection Legislation by providing an adequate level of protection to any Personal Data that is transferred; and
 - (iv) NEVION complies with reasonable instructions notified to it in advance by the Customer with respect to the processing of the Personal Data;
 - (f) assist the Customer, at the Customer's cost, in responding to any request from a Data Subject and in ensuring compliance with its obligations under the Data Protection Legislation with respect to security, breach notifications, impact assessments and consultations with supervisory authorities or regulators;
 - (g) notify the Customer without undue delay on becoming aware of a Personal Data breach;
 - (h) at the written direction of the Customer, delete or return Personal Data and copies thereof to the Customer on termination of the agreement unless required by Applicable Law to store the Personal Data; and
 - (i) maintain complete and accurate records and information to demonstrate its compliance with this Data Protection Agreement and upon the Customer's request without undue delay, at the Customer's cost and without disruption to NEVION, allow for audits by the Customer or the Customer's designated auditor.
- NEVION is authorized to engage third-party processors of Personal Data under this Data Protection Agreement. NEVION shall inform the Customer of any intended changes concerning the addition or replacement of such third-party processors, thereby giving the controller the opportunity to object to such changes. NEVION confirms that it has entered or (as the case may be) will enter, with the third-party processor, a written agreement incorporating terms which are substantially similar to those set out in this Data Protection Agreement. As between the Customer and NEVION, NEVION shall remain fully liable for all acts or omissions of any third-party processor appointed by it pursuant to this Data Protection Agreement.
- 10.6. Each of NEVION and the Customer may, at any time on not less than 30 days' notice, revise this Data Protection Agreement by replacing it with any applicable controller to processor standard clauses or similar terms forming part of an applicable certification scheme (which shall apply when a written record of same has been signed by the Customer and NEVION).

11. **LIMITATION OF LIABILITY**

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- 11.1. NEVION is not liable under the NEVION warranty or otherwise for any damage or defect to Equipment or Services caused, or contributed to by any of the following:
- (a) improper use, neglect, accident, alteration;
 - (b) failure to follow NEVION's instructions;
 - (c) any integration issues related to use with third party equipment including connection to incompatible equipment, improper, faulty or inadequate installation, operation, maintenance or care;
 - (d) use of the Equipment or Services in combination with equipment or software not provided or specifically authorized by NEVION in writing for use with such Equipment;
 - (e) damage to or deterioration of any Equipment during shipping or storage, or while in the possession or custody of any party other than NEVION;
 - (f) use or operation of any Equipment that is inconsistent with or outside of its usual use or service or NEVION's published specifications, or in a "hostile" (caustic or abrasive) environment;
 - (g) power surges or improper line voltage or software viruses;
 - (h) actual or attempted correction, repair, service, modification or alteration of or to any Equipment or Services by personnel other than NEVION representatives.
- 11.2. The NEVION warranty and the terms of this condition 11 set out the entire liability of NEVION (including any liability for the acts or omissions of its employees, agents and sub-contractors) in respect of any breach of a Contract and any representation, statement or tortious act or omission (including negligence) arising out of or in connection with a Contract or any indemnity (express or implied).
- 11.3. All warranties, conditions and other terms implied by statute or common law are excluded from the Contract to the fullest extent permitted by law.
- 11.4. Nothing in the Contract excludes or limits the liability of NEVION for (i) death or personal injury caused by NEVION's negligence or (ii) fraud or fraudulent misrepresentation.
- 11.5. Subject to conditions 11.3 and 11.4, NEVION shall not be liable whether in tort (including for negligence or breach of statutory duty), contract, under an indemnity, misrepresentation, restitution or otherwise for any (i) actual or anticipated loss of profits; (ii) actual or anticipated loss of compensation; (iii) actual or anticipated loss of business; (iv) actual or anticipated loss of contract; (v) loss of use (vi) depletion of goodwill or similar; (vii) loss of, or loss of the use of or corruption of, any software or data; (viii) loss due to disruption of service or other disruption; (ix) indirect, special, punitive or consequential or pure economic loss, costs, damages, charges or expenses.
- 11.6. Subject to conditions 11.4 and 11.5, NEVION's total liability in tort (including negligence or breach of statutory duty), contract, under an indemnity, misrepresentation, restitution or otherwise shall be limited to general money damages in an amount not to exceed the amount of money paid by the Customer to NEVION under the Contract in respect of which the liability arises.
12. **TERMINATION**
- 12.1. Without prejudice to any other right or remedy available at law, either party may terminate a Contract and NEVION may suspend any further deliveries to the Customer without liability (and, if Equipment has been delivered but not paid for, the price shall become immediately due and payable) if:
- (a) an order is made/a resolution is passed to make/ circumstances arise which entitle a court of competent jurisdiction to make, a winding-up order in relation to the other party; or
 - (b) a notice of intention is given/ documents are filed for/ an order is made, for the appointment of, an administrator, receiver, manager or any other person to manage the affairs, business and property of the other party; or
 - (c) the other party makes any arrangement or composition with its creditors, or makes an application for the protection of its creditors, or becomes bankrupt;
 - (d) the other party ceases, or threatens to cease, to trade; or
 - (e) the other party takes or suffers any action similar or analogous to those listed above in any jurisdiction in consequence of debt; or
 - (f) the other party commits a material breach of a Contract which it fails to remedy within 7 days in the case of payment breaches, and otherwise, 30 days, of the date of notice requiring remedy
- 12.2. Termination of a Contract, however arising, shall not affect or prejudice the accrued rights of the parties as at termination or the continuation of any of conditions 4, 5, 6 or 8-17 inclusive or any provision implicitly surviving termination.
13. **FORCE MAJEURE**
- Neither party shall be liable for any loss or damage suffered or incurred by the other as a result of acts, events, omissions or accidents beyond its reasonable control, including without limitation strikes, lock-outs or other industrial disputes (other than disputes involving the workforce of the party relying on this condition), failure of a utility service or transport network, act of God, war, riot, civil commotion, malicious damage, compliance with any law or governmental order, rule, regulation or direction, accident, breakdown of plant or machinery, fire, flood, storm or default of suppliers or sub-contractors. Each party undertakes to notify the other party immediately it becomes aware of any such event on which it intends to rely and to use commercially reasonable efforts to avoid any breach of a Contract as a result of such event. NEVION may defer the date of delivery or reduce the amount of Equipment ordered if it is prevented from or delayed in carrying on its business by such an event and if an event continues to prevent performance by either party for a continuous period of 30 days, either party may terminate all or part of the affected Contract.
14. **SEVERANCE**
- If any provision or part of a Contract is found to be invalid, unenforceable or illegal, the other provisions shall remain in force.
15. **NO RELIANCE**
- The Customer agrees that it does not rely on any undertaking, promise, assurance, statement, representation, warranty or understanding (in writing or not) whatsoever relating to the subject matter of a Contract other than as expressly stated in a Contract.
16. **ASSIGNMENT**
- The Customer shall not, without the prior written consent of NEVION, assign, transfer, charge, sub-contract or deal in any other manner with all or any of its rights or obligations under a Contract. NEVION may at any time assign or transfer a Contract or any of its rights or obligations under a Contract to any other company which, at the time of such assignment or transfer, is an associated company and/or on any transfer of its business or undertaking and/or, in the case of a transfer or assignment of NEVION's rights to accounts receivables for financing purposes, to any reputable bank or other financial institution, subject only to giving notice to the Customer.
17. **GOVERNING LAW AND JURISDICTION**
- 17.1. Each Contract arising out of or in connection with it or its subject matter or formation (including non-contractual disputes or claims) shall be governed by and construed in accordance with the law of Norway.
- 17.2. The United Nations Convention on Contracts for the International Sale of Goods does not apply to any Contract.
- 17.3. The parties irrevocably agree, for the sole benefit of NEVION, that the courts of Norway shall have exclusive jurisdiction over any dispute or claim arising out of or in connection with any and all Contracts or its subject matter or formation (including non-contractual claims). Nothing in this condition shall limit the right of NEVION to take proceedings against the Customer in any other court of competent jurisdiction, nor shall the taking of proceedings in any one or more jurisdictions preclude the taking of proceedings in any other jurisdictions, whether concurrently or not, to the extent permitted by the law of such other jurisdiction.