



General Terms of Sale & Delivery of NTT Germany AG & Co. KG, Horexstraße 7, 61352 Bad Homburg v. d. Höhe, Germany (“NTT”)

1 Scope of applicability

Unless expressly agreed otherwise in writing, the present General Terms of Sale & Delivery shall apply to all deliveries and services provided by NTT in the context of its business dealings with entrepreneurs, legal entities under public law, and special assets (Sondervermögen) under public law, terms and conditions that deviate from the present General Terms of Sale & Delivery shall have no applicability, even if NTT has not expressly rejected them and even if it elects to perform in the knowledge that deviating general business terms, respectively contractual terms, exist. The present General Terms of Sale & Delivery shall apply to sale transactions including any corresponding delivery, installation and placement into service that has been contractually provided for.

2 Offers and conclusion of contract

2.1 NTT retains sole ownership rights and copyrights to any and all documentation appurtenant to a given offer or order confirmation, such as illustrations, drawings, specifications, etc.; such items may not be made accessible to third parties or otherwise utilised without the consent of NTT; they are to be returned upon request in the event the parties ultimately fail to enter into a contractual relationship.

2.2 If the contractually agreed performance has been defined only in terms of its general category and NTT is not properly or timely supplied by its own vendors through no fault of its own, then NTT reserves the right to rescind the agreement (proviso of proper upstream supply). However, NTT is under obligation to promptly notify the customer about the non-availability of the deliverable concerned and to immediately refund any remuneration it may have received in this context.

3 Customer's obligations to assist

3.1 The customer hereby acknowledges that NTT's contractually compliant performance will depend on the customer's timely and proper compliance with its obligations to assist. NTT shall not assume responsibility for any delays caused by the untimely provision, non-provision or deficient provision of the assistance that is incumbent upon the customer. Any resulting additional costs or expenditures shall be borne by the customer.

3.2 The customer is to periodically perform a backup of its data in accordance with the generally recognised codes of practice and the principles of proper data backup, and shall check such data after any total breakdown of the System. This shall not apply if and insofar as the Parties have demonstrably agreed to make NTT responsible for such data backup.

3.3 The customer is to ensure that the System enjoys proper and up-to-date protection against physical or virtual tampering by third parties. This also means that the customer must promptly change the factory-set default passwords. The foregoing shall not apply if and insofar as the parties have demonstrably agreed that the corresponding measures are to be taken by NTT.

4 Delivery and performance deadlines

The dates scheduled for deliveries and the performance of services shall be binding insofar as they have been agreed or confirmed in writing. NTT shall not become bound to adhere to the delivery schedule until all the relevant commercial and technical aspects have been clarified between the Parties.

5 Partial deliveries

Partial deliveries shall be permitted insofar as they are reasonable for the customer. When making such reasonable, partial deliveries, NTT shall be entitled to issue corresponding partial invoices.

6 Deployment of subcontractors

NTT reserves the right to also have the agreed services performed by suitable contractors. Also, in the event of subcontractors being deployed, NTT shall remain liable for the proper performance of the contractual services. The customer may refuse to allow deployment of specific subcontractors if it has serious cause for doing so.

7 No hiring out of employees as temporary staff

NTT will have suitable personnel perform its services. However, this shall in no way entitle the customer to demand the deployment of (a) specific employee(s), even if specific employees of NTT have already been deployed on site with the customer for purposes of performing the above-defined services. The customer shall not be entitled to direct or instruct the employees of NTT. Furthermore, the employees deployed by NTT shall not be integrated into the operational structure of the customer. Any deviations from the foregoing must be expressly agreed between the parties on a case-by-case basis.

8 Acceptance

To the extent that NTT is delivering work results requiring formal acceptance under a contract as to work and services, NTT shall notify the customer once these results are ready for placement into service and shall request the customer to perform acceptance. The customer shall then inspect the deliverable without undue delay, in any case by no later than five normal working days (Monday to Friday) after having received the aforementioned notification of operational readiness. NTT shall be entitled to take part in the inspection. Negligible deficiencies shall not entitle the customer to refuse acceptance. Declarations of acceptance must be issued in writing (record

of acceptance). If the customer does not object to any acceptance-impeding deviations, yet still fails to perform acceptance within the above deadline, then the deliverable in question shall be deemed accepted.

9 Usage rights

- 9.1 To the extent that NTT makes available to the customer, for its use, software or other copyrightable work results, the customer shall be granted a simple, non-exclusive, non-transferrable right of unlimited term to use such software for its own internal purposes at the agreed place of performance.
- 9.2 The software may not be reproduced, modified or decompiled except to the extent permitted by virtue of inalienable, statutory rights.
- 9.3 Any usage terms or licensing terms pre-defined by the manufacturer shall take precedence.
- 9.4 The customer pledges to at all times respect the industrial property rights and copyright-related usage rights of NTT and of the manufacturer with respect to the relevant goods. Particularly in the event of software having been made available to it for its use, the customer shall use said software only to the extent permitted under the software's licensing terms and subject to the applicable statutory provisions.
- 9.5 Any manufacturer-stipulated registrations, activations etc. that may be required for the contractually compliant use of the software so made available are to be carried out by the customer, unless the parties have expressly agreed in writing that this is to be the responsibility of NTT.

10 Reservation of title

- 10.1 NTT shall retain sole ownership of all deliveries ("goods subject to reservation of title") until fulfilment of all of its claims against the customer, insofar as these arise in connection with the same business relationship.
- 10.2 For as long as the reservation of title is in effect, the customer shall be prohibited from pledging the goods subject to said reservation of title and from transferring them by way of providing security. The customer shall promptly notify NTT in writing if and insofar as the goods subject to reservation of title have become subject to seizure by a third party or have been damaged or lost. The customer shall handle and maintain the goods subject to reservation of title with the proper degree of care.
- 10.3 Insofar as the value of the surety interests it holds exceeds the value of its secured claims by more than 10%, NTT shall release surety interests of equivalent value, to be selected at its discretion, upon the customer's request.
- 10.4 Said reservation of title shall include any and all work results, valued at their full value, insofar as they arise from processing the goods subject to reservation of title or from commingling or combining such goods with other goods, whereby NTT shall be treated as the manufacturer of these work results. If third parties retain title to their goods that have been so processed, commingled, or combined, then NTT shall obtain pro-rata co-ownership rights therein in proportion to the respective, calculated values of the goods subject to reservation of title that were so processed, commingled or combined. In all other respects, the provisions applicable to the goods subject to reservation of title shall also apply by analogy to the work results obtained by processing, commingling or combining.
- 10.5 NTT need not revoke the agreement in order to assert its reservation of title and the associated right to demand return of the goods subject to reservation of title; neither of these actions nor a pledging of the goods subject to reservation of title shall constitute a revocation of the agreement, unless NTT has expressly declared that they are intended to do so.

11 Payment terms

- 11.1 Unless otherwise stated, all quoted prices shall be deemed net prices (excluding VAT) and shall be payable in euros without deduction. Any supplemental services (e.g. travel costs) shall be charged separately.
- 11.2 Unless otherwise agreed, the prices quoted for services shall be deemed to be prices for pickup "ex works" (excluding transport insurance, packaging, installation, etc.).
- 11.3 Unless deviating payment terms have been agreed, NTT shall be entitled to bill the contract price as follows: 1/3 following order confirmation; 1/3 after commencement of the installation work, respectively after notice has been given that the goods are ready for dispatch. The balance is to be paid once the delivery and corresponding invoice have been received.
- 11.4 Insofar as services are to be performed on a time & materials basis, a "workday" shall be deemed to consist of eight (8) working hours.
- 11.5 Aside from situations involving a contract for the performance of continuing obligations (Dauerschuldverhältnis), NTT shall be entitled to make appropriate price adjustments to the prices quoted in the order confirmation if the agreed delivery or service date falls more than three months after the date of conclusion of contract and the price adjustment becomes necessary for reasons beyond NTT's control. These circumstances would include, for example, a significant increase in the cost of materials, in manufacturing costs or in the costs charged by vendors, as well as changes in customs duties.
- 11.6 In the event that the object of an agreement comprises the delivery of components made by a manufacturer whose price list is denominated in foreign currency, the final remuneration amount to be paid by the customer

shall be determined on the basis of the reference exchange rate published by the European Central Bank at the time of delivery – whereby any discounts quoted in the offer with respect to the manufacturer's prices are to be applied.

- 11.7 All invoice amounts shall be payable without deduction within 30 days of the corresponding invoice date.
- 11.8 If the customer defaults on payment, or if circumstances become known that would normally cause a prudent merchant to harbour legitimate doubts about the creditworthiness of the customer, then NTT shall be entitled to demand advance payment or the lodgement of a surety for any deliverables still pending and – once a reasonable period of grace for lodgement of the surety has expired without result – to rescind the agreement and to claim compensation of its damages, whereby none of the foregoing actions shall prejudice any furthergoing legal rights that NTT may enjoy.

12 Right of offset

The customer shall be entitled to offset the claims receivable of NTT with the customer's own claims only on the basis of counterclaims that have been recognised in writing or that have been finally and conclusively determined by a court's declaratory judgment. Except for the claims defined in Sentence 1 hereof, the customer may assert the right of retention only insofar as its own claim arises from the same contractual relationship. The customer may not assign to third parties any of its claims against NTT. Section 354a German Commercial Code (HGB - Handelsgesetzbuch) shall remain unaffected.

13 Export controls

Goods or services may contain technology or software that is subject to the export regulations of the country to which it is to be delivered or in which it is produced or performed. The customer pledges to obtain information about any applicable regulations that may exist and to comply with same. In cases of doubt, the customer shall consult NTT to confirm whether or not the affected technology or software is subject to any export controls.

14 Claims for defects

- 14.1 The right to assert claims for defects shall presuppose that the customer has properly complied with its obligations to perform inspection and to lodge complaint for defects, e.g. pursuant to Section 377 German Commercial Code (HGB - Handelsgesetzbuch), and that the customer has promptly submitted a written notice of defects. In the course of reporting defects, the customer must promptly provide NTT with the relevant ordering data, invoice numbers and delivery numbers, as well as with the serial number(s) of the affected hardware components.
- 14.2 NTT shall remedy any defects for which the cause was given before the devolution of risk by way of subsequent contractual performance, whereby NTT may elect, at its free discretion, to either deliver defect-free goods or to take corrective action.
- 14.3 If NTT is not obligated under the contract to install the relevant goods, it shall also have no obligation to de-install defective goods or to install defect-free goods in this connection, respectively to assume the corresponding costs.
- 14.4 The customer shall bear any expenditures arising because subsequent contractual performance is to be delivered at a location other than the agreed place of performance.
- 14.5 Claims for defects shall become time-barred 12 months after the devolution of the risk as far as new equipment is concerned and six months after said date as far as deliveries of spare parts and replacement parts are concerned; whereby the following shall be excepted: claims pursuant to Section 438 (1) no. 2 and Section 634a (1) no. 2 German Civil Code (BGB - Bürgerliches Gesetzbuch); claims due to injury to life, limb or health; claims due to a grossly negligent or wilful breach of obligations, fraudulent misrepresentation, or the non-fulfilment of a contractually guaranteed characteristic. The applicable statutory provisions regarding the suspension and resumption of periods shall remain unaffected hereby.
- 14.6 Liability for material defects shall be precluded in cases of damage caused by any of the following: normal wear & tear; improper or negligent handling; non-adherence to the documentation; modification by the customer or third parties of the programs delivered along with the systems; use of unsuitable operating equipment or premises; any other circumstances that are not the fault of NTT; a deviation from the agreed characteristics that is merely negligible in scope and non-detrimental; or a merely negligible restriction of serviceability.
- 14.7 Once the third attempt at remediation has failed, the customer may revoke the agreement or reduce the price.
- 14.8 The customer shall have no claim for compensation of damages, for compensation in lieu of performance, or for reimbursement of expenses unless the preconditions set forth in Clause 15 have been met.
- 14.9 The customer is to grant NTT the time and opportunity to perform that the latter may deem necessary, at its free discretion, for purposes of such subsequent contractual performance. Any parts replaced shall become the property of NTT.
- 14.10 NTT may also meet its obligation to satisfy claims for defects by means of remote access, provided it notifies the customer in advance and the required technical preconditions are given.

15 Liability

NTT's liability shall be strictly limited as follows:

- 15.1 NTT shall be fully liable for cases involving wilful conduct, gross negligence or injury to life, limb or health, as well as for a failure to provide a characteristic for which NTT has assumed a guarantee, and for fraudulent misrepresentation.
- 15.2 NTT's liability for a slight negligent breach of a duty, the fulfilment of which is indispensable to the proper performance of the agreement and something upon which the customer should normally be able to rely, shall be limited to the damage that was foreseeable and customary upon conclusion of the agreement.
- 15.3 The damage that is "foreseeable and customary" for the type of contract concerned within the meaning of Clause 15.2 shall be capped at the contract price. If several damage events occur, the foreseeable and customary damage for the contractual agreement involved shall be limited to double the contract price. A corresponding insurance policy is to be taken out whenever the level of potential damage is atypically high.
- 15.4 Unless the parties have agreed in writing that NTT is to be responsible for performing data backups, NTT shall assume no liability for any loss of data by the customer, except in those cases where NTT has wilfully or grossly negligently caused the data loss and the customer has ensured that the data files can be reconstructed at reasonable effort and expense using machine-readable data material kept available on a standby basis.
- 15.5 No liability shall be assumed for indirect damages, particularly for lost profits, production disruptions, investment-related interest costs, or financing costs.
- 15.6 Unless otherwise provided for in Clauses 15.1 to 15.4 hereof, the customer shall not enjoy any right to claim compensation of damages or reimbursement of costs, for whatever cause in law, in particular for a breach of obligations under the relationship entailing the performance of obligations or for tort. The above limitation of liability shall include claims against employees and vicarious agents of NTT.
- 15.7 Liability under the German Product Liability Act (*ProdHaftG - Produkthaftungsgesetz*) and the General Data Protection Regulation (*DS-GVO - Datenschutz-Grundverordnung*) shall remain unaffected.

16 Miscellaneous provisions

- 16.1 If any provision of the present General Terms of Sale & Delivery should be or become invalid, this shall not affect the remaining provisions.
- 16.2 Any collateral agreements, undertakings, contractual amendments, or other deviating provisions must be agreed in writing in order to be valid. This shall also apply to any deviations from this requirement.
- 16.3 The laws of the Federal Republic of Germany shall apply, whereby the UN Convention on Contracts for the International Sale of Goods (CISG) as well as international private law shall be precluded.
- 16.4 The place of jurisdiction shall be Bad Homburg v. d. Höhe, Germany. NTT is entitled to bring suit at the customer's general place of jurisdiction.