

General Terms and Conditions of Purchase of next system Vertriebsges.m.b.H.

As of: July 2006

The below-stated General Terms and Conditions (AGB) shall be applicable as part of the contract agreed upon to any and all contracts entered into between next system Vertriebsges.m.b.H (hereinafter referred to as next) and its suppliers and service providers (hereinafter referred to as Seller), unless specified differently by separate agreement executed in writing. Terms and conditions of parties to a contract which contradict the following AGB, also if only in part, shall not constitute integrating part of the contract, unless this has been explicitly agreed upon in writing. Unless any separate agreement or the following AGB state otherwise, only dispositive law shall apply. Discrepancies from dispositive law in the General Terms and Conditions of parties to a contract shall not be acceptable unless explicitly agreed in writing.

1. Offers and contract entered into

1.1 Enquiries and offers

Any and all enquiries and offers on the part of next are never binding. Any cost estimates prepared by Seller are free of charge and shall not oblige next to pay any remuneration or compensation of any of Seller's expenses. Any enquiries issued by next to possible Sellers are – in case of doubt – only invitations to Seller to submit an offer, unless next explicitly designated such enquiry to be an offer and at the same time specified to any possible Seller specific modalities regarding its acceptance. Offers quoting Seller's Terms and Conditions will be accepted by next as a matter of principle without such terms being accepted.

1.2 Acceptance/declarations

Acceptance and submission of offers on the part of next shall be exclusively effected in writing (e-mail or fax are acceptable). Declarations on the part of next – not issued by the Management Board – shall never be binding if the commitment would exceed an amount of € 100,000.--.

1.3 Prices

In case of doubt, the prices agreed upon shall be deemed not to include any sales tax at the rate prescribed by the law. Unless explicitly agreed upon otherwise, the prices offered by Seller shall be firm prices „DDP“ (Incoterms 2000) for delivery at the point of destination as specified by next. The prices are deemed to include overtime charges, if applicable, on the part of Seller, as well as packing to commercial standards. In case Seller reduces prices, such reduced prices shall replace the price agreed originally with effect as of the date such price reduction becomes effective.

2. Challenge of the contract

Both challenge and adjustment of the contract because of error on the part of Seller is not admissible. Challenge or adjustment of the agreement on the part of Seller because of consideration given in exchange being more than twice the fair market price is not admissible.

3. Modifications of the contract

Any modification of agreements entered into between next and a Seller, including the subject reservation of the written form, need to be executed in writing in order to be legally effective (e-mail or fax are admissible) and they need to be signed by the Management Board in case they would result in an additional commitment of € 50,000.—for next. Oral side agreements shall not be legally effective.

4. Performance and default

Unless explicitly agreed upon otherwise, Seller shall perform delivery “DDP” (Incoterms 2000) at the registered office of next or at any other address as specified by next.

4.1 Terms and conditions

Unless any other time of performance or a certain deadline has been stipulated, Seller shall perform all contracts upon call on the part of next. Terms of performance of delivery or service therefore are firm and binding for Seller. In cases of doubt, performance of delivery and/or service shall be effected only within business hours as specified by next, otherwise it shall not be deemed performance and Seller will be deemed to be in default. Except if agreed upon otherwise, Seller's amounts payable shall be due for payment within 60 days from performance. next shall be entitled to a 3 % cash discount in case of payment within 14 calendar days from the due date.

4.2 Consequences of default

As soon as Seller realizes that he is likely to be in default in performing any delivery or service, he shall without delay inform next accordingly. Notwithstanding Seller's obligation to inform of any foreseeable default, next is in case of default, regardless if foreseeable or accomplished, entitled to withdraw from the agreement pursuant to item 6. Default occurs as soon as the date of delivery agreed upon is exceeded. If next does not withdraw from the agreement, Seller shall pay to next a penalty amounting to 1 % of the contract value for each calendar day. The judicial right of mitigation is not admissible. The right on the part of next to claim further damages, to withdraw from the contract as well as the right to execution by substitution, shall remain unaffected.

4.3 Interest on overdue amounts

In case next does not comply with its obligation to pay, interest on overdue amounts is deemed agreed upon at the rate of 4 % p.a. To the extent any amount receivable from Seller, for any reason whatsoever, is due to next, next is entitled to charge interest for overdue payment as of the first day of delay at a rate of 0.05 % per calendar day. The right on the part of next to further claims, in particular for damages, remains unaffected.

4.4 Retention of title

Seller acknowledges that next generally acquires goods for resale. next therefore explicitly does not agree to a retention of title in favour of Seller. Obtaining deliveries and services of Seller on the part of next has no declaratory effect with regard to the retention of title.

4.5 Default of acceptance

In case next does not take delivery of goods supplied or services performed by Seller in accordance with the stipulations of the subject AGB at the date agreed upon, Seller notwithstanding is obligated to stay ready for performance at any time and to carefully store any merchandise to be delivered for next. Any delivery or service not accepted by next on the contractual date however does not result in the risk passing to next. Seller however has the right to notify next in writing of an adequate extension for acceptance and to withdraw from the contract upon expiry of such extension. In case next does not take delivery of the goods after expiry of this extension, although the condition of such goods is fully in compliance with the contract, Seller may, in case of gross negligence, claim compensation from next for damage suffered directly by him. next however is not liable for any lost profit or consequential damage.

4.6 Possessory lien

Any possessory lien in favour of Seller in any form whatsoever is not admissible.

4.7 No transfer of performance

Without next's explicit consent in writing Seller does not have the right to transfer its contractual obligations, as entered into with next, to any third party, neither in full nor in part.

5. Warranty and damages

5.1 Warranty

Within the scope of the warranty obligation, Seller is obligated, notwithstanding any further rights on the part of next, to remedy any defects without delay. Seller shall remedy any defects fully at its own cost, including also any cost for necessary freight and transportation, working time and identification of defects, all of which to be assumed by Seller. The general term as stipulated by the law in § 933 ABGB (Austrian General Civil Code) shall apply to warranty claims on the part of next. In case next claims any defects within the warranty period as provided by the law, the assumption is that they were already in existence at the date of performance of delivery or service as long as there is no evidence to the contrary. The assumption of existence of defects is therefore not restricted to the first six months after delivery.

5.2 No restriction of liability.

No restrictions or exclusions of Seller's liability have been agreed upon. Seller is liable for any and all indirect and direct damage he inflicted upon next or any third parties, either deliberately or by negligence. Even In case of slight negligence, Seller itself is liable also for lost profit, consequential damages resulting from defects and default as well as damages next suffers from not being able to comply its obligations to perform vis a vis third parties. The same applies to damages next suffers from third parties claiming warranty or damages resulting from defects, damage or loss or

consequences of damage or loss regarding the or resulting from Seller's goods supplied to and resold by next.

5.3 Execution by substitution

In case Seller does not comply without delay with its obligations pursuant to warranty or to claims of damages, next has the right to remedy or have remedied by third parties any defects or damage at Seller's cost, without having to grant Seller an extension.

5.4 Order of sequence of remedies

Within the scope of its rights pursuant to warranty, next is free, without having to follow any order of sequence, to claim improvement, replacement, rescission or reduction of price. Within the scope of its rights to claim damages, next is free, without having to follow any order of sequence, to claim financial compensation, improvement or replacement. There is thus also no priority in favour of restitution in kind.

5.5 Obligation to claim defects

The obligation to inspect and to claim defects pursuant to §§ 377 f HGB/UGB (Austrian Commercial Code / Companies Act) is excluded

5.6 Commencement of the warranty period

The period of limitation of actions regarding warranty claims in favour of next only commences as soon as full performance under the contract has taken place. In case of partial performance of deliveries or services, and also if they have been agreed upon, the limitation of actions period commences only upon completion of deliveries or services, even if next has already started using partial deliveries or services.

5.7 Properties

Unless otherwise agreed upon in writing, any and all goods delivered to and services performed for next must comply with EU standards applicable on the date of delivery (e.g. CE conformity, RoHS conformity).

5.8 Product liability

Notwithstanding any other obligations of Seller resulting from provisions of the law regarding product liability, Seller is obligated, with regard to all products he supplied to next, to hold next free of harm and claim with regard to any product liability claims of third parties and to reimburse to next any and all cost accruing to next from having to defend against a claim or to replace a delivery or service. Upon request Seller is obligated to name without delay the supplier, importer and manufacturer of any products delivered by it and make available for next, if applicable, suitable evidence required for defending against any claims.

6. Withdrawal from the contract

To the extent Seller does not perform in accordance with the contract, next has the right to withdraw from the contract without having to grant an extension. Replacement of further loss or damage however shall not be affected in any manner by such right of withdrawal. next has the right to declare withdrawal also only with regard to a part of the contractual performance. next also has the right to withdraw from the contract without granting an extension if an insolvency proceeding is instituted against the other party to the contract or such proceeding is dismissed because of lack of funds.

7. Waste disposal

Whenever dangerous waste and waste oil may result from goods supplied by Seller, Seller undertakes to draw next's attention to such fact and at the same time to inform of possibilities of disposal of such waste.

Seller undertakes upon request to accept back any waste left behind after next's proper use of goods supplied by Seller. If Seller does not comply with such request within an adequate period of time, next has the right to dispose of such waste at Seller's cost. Seller also undertakes to discharge through its ARA service agreement all packing materials delivered to next and to evidence such fact on invoices and delivery notes. Any and all cost in connection with the above are already paid with the contractual price. In case Seller does not comply with its obligations under this item, Seller undertakes to fully keep next safe of harm and claim for any damage, loss or inconvenience of any kind whatsoever resulting from such omission.

8. Duty to observe secrecy

8.1 Confidentiality

Seller is obligated to keep any and all information, documents or data received by next and such information, documents and data having come to its knowledge within the scope of the mutual business relationship strictly confidential and to ensure in an

adequate manner that such data will be neither communicated or otherwise become accessible to third parties. Seller in particular shall ensure that its computer systems are safe in accordance with the state of the art in order to prevent access of third parties to any data regarding next and saved on Seller's hard- and software. The same applies to any and all electronic and other means of communication as used by Seller. Seller is only authorized to use all information, documents and data having come to its knowledge to the extent indispensable for compliance with its contractual obligations. In case Seller violates any of the aforementioned obligations he shall keep next free of any harm and claim for any and all damage, loss or inconvenience, whatsoever, resulting therefrom.

8.2 Extent of the obligation of secrecy

Seller is obligated to bind by the subject obligation of secrecy also its staff and third companies involved in performing delivery or service.

8.3 Disclosure of identity of party to the contract

Without written consent on the part of next, Seller does not have the right to disclose the business relationship existing between Seller and next vis a vis third parties, in any way whatsoever, next however has the right to disclose at any time the business relationship with Seller vis a vis third parties, also in public, and in any way whatsoever and to use for this purpose also Seller's company name and logo.

8.4 Secrecy to continue in force

The subject obligation to maintain secrecy does not terminate upon termination of the transaction but continues in force thereafter for an indefinite period of time.

9. Intellectual property rights

9.1 Recompensation for all intellectual property rights

With the purchase price agreed upon, any and all rights of use and property rights are deemed to be compensated. next has the right to unrestricted use, publication or resale of the object of delivery or service. Inventions made within the scope of the business relationship shall pass to next without any further compensation.

9.2 Interference with rights of others

Seller shall ensure that by free use of the object of delivery or service next does not interfere with rights of others. In case of any violation of industrial property rights of third parties in connection with the object of delivery or performance, Seller will hold next fully free of harm or claim.

10. Use of Incoterms

Whenever Incoterms are used in the subject AGB for more detailed specification of the way the transaction is handled, they only apply to the extent as not provided for different in the subject AGB. In case in any additional agreement between next and Seller admissible pursuant to the subject AGB the application of Incoterms is agreed upon, they shall be deemed to be the Incoterms 2000. Even so, unless not explicitly agreed upon to the contrary, these shall apply only to the extent as they are not in contradiction with stipulations of the subject AGB and any other agreements entered into.

11. Electronic communication

Seller explicitly agrees that next communicates by means of electronic communication in terms of § 107 TKG (Telecommunications Act) for any purpose whatsoever.

12. Partial ineffectiveness

In case individual stipulations of the subject AGB are not legally effective, the remaining stipulations shall remain effective. Seller agrees that in such case next may specify a legally effective stipulation with the same financial and legal scope.

13. Applicable law and venue

Austrian substantive law shall exclusively apply under express exclusion of the provisions of international private law and the UN Sales Convention. For any dispute arising under the subject contract or any dispute connected with it, the court of Vienna competent in the matter shall be deemed agreed upon to be the venue.