

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

As of: December 2015

The below-stated General Terms and Conditions of Purchase (GTC\_P) shall be applicable as part of the contract agreed upon to any and all contracts entered into between next system Vertriebsges.m.b.H, Strohbogasse 4, 1210 Vienna, Austria, commercial register no.: 209521w, commercial court of Vienna, VATIN: ATU51685804 (hereinafter referred to as next) and its suppliers and service providers (hereinafter referred to as Seller), unless specified differently by regulations in the order or by separate agreement executed in writing. Terms and conditions of parties to a contract which contradict the following GTC\_P, also if only in part, shall not constitute an integral part of the contract, unless negotiated in detail and explicitly agreed upon in writing otherwise. If a delivery or performance is accepted and/or paid without explicitly contradicting to Terms and Conditions by a contractual partner, it cannot be deduced in any case that next has accepted such Terms and Conditions. Should it be the case that as regards a certain matter, there is no regulation to be found in either a separate agreement or the following GTC\_P, the provisions of non-mandatory law (ius dispositivum) shall be solely applicable. Discrepancies from non-mandatory law in the General Terms and Conditions of parties to a contract shall not be acceptable, unless these have been negotiated in detail and 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 for 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 or by a person vested with general commercial power of representation ("Prokurist" pursuant to secs. 48 et seq. Austrian Business Code ["Unternehmensgesetzbuch"]; hereinafter referred to as Prokurist) – 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 value-added tax (hereinafter referred to as VAT) at the rate prescribed by the law. Unless negotiated in detail and explicitly agreed in writing otherwise, the prices offered by Seller shall be firm prices „DDP“ (Incoterms 2010) for delivery at the point of destination as specified by next, which in case of doubt is next's registered seat. The prices are deemed to include overtime charges, if applicable, on the part of Seller, as well as packing to commercial standards. Unless negotiated in detail and explicitly agreed in writing otherwise, the price also includes necessary and appropriate documentation as regards the use of delivered goods or services (see section 5.8) and, in particular, also the usage and property rights to this documentation (for the use in accordance with the contract and for training purposes).

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. next reserves the right to adjust and reduce the price according to the changes in value of the price effectuated by fluctuations in exchange rates, in case exchange rate fluctuations of more than 5% occur at any point in time from the moment when the order is placed with next to the fulfillment of the contract.

## 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 Seller, including the present 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 or by a Prokurist (see section 1.2), 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 in writing otherwise, Seller shall perform delivery "DDP" (Incoterms 2010) at the registered seat 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 section 6. Default occurs without reminder, 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 maximum contractual penalty is limited to 40% of the total order amount. 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 present GTC\_P 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.

### 4.8 Standard of care of Seller

Seller's Deliveries and services can become a part of a complex overall system in areas of application, in which such systems (i.) can affect the physical or mental integrity of human beings (e.g. hospitals) or (ii.) the security of private or public infrastructure (e.g. transport- and energy networks). In such cases, default as regards single services or deliveries, will regularly result in problems in the overall project organisation (in particular postponement of dates, third party claims, logistics disorders, delay in acceptance by next's clients, downtimes), which will in turn result in extra costs. Seller is therefore bound to a particular standard of due care in the course of fulfilling the contract, which meets the above-mentioned particular

circumstances. In particular, Seller is obliged to get all the information necessary for fulfilling the contract under the concrete conditions, i.e. route of transport, site of use of the deliveries and services and integration of the latter deliveries and services into a complex system.

## **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 law in sec. 933 Austrian General Civil Code ("*Allgemeines Bürgerliches Gesetzbuch*") shall apply to warranty claims on 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. Signatures or other signs on delivery notes or similar documents are in no case to be interpreted in a way suggesting next has recognized the delivery to be complete, accurate or free of defects.

### **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 or a person employed in performing an obligation, for whom the principal is vicariously liable ("*Erfüllungsgehilfe*" pursuant to sec. 1313a Austrian General Civil Code), 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 secs. 377 et seq. Austrian Business Code ("*Unternehmensgesetzbuch*") 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 of goods and services / next right of verification / Seller's obligation to cooperate**

Unless otherwise agreed upon in writing, any and all goods delivered to and services performed for next must comply with (i.) all statutory regulations and regulations of public authorities (e.g. CE conformity, RoHS conformity, REACH [EU Reg. no. 1907/2006; hereinafter referred to as REACH]) and (ii.) the state of the art, i.e., in particular, customary technical standards, which especially means ISO, EN, Ö-Norm, DIN, et al. in their latest version, applicable on the date of delivery in the EU and at the goods and/or services place of destination as advised by next.

next, by itself or by a person contracted by next, at any time after reasonable advance notice, is authorized to inspect the Seller's area of production and his commercial facilities as regards the adherence to the above-mentioned regulations and standards. Upon next's request, Sellers provide next – free of charge and in an appropriate form (e.g. machine-readable or duly notarized) – with documents proving conformity with the above-mentioned statutory regulations, regulations of public authorities and international and respective national technical standards, especially test reports performed by accredited offices, whereby it is understood that such

documents have to meet all content requirements foreseen by the latter regulations and technical standards.

Should it be the case that next (according to its respective role in the supply chain of "substances" pursuant to art. 3 no. 1 REACH) pursuant to any provisions foreseen in REACH, in particular in its Titles IV (Information in the supply chain) and/or V (Downstream user), have to fulfil any legal obligations, the Seller is obliged to support next, free of charge and in any way necessary, in particular, via providing information and documents.

### **5.8 Documentation**

All goods and services delivered to next also include the documentation necessary and expedient for the use of these goods and services, i.e., in particular, the technical documentation (e.g. requirements specification, calculation notes, test reports, risk evaluations, technical drawings, manufacturing documents, verification for quality assurance measures, et al.) and the user documentation (e.g. user manual, installation guide, assembly instructions, quick guide, user guide, service manual, et al.). The concrete scope of the documentation to be provided by Seller shall, unless explicitly specified by next, be determined by the respective delivery/business case. The latter documentation has, as a minimum requirement, to comply with the statutory regulations, regulations of public authorities and state of art as described in section 5.7, unless next, in the course of its order, specified additional special requirements for such documentation.

Seller has to provide next with documentation in an appropriate form (e.g. text documents searchable in full text and, respectively, machine-readable) and, in case not otherwise specified by next, in the English or German.

### **5.9 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 bankruptcy proceeding is instituted against the other party to the contract or such proceeding is dismissed because of lack of funds.

## **7. Assignment and set-off of claims / right of retention**

If Seller plans to assign his claims against next to third parties, he is obliged to inform next thereof, in writing, 3 months prior. Unless an explicit consent by next, Seller shall not assign his claims against next to third parties. Seller has no right of retention, insofar as it is based upon counterclaims arising from other legal transactions with next. Seller can only set-off against acknowledged claims or claims whose title has been declared valid and enforceable declare ascertained claims and which have arisen out of the present or another contractual relationship with next.

## **8. 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 the present section, 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.

## **9. Duty to observe secrecy**

### **9.1 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. All rights of a property or copyright and other rights on information, documents or data remain with next. 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.

## **9.2 Extent of the obligation of secrecy**

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

## **9.3 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.

## **9.4 Secrecy to continue in force**

The present obligation to maintain secrecy does not terminate upon termination of the transaction but continues in force thereafter for an period of time of 10 years.

## **10. Intellectual property rights**

### **10.1 Compensation for all intellectual property rights**

With the purchase price agreed upon, any and all rights of use and property rights regarding the free use and resale of delivered goods and services, in particular patent rights, copyright and rights to designs and industrial or utility models, are deemed to be compensated. next has the right to unrestricted free use, in particular publication and resale, of the object of delivery or service. next has the right to unrestricted and free use of delivered objects or services, including publication and resale. Unless more comprehensive rights are granted to next in a specific case, next is entitled to use, in particular, inventions in the course of the contractual relationship and thereby is granted a non-exclusive unlimited license. Seller is obliged to provide the rights of ownership and use necessary for the use of delivered goods and services as described in the present section.

### **10.2 Open source products**

If the seller intends to use open source products for the goods or services provided, he is obliged inform next about this fact at the earliest possible time. Without explicit consent by next, the use of open source products is prohibited.

### **10.3 Interference with rights of others**

Seller guarantees that all deliveries for next are free of proprietary rights of third parties and ensures that next does not infringe upon any external protective rights (in particular, as regards open source products) by freely using the delivered goods or services. In case of any violation of such rights of third parties in connection with the object of delivery or performance, Seller will hold next and its clients fully free of harm or claim. If some party brings forward a claim based upon an infringement of such rights, Seller is obliged (i.) either to obtain for next the right to freely use the delivered goods or services without being held liable for an infringement of the latter rights (ii.) or, in case only a part of the delivered goods or services infringe upon such rights and next has given its express consent, to replace this part with other at least equivalent parts that comply with the contractual requirements.

## **11. Use of Incoterms**

Whenever Incoterms are used in the present GTC\_P for more detailed specification of the way the transaction is handled, they only apply to the extent as not provided for different in the present GTC\_P. In case in any additional agreement between next and Seller admissible pursuant to the present GTC\_P the application of Incoterms is agreed upon, they shall be deemed to be the Incoterms 2010. Even so these shall apply only to the extent as they are not in contradiction with stipulations of the present GTC\_P.

## **12. Data protection / Electronic communication**

Personal data relating to the person that is the Seller, which next is provided with in the course of the performance and fulfilment of the contractual relationship, are used, in particular, processed and stored, by next or a processor contracted by next in accordance with the scope of the law (Austrian Data Protection Act, "Datenschutzgesetz 2000") for the purpose of performing and fulfilling this contractual relationship.

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

## **13. Partial ineffectiveness**

In case individual stipulations of the present GTC\_P are not legally effective, the remaining stipulations shall remain effective. Invalid stipulations are deemed to be replaced by legally effective regulations apt to realise the economic purpose of the regulations, which seized to apply because of their invalidity.

## **14. 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 present contract or any dispute connected with it, the court of Vienna competent in the matter shall be deemed agreed upon to be the venue.