

## Terms of Sale and Delivery NBG Systems GmbH

### 1. Validity of the Terms of Sale and Delivery

- 1.1. The following Terms and Conditions of Sale and Delivery shall apply exclusively to all business transactions of NBG Systems GmbH, Zweiländerstraße 1, A-3950 Gmünd, FN 228005b (hereinafter referred to as "NBG SYSTEMS", "Seller", "we" or "us"). Our contractual partner is hereinafter referred to as "Buyer" or "Contractual Partner". These Terms and Conditions of Sale and Delivery shall be binding for all present and future business transactions with NBG SYSTEMS, even if no express reference is made to them.
- 1.2. Regulations deviating from or supplementing these Terms of Sale and Delivery - in particular general terms and conditions of the Buyer - only become part of the contract if this has been expressly confirmed in writing by NBG SYSTEMS.

### 2. Offer and Conclusion of Contract

- 2.1. Offers from NBG SYSTEMS are non-binding unless they are expressly designated as binding. NBG SYSTEMS offers contain a conclusive list of the contractually owed (service) items. An integral part of offers is a Statement of Work (SOW), from which an exact specification of the service components and details of the contract execution, such as delivery time, acceptance, etc., result. In addition, a Service Level Agreement (SLA) can be an integral part of an offer if services are owed.
- 2.2. The order of the Contractual Partner shall be deemed accepted only upon the NBG SYSTEMS Order Confirmation, whereby a contract shall come into existence.

### 3. Secrecy

- 3.1. Unless a separate Non-Disclosure Agreement is concluded, the Contractual Partner hereby irrevocably undertakes to maintain secrecy with regard to all trade and business secrets made accessible to it by NBG SYSTEMS, provided to it or otherwise becoming known to it in connection with or on the basis of a business relationship or contact with NBG SYSTEMS and not to make these accessible to third parties in any way whatsoever without the consent of NBG SYSTEMS. Furthermore, the Contractual Partner undertakes to use information only on a "need to know" basis and only within the framework of the concluded contract.
- 3.2. The confidentiality obligation shall remain in force for 3 years after termination of the business relationship with NBG SYSTEMS or, irrespective of a business relationship, for 3 years after NBG SYSTEMS has made an offer.

### 4. Prices and Terms of Payment

- 4.1. Our prices are stated in EURO, unless another currency is explicitly stated in the offer of NBG SYSTEMS. The statutory value added tax shall be invoiced additionally at the respective valid rate. Any fees are to be paid by the Contractual Partner.
- 4.2. Unless otherwise agreed, the following payment terms apply: 30 days net cash. In case of default of payment NBG SYSTEMS is entitled to demand default interest in the amount of the statutory interest as well as all reminder charges and all costs of the same associated with the pursuit of the claim.
- 4.3. Unless otherwise agreed, the prices quoted are EXW Incoterms 2020.
- 4.4. In the case of partial deliveries, partial invoices shall always be admissible.
- 4.5. In the event of an agreement on partial payments, a loss of payment date shall occur if even only one partial payment is made unpunctually or not in the full amount. With the occurrence of a missed deadline, the entire outstanding balance shall become due for payment immediately. In the event of loss of payment on time, NBG

SYSTEMS has the right to take custody of the goods delivered under retention of title without withdrawal from the purchase contract until the entire claim is completely covered including incidental costs.

### 5. Place of Performance and Transfer of Risk

- 5.1. Unless otherwise agreed, the delivery of the goods shall be deemed sold EXW according to INCOTERMS 2020 (place of performance NBG SYSTEMS GmbH, Zweiländerstraße 1, A-3950 Gmünd). The price and performance risk shall pass to the Buyer at the time of the agreed handover.
- 5.2. In the case of services, the place of performance shall be the place specified in the written order confirmation, secondarily the place where the service is actually rendered by the Seller. The risk for a service or an agreed partial service shall pass to the Buyer upon its performance.

### 6. Retention of Title, Right of Use

- 6.1. The goods remain our property until full payment. In the event of resale of the goods subject to retention of title, the Buyer shall assign in advance all claims against the secondary buyer to the Seller on account of payment, but the Buyer shall remain directly obligated without restriction.
- 6.2. For supplied standard software, those license terms shall apply which the Buyer concludes directly with the respective software manufacturer, such as Microsoft, SAP or third party providers.

### 7. Delivery, Partial Delivery

- 7.1. If the shipment of goods to the Buyer is ordered separately, the delivery will be made by efficient forwarders of our choice. The Buyer shall be responsible for the proper disposal of sales packaging. Transport damages are to be reported immediately to the forwarder.
- 7.2. NBG SYSTEMS deliveries and services are always divisible. In the case of partial deliveries, partial acceptances are permissible. Partial invoices are admissible and must be settled within our terms of payment.

### 8. Delivery Periods and Dates, Default of Acceptance

- 8.1. Unless expressly agreed in writing as binding, the delivery periods and dates are non-binding and are always understood as the expected time of provision and handover to the Buyer.
- 8.2. If the Buyer does not accept the goods provided on the agreed date, he shall be liable for all consequential damages incurred by the Seller.

### 9. Breach of Contract due to Defective Delivery or Performance

- 9.1. NBG SYSTEMS warrants that the products are free from manufacturing or material defects at the time of delivery and that the services meet the agreed requirements and those usually assumed.
- 9.2. The period for asserting a breach of contract according to this § 9 is, in deviation from Art 39 para. 2 United Nations Convention on Contracts for the International Sale of Goods (CISG), a maximum of 12 months from handover. This shall also apply to defects of title. The limitation period for all claims for breach of contract in accordance with this § 9 shall also commence within this period.
- 9.3. The existence of defects must be proven by the Contractual Partner.
- 9.4. Any defects that occur must be reported by the Contractual Partner immediately (at the latest within one week after receipt of the goods), in detail and in writing.
- 9.5. NBG SYSTEMS is entitled in the event of breach of contract due to defective delivery to determine the method of rectification of defects itself. The legal consequences are limited that we either replace the defective part or - at our discretion - credit the value of the sales price.
- 9.6. If operating or maintenance instructions of the Seller are

not followed, modifications are made to the products or parts are replaced, any liability for breach of contract due to defective delivery shall lapse.

- 9.7. If the Buyer requests that rectification work be carried out at a place determined by him, NBG SYSTEMS may comply with this request, whereby parts to be replaced due to defectiveness will not be charged, while working time and travel expenses shall be paid at the Seller's standard rates.
- 9.8. Liability for normal wear and tear is excluded.
- 9.9. Only the direct purchaser is entitled to claims against NBG SYSTEMS arising from breach of contract due to defective delivery and such claims are not assignable.
- 9.10. Insofar as NBG SYSTEMS remedies defects which are not attributable to breach of contract due to defective delivery, or renders other services or direction services, these will be charged on a time and material basis.
- 9.11. Special recourse to NBG SYSTEMS in the event of a claim against the Contractual Partner by its customers due to breach of contract by defective delivery or performance is excluded.

## 10. Liability

- 10.1. NBG SYSTEMS is liable for damages in all cases under consideration only in the event of foreseeability and additionally in the event of intent or gross negligence. In the event of slight negligence, NBG SYSTEMS is liable exclusively for personal injury. The burden of proof for the existence of gross negligence is borne by the Contractual Partner.
- 10.2. The total liability of NBG SYSTEMS in cases of gross negligence is limited to 20% of the net order value or to EUR 500,000, whichever is lower. Per claim, NBG SYSTEMS' liability is limited to 15 % of the net order value or to EUR 125,000, whichever is lower.
- 10.3. The liability expires in 6 months from the date of knowledge of the damage and the damaging party. The period of Art 39 para. 2 CISG is shortened to 6 months.
- 10.4. NBG SYSTEMS is not liable for indirect damages, loss of profit, loss of interest, loss of savings, consequential damages and financial loss, damages from third party claims as well as for the loss of data and programs and their recovery.
- 10.5. NBG SYSTEMS only offers individual products or individually agreed services and assumes liability only for these. Liability for products or services derived from the contractual products or services by the buyer, such as end products, is excluded.
- 10.6. The liability of NBG SYSTEMS for the delivered parts according to the Austrian Product Liability Act (Produkthaftungsgesetz - PHG) remains unaffected.
- 10.7. If, in any case, a penalty has been agreed, this shall be subject to the judicial right of moderation. The assertion of claims for damages in excess of the penalty shall be excluded.

## 11. Arbitral Tribunal and Choice of Law

- 11.1. All disputes arising out of or in connection with this Contract shall be finally settled under the Rules of Arbitration of the International Chamber of Commerce (ICC) by one or more arbitrators appointed in accordance with such Rules.
- 11.2. The place of arbitration is Vienna, Austria. The language of the proceedings is German, if the contract is drawn up in English, the language of the proceedings is English.
- 11.3. The contract is subject to the United Nations Convention on Contracts for the International Sale of Goods (CISG) and, in addition, exclusively to the law of the Republic of Austria.

## 12. Miscellaneous Clauses

- 12.1. Should any provision of these Terms and Conditions be or become legally invalid or unenforceable in whole or in part, this shall not affect the legal validity of all other provisions. The contracting parties shall replace the legally invalid or unenforceable provision by a valid and

enforceable provision which comes as close as possible to the legally invalid or unenforceable provision in terms of content and purpose.

- 12.2. Amendments or supplements to a contract must be made in writing. This shall also apply to the amendment of the written form requirement.
- 12.3. Any set-off against our claims with counterclaims of any kind whatsoever shall be excluded.
- 12.4. The use of subcontractors is always permitted.

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