

General Terms and Conditions (Terms) of NEXTSENSE GmbH (NXS)

1. Validity

1.1 These General Terms and Conditions (in short "Terms") have been designed for contractual relations between companies. In case they are used as a basis for contractual relations with private consumers, they are valid only insofar as they do not contradict any binding legal provisions.

1.2 These Terms are valid for all business relations and legal transactions between NXS and the Customer, not only in regard to the first legal transaction. These Terms are explicitly valid for all additional and follow-up orders and any other further business transactions.

1.3 Terms of purchase or other general terms and conditions of the Customer shall not be recognised and are explicitly excluded. NXS declares that they want to contract only and solely on the grounds of their own Terms. In case the use of the general terms and conditions of the Customer are agreed upon in writing, these terms and conditions are valid only insofar as they do not collide with the Terms herein. Non-colliding clauses of the terms remain valid.

1.4 The Customer declares that he has read the Terms before signing the contract and that he agrees with the contents thereof.

1.5 Changes or amendments to these Terms are legally binding only if effected in writing. The obligation to make changes only in writing can also only be abandoned in written form.

2. Quotations, award of contract

2.1 Quotations submitted by NXS are not binding and subject to confirmation.

2.2 NXS confirms quotations or orders of the Customer in form of written order confirmations, especially also via e-mail or fax, or by supplying the goods or services in question.

2.3 Any information about the products and services of NXS given in catalogues, price lists, brochures, company profiles, leaflets, advertising at exhibition stands, in circular

notes, promotional postings or other media is not binding if it has not been declared explicitly and in writing to be part of the contract.

2.4 Cost estimates submitted by NXS are subject to correction.

3. Terms of delivery

3.1 Deadlines for the supply of goods and/or services are not binding unless they have been agreed upon explicitly in the order confirmation or in the individual contract.

3.2 If the contract is changed or amended after being signed, whatever the reasons, the period specified for supplying the goods and/or services is prolonged adequately.

3.3 If no other arrangements have been made, the delivery period starts, at the earliest, with the latest of the following:

a) Date of order confirmation;

b) Date when the Customer has fulfilled all necessary technical, commercial or other requirements;

c) Date when NXS receives the agreed down payment or any other security.

3.4 If NXS cannot fulfil their obligations on grounds of events which cannot be anticipated or influenced by NXS, such as operational failures, sovereign measures and interferences, problems of power supply, loss of a main supplier, strike, obstructed transport routes, delays in customs clearance or Force Majeure, the delivery time for goods and/or services is prolonged adequately. Thereby it is irrelevant if this event affects NXS, one of their suppliers or the subcontractor.

3.5 If, for reasons beyond their sphere of influence, it is impossible for NXS to fulfill their obligations, NXS is liberated from their contractual responsibilities.

3.6 NXS is entitled to carry out and to charge for partial or preliminary supplies. If delivery on request has been agreed upon, the goods or services in question are



considered requested six months after order at the latest.

4. **Payment/Prices**

- 4.1 If an order is placed without previous quotation or if services are rendered which have not been included in the order, NXS can invoice the prices which are shown on their pricelist or in compliance with their general payment level.
- 4.2 NXS is entitled to invoice higher prices than those agreed upon previously if the calculation basis used at the time of award of contract has changed, e.g. prices of raw materials, the exchange rate or the labour costs have risen after the contract has been signed.
- 4.3 All prices and payments are quoted plus the legal VAT and ex warehouse. Costs for packaging, transport, loading and shipping, for customs clearance and insurance have to be borne by the Customer. Packaging is only taken back if this has explicitly been agreed upon.
- 4.4 If no other arrangements have been made, half of the price/payment is due on receipt of the order confirmation and the rest on delivery or on being ready for collection and on receipt of the invoice, without expenses or deductions.
- 4.5 A payment is considered on time if the contractor can dispose of it. Payment dedications of the Customer, such as payment slips or transfer confirmations are not binding.
- 4.6 In case of delay in payment, interest rates amounting to 12 % p.a. are charged. If NXS wishes to make use of other interest rates, they are entitled to do so. All appropriate and necessary costs accrued due to reminders, trying to collect a bill, costs for storage and any costs for legal representation in and out of court, have to be paid by the Customer.
- 4.7 Any contractual benefits such as discounts and reductions, are only valid if payment is effected in time and completely. In case only one partial payment is delayed, NXS is entitled to invoice the Customer with the full amount.
- 4.8 The Customer is not entitled to retain any parts of the payment or to object to the contract on grounds of claimed

deficiencies. The Customer is only allowed to offset claims or reduce his payment if the claims or reductions have been acknowledged in court and are uncontested by NXS.

- 4.9 If the Customer delays the payment of amounts due to the contract or any other payments to NXS, NXS is entitled, without prejudice to other claims they may have, to stop their supplies until the Customer effects payment and/or to demand a longer period of delivery; to domicile all open invoices based on this and other legal transactions and to pick up again any objects already delivered. These actions, however, do not absolve the customer from his obligations. A withdrawal from the contract by NXS is only the case if this withdrawal has been announced explicitly.
- 4.10 If the financial circumstances of the Customer deteriorate, NXS is entitled to make payable immediately the agreed amount or the price for goods and to fulfil their contractual obligations only after advance payment.
- 4.11 If a periodical payment has been agreed upon, e.g. for service or maintenance works, this payment is always due at the beginning of the year. If the contract starts or finishes in the course of the year, the payment is due proportionally. Payment has to be calculated with guaranteed value, based on the Harmonised Index of Consumer Prices (HICP) 1996, based on the month of signing the service or maintenance contract. If the HICP is not issued anymore, the index which follows it or corresponds to it as far as possible, becomes valid. NXS is furthermore entitled to adjust periodical payments for the reasons stated in item 4.2. hereof.
- 4.12 If periodical payment has been agreed upon, the costs for travel, daily and night allowance is invoiced separately. Transit time is considered working time.

5. **Risk and shipment**

- 5.1 Risk is transferred to the Customer as soon as NXS keeps ready the goods ex factory or ex warehouse, irrespective of whether the goods are handed over to a carrier or a haulier. Shipping, loading and unloading are always at the risk of the Customer.
- 5.2 The customer accepts any appropriate type of shipping. A transport insurance is

only taken out if the Customer orders it in writing.

5.3 NXS is entitled to collect on delivery the costs for packaging, shipping and the goods from the Customer if the financial circumstances of the Customer deteriorate or the limit of credit agreed upon with the Customer is exceeded.

5.4 Place of delivery is the registered office of NXS.

6. Retention of title and goods

6.1 All goods and products remain the property of NXS until they have been paid completely by the Customer, even if the objects to be delivered or to produced have been sold to others, changed, adapted, processed or mixed.

6.2 Before the claims of NXS have been paid completely, the goods are not allowed to be given in pledge or used as a security and no rights of third parties must be attached to them. In case of distraint or other demands, the Customer has to indicate the proprietary right of the Supplier and to inform the Supplier immediately

6.3 The Customer cedes all claims and rights based on the sale to others, processing, mixing or other utilisation of the goods and products. The Customer has to note this cession in his books and on his invoices and inform his debtors about it until he has paid all open amounts completely. On request, the Customer has to make available to the Supplier all documents and information which are required for the enforcement of the ceded claims.

6.4 In order to safeguard their claims and any claims from other legal transactions, NXS is entitled to retain their products and goods until all open amounts of the business relationship have been settled.

7. Obligations of the customer

7.1. In case, installations have to be carried out by NXS, the Customer has to make sure that NXS staff can start installation work as soon as they have arrived

7.2. It is the customer's responsibility that the necessary technical requirements for the works to be carried out or the product to be supplied are fulfilled and that the technical infrastructure, such as but not limited to

power supply, cabling, networks etc. is in professional and functional condition and compatible to the works or goods to be supplied by NXS. NXS is entitled but not obliged to check this infrastructure against separate payment.

7.3. NXS is not obliged to check, warn of or clarify any documents, submitted data or instructions of the Customer and NXS is not liable for any damages caused in this regard.

7.4. The order is independent of any possibly required official permits or permissions which may have to be applied for by the Customer.

7.5. The customer is not entitled to cede claims or rights from the legal transaction without prior written consent of NXS.

8. Warranty

8.1. Warranty is limited to 12 months and starts with the transfer of risk as stated in these Terms. This also applies to goods and services which are fixed to a building or to landed property.

8.2. No warranty is given if the technical infrastructure, such as power supply, cabling, networks etc. is not in professional and functional condition and not compatible to the works or goods to be supplied by NXS.

8.3. No warranty is given for defects caused by improper handling or excessive strain, if legal regulations or NXS' instructions for use or installation have not been adhered to; if the goods supplied have been produced on the basis of the data submitted by the Customer and the deficiencies have resulted from these data or drawings; if the installation carried out by the Customer or third parties was inadequate; in case of natural wear and tear, transport damages, improper storage, functional disorder (e.g. interrupted power supply), chemical, electromagnetic or electrical influences, if necessary service has not been carried out or equipment has not been maintained properly.

8.4. In order to safeguard the rights of warranty, notices of defects and complaints of any kind have to be reported in writing immediately, stating the possible causes. Notices given by word, by telephone or not immediately are rejected.



After the official technical handing-over-procedure, complaints about defects which could be determined during the handing-over, are excluded.

- 8.5. Notice of defects and complaints have to be submitted to the registered office of NXS, describing the faults as precisely as possible. The goods complained about have to be handed over to the Supplier if this seems adequate.
- 8.6. NXS is entitled to carry out or have carried out any inspection they deem necessary, even if the goods are rendered unusable thereby. In case such an inspection finds that the Supplier is not responsible for the deficiency, the Customer has to bear the costs for this inspection as is appropriate.
- 8.7. If the goods/services are produced on the basis of data, drawings, designs, models or other specifications submitted by the Customer, the Supplier only guarantees that the works are carried out according to the specifications.
- 8.8. If the Customer changes the supplied goods without written consent of NXS, the warranty of NXS expires.
- 8.9. If secondary warranty is claimed, NXS is – if they wish to do so – entitled to fend off a rescission by enforcing a claim for price reduction, insofar as the defect is not significant and non-recoverable.
- 8.10. The Customer has to prove that a deficiency in or on the supplied goods found within six months from delivery was already there during the handing-over procedure.
- 8.11. All costs for the rectification of a deficiency, such as but not limited to costs for transport, incoming and outgoing and travel costs, have to be borne by the Customer. On request of the Supplier, the Customer has to make available to the Supplier the necessary workforce free of charge.

9. Liability and product liability

- 9.1. NXS is only liable for damages caused by intent and gross negligence. Liability for simple negligent breach is excluded. The Customer has to prove the Supplier's fault.
- 9.2. No liability is accepted for the following: indirect damages, follow-up damages, loss

of profit, property damages, costs for interruptions of operation, loss of data, loss of interest rates and damages caused by claims of third parties towards the Customer.

- 9.3. The liability of NXS, where applicable, is limited to the amount of the agreed payment/price of the contract. NXS only accepts contracts stating this clause of limited liability. Any liability exceeding such a limited liability is explicitly rejected. If the actual total loss exceeds the maximum limit, the claims of the aggrieved parties are reduced proportionally.
- 9.4. The Customer has to inform NXS about deficiencies on goods/services immediately after they occur, otherwise the Customer loses his right to claim. Claims for damages have to be brought to court within six months, otherwise the Customer loses his right to claim.
- 9.5. At first, the Customer can only claim the improvement or the replacement of the goods/services; only if neither of them is possible or if both would result in disproportional efforts and costs, the Customer can claim token money.
- 9.6. If conditions for installation, putting-into-operation and use or legal requirements are not fulfilled, the Customer is not entitled to liability. The Customer has to ensure that all users know and act on the basis of the operational manual supplied with the goods or services. The Customer is especially obliged to train and comprehensively inform his staff and all other users of the goods or services.
- 9.7. Duty of replacement for damages, based on the product liability law or deriving from other regulations, is excluded, insofar as it is legally possible. The Purchaser is obliged to transfer this exclusion of product liability to his contractual partners. The Customer does not have a right of recourse towards NXS for claims based on the product liability law.

10. Termination of contract and errors

- 10.1. If the supply of goods/services is rendered impossible for reasons the Customer is responsible for or if the Customer fails to fulfil a legal or contractual obligation towards NXS, NXS is entitled to withdraw from the contract. In this case, the Customer is obliged to recompense to



NXS all costs and loss of profit caused by this.

- 10.2. The Customer renounces his right to the challenge/adaptation of this contract due to errors.

11. Property rights

- 11.1. The Customer has to ensure that the handing-over of construction data, drawings, models or other specifications does not infringe the copy and/or property rights of third parties. If property rights are infringed, the Customer indemnifies the Supplier and satisfies NXS' claims.

- 11.2. Software, implementation documents, such as drawings, sketches and other technical documents, samples, catalogues, brochures, illustrations and similar remain the intellectual property of NXS and are copyright reserved. Duplication, circulation, copying, reediting or otherwise exploiting the documents is subject to prior consent of NXS.

12. Software

- 12.1. If the services/goods also include software components or computer programmes, NXS grant the Customer a non-transferable and non-exclusive right of use on the site of installation providing that the contractual conditions and submitted documents (e.g. operation manual) are observed.

- 12.2. Without prior written consent of NXS, the Customer is not entitled to duplicate or change the software, to make it available to third parties or to use it in any other way than those explicitly agreed upon, otherwise the Customer loses his right to claim. This applies especially to the Source Code.

- 12.3. A warranty for the software is limited to the fact that it corresponds to the specifications agreed upon in the contract, providing the software is used acc. to the installation instructions and the required conditions. NXS cannot be held responsible for the faultless state and uninterrupted and error-free operation of the software. The occurrence of faults cannot be excluded.

- 12.4. The supplied software is selected and specified by the Customer who has to ensure that it is compatible with the

technical conditions on site. The Customer is responsible for the use of the software and for the results thereof.

- 12.5. For individually designed software, features, special functions, hardware, software and installation requirements, technical conditions and its use are exclusively based on the customer requirement specifications which have to be agreed upon in writing by the contract parties. The information needed for the creation of individual software has to be made available by the Customer prior to signing the contract.

13. General

- 13.1. Should any provision of these Terms be or become invalid, the validity of the remaining contract shall remain in place. Ineffective clauses shall be replaced, by the contractual partners, with clauses which are closest to the ones rendered ineffective and which are considered customary in trade.

- 13.2. Place of jurisdiction for all disputes arising from this contract or future contracts between the Customer and the Supplier is the competent court for the registered office of NXS. NXS is also entitled to file a suit to the competent court of the Customer.

- 13.3. The parties agree that Austrian Law shall be applicable. The application of the UN Convention on Contracts for the International Sale of Goods (CISG) is explicitly excluded.

- 13.4. The Customer is obliged to inform NXS immediately in writing about changes in name, company, address, form of organisation or other relevant details.

14. Compliance

- 14.1. NXS has a high ethical standard in the way they conduct business. Their commitment to corporate responsibility and integrity guides what they do as a company and defines the work of their ethics and compliance programme. Further information can be found in: [Hexagon's Ethics & Compliance Programme](#)

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