

# General Terms and Conditions of Sale of next:urban technologies GmbH

As of: July 2016

The below-stated General Terms and Conditions of Sale (GTC\_S) shall be applicable as part of the contract agreed upon to all contracts entered into between next system Vertriebsges.m.b.H, Strohgasse 4, 1210 Vienna, Austria, commercial register no.: 449077 h commercial court of Vienna, VATIN: ATU70516578 (hereinafter referred to as next) and its purchasers and service receivers (hereinafter referred to as Purchaser), unless specified differently by separate agreement executed in writing. Terms and conditions of parties to a contract which contradict the following GTC\_S, also if only in part, shall not constitute an integral part of the contract, unless something else has been negotiated in detail and explicitly agreed upon in writing. If an offer of Purchaser is accepted, without explicitly contradicting to Terms and Conditions by a contractual partner, e.g. by actual contractual performance, 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\_S, the provisions of non-mandatory law (ius dispositivum) shall be solely applicable. Discrepancies from non-mandatory law in the General Terms and Conditions of a contractual partner 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 offers on the part of next are always subject to confirmation and not binding. Offers made by next are always deemed to be – unless they contain an explicit statement to the effect, that purchaser may trigger acceptance – mere invitations to purchaser to tender. General prerequisite for an offer of next to be eligible for acceptance is always that it has been issued in writing (e-mail or fax are acceptable). In the absence of an explicit written agreement to the contrary, the Purchaser is legally bound to his offer for a period of 2 weeks starting from the date of its receipt by next. Should next not accept the Purchaser's offer within the latter timeframe, the Purchaser is not authorized to claim damages of any kind whatsoever.

### 1.2 Acceptance/declarations

Acceptance of offers on the part of next will 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 result in an amount exceeding € 100,000.--.

### 1.3 Cost estimates

Purchasers enquiring repair cost estimates will be charged an appropriate fee and compensation of expenses incurred by next. next will charge customers for repairs of components or systems not subject to warranty. The lump sum fee for a cost estimate shall amount to EUR 100.00 (not including value-added tax; hereinafter referred to as VAT). This amount will not be charged, if next is awarded the respective repair order. The labour cost for repair work shall be charged at a rate of EUR 65.00 per hour (not including VAT), costs for raw materials are not included. Unless such cost estimates explicitly stipulate otherwise, their amounts are only estimates not guaranteed.

### 1.4 Prices

In case of doubt, the prices agreed upon shall be deemed not to include any VAT at the rate prescribed by the law. Unless explicitly agreed upon otherwise in writing, all prices offered by next shall be on the basis „EXW“ (Incoterms 2010) for performance at the place as specified by next, which in case of doubt is next's registered seat. Prices do neither include the cost of any overtime work to be performed by next nor the cost of packing. Prices do neither include the cost of documentation (technical documentation) as regards the goods supplied and/or services rendered nor the cost for proprietary rights or usage rights concerning the latter documentation, unless negotiated in detail and explicitly agreed in writing otherwise. Unless not negotiated in detail and explicitly agreed in writing otherwise, the price does also not include intellectual property (especially patent rights, copyright and rights to designs and industrial or utility models) beyond those absolutely necessary for the use of goods supplied and/or services rendered by next according to the purpose of the contract. The Purchaser acquires only a license, which is non-exclusive and strictly limited to the immediate purpose of the contract.

next reserves the right to adjust and raise 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 fulfilment of the contract.

## 2. Challenge of contracts

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

## 3. Modifications of contracts

Any modification of contracts entered into between next and Purchaser, 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. Retention of title/Assignment of amounts receivable

next explicitly reserves the right to title of property of the object of the contract until Purchaser's consideration will have been paid in full. By accepting deliveries and services as offered by next, Purchaser in any case agrees with this retention of title of property. Until further notice Purchaser is authorized to resell in the normal course of business any goods received from next, except when Purchaser is in default of payments owed to next. Purchaser already at this point assigns to next any amounts receivable by him from his customer for the merchandise under retention of title and sold, including any ancillary claims due to him. Purchaser undertakes to record the assignment of such amounts receivable to next immediately in his books, including the amount, reason, debtor, assignee, and date of the assignment, and to inform next accordingly. Purchaser shall give evidence of such records upon request of next. Purchaser shall not dispose of such amounts receivable and assigned as long as he owes amounts payable to next, for any reason whatsoever. In case any purchaser of such goods under reservation of title of ownership insists on prohibiting such assignment, Purchaser is only authorized to enter a contract, if explicitly authorized to do so by next. In case the goods under reservation of title of ownership are sold against payment in cash, Purchaser undertakes to keep the cash collected separate from funds of his own and of other parties and to inform next in writing and make a note in his books accordingly. To the extent as a reservation of title of ownership in favour of next exists pursuant to the above stipulations, Purchaser shall inform his customer in writing that the goods are property of next and that customer is not authorized to resell the goods. Complying with the duty of due care of a diligent entrepreneur, Purchaser shall provide for adequate insurance coverage of the goods under reservation of title of ownership in favour of next and already at this point assigns any claims resulting from damage to such goods in favour of next. In case next for justified reasons, whatever they may be, withdraws from the contract, next shall have the right to immediately recover the goods under reservation of title of its ownership notwithstanding where they are stored. For this purpose, Purchaser shall enable next to enter Purchaser's premises and not prevent next from taking the goods.

## 5. Performance of contract and default

### 5.1 Place of performance

Unless negotiated in detail and explicitly agreed upon in writing otherwise, next will perform delivery "EXW" at the place as specified by next (Incoterms 2010), which in case of doubt is next's registered seat.

### 5.2 Date of performance

Unless explicitly agreed upon otherwise in writing between next and Purchaser, next will perform under the contract within three months to be counted from the date the contract has been entered into. In case performance is effected by making the delivery or service available at the place as specified by next, which in case of doubt is next's registered seat, Purchaser shall have the goods picked up at the date as specified by next, failing which, default of acceptance will result. next will specify such date of availability of goods to Purchaser at least three days in advance. In case next has notified the object of the contract to be ready, without specifying any date, Purchaser shall have the goods picked up within seven days, failing which Purchaser is in default of acceptance. In case next and Purchaser agree in writing on the object of the contract to be shipped, Purchaser assumes the risk of such shipment. In such case, delivery is deemed to have been performed as soon as the object of the contract has left next's warehouse.

### 5.3 Due date of payment

Unless stipulated otherwise in writing, the purchase price or other consideration due for payment is payable as soon as the goods have been made available for being taken over by Purchaser. In case, pursuant to section 5.2, shipment on the part of

next has been agreed upon in writing, payment is due as soon as the goods have been delivered to the transporting company.

#### 5.4 Interest for delayed payment

In case Purchaser does not comply with his payment obligation in due time, next has the right to claim interest for delayed payment at the rate of 0.05 % per calendar day, starting with the first day of delay. To the extent any amount receivable from next and resulting from the present contract, for any reason whatsoever, is due to Purchaser, interest for delayed payment of such amount receivable is chargeable at a rate of 4% p.a.

#### 5.5 Default of delivery

As soon as next realizes that it is not likely to be able to perform delivery or service at the date agreed, next may without delay inform Purchaser accordingly. In such a case Purchaser is obligated to accept performance also within an adequate extension granted by next without having the right to claim any compensation of damage or cost. In case, also after such adequate extension, next should not perform, Purchaser has the right to withdraw from the contract and request damages pursuant to the limitations of liability stipulated in the present GTC\_S.

In the specific case of circumstances like unforeseeable events and force majeure (e.g. war, civil turmoil, natural forces, accidents, official orders, other operational disruptions, delays in the delivery of important working materials or input materials, etc.) that concern next or its suppliers and where next is not responsible for them, next is released from its obligation to perform for the duration of such circumstances and insofar as these circumstances impact on next's capacity to execute deliveries. In the cases described above, next is moreover entitled to withdraw from the contract, without being liable for damages, if contractual performance has become impossible or unreasonable for next or if the end of the obstacle hindering contractual performance is not foreseeable.

#### 5.6 Consequences of default of acceptance

In case Purchaser does not take delivery of goods supplied or services performed by next pursuant to the stipulations of the present GTC\_S at the date agreed upon, next has the right to immediately withdraw from the contract without having to grant any extension, or to maintain the contract and store the object of the contract at the risk and cost of Purchaser. Not taking over the object of the contract in due time in any case results in the risk passing to Purchaser. In cases of default of acceptance Purchaser shall at any rate reimburse any and all damage and loss resulting therefrom to next.

#### 5.7 Consequences of default of payment

To the extent Purchaser does not comply with its payment obligation in due time, next has the right to immediately withdraw from the contract after having granted a 14 days' extension. In case it comes to the knowledge of next that Purchaser's financial situation has materially deteriorated, that a bankruptcy proceeding has been instituted against Purchaser or that the opening of an insolvency proceeding has been dismissed because of insufficient assets, next has the right to withdraw from the contract without granting any extension. In case further deliveries or services are ready for performance on the part of next and any of Purchaser's liabilities vis a vis next are outstanding, next is free from any further obligation to perform delivery or service for the duration of the default in payment.

#### 5.8 Transfer of performance

next has the right to transfer part or all of its obligations under the contract vis a vis Purchaser to third parties.

#### 5.9 Standard of care of next

next, pursuant to sec. 347 Austrian Business Code, in the course of all of its entrepreneurial activities exercises the due care of a prudent entrepreneur. A standard of care more strict than the one just described shall not apply to next, unless something else has been negotiated in detail and explicitly agreed upon in writing.

### 6. Warranty and damages

#### 6.1 Quality claims

In case of defective goods supplied or services performed by next, Purchaser shall claim such defects without delay in writing, specifying the exact nature of the defect, failing which any and all claims of warranty and damages shall be null and void.

#### 6.2 Warranty

In case of defective goods or services, where such defects have been justifiably notified, next has an option to either remedy or replace within an appropriate period

of time of at least 14 days, to be determined by next. Purchaser may claim further rights only if next effects neither remedying nor delivery within the aforesaid period of time as determined. The cost of such remedying or exchange shall be borne by next, Purchaser however undertakes to ship the goods, to the extent Purchaser can be expected to do so, to a place specified by next, which, in case of doubt, is next's registered seat, for the purpose of remedying the defect or exchanging the goods, and also to take back or have picked up the goods on the place where remedying or replacing has taken place, and to assume the respective cost. The period of time to be allowed for remedying or replacing shall start with the date of arrival of the goods on the place specified by next for remedying or replacing such goods. In case examination on the part of next should reveal that the goods are free from defects, Purchaser shall reimburse to next all cost resulting from such examination. Whenever next has not complied in due time with Purchaser's justified request to remedy the defects or replace the goods, Purchaser is entitled to request reduction in price or rescission. Purchaser is entitled to request rescission however only in such case when the defect is not of a minor nature and also in such case only to the extent of the defective components, while the remaining part of the contract shall remain unaffected.

#### 6.3 Restriction of liability

Apart from personal injuries, next shall be liable only for such damage or loss if there is evidence of its wilful intent or crass gross negligence. Furnishing the burden of proof for any fault on the part of next is Purchaser's responsibility, under exclusion of sec. 1298 Austrian General Civil Code ("*Allgemeines Bürgerliches Gesetzbuch*"). Any further liability of next exceeding the loss or damage of the goods themselves, e.g., in particular, for indirect damage, damage resulting from claims of third parties directed against Purchaser, consequential damage resulting from defects, damage resulting from default, lost profits and liability for cost of disassembling and assembling, travelling and transport expenses, cost incurred for identification of defects, is in any case excluded.

#### 6.4 Order of sequence of warranty and damages

Purchaser can initially claim only pursuant to the warranty obligation. Purchaser is entitled to damages only pursuant to the liability restrictions as specified in the present GTC\_S and only for the case that the performance under the warranty was not successful.

#### 6.5 Limitation of actions regarding warranty and damages

The period of limitation of actions of any right regarding warranty shall commence on the date as specified in section 5.2. This shall equally apply for part shipments. The warranty period is 12 months, starting from this date.

Any claims for damages become statute barred within 6 months from the time when Purchaser had or was able to have knowledge of the damage or of who caused such damage. Notwithstanding the latter case, such claims for damages become statute barred within 18 months from the time of the occurrence of the damaging event.

#### 6.6 Product liability

In case third parties should approach next with a claim for product liability, Purchaser is obligated to keep next fully free of harm and claim with regard to such claim if such claim is the result of a product defect caused by Purchaser, in particular by improper handling, storage or transportation.

### 7. Exclusion of set-off

Unless something else has been negotiated in detail and explicitly agreed upon in writing, there can be no set-off against next's claims with any counterclaims, whatsoever.

### 8. Visitation and inspection

Unless negotiated in detail and explicitly agreed upon in writing otherwise, Purchaser is not authorized, in whatever form, to have access to next's business operations or to inspect them, in particular, Purchaser is not authorized to inspect delivery and service provision (also documentation) by next and to visit next's spaces.

### 9. Waste disposal

Purchaser undertakes to ensure proper disposal of any and all waste and waste oil resulting from the goods taken over and to assume the respective cost. next is not obligated to take back waste left over in connection with the goods supplied.

Purchaser shall ensure discharge of all packing materials taken over, enter into an ARA service agreement and assume the respective cost. In case Purchaser violates its obligations under the present section of the GTC\_S, Purchaser is obligated to reimburse all respective cost to next and keep next fully free of harm and claim. The cost of discharge on the part of Purchaser is already included in the prices pursuant to the contract.

## **10. Duty to observe secrecy**

### **10.1 Confidentiality**

Purchaser is obligated to keep any and all information, documents or data received by next and such information, documents and data having come to his 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. Purchaser 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 Purchaser's hard- and software. The same applies to any and all electronic and other means of communication as used by Purchaser. All rights of a property or copyright and all other rights as regards all information, documents and data provided by next remain with next. Purchaser is only authorized to use all information, documents and data having come to his knowledge to the extent indispensable for compliance with his contractual obligations. In case Purchaser 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.

### **10.2 Extent of the obligation of secrecy**

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

### **10.3 Disclosure of identity of party to the contract**

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

### **10.4 Secrecy to continue in force**

Purchaser's present obligation to maintain secrecy does not end upon termination of the transaction but continues in force thereafter for a period of 10 years.

## **11. Use of incoterms**

Whenever Incoterms are used in the present GTC\_S 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\_S. In case in any additional agreement between next and Seller admissible pursuant to the present GTC\_S 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\_S.

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

Personal data relating to the person that is the Purchaser, 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.

Purchaser explicitly agrees that next communicates by electronic means in terms of sec. 107 Austrian Telecommunications Act ("Telekommunikationsgesetz 2003") for any purpose whatsoever.

## **13. Partial ineffectiveness**

In case individual stipulations of the present GTC\_S 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.