

# General Terms and Conditions of Dr. Neuhaus Telekommunikation GmbH with effect from 1 May 2008

## 1. Scope

- 1.1 These General Terms and Conditions apply to all supplies and services of Dr. Neuhaus Telekommunikation GmbH, hereinafter referred to as Dr. Neuhaus, in particular to hardware, software and system supplies and also hardware and software development, project management and engineering services. These General Terms and Conditions shall also apply in addition to special contractual relationships such as service provision, maintenance agreements etc.
- 1.2 These General Terms and Conditions shall apply exclusively. Any other conditions or additional conditions of a party to the contract (hereinafter "Purchaser") shall only take effect if approved in writing.

## 2. Offers

- 2.1 Unless agreed otherwise in writing, any offers made by Dr. Neuhaus are subject to confirmation. A contract shall be formed only when Dr. Neuhaus provides written order confirmation.
- 2.2 Confirmation of the order by Dr. Neuhaus shall be decisive as regards the scope of the supply.
- 2.3 Technical specifications, descriptions or reproductions of the item to be supplied, prospectuses or miscellaneous informative documents do not constitute any guarantee of quality. Dr. Neuhaus reserves the right to make technical changes to the offer documents even after confirmation of the order. Dr. Neuhaus shall retain title, intellectual and industrial property rights over tenders, drawings and other documents; they must not be made available to third parties without prior approval from Dr. Neuhaus. Drawings and other documents are to be returned immediately on request, if the contract is not awarded to Dr. Neuhaus.

## 3. Price and terms of payment

- 3.1 All prices are quoted ex works. The manufacturer's supply conditions shall apply for third party equipment. The price is quoted exclusive of statutory VAT. For order quantities with a net value of less than € 250.00, a minimum quantity surcharge of € 25.00 will be applied; repairs and accessories are excluded from this rule.
- 3.2 If the order for the consignment or service is accepted, the following terms of payment will apply: a) for services: 35% of the contract value on confirmation of the order; 50% of the contract value on delivery; 15% of the contract value on acceptance. b) for standard products, within 14 days. In the event of default in acceptance (par. 5.2.3) the remaining amount plus statutory VAT will immediately become due for payment. Invoices shall become payable within 30 days without deductions. The Purchaser shall be in default of payment, with no requirement for notice of default, if it has not paid the amount due within 30 days from receipt of the invoice.
- 3.3 Dr. Neuhaus will not grant discounts.
- 3.4 The Purchaser shall only have the right of set-off if its counterclaims are legally determined, beyond dispute or acknowledged by Dr. Neuhaus.
- 3.5 If the Purchaser defaults, interest shall accrue on the amount due from the time the default occurs, pursuant to § 288 of the German Civil Code. We reserve the right to assert further claims for damages and in particular to collect default charges.
- 3.6 One month after occurrence of the default in acceptance pursuant to par. 5.2.4, Dr. Neuhaus shall be entitled to charge storage fees at the rate of 0.5% for each month or part month unless higher costs can be proven.

## 4. Retention of title

- 4.1 The goods shall remain the property of Dr. Neuhaus until all Dr. Neuhaus' present and future claims under the business relationship have been satisfied in full (goods subject to retention of title). Dr. Neuhaus' entitlement shall not be lost even if the amounts outstanding are included in a recognised current account balance. The Purchaser must store the reserved goods properly and protect them adequately at its own expense.
- 4.2 Resale within the normal course of business is permitted. In this case, all the Purchasers' claims resulting from the resale, up to the value of the reserved goods, shall be considered as having been assigned to Dr. Neuhaus. The value of the reserved goods is the invoice total. Development or conversion of the reserved goods shall be done on behalf of the manufacturer in accordance with § 950 of the German Civil Code. If the reserved goods are developed or processed with other items not belonging to Dr. Neuhaus, the latter shall acquire a share of the ownership of the new product in the ratio of the invoice value of the reserved goods and the invoice value of the other goods used, up to the time of the development or amalgamation. If the value of the collateral exceeds Dr. Neuhaus' claims by more than 20%, Dr. Neuhaus is obligated to grant a re-assignment or release, at the request of the Purchaser.
- 4.3 Rights of use over software and licences delivered by Dr. Neuhaus will only be granted upon full payment. Paragraphs 4.1 and 4.2 shall apply accordingly.

## 5. Delivery term

- 5.1 The delivery term shall begin on the date on which Dr. Neuhaus provides written confirmation of the order. Compliance with the delivery term is conditional upon timely receipt of all the documents and hardware and/or software specifications to be provided by the Purchaser, the availability of all the required authorisations, releases, timely clarification and approval of plans, compliance with the agreed terms of payment and special covenants. If these conditions are not complied with in time, the delivery term will lapse and a new date must be agreed after allowing for the operational requirements of Dr. Neuhaus.
- 5.2 The delivery term shall have been complied with:
- 5.2.1 For supplies without installation, if the consignment has duly left the factory of Dr. Neuhaus or the factory of the subcontractor within the delivery term according to par. 5.1.
- 5.2.2 For supplies including installation, if the installation has been made within the delivery term according to par. 5.1.
- 5.2.3 For all types of software, development or special services, the supply shall be considered complete upon delivery of the data processor or the developed system.
- 5.2.4 If there are delays in acceptance on the part of the Purchaser, written notification from Dr. Neuhaus that the goods are ready shall suffice for the purposes of justifying default in acceptance.
- 5.3 Partial deliveries are permitted.
- 5.4 If the delivery term is not complied with due to force majeure or industrial disputes at Dr. Neuhaus or on the part of subcontractors, damage to a major piece of work or due to circumstances beyond the control of Dr. Neuhaus according to general principles of law, the delivery deadline will be extended accordingly.
- 5.5 If the delivery deadline is not complied with due to reasons other than those listed in par. 5.4, the Purchaser may – having demonstrated that damages due to delay have occurred and after a corresponding period of grace, agreed in writing, has elapsed to no avail – demand compensation at the rate of 0.5% up to a maximum of 5% of the value of that part of the delivery that cannot be used on account of the delay in production, for each full week of delay.

## 6. Transfer of risk

- The risk (risk of non-performance and payment risk) is transferred to the Purchaser:
- 6.1 Upon handover at the location named by the Purchaser;
- 6.2 In the event of default in acceptance pursuant to par. 5.2.4;
- 6.3 On shipment, if the goods have duly been sent for dispatch.

## 7. Installation

- 7.1 Installation and start-up on the customer's premises will be billed.
- 7.2 The Purchaser must comply with the following conditions before installation: before work commences the preliminary work required for the installation must have been completed by the Purchaser, so that installation can begin immediately after Dr. Neuhaus' personnel arrive on the premises and can continue without interruption. The Purchaser must make all the necessary facilities available during installation, provide assistance with the use of all related third-party equipment and if necessary provide access even outside of normal working hours.
- 7.3 If the installation or start-up is delayed due to the fault of the Purchaser, the latter shall bear the costs of waiting time and any extra journeys which Dr. Neuhaus' personnel may have to make.
- 7.4 Apart from the costs of installation and start-up, the Purchaser shall also bear the costs of return journeys including travelling time, travel costs and expenses according to Dr. Neuhaus' currently valid scale of charges.

## 8. Acceptance

- 8.1 Acceptance shall take place immediately after delivery but no later than 30 days after Dr. Neuhaus has carried out its standard acceptance tests or following agreed test procedures.
- 8.2 An acceptance protocol will be drawn up and must be signed by the Purchaser.
- 8.3 The Purchaser is informed that if it does not declare its acceptance within 30 days after delivery, delivery and installation shall be considered to have been approved. The Purchaser may object to this assumed acceptance within the 30 day period at its own discretion.
- 8.4 Any defects named in the acceptance protocol will be remedied according to the provisions of par. 10.

## 9. Software licences

- Software (binary programs) including subsequent upgrades will be recognised as being secured by copyright according to the contractual relationship between the parties. The Purchaser will receive a basic software licence under the following conditions:
- 9.1 The software, whether in whole or in part, must only be used on the CPU on which it was first installed. It may only be used on this CPU and only copied or modified on condition that the copyright endorsement of Dr. Neuhaus and any special copyright endorsements are affixed to all duplicated items.
- 9.2 If a malfunction of the CPU inhibits use of the software, it may temporarily be used on another CPU.
- 9.3 The Purchaser must not make the software available to any third parties. Persons exercising the right of use on the Purchaser's behalf do not count as third parties.
- 9.4 The Purchaser shall not be granted any further rights over the software.

## 10. Remedy of defects

- 10.1 Dr. Neuhaus guarantees the original equipment and products for the term of one year in the sense that any defects which arise will be remedied if it is shown that they are due to defective material and/or defective workmanship. The warranty period shall run for two years if the Purchaser is a consumer and the contract is a consumer goods purchase under the terms of article 474 of the German Civil Code.
- 10.2 The defects will be remedied at the factory of Dr. Neuhaus, by means of replacement delivery or overhauling at the installation site. Any travelling time, costs and expenses and shipping costs during the warranty period will be borne by Dr. Neuhaus. The warranty period for the services named in par. 5.2.3 shall begin on the closest agreed delivery date.
- 10.3 For third-party equipment delivered by Dr. Neuhaus, (intended as equipment and modules without a Dr. Neuhaus part number or programme) shall only be liable to the extent of the respective manufacturer's warranty. The warranty period shall run for two years if the Purchaser is a businessman who is under a warranty obligation to a consumer due to an existing defect at the time the risk is transferred and requests reimbursement of these expenses from Dr. Neuhaus. The Purchaser may request similar terms from Dr. Neuhaus at any time.
- 10.4 For corrections or additions to the hardware or software supplied, the original warranty period shall not be limited nor interrupted. Dr. Neuhaus will provide a guarantee of one year for file extensions following the subsequent improvement of a product, compared to a two-year parts warranty for consumers, calculated from the date of delivery. Any travelling time, travel expenses and shipping costs will be charged - provided that these are not incurred in relation to a legal claim - according to Dr. Neuhaus' current scale of charges for services.
- 10.5 The warranty shall not extend to items that must be replaced or improved due to normal wear and tear or improper handling. However Dr. Neuhaus is willing to remedy such defects within the warranty period in return for payment of the relevant costs.
- 10.6 If the equipment is damaged during acceptance or delivery, and it is proven that such damage is the result of transport to another location other than the first installation site, the customer's warranty entitlement shall lapse, if Dr. Neuhaus was not involved in such transport.
- 10.7 Notification of defects must include details of the type of equipment, machine number and type of defect; if test procedures are supplied by Dr. Neuhaus (such as test programs or test devices) the detailed results or tests must also be returned. Paragraphs 7.1 and 7.2 shall apply according with regard to remedying of defects. The Purchaser's compliance with its contractual obligations and fulfilment of its payment obligations in particular is a prerequisite for repair services. With regard to the exchange of parts, the returned parts shall remain the property of Dr. Neuhaus.
- 10.8 If Dr. Neuhaus allows a period of grace agreed with the Purchaser to elapse without having remedied the defect, refuses to make the improvement or if the improvement is impossible, the Purchaser is entitled to withdraw from the agreement or claim a reduction in price. The right to withdraw from the agreement shall only apply if Dr. Neuhaus is unable to remedy the defect after two attempts at improvement or replacement deliveries.

## 11. Development requests

- The following conditions shall apply to hardware and software developments carried out by Dr. Neuhaus as part of a development request:
- 11.1 The specifications agreed between the parties and which form an integral part of the contract are material for the services to be performed. Any changes or additions to the specifications must be agreed in writing by means of a document to be signed by both parties. This document must also govern the financial implications of any changes or additions.
- 11.2 If deadlines are missed due to the complexity of the order history, any extension periods granted by the Purchaser must, on principle, be set by taking into account the technical difficulties or supplier-related problems that have arisen. If the Purchaser's requests for changes or additions need to be borne in mind, new terms shall be agreed in accordance with the additional expenditure required.
- 11.3 After the development has been accepted, a suitable phasing-in period is usually envisaged, based on the scope and technical complexity of the project, designed to reveal or eliminate any defects that will only become evident under normal working conditions. Such defects will be remedied by Dr. Neuhaus free of charge; any further claims in particular claims for compensation on the grounds of delays to the start-up of operations or downtime are excluded.

## 12. Liability

- 12.1 Dr. Neuhaus shall be liable for damage on whatever legal grounds only in the event of culpable breach of a material contractual obligation (cardinal obligation) in a way that jeopardizes the object of the Agreement or if the damage is attributable to gross negligence or intentional wrongdoing. If the breach of the material obligation does not constitute gross negligence or intentional wrongdoing, the liability is limited to the typical damages and extent of loss that is reasonably foreseeable for Dr. Neuhaus up until the time that the contract is concluded. This does not include indirect damages, consequential damages or loss of profits.
- 12.2 Liability shall also be limited if obligations are breached deliberately or by gross negligence by employees, workers or agents who are not executive officers of Dr. Neuhaus.
- 12.3 For any culpable breach of a material contractual obligation and in the event of gross negligence by vicarious agents, liability is limited to the amount of € 100.000. The contracting party hereby agrees that the amount of damage which is typically foreseeable shall not exceed € 100.000.
- 12.4 The foregoing disclaimer or limitation of liability applies for any liability on whatever legal grounds, particularly due to breach of contractual obligations. The disclaimer and limitation of liability in this clause do not apply to damages for death, personal injury or damage to health.

## 13. Final provisions

- 13.1 If any of the provisions of this contract is unenforceable, the remaining provisions shall remain valid. Any unenforceable provision must be replaced with a new one that best reflects the intended financial aim.
- 13.2 All contractual agreements must be made in writing and acknowledgement of correspondence shall suffice in this regard.
- 13.3 Insofar as permitted under § 38 of the German Code of Civil Procedure, Hamburg shall be the sole place of jurisdiction.
- 13.4 For all legal relations with Dr. Neuhaus, the law of the Federal Republic of Germany shall apply exclusively. The application of laws applicable to the international sale of goods is excluded.