

## Terms and Conditions for Purchase of Hardware

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| <p><b>1. Scope</b></p> <p><b>1.1</b> These Terms and Conditions apply to all individual agreements (“<b>Individual Contracts</b>”) by which the Customer purchases third party hardware from Nexus.</p> <p><b>1.2</b> To the extent an Individual Contract does not contain any explicit deviating stipulations, the stipulations of these Terms and Conditions shall apply to all Purchases of Software sold by Nexus to the Customer. For the avoidance of doubt, any deviating stipulations in an Individual Contract shall prevail over these General Terms and Conditions.</p> <p><b>1.3</b> Any general terms and conditions of the Customer that deviate from or supplement the provisions of these Terms and Conditions shall not become part of any Individual Contract unless agreed by both Nexus and the Customer in writing.</p> <p><b>1.4</b> Nexus’s offers are non-binding, unless explicitly stated otherwise in the respective offer; therefore, the respective Individual Contract is concluded if the Customer accepts Nexus’ offer and Nexus has confirmed the order by way of an order confirmation (as a rule in writing).</p> <p><b>1.5</b> Unless explicitly agreed otherwise, the third party hardware is sold as described in the Individual Contract including the pertaining user documentation (hereinafter comprehensively referred to as the “<b>Hardware</b>”)</p> <p><b>1.6</b> Details concerning the description, quality and equipment of hardware, the delivery time, installation site and purchase price are agreed upon in the Individual Contract.</p> <p><b>1.7</b> Nexus is not obliged to install the Hardware.</p> | <p><b>2.2</b> The Customer agrees to use such software only in conjunction with the normal operation of the Hardware. If such software is provided by Nexus, Nexus grants to the Customer a right of use according to this Section 2.2:</p> <p><b>2.2.1</b> Within the scope of the licensing model agreed under the respective Individual Contract, Nexus shall grant to the Customer the permanent, non-sublicensable and non-exclusive right to run the Nexus Software for its own purposes on its own computers and, to the extent required for running the Nexus Software and for backup purposes as per Section 2.2.4, to copy it. Apart from such right, no further rights of use in the Nexus Software are granted to the Customer. In particular, Nexus reserves its rights with respect to any change, copy, distribution, and publishing of the Nexus Software. The Customer warrants that only authorised employees (the named users for which a license was granted) will get access to the Nexus Software. The Customer shall instruct its employees to comply with the provisions of these General Terms and Conditions.</p> <p><b>2.2.2</b> The Customer shall be entitled to print out and copy the user documentation for its own purposes. Any forwarding to or sharing with third parties is not permissible.</p> <p><b>2.2.3</b> Nexus warrants that the Nexus Software is free of any third-party rights that would restrict or exclude its contractually agreed use. Should the contractual use of the Nexus Software be affected by third-party industrial property rights, Nexus shall be entitled to reasonably modify the Nexus Software in such a way that it no longer falls under the protection of such rights while at the same time preserving its essential usage functions, or to obtain authorisation that the Nexus Software may be used without restrictions without additional costs.</p> <p><b>2.2.4</b> In the event the Customer was not provided with a backup copy, it shall be entitled to make one (1) machine-readable copy of the Nexus Software for backup purposes, ensuring that such copy is labelled as a “backup copy” in machine-readable form or plain writing. The Customer shall ensure that</p> |
| <p><b>2. Rights of Use</b></p> <p><b>2.1</b> To the extent that there is any software embedded in or provided with the Hardware, the software shall not be sold as part of the Hardware.</p>   |  |

no backups or copies of the computer program are made within the scope of other data backups.

- 2.2.5** The removal of serial numbers, copyright notices or other programme identification features is prohibited. The same applies with respect to the suppression of the on-screen display of such features.
- 2.3** Should the software be provided by a third party, the applicable third party license and other relevant terms shall apply.
- 2.4** Nexus shall not be responsible for third party software and the Customer undertakes to only use such software in accordance with the applicable terms.
- 3. Delivery**
- 3.1** The Hardware shall be delivered Ex Works (EXW) INCOTERMS 2020.
- 3.2** However, Nexus will as a separate service deliver the Hardware to an address specified by the Customer (at the cost of the Customer) if so agreed in the Individual Contract.
- 4. Remuneration and Payment**
- 4.1** Unless agreed otherwise in the respective Individual Contract, the Customer will be invoiced for 50 % of the purchase price upon conclusion of the Individual Contract. The remaining 50 % of the purchase price will be invoiced to the Customer upon delivery, i.e. in case of delivery Ex Works directly from the third party hardware supplier to the Customer upon dispatch from the supplier's delivery warehouse.
- 4.2** Nexus shall charge the remuneration as agreed in the respective Individual Contract plus VAT as applicable. For the avoidance of doubt, any taxes applicable to the Customer which apply in connection with the business relationship between the Customer and Nexus (e.g. sales taxes or source taxes) are to be borne by the Customer.
- 4.3** The Customer shall pay the due remuneration in full within thirty (30) calendar days from receipt of the respective invoice.

## **5. Obligation to Notify Defects**

- 5.1** The Customer shall examine the Hardware with respect to completeness and possible defects immediately but not later than fourteen (14) calendar days after receipt, including a test of the functionality, and shall notify any defects to Nexus without undue delay but not later than fourteen (14) calendar days after receipt of the Hardware. If the Customer fails to provide the above notice, the Hardware shall be deemed approved, with the exception of defects which were not recognisable by such examination. In case such defect becomes apparent later, the Customer shall provide notice without undue delay after the discovery; otherwise the Hardware shall be deemed approved also with respect to such defect.

- 5.1** A notice of defects shall state the asserted defects as detailed as possible, indicating the circumstances of the environment, performed functions, the detected defect pattern and the effects of such defect on the functionality of the Hardware (qualified defect message).

## **6. Claims for Defects**

- 6.1** Notwithstanding Sec. 438 (1) No. 3 BGB (German Civil Code), the general limitation period for claims arising from material defects and defects of title is one year from delivery. If acceptance has been agreed, the limitation period shall commence upon acceptance.
- 6.2** Nexus assumes no responsibility that the Hardware delivered fulfils the Customer's requirements in respect of the use of the Hardware intended by the Customer.
- 6.3** The warranty shall be void if it is determined that the Hardware has been subject to abuse, used in an environment beyond Nexus's or the third party manufacturer specifications, or if the defect or malfunction is due to incorrect installation or use by the Customer.
- 6.4** Claims of the Customer for damages or compensation for futile expenditure only exist in accordance with Section 10, even in the case of defects, and are otherwise excluded.

## **7. Retention of Title**

Title to the Hardware shall pass to the Customer upon completed delivery and full

payment in accordance with the Individual Contract.

## 8. Withholding of Performance and Set-off

**8.1** The Customer shall be entitled to withhold or refuse performance with regard to claims that are undisputed or have been acknowledged by a final court decision or which are counterclaims from the same contractual relationship with Nexus. Other withholding rights are excluded.

**8.2** The Customer shall only be entitled to set-off claims against those claims of Nexus if the Customer's claims are undisputed or have been acknowledged by a final court decision or are counterclaims from the same contractual relationship with Nexus. Other set-off rights are excluded.

## 9. Force Majeure

**9.1** Malperformance shall not constitute a breach of contract to the extent it is caused by unpreventable occurrences, in particular epidemics and pandemics, earthquake, deluge, flooding, fire, explosion, blackout, embargos, governmental restrictions, riots, terrorist attacks, war or other military action, civil unrest, rebellion, vandalism, sabotage, strike at Nexus's or sub-supplier's plant, or other causes not attributable to the affected Party ("**Force Majeure**"). The obligations of the affected Party shall be suspended for the duration of Force Majeure.

**9.2** The performance period shall be extended by the delay caused by the occurrence of Force Majeure plus an adequate restarting period.

**9.3** In the event concrete indications exist that the impediment of performance due to Force Majeure will continue for more than one hundred and twenty (120) calendar days, either Party shall be entitled to terminate in writing any Individual Contract. If a one-off Individual Contract has not yet been performed, each of the Parties shall be entitled to rescind from the contract. All further rights shall be excluded in case of Force Majeure.

## 10. Liability

**10.1** All rights of the Customer to claim damages or compensation for wasted expenditure

shall, regardless of their legal nature, be subject to this Section 10.

**10.2** Nexus shall be fully liable for damages caused by an intentional violation of its obligations.

**10.3** Nexus shall also be fully liable for damages caused by a grossly negligent violation of its obligations, with the following exception: If the violation has been committed by a simple vicarious agent and has caused other damage than damage to life, body or health, Nexus' liability shall be limited to the foreseeable typical damage (as provided for in Section 10.5).

**10.4** In case of simple negligence (i.e. not gross negligence), Nexus shall be liable as follows:

**10.4.1** Nexus shall be fully liable for damages (i) to life, body or health, (ii) caused by a violation of a contractual guarantee or (iii) in case of claims under the Product Liability Act.

**10.4.2** In all other cases than those addressed in Section 10.4.1, Nexus shall only be liable for the violation of such obligations that are material for the proper implementation of the Individual Contract and on the fulfilment of which the Customer relies and regularly may rely (essential duties). In such cases, liability shall be limited to the foreseeable typical damage as provided for in Section 10.5.

**10.4.3** Nexus liability for simple negligence in all other cases not addressed in Sections 10.4.1 and 10.4.2 is excluded.

**10.5** The Parties agree that the foreseeable typical damage shall not exceed a maximum amount corresponding to the purchase price paid for the Hardware.

**10.6** Unless explicitly agreed otherwise, the Customer shall be responsible to back-up its data in accordance with current technical standards. If any data is destroyed or lost, Nexus' liability shall be limited to such amount that would have been required for the recovery or replacement of such data if the Customer had made proper backups.

Recovery expenses shall extend to the actually incurred additional costs for recovery and/or replacement of the data.

**10.7** All other liability of Nexus shall be excluded. The limitations of liability and exclusions of liability pursuant to this Section 10 shall not affect the liability of Nexus pursuant to the mandatory statutory provisions of the Product Liability Act, due to the fraudulent concealment of a defect or the assumption of a contractual guarantee for the quality of an item.

**10.8** The provisions of this Section 10 shall also apply in favour of Nexus' vicarious agents in case the Customer raises claims directly against any of them.

## **11. Confidentiality**

**11.1** The Parties undertake not to disclose to any third party confidential information of the respective other Party of which they gain knowledge within the scope of negotiating and implementing any Individual Contract, and to likewise bind their respective employees within the scope of the applicable employment law to secrecy.

**11.2** Confidential information within the meaning of these Terms and Conditions is all information (whether in writing, electronically, orally, digitally embodied or in any other form) which is transferred from the holder to the recipient or to a person associated with the recipient within the meaning of Sects. 15 ff. AktG (German Stock Corporation Act) within the aforementioned scope. Confidential information includes, in particular, trade secrets, products, manufacturing processes, know-how, inventions, business relationships, business strategies, personnel matters, digitally embodied information (data), as well as any documents and information of the holder which are subject to technical and organizational secrecy measures and which are marked as confidential or are to be considered confidential due to the nature of the information or the circumstances of the transmission.

**11.3** This obligation does not apply to such confidential information,

**11.3.1** which were demonstrably already known to the other Party when the

Individual Contract was concluded or which subsequently become known to the other Party by third parties, without this infringing any confidentiality agreement, statutory provisions or official orders.

**11.3.2** which are publicly known at the time of the conclusion of the Individual Contract or are made publicly known thereafter, unless this is based on a breach of the Individual Contract.

**11.3.3** which must be disclosed by virtue of statutory obligations or by order of a court or authority. To the extent permissible and possible, the Party subject to the disclosure obligation shall give prior notice to the other party and the opportunity to take action against the disclosure.

## **12. Applicable law and Place of Jurisdiction**

**12.1** These Terms and Conditions and any Individual Contract shall exclusively be governed by German law. The regulations of the UN Convention on Contracts for the International Sale of Goods dated 11 April 1980 (CISG) shall be excluded.

**12.2** If the Customer is a merchant within the meaning of the German Commercial Code (HGB), a legal entity under public law or a special fund under public law, the exclusive - also international - place of jurisdiction for all disputes arising directly or indirectly from the contractual relationship is Düsseldorf. The same applies if the Customer is an entrepreneur within the meaning of Sect. 14 BGB. Priority statutory provisions, in particular those relating to exclusive jurisdiction, shall remain unaffected.

## **13. Miscellaneous**

**13.1** All changes, amendments, supplements or substantiations to the provisions of these Terms and Conditions as well as special guarantees and arrangements shall require the written form. The aforesaid also applies to any amendments of this Section 13.1.

**13.2** Should a provision of these Terms and Conditions or any Individual Contract be or become invalid, this shall not affect the validity of the remaining provisions.

**13.3** Any oral agreements shall be confirmed in writing.