

# General Terms and Conditions

## Deliverables and Performances of NETCOR GmbH

### 1. General Information

The Terms and Conditions hereafter are solely effective in business with companies, not for consumers. All deliverables and performances (hereafter referred to as contractual performances) of NETCOR GmbH (hereafter referred to as NETCOR) are subject to these General Terms and Conditions. Any deviations or subsidiary agreements - particularly conflicting customer business terms - require the express written consent of NETCOR. Any and all orders with NETCOR as well as possible special warranties from NETCOR require a written confirmation from NETCOR. This written form may only be omitted based on a written agreement. The internal order processing at NETCOR is partially performed through automated data processing.

### 2. Pricing and Payment

Prices are understood - unless otherwise indicated - ex works and not including packaging plus statutory value added tax. A reasonable flat rate fee for shipping and insurance costs is payable by the customer. This fee is indicated in the order confirmation by NETCOR. Unless otherwise agreed, payments for deliverables are due within 14 days, net, from the date of invoice and payments for services without deduction immediately following acceptance, if such is provided by law or contract, and receipt of invoice. NETCOR is entitled to charge interest on due business dealings pursuant to the provisions of §§ 352, 353 HGB [German Commercial Code] as well as in the event of default, with accounts receivable in the amount of 9 % above the prime lending rate.

### 3. Due dates and respites

Any and all due dates and respites for contractual performances of NETCOR are only valid agreed into writing. A breach of a due date for reasons for which NETCOR is not responsible, the due date is extended by the period from when the hindrance occurs until the time that the hindrance ceases to exist. NETCOR is entitled to make partial deliveries and partial performances of reasonable extent for the customer, the payment due dates of item 2 apply accordingly. In the event of the customer cancelling a purchase order with the approval of NETCOR, NETCOR is entitled to a flat rate compensation in the amount of 15 % of the base price for the product as per NETCOR Euro price list. The customer is permitted to substantiate damages were not incurred or were significantly lower. The customer shall grant NETCOR free access to the equipment and unhindered access to associated diagnostic and application programs, documentation, etc. at agreed customer service appointment times. If the contractual performance of NETCOR is delayed for reasons for which the customer is responsible, he shall be liable for resulting damages incurred by NETCOR.

### 4. Retention of Title

- (1) NETCOR reserves the right to ownership in the products supplied until any and all demands arising from the business relationship are settled, specifically the balance has been settled.
- (2) Any modification or processing of the retained goods is performed for NETCOR as the manufacturer in the sense of § 950 BGB. If retained goods are processed with foreign goods, NETCOR acquires co-ownership in the new product at the ratio of the value of the original retained goods vs. the other goods processed at the time of processing. If the customer's good is regarded as the main article, then the customer shall transfer co-ownership to NETCOR.
- (3) The customer is entitled to sell the retained goods in the ordinary course of business. Herewith the demand of the customer from the resale of the retained goods already assigns to NETCOR, in the amount of the final invoice amount (including VAT) of the claim. The assignment shall be valid regardless of whether the retained goods have been resold with or without processing. The customer remains entitled to the assignment to collect the debt. The customer has to pay the claim promptly to NETCOR. The power of NETCOR to collect the debt ourselves remains unaffected. NETCOR will not collect the claim as long as the customer meets his payment obligations from the collected proceeds, is not in default of payment or payments.
- (4) Furthermore, the customer assigns to NETCOR by way of security the receivables resulting from the sublease of the retained goods in the amount of the final invoice amount. In addition, par. 3 applies accordingly.
- (5) The pledging or transfer by way of security is not permitted for retained goods. In the event of third parties accessing the retained goods the customer shall identify the property of NETCOR and immediately notify NETCOR.
- (6) NETCOR shall release the securities upon the customer's request as far as their value exceeds 20 % of the value of all receivables to be secured.

### 5. Delivery and Service

If certain products are agreed to be assembled at the customer site and set up for operation, such products are considered operational if testing programs and processes used in line with functionality testing developed for this purpose by NETCOR or by the product manufacturer do not show essential contractual faults and NETCOR notifies the customer of the operational readiness. Incidentally, NETCOR only performs the in-house functionality test with own products. For all other products, if NETCOR is listed as a reseller of such, the functionality testing is performed in line with final inspection at the respective manufacturer's works. Within the scope of customer services, NETCOR is instructed to perform all maintenance required for the smooth operating of the equipment or by its specifications. Within the scope of customer service agreements made with the customer, NETCOR reserves the right to negotiate its own customer service agreements with the manufacturer of the product to satisfy the contracted

customer service agreements on behalf of NETCOR. NETCOR or the product manufacturer are authorised to make improvements to the functionality of the equipment at any time; these shall be free of charge. Some products may contain selected and carefully refurbished components which correspond equally to new components in terms of performance. The selection of software programs and consultations in regard to the applications intended by the customer as well as instruction, training and other technical support to the customer are not subject matter of this agreement. These may be subject matter of a separate contract. NETCOR insures the products against potential transport damages. The customer is authorised to return NETCOR transport packing materials to any NETCOR branch office. The packing materials must be clean, free of foreign materials and sorted by different packaging materials. NETCOR is otherwise entitled to demand reimbursement from the customer for the additional costs incurred during disposal.

### 6. Warranty

- (1) For any defects to products supplied NETCOR will first provide warranty by remedy or replacement, at the choice of NETCOR. Should the supplementary performance fail, the customer may demand at his discretion a reduction in payment (discount) or cancellation of the contract (rescission) as well as damages. The Buyer is not entitled to withdrawal in the case of minor defects. Should he decide on punitive damages, the stipulation of item 7 applies.
- (2) If the customer acquires products from NETCOR which were not manufactured by NETCOR, the customer shall first contact the manufacturer for remedy. NETCOR surrenders any warranty claims against the manufacturer to this effect to the customer. The customer is only entitled to claims for remedy against NETCOR if the manufacturer does not provide remedy within a reasonable period.
- (3) The customer has to inspect immediately any goods delivered for discrepancies in quality or quantity and notify NETCOR in writing of any visible defects within a period of one week from the receipt of goods; a claim for warranty is otherwise excluded. Concealed defects shall be reported in writing within a period of one week from the time of discovery. Punctual dispatch suffices to comply with the time limit. The full burden of proof lies with the customer for any and all basis of claims, particularly the defect itself, for the time of discovery of defect and the timeliness of the notice of defect.
- (4) For manufacturer defects NETCOR shall perform supplementary performance at the discretion of NETCOR either by remedy or remanufacture. In the event of rescission the customer shall owe a reasonable royalty for the period up to the rescission. Incidentally, the customer's rights in the event of manufacturer defects are subject to the legal warranty provisions. Should the customer opt for punitive damages, the stipulations of item 7 apply. The customer is not entitled to warranty if the customer has made modifications to the product himself or through third parties, unless the customer can prove the modifications do not significantly impede the analysis and processing efforts made by NETCOR and the defect was already inherent to the factory at the time of acceptance.
- (5) Warranty claims against NETCOR due to defects on delivered goods expire - unless otherwise agreed - twelve months from the time of delivery, due to manufacturer defects twelve months from the time of delivery.

### 7. Liability

- (1) In the event of intention or gross negligence by NETCOR or one of his vicarious agents, NETCOR shall be liable to the extent of the law. Incidentally, NETCOR shall only be liable pursuant to the Product Liability Act for personal injuries or for culpable breach of vital contractual obligations. A claim for damages for the breach of vital contractual obligations shall be limited to losses foreseeable and typical for this type of contract. Any liability is excluded for damages to the customer's other legally protected interests, e.g. to other items, due to an object of delivery or performance by NETCOR. The stipulations of sentences 3 and 4 of this par. 1 do not apply to liability for intention or gross negligence or due to personal injury.
- (2) The stipulations of above par. 1 extends to punitive damages in addition to performance and punitive damages in lieu of performance, regardless of the legal basis, particularly defects, a violation of duties as a result of contractual obligations or a tortious act. It also applies to the right to replacement of futile expenses. The liability for delay, however, is determined pursuant to par. 3, the liability for impossibility pursuant to par. 4.
- (3) For delays in the contractual performance NETCOR shall be liable to the extent of the law in the case of intention or gross negligence by NETCOR or a vicarious agent. Incidentally, the NETCOR's liability for punitive damages in addition to performance as well as that in lieu of performance shall be limited to 50 % of the value of the contractual performance (agreed compensation). Further customer claims - including upon expiration of possible respite for performance placed upon NETCOR - are excluded. The above limitation does not apply to liability for personal injuries.
- (4) If the contractual performance is impossible, the customer shall be entitled to demand punitive damages pursuant to the legal provisions. The customer's right for punitive damages in addition to or in lieu of performance and for reimbursement of futile expenses, however, is limited to 50 % of the value (agreed compensation) of that item of the contractual performance, which cannot be used due to impossibility. Further customer claims due to impossibility of delivery are excluded. The above limitation does not apply to liability due to intention, gross negligence or due to personal injury. The customer's right to rescind remains unaffected.

### 8. Industrial property rights and third-party copyrights

In the event of infringement of German industrial property rights or copyrights due to the use of a NETCOR product, NETCOR shall release the customer from claims asserted by the proprietor. As a basic principle, NETCOR shall further procure the right for continued use of the product. Should this not be possible under economically reasonable conditions, NETCOR shall, at its discretion, either modify or replace the product so as not to violate the property rights or take the product back and refund the purchase price paid to NETCOR minus an amount considering for the age of the product. The aforementioned obligations of NETCOR only apply if the customer promptly notifies NETCOR of claims made against him, all defensive measures including out-of-court negotiations remain reserved to NETCOR and the infringement of property rights is not caused by a modification of a product supplied by NETCOR, the use thereof in a manner not described in NETCOR publications or use thereof together with products not supplied by NETCOR. This stipulation contains, with the exception of item 7, any and all obligations of NETCOR for claims asserted in connection with the infringement of industrial property rights or copyrights.

### 9. Software licenses

The customer is granted, if not agreed otherwise, a non-exclusive and non-transferable license of software by NETCOR and software from external sources (software developed by a software provider not affiliated with NETCOR) and the associated documentation as well as supplements thereof and other documentation for the internal use on any or more computer systems. All other rights in the software and documentations, including copies and subsequent supplements remain the property of NETCOR or the respective software provider. Furthermore, for third-party software the license terms of the software provider shall apply pre-eminently. On request at any time these license terms can be provided also in written form by NETCOR. The customer is entitled to monitor, inspect or test the functionality of the software to determine the ideas and principles the software is based on, provided this is done by actions of starting, displaying, executing, transferring or saving the software to which he is authorised by contract; item 9 sentence 1 applies accordingly. The customer is not authorised to duplicate, modify, translate, convert from object code to source code or decrypt encrypted software of any type, in whole or in part, without the written consent of NETCOR. This does not apply if such action would be necessary to obtain information required to set up the interoperability of an independently created computer program with other programs, and if this information is not accessible to the customer without further ado. These actions must be limited to those portions of the original program which are required to set up the interoperability; the information gained may not be used for any other purpose or passed on to third parties (cp. § 69e UrhG [German Copyright Act]). NETCOR is entitled to demand reasonable reimbursement for passing such information on. The customer must ensure the software and documentation is not accessible to third parties without the prior written approval of NETCOR. On principle, copies may only be made for archiving, data backup and troubleshooting purposes; item 9 sentence 1 and 2 apply accordingly. The license of source programs requires a separate, written agreement. If the originals bear a notation indicating copyright protection, the customer must also apply this notation to copies. Unless otherwise agreed, the license is considered granted with each the order confirmation and delivery of software, documentations and subsequent supplementations. NETCOR is entitled to revoke the license if the customer does not satisfy his payment obligations. Furthermore, item 4 applies. In the event of violation of such revocation, NETCOR is entitled to reasonable reimbursement.

### 10. Export regulations

In the event of (re-) export of the products, the customer must observe the respective German and U.S. regulations and notify his customers of the applicability of German and U.S. export and import regulations in the event of (re-) export.

### 11. Assignment and set-off

The customer shall only transfer the rights and obligations arising from the contract with the written consent of NETCOR. He is only entitled to offset or assert a lien to demands made by NETCOR if the customer's counter claim is uncontested, legally binding or is synallagmatically linked to the claim of NETCOR.

### 12. Miscellaneous

In the event that individual provision is invalid, the remainder of these general terms & conditions remains in effect. The jurisdiction for all contractual claims between the customer and NETCOR is Tostedt, provided the customer is a merchant. NETCOR is additionally entitled to file claims with the court in jurisdiction for the (residential) address or domicile of the customer. The contract is subject to the laws of the Federal Republic of Germany excluding the applicability of the UN Convention on Contracts for the International Sale of Goods.