

General Terms And Conditions of navtec Remoto, Gesellschaft für drahtlose Datenübertragung mbH

Version: -2

0. Preamble

0.1. (Application) The following terms and conditions apply for any and all of our deliveries, performances and other business relations without exceptions, unless deviating terms and conditions have been agreed. Any deviation requires our explicit and written approval.

0.2. (Other Terms and Conditions) The terms and conditions of business of our business partners do not apply in business relations with us, regardless of the fact that we have not expressly objected to their terms and conditions. They are valid only if we declare so explicit in writing.

1. Subject of the Contract

1.1. (Scope) The scope of supplies or performances is solely determined by our written order confirmation, in case of the lack of an order confirmation by our written quotation. The delivery note is part of this contract. Referring to hardware, the product decision is at navtec's own discretion. The product or performance has to meet only the requirements of the system solution with regard to its quality and independent from the respective manufacturer, resulting from the mutually signed contract. The technical specification for the compliance with the performance parameters are within the sole responsibility of navtec.

1.2. (Change of Contract) Changes of the subject of the contract have to be amended to the contract and mutually signed by the parties.

1.3. (Other Performances) Additional performances, Options to products or in performances etc., the customer decides to order at a later date, have to be covered by amendments, the terms of the contract will apply for accordingly.

1.4. (System Changes) Changes particularly with regard to hardware configuration or to the system software are to be notified to navtec by the customer in sufficient time to enable navtec to check the consequences on cost and time and to inform the customer accordingly.

1.5. (Approval) The sole responsibility for possible approvals, e.g. CE-qualification, Wheelmark, RTCA, RTCM, FCC, R&TTE or other remains with the customer.

2. Delivery

2.1. (Delivery) navtec delivers products and performances to the customer according to the provisions of clauses 1.1. to 1.3.

2.2. (Delivery Period) To facilitate compliance with our obligation for delivery requires performances by the customer in due time and in proper form. The delivery period for customer-specific developments starts basically upon receipt of a down payment.

2.3. (Place of Performance) Place of performance is the registered office of navtec.

2.4. (Warranty Period, Maturity) Our warranty obligation starts upon the delivery ex works. Payments become due from this moment at the latest.

2.5. (User Dokumentation) navtec delivers together with the ordered products related documentation material (in particular operating instruction, description, manuals, spreadsheets and other material).

2.6. (Shipment and Passing of Risk) Unless otherwise agreed, shipment is made in a suitable mode of dispatch at the choice of navtec. The customer bears the cost of shipment. The risk passes to the customer at the time of shipment or the notice of readiness for shipment. Insurance policy against breaking, transportation and fire damages is effected by the customer.

2.7. (Replacement) If products from navtec the customer possesses spoiled or accidentally destroyed in whole or in part during the contractual use without customer's responsibility, navtec will replace the goods at no cost to the customer.

3. Warranty

3.1. (Definition) navtec warrants that the goods supplied fulfil the mutually agreed functionalities. navtec warrants, that upon delivery the products are not as faulty as the value or the suitability for the contractual use is suspended or significantly reduced. Essential prerequisite for the warranty is only the contractual use. Moreover, the customer may claim for warranty only if the defects reported are repeatable or pointed out by appropriate verification. The customer has to report faults in writing and in due form by supplying all relevant

information to support fault identification. The customer has to assist navtec in the removal of faults if necessary, in particular if required by navtec to submit additional information and to hold tools and equipment at disposal.

3.2. (Effectiveness) Warranty of quality given by navtec must be in written form to become effective.

3.3. (Fault Reporting) It is the customer's obligation to check the consignment promptly upon reception for its conformity. Within ten days of reception notice has to be given of possible faults, short delivery or false delivery in writing. If no notice is given, the delivery is deemed approved. Non-obvious defects have to be reported immediately after they appear, within the warranty period stated in German Law. If a warranty case arises, the customer has the right to have the faults removed, the removal may at the request of navtec take place in the navtec premises. For the purpose of fault removing navtec has to be granted a reasonable period of time and opportunity. If navtec is not allowed to proceed accordingly, navtec is released from liability for defects. Return shipment of goods claimed defective has to be made in appropriate package. The risk of loss or damage during return shipment will be borne by the customer. Any claim raised due to defects prescribe within the period stipulated by Law. Statute of limitation starts upon receipt of the consignment at the destination. The warranty period is neither barred nor interrupted by the repair of the goods delivered. Further claims by the customer, particularly claims for damages that have not occurred in the goods supplied itself, are excluded from warranty. This exclusion of liability does not apply in case of intention, gross negligence of the general management or executive officers of the company nor in case of culpable breach of material contractual obligations. In case of culpable breach of material contractual obligations, navtec is liable only for the contract specific and reasonably foreseeable damage, except in cases of intention and gross negligence of the general management or executive officers of the company. Furthermore, exclusion of liability does not apply in cases where – pursuant to the German Product Liability Law – the manufacturer is liable for personal injury or damage to property, if the goods delivered are faulty, when the items are used in private spheres. Neither does it apply, if qualities are missing that have expressly been guaranteed, if the warranty has been made just for the purpose of keeping the customer free from damages that have not occurred in the goods supplied itself.

3.4. (Right to Removal) navtec has the right to clear defects being reported. In doing so, the clearing of such defects, which cause only minor interferences in the use of the products, may be replaced by the delivery of an enhanced version. If fault clearing is proved to be impossible, navtec is entitled to develop a fallback solution.

3.5. (Warranty Rights) If navtec will not succeed in fulfilling the obligations according to the provisions of clause 3.4., the customer may at his choice cut remuneration in a reasonable amount or demand cancellation of the contract.

3.6. (Statute of Limitation) Claims for warranty raised by the customer prescribe within the period stipulated by Law.

3.7. (Exclusion from Warranty) navtec excludes from warranty, that the software delivered meets any and all specific requirements of the customer.

4. Third Party Intellectual Property Rights

4.1. (Breach of Property Rights) navtec did not and will not verify possible breach of intellectual property rights resulting from the use of the delivered items and/or goods developed (hardware and software). This remains the sole liability of the customer.

4.2. (Legal Consequences) In case legal consequences arise from a contract due to the breach of property rights, all liability is excluded by navtec.

5. Prices and Payment

5.1. (Prices) Charging is based on the prices written in our written order confirmation. If no order confirmation exists, prices valid at the date of delivery are billed. All prices are ex works (EXW – Incoterms 2000) and include individual packing, VAT at the date of delivery will be charged extra. Transport package is billed extra, the package cannot be returned.

5.2. (Additional Cost) Amounts which exceed the contractual prices, in particular software- and hardware supervision, maintenance or hotline services after completion of the contract, have to be negotiated separately and will be charged extra in either case. Cost arising at navtec, resulting from the lack of the obligation to cooperate by the customer, are solely for the account of the customer.

5.3. (Payment Period) invoices have to be settled within 14 calendar days after date of invoice without any deduction, if not stated otherwise in our order confirmation. navtec reserves the right to claim

an interest of 5% above the basic interest rate from maturity.

5.4. (Bills of Exchange, Cheques) navtec reserves the right to decide on a case by case basis whether or not navtec accepts bills of exchange or cheques. Acceptance is made on behalf of payment only. Discount fees, collection or other fees are for the account of the customer. The credit is made under usual reserve. We do not safeguard for presentation or collection in due time.

5.5. (Delay of Payment) If the customer comes behind schedule with the payment of one of our invoices to an important extent – 20% of the total amount before delay of payment – all outstanding debits from our business relation become payable at once, notwithstanding the possible acceptance of bills of exchange. navtec is further entitled to claim payment in advance before other goods are delivered. In case of a delay of payment, navtec charges interest for delay amounting to 8% above the basic interest rate and reserves the right to claim further damages.

In the event the delay of payment is not cleared within an adequate grace period, we are entitled to cancel the contract and claim damages due to delay or non-performance of the contract. This shall in particular be deemed for agreed, but not yet performed transactions.

5.6. (Change) If we receive information and facts about an essential deterioration of assets on the customer's side, navtec is entitled to claim for cash payment in advance of delivery, even if otherwise agreed in the contract, as well as to set due all non-statute-barred outstanding debits from the present business relation.

5.7. (Set-Off) Any set-off may only be made by the customer against undisputed or legally binding and established counter-claims.

6. Liability of navtec

6.1. (Accountability) Notwithstanding the legal cause, navtec will be responsible against the customer for damages caused by navtec or their employees in cases of intention and gross negligence and for damages caused by the lack of warranted characteristics. In case of slight negligence navtec is only liable if navtec has violated a material contractual obligation (cardinal obligation).

6.2. (Limitation) For each single case the maximum liability of navtec is limited to the contract value. In case of an ongoing lump-sum the liability is restricted to the annual amount of the calendar year the case of loss arose.

6.3. (Product Liability) Claims existing from §§ 1 and 4 German Product Liability Law remain unaffected.

7. Obligations of the Customer

7.1. (Information) Information handed over during the project processing may neither in whole nor in part be accessed to third parties.

7.2. (Changes) The customer is not authorised to change or to modify labels, copyright-markings and ownership information of navtec on the products delivered by navtec.

7.3. (Obligation to Cooperate) If the customer is obliged to cooperate during the settlement of the contract, the customer will perform the services in the framework of the project schedule in due time. If time displacement arises by reason of the lack of the obligation to cooperate, in no case navtec has to bear the consequences.

8. Duration of the Contract

8.1. (Termination) If the customer infringes a material contractual obligation, navtec is entitled to terminate the contract immediately.

8.2. (Obligation to Return) If the contract is aborted, the customer has the obligation to return any and all material, which has been left to the customer for project processing purposes, e.g. pre-delivered items and/or user documentation. navtec is entitled to demand a statutory declaration from the customer. Is the contract transferred to a third party by the customer, the obligations remain unaffected. Upon the transfer, the customer is obliged to return any and all items from the project processing to navtec, the customer is only entitled to transfer original products.

9. Reservation of Title

The goods remain the property of navtec until any and all claims to which we are entitled by the business relationship have been fulfilled. If the goods under reservation have been processed or connected to other goods navtec does not own within the meaning of §§ 947 and 950 of the German Civil Code, navtec is entitled to joint ownership in the new product to the extent of the price V.A.T. included invoiced to the customer. The customer may sell the reserved goods in regular business and against prompt payment or under reserved ownership. Any other use, especially transfer by way of security or mortgaging

property is excluded. The customer here and now transfers to navtec the claims from the sale of the goods under reserved ownership at the amount of the selling price including VAT invoiced to him. Until revocation, the customer may collect the claims transferred to navtec. Transferring or mortgaging of these claims may only be made with the written consent by navtec. If circumstances occur that in the opinion of navtec the customer is no longer qualified for a delay in payment, the customer has on the demand of navtec to inform the debtors of the transfer in writing and to inform navtec about all details. If a third party attaches the reserved goods, the customer shall inform navtec immediately and support navtec to except against. If the customer fails to pay or to perform other essential contractual requirements, navtec may demand the re-delivery of the reserved goods and make use of them. The customer has to accept the removal of the goods and to grant navtec access to the customer's premises for navtec's purpose. This cannot be misconstrued as termination of the contract. The customer is liable for the difference between the selling price and the proceeds of utilisation. Any and all of the aforesaid proprietary rights exist under every condition until all claims from the business relation with the group of companies navtec is a member of, its group companies or any of its at least 50% holding companies have been satisfied by the customer.

10. General Provisions

10.1. (Applicable Law) For any and all claims arising under the contractual relation or in connection with the contract, German Law is applicable. If for foreign customers the UN-sales Law should be applicable, which was transferred into German Law, this is explicit excluded.

10.2. (Written Form) Changes or amendments to these regulations are only valid if they are in written form. The same applies for the cancellation of this clause.

10.3. (Venue) Venue for any and all disputes arising under the contractual relation is the registered office of navtec, in case the customer is a registered merchant, a legal person under public law or a public special fund.

10.4. (Severability Clause) If any single of the aforesaid conditions are or should become ineffective or null and void – regardless of the reason – the effectiveness of the remaining clauses shall not be affected hereby. If any single of the aforesaid conditions are or should become null and void, it should be replaced by regulations which come close to the commercial intentions of both parties.