

General Terms and Conditions

of NetJapan Europe GmbH. August 2015

General Terms and Conditions of **NetJapan Europe GmbH** [also referred to as “we”, “us”, “our”] for commercial **customers** [also referred to as “customer” or “you”, “yours”,...]

1. Preamble

- 1.1 All our services are provided on the basis of these Terms and Conditions. These Terms and Conditions shall exclusively apply, unless expressly agreed otherwise in writing by both parties. All our offers or acceptances of orders of customers are conditioned upon the terms contained herein. Any conditional or different terms proposed by you are objected to and will not be binding upon us unless assented in writing by us.
- 1.2 These terms and conditions in their particular current version shall also govern any future contract between us and any customer. Our current Terms and Conditions can be found here [<http://www.netjapan.eu>]. If we publish a new version of our Terms and Conditions, we will give notice on our website.

2. Offers and Orders; Contract.

- 2.1 Our offers to customers are not offers in a legal sense but an invitation to you to place an order. Normally you will get a notice that we received your order, which will not constitute a contract. Your offer shall be binding for two weeks. A contract may be concluded by our written confirmation of your order or in any other convenient way. We also may accept your offer (i) by activating your access to our MSP Portal or (ii) by extending an already existing access of yours to our MSP Products, or (iii) by delivering the goods requested by you via E-Mail or via download access.
- 2.2 Our offers and order confirmations are always subject to a positive credit check of the customer and to a proper and timely self-supply.

3. Subject of Contract

- 3.1 Subject of the contract may be the delivery of standard software and the granting of rights of use under paragraph 4.
- 3.2 You confirm that you checked the specification of the software and that they meet the needs and desires of you or your customers before concluding the contract. You know the essential functional features and conditions of the software.

4. Intellectual Property Rights

- 4.1 All our software products (Licensed Software) are subject to the intellectual property rights of the manufacturers / licensors. You may not alter, cover or eliminate evidence of such rights.

“Intellectual Property Rights” means all of NetJapan’s, NetJapan Inc.’s or any other manufacturer’s ownership rights associated with intellectual property and the Licensed Software, including but not limited to patents, copyrights, trademarks, service marks, and trade secrets, and any and all rights to exclude existing from time to time in a specified jurisdiction under patent law, copyright law, moral rights law, trade-secret law, trademark law, unfair competition law, or other similar rights.

You are obliged to respect these Intellectual Property Rights and to oblige your own customers to respect these Intellectual Property Rights as well.

- 4.2 We grant you the non-exclusive right to distribute the Licensed Software, i.e. to sell / market it to retailers or end customers. This right is subject to conditions precedent by paying the agreed fee to us.

Sales can be carried out as follows:

- (i) By selling the Licensed Software, that is, by way of transfer on a permanent basis with a single payment; or
- (ii) as managed services as part of our MSP program (time-limited provision against current pay, connected to services). In this case, the customer will enter into a separate MSP contract with us.

It is pointed out that so-called NFR licenses ("Not For Resale") may only be used for self-consumption of the customer (not of an end user). Unless otherwise expressly agreed on these licenses may not be sold or made the basis of services for end customers.

- 4.3 If the Licensed Software is software of a third-party manufacturer in addition the license terms of this third-party manufacturer (also called "Licensor") will apply. We will provide the customer with the license terms of the licensor - possibly as part of the software product, or by giving the customer a download link of the licensor. Usually the software products of Licensors are provided with End User License Agreements ("EULA"). You are obliged to inform your contractors / customers to the aforementioned rights and license conditions of the Licensors and to all restrictions stated in the license terms / EULA. You have the obligation to make the EULA a legally effective part of all contracts with your customers / end users. You will be liable for all damages resulting from a breach of this obligation.
- 4.4 For damages resulting from an infringement of such rights of third parties, we only can be held responsible if we knew or should have known that they exist, and that the customer is exposed to third party claims because of these rights. Our liability in this respect is limited to the invoice value of the respective goods, or the annual amount owed by customers, except where we have acted with intent to deceive.

5. If Customer is End User

- 5.1 If the customer uses the software products in his own company (end user), he has to accept the manufacturer's license agreement for the end user (End User License Agreement - EULA).
- 5.2 The end-user is not entitled to sell, lease or distribute in any other way the Licensed Software

6. Condition of Goods, Delivery, Delayed Delivery

- 6.1 All prices, qualities and quantities of our offerings are non-binding and subject to change without notice, insofar as they are not explicitly designated as being binding. Delivery dates are non-binding unless this has been agreed separately in writing.
- 6.2 If we deliver software on a data storage medium we cannot guarantee a certain delivery time. A specified delivery time is complied with if the product leaves our stock within the designated time.
- 6.3 If we exceed a binding agreed delivery deadline by more than one month, the customer is entitled to withdraw from the contract after a reasonable extension period unless we are not responsible for the delay, as it is due to the behaviour of a third party. The same applies with regard to events that are outside of our control, especially force majeure, the refusal, restriction, suspension or retrieval of a licence, permit or other measures on the part of the relevant authorities, fire, explosions, other tariff conflicts, scarcity of materials, energy or transport possibilities, war and upheaval.

The deadlines for the provision of delivery or services shall be reasonably extended in such cases. This shall also apply if such circumstances occur at our suppliers. We will inform our customers about beginning and end of such obstacles as soon as possible.

Compensation claims in such cases are excluded.

7. Examination of Goods and Services

The customer must examine our services / deliveries immediately for completeness, compliance with the shipping documents and the order and for deficiencies. Identifiable defects shall be reprehended in writing immediately i.e. within four business days. If no complaint is made within four business days from receipt of the goods, the delivery shall comply to the contract, unless the deviation was not recognizable in spite of careful investigation

8. Terms of Payment

- 8.1 The prices specified in our acceptance of offer are effective; otherwise it's the prices of our current price list.
- 8.2 All prices are exclusive of value added tax (VAT) and any transport costs.
- 8.3 The payment for Licensed Software is due with the actual activation of licenses; but in any case no later than ten (14) days following receipt of the invoice without any deductions.
- 8.4 In the event of payment default by the customer, default interest of 10 (ten) percent p.a. shall be chargeable. The claiming of further loss caused by default is reserved.
- 8.5 In the event of default by the customer all other outstanding bills are due for payment immediately.

8.6 The customer may only set off payments against claims that are undisputed by us or legally enforceable. The customer may assert a right of retention only with respect to the respective contract.

9. Electronic Invoicing (eBilling)

9.1 We may send our invoices to you by electronic means. This must take place under consideration of the tax regulations of each country including VAT regulations.

9.2 Upon receipt of the invoice, you shall be responsible for complying with the tax regulations that apply to it concerning this invoice, especially the archiving of the invoice according to law. If necessary according to law, you shall generate/transmit a confirmation of receipt for electronic invoices. In the event that you are not (only) subject to the tax laws of Switzerland

9.3 , it may also be responsible for complying with any further regulations of relevant tax laws concerning electronic invoices.

9.4 We are under no obligation to send electronic invoices. If the invoices are issued electronically, we may return to issuing the invoices in the conventional way (paper). We may likewise change the way of issuing and/or transmitting electronic invoices if this appears to be useful or necessary due to changes in law or for economic/technical reasons. In such cases, we shall inform you of the changes early enough in advance in writing.

10. Liability and Indemnity

IMPORTANT – Your attention is in particular drawn to the provisions of this clause 10:

10.1 Nothing in these terms and conditions excludes or limits liability for death or personal injury caused by negligence, fraudulent misrepresentation, or any other liability which may not otherwise be limited or excluded under applicable law.

10.2 Subject to Section 10.1 above, other than as expressly provided in these terms and conditions or otherwise in writing with respect to specific products, any indemnities, warranties, terms and conditions (whether express or implied) are hereby excluded to the fullest extent permitted under applicable law.

10.3 Subject to Section 10.1 above, we will not be liable, in contract, tort (including, without limitation, negligence), pre-contract or other representations (other than fraudulent or negligent misrepresentations) or otherwise out of or in connection with the terms and conditions for any:

- economic losses (including without limitation loss of revenues, data, profits, contracts, business or anticipated savings); or
- loss of goodwill or reputation; or
- special or indirect losses

which arise out of or in connection with any contract between you and us.

10.4 Notwithstanding the above, subject to Section 10.1 our aggregate liability (whether in contract, tort or otherwise) for loss or damage shall in any event be limited to all sums paid under the respective contract.

10.5 This clause 10 does not affect your statutory rights which may not be limited or excluded under applicable law, nor does it affect your contract cancellation rights.

11. Force Majeure.

Neither Party shall be responsible for any delay or failure in performance of any part of an agreement, except for obligations to make payment hereunder, to the extent that such delay or failure is caused by fire, flood, explosion, war, terrorism, embargo, government requirement, civil, or military authority, act of God, act or omission of carriers, or other similar causes beyond its control. If any such event of force majeure occurs and such event continues for thirty (30) consecutive days or more, the Party delayed or unable to perform shall give immediate notice to the other Party, and the Party affected by the other's delay or inability to perform may elect to terminate the respective agreement upon the agreement of both Parties. If such condition continues for sixty (60) consecutive days or more, the Party affected by the other's delay or inability to perform may, in its sole discretion, elect to terminate the respective agreement.

12. Installation, Remote Access at the End User, Liability for Loss of data

On request of the customer and based on a separate agreement, we can perform installation and maintenance services in the way of remote access at contractors of the customer (end user). Precondition is that the customer has made before a full backup of the end user's data or initiated and monitored such a backup. We are not liable for any data losses if no proper data backup has been done beforehand.

13. Limitation Period

For all claims against us the period of limitation is one year.

14. Assignment

14.1 The customer may assign claims from this contract to third parties only with our prior written approval. We will refuse our consent only for good cause.

14.2 We have the right to assign our rights and obligations under a contract with the customer as a whole to a company affiliated with us or to the software vendor (licensor), provided that the further performance of the contract is not jeopardized and that this is not unacceptable for the customer.

15. Agreement to transfer of personal data

15.1 We will not disclose your personal data to third parties for purposes of advertising or the like.

15.2 However, you consent to the transfer of personal data to the following extent:

- (i) To our affiliates, and / or
- (ii) to the manufacturer (licensor) of the Licensed Software you have purchased or you are using, to the extent necessary to provide support services to you, to transmit new software versions or software patches etc. to you, or if a company affiliated with us or the manufacturer (licensor) enters instead of us in the contracts with you.

16. Written form

There are no oral side agreements; if so they are not valid until written affirmation by both parties. All amendments to this Agreement must be made in writing and be signed by the Parties. This also applies to the waiver of this requirement for written form.

17. Severability

Any term or provision of these Terms and Conditions held to be illegal or unenforceable shall, if possible, be interpreted so as to be construed as valid, but in any event the validity or enforceability of the remainder hereof shall not be affected, provided that the general purposes of these Terms and Conditions are still reasonably capable of being accomplished.

18. Governing Law, Venue, Provisional Relief

Any agreement between us shall be governed and construed in accordance with the laws of Switzerland without application of any choice-of-law or conflict-of-law principles, rules, or provision that would result in the application of the laws of any jurisdiction other than Switzerland, including any action for provisional relief concerning this Agreement or the Parties' relationship hereunder.

The place of jurisdiction is Nyon, Switzerland.