



General Terms and Conditions for goods and services of NTT Global Data Centers EMEA GmbH

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Services and repairs

1. General

- 1.1. The contractual relationship (hereinafter also referred to as »Order«) relating to repairs and services by NTT Global Data Centers EMEA GmbH (hereinafter also referred to as »NTT«) is entered into by the submission of an offer by NTT to conclude an Order for services and repairs (the »Offer«) and by acceptance of this Offer by the client (»Acceptance«).
- 1.2. For the execution of building work the Order Governing the Placing and Content of Contracts for Building Work (Vergabe- und Vertragsordnung für Bauleistungen (VOB)) Part B shall apply as a whole and in respect of DIN 18 299, DIN 18 382, DIN 18 384, DIN 18 385 and DIN 18 386 as »General Technical Contract Terms for Building Work (Allgemeine Technische Vertragsbedingungen für Bauleistungen (ATV))« extracts of Part C shall apply as well.
- 1.3. Documents forming part of NTT' offer such as images, drawings etc. shall only be considered as providing approximate measures and weights unless it was explicitly confirmed in writing that dimension and weight accuracy exists. NTT reserves property rights and copyrights in these documents; they shall not be made available to third parties without NTT' consent or may not be put to any unauthorized use. If the Order is not placed documents prepared to clients specification shall be returned without being asked and shall in all other cases be returned immediately upon request, at the client's expense.

2. Costs for Orders not executed

- 2.1. The client will be charged for the expenses incurred – for which proof has to be furnished – (time spent for error diagnostics = working time), unless the expenses refer to warranty works of NTT. The client shall also bear the expenses incurred if an Order is not executed for reasons beyond NTT' control. This shall in particular apply if:
 - 2.2. the defect complained of did not occur during examination which was carried out observing proper engineering standards;
 - 2.3. a required spare part can no longer be procured for reasons beyond NTT' control;
 - 2.4. if the client negligently fails to observe the agreed date;
 - 2.5. the order was withdrawn during execution without NTT being responsible for the circumstance underlying such withdrawal.

3. Estimates of cost

If an estimate of cost is desired prior to the execution of an Order the client shall explicitly advise thereof in writing. The costs for any such estimate of costs shall be agreed separately and be borne by the client. Any agreement relating to the estimate of costs shall form part of this contract/Order. Any part which needs no repair but is dismantled for the preparation of the estimate of cost must only be returned to its original condition against reimbursement of costs incurred and upon client's explicit request. This shall not apply if the client has refused its consent to dismantling or if dismantling was not necessary.

4. Warranty and liability

- 4.1. The warranty period for all work performed – except for work on buildings (building work) – and for built-in material is twelve (12) months. The period shall start to run upon Acceptance but not later than – if applicable – one (1) week after the date of collection the client was notified of. This shall not apply to damage to life and limb, to claims resulting from intentional or negligent breach of duty on the part of NTT, to damage resulting from a breach of material contractual obligations (obligation the proper fulfilment of which constitutes a condition sine qua non and on the fulfilment of which the client regularly relies and may rely) or if a defect is fraudulently concealed. The statutory provisions relating to expiration, suspension and resumption of time limits shall remain unaffected. Warranty and liability for work on buildings (building work) is exclusively subject to sec. 13 VOB/B.
- 4.2. The client shall allow NTT the time and opportunity reasonably required to remove any defect. The client shall in particular ensure that the item about which complaints were received is available to NTT or its agents for examination and execution of the repair work. If the client refuses to make available the item or unreasonably delays this NTT shall be exempted from liability for defects. Two attempts to remedy a defect shall be admissible.
- 4.3. If within the scope of client's warranty request it turns out that the defect about which complaints were received is attributable to a technical cause other than the cause existing in the original repair this is not considered as warranty case. The client will therefore be charged for the expenses incurred and to be proved.
- 4.4. Defects caused by damage, arising from improper connection or handling on the part of the client, damage caused by force majeure such as damage by lightning, defects by wear and tear caused by overstraining of mechanical or electromechanical parts, by unintended use or contamination as well as damage arising from exceptional mechanical, chemical or atmospheric influences shall be excluded from warranty.

- 4.5.** The warranty claim shall expire if the client or any third party takes any unauthorized measures or makes any other modifications in respect of the item which are associated with the defect without having obtained the written consent of NTT.
- 4.6.** In defects recognizable by the client notice shall be given immediately in writing, eight (8) days after Acceptance at the latest; in hidden defects notice shall be given immediately in writing after their detection. Otherwise, NTT shall be released from liability for defects.
- 4.7.** Unless otherwise provided in these General Terms and Conditions including the below provisions, in case of any breach of contractual and extra-contractual provisions NTT' liability shall be subject to the relevant statutory provisions.
- 4.7.1.** NTT shall be liable for damages and losses relating to the item if they were caused by NTT or any of its agents. In case of damage NTT shall be obliged to repair the item at no cost (lastenfrei). If this is impossible or associated with unreasonably high costs the replacement value at the time of defect shall be refunded.
- 4.7.2.** The same applies in case of loss; clause I. 5.2 shall remain unaffected. Any further claims against NTT and its agents, in particular client's damage claims (contractual), are excluded unless caused by intention or gross negligence on the part of NTT or its agents. In simple cases of negligence NTT' liability shall be limited to
- a) damages resulting from damage to life or limb,
 - b) damage resulting from the breach of material contractual obligations (obligations the proper fulfilment of which constitutes a condition sine qua non and on the fulfilment of which the client regularly relies and may rely); in such case NTT' liability shall be limited to payment of the typically foreseeable damage.
- 4.7.3.** The warranty period of twelve (12) months set out in clause I. 4.1 shall also apply to client's claims, if any, resulting from positive violation of contractual duty (positive Vertragsverletzung) and from culpa in contrahendo, provided that this shall not apply in cases of damage to life and limb, intentional or grossly negligent breach of obligations, damage resulting from the breach of material contractual obligations (obligations the proper fulfilment of which constitutes a condition sine qua non and on the fulfilment of which the client regularly relies and may rely) to which the statutory warranty periods apply.
- 4.7.4.** The limitations on liability set out in clauses I.4.7.2 and I.4.7.3 shall not apply,
- a) if NTT has fraudulently concealed a defect or has assumed a guaranty for the service provided or
 - b) to claims of the client under the Product Liability Act (Produkthaftungsgesetz).

5. NTT' extended pledge of movables

- 5.1.** Concerning its claim relating to the Order, NTT has a right of lien on the client's item of which it obtained possession as a result of the Order. The right of lien may also be asserted for claims relating to work performed in the past, spare part supplies and other services provided inasmuch as they are associated with the item. The right of lien shall only apply to other claims resulting from the business relationship if they are awarded under a final court decision or have not been contested.

- 5.2.** If the item is not collected within four (4) weeks after collection was requested NTT may charge reasonable storage charges upon expiry of that period. If the item is not collected three (3) months after the request for collection was made NTT shall no longer be obliged to store the item and shall no longer be liable for damage or loss except in cases of intentional acts or omissions or gross negligence. The client shall be provided with a warning letter to the effect that the item will be sold one (1) month before the expiry of this period. After expiry of that period NTT will be entitled to sell the item of the order at the market value in order to cover its claims. The client shall be reimbursed for any excess proceeds.

6. Retention of title

Unless spare parts etc. assembled within the scope of repair work become integral parts, NTT retains title to any assembled parts until all its claims from the existing business relationship are settled. The retention of title shall expire if the unsettled claims are fulfilled for the first time. If the client defaults in payment or fails to fulfil its obligations under the retention of title NTT may withdraw from the contract after having set a reasonable time limit and may demand return of the item to disassemble the built-in parts. In the event of hire purchase transactions with a client who is not registered in the commercial register as businessman any recovery of items delivered shall be considered as rescission of the contract. The client shall bear all costs of recollection and disassembly. If the repair was made on the client's premises the client shall give NTT the opportunity to disassemble the item on its premises. The client shall bear any labor costs and travel expenses.

II. Terms of sale

1. Retention of title

NTT retains title to the sold items and systems until all its claims against the client under the existing business relationship are settled. The retention of title shall expire if the unsettled claims are settled for the first time. Until settlement of these claims the items may not be resold, leased, lent or given away and not be repaired by non-qualified third parties. Transfer by way of security and pledging shall also be forbidden. The client may be allowed to resale in the ordinary course of business if the claims from any resale, including all ancillary rights in the amount of NTT' invoice amounts, are assigned to NTT already today. During the duration of the retention of title, the client shall be entitled to possession and, possibly, to use the item as long as it meets its obligations from the retention of title and is not in default of payment. In addition, during the duration of the retention of title the client is obliged to maintain the item in a proper condition and to have NTT carry out all necessary maintenance work and repairs without delay. If the client defaults in payment or fails to fulfil its obligations under the retention of title NTT may withdraw from the contract after having set a reasonable time limit and may demand return of the item and, after having set another reasonable time limit, may realize the item by sale in the open market by set-off against the purchase price. In the event of hire purchase transactions of a client who is not registered in the commercial register as businessman any withdrawal shall be considered as rescission. The client shall bear

all costs of withdrawal and realization. In case of third party measures, in particular if the item is pledged or if any third-party service provider exercises the contractor's lien the client shall immediately notify NTT in writing and shall immediately advise the third party about the retention of title. The client shall bear all costs required to stop any unauthorized measures and to replace the item unless third parties are authorized to confiscate it. NTT undertakes to release any security it is entitled to, upon client's request, if its value exceeds the outstanding claims to be secured by more than 25%.

2. Acceptance and default in taking delivery

If the client fails to accept the item within the set period NTT shall be entitled to grant a reasonable grace period and to otherwise dispose of the item after expiry of that period and, to supply a replacement item to the client within an appropriate period. NTT' rights to withdraw from the contract and to claim damages shall remain unaffected. Within the scope of a claim for damages NTT may claim 20% of the agreed price (excluding VAT) as compensation without providing evidence of any damage suffered, unless evidence is provided to NTT showing that arisen damage was much smaller. The right to claim damages exceeding that 20% threshold remains reserved. The client shall be obliged to accept part deliveries (advance deliveries) if this can be reasonably expected.

3. Warranty and liability

3.1. Claims for defects in quality are subject to a twelve (12) month limitation period. This shall not apply if longer periods apply according to sec. 438 para. 1 no. 2 (buildings and things that have been used for buildings), sec. 479 para. 1 (recourse claim) and 634a para. 1 no. 2 (building defects) of the Civil Code (BGB) or in cases of damage to life and limb, in cases in which NTT infringes its obligations intentionally or by gross negligence, if damage is caused through a breach of material contractual obligations (obligations the proper fulfilment of which constitutes a condition sine qua non and on the fulfilment of which the client regularly relies and may rely) and if a defect is fraudulently concealed. The statutory provisions relating to expiration, suspension and resumption of time limits shall remain unaffected. Notice of apparent defects must be given immediately in writing, eight (8) days after delivery at the latest; and notice of hidden defects must be given to NTT immediately in writing within eight (8) days after their detection. Otherwise, NTT shall be released from liability for defects.

3.2. NTT shall be liable for defects about which complaints were received in due time as follows, including the absence of guaranteed qualities: All parts shall be repaired or new parts shall be delivered at no cost, at NTT' choice, in case parts turn out to be unusable or their usability turns out to be impaired considerably as a consequence of a circumstance occurring prior to the passing of risk, in particular due to defective design, poor building material or defective workmanship. Two attempts for repair or delivery of new parts are permitted. Replaced parts shall pass into the ownership of NTT. For portable items freight charges and travel costs shall not be assumed. If a

justified complaint in respect of a defect of parts is lodged payments may only be retained to the extent this is reasonable in view of the significance of the defect concerned.

- 3.3.** If warranty claims are asserted proof must be furnished immediately by presentation of the invoice or other proofs of purchase.
- 3.4.** Clause I. 4.4 shall apply analogously.
- 3.5.** The warranty claim shall expire if the client or any third party takes any unauthorized measures (Eingriff) in respect of the item which are associated with the defect, without the client having granted NTT a reasonable period for supplementary performance which has expired unsuccessfully.
- 3.6.** As far as admissible by law, all further claims of the client vis-à-vis NTT and its vicarious agents shall be excluded, including damage claims concerning direct and indirect damages (contractually and extra-contractually) and damage claims resulting from the performance of the repairs or delivery of new items, unless NTT has acted intentionally or grossly negligent. In cases of simple negligence NTT shall only assume liability.
 - 3.6.1.** in cases of damage to life and limb;
 - 3.6.2.** for damage resulting from a breach of material contractual obligations (obligation the proper fulfilment of which constitutes a condition sine qua non and on the fulfilment of which the client regularly relies and may rely); in such case NTT' liability shall be limited to payment of the typically foreseeable damage.
- 3.7.** The warranty period set out in clause II. 3.1 shall also apply to client's claims, if any, resulting from positive violation of contractual duty (positive Vertragsverletzung) and from culpa in contrahendo and from tort, but this warranty period shall not apply in cases of damage to life and limb, breaches of obligations committed intentionally or through gross negligence, in damage resulting from the breach of material contractual obligations (obligation the proper fulfilment of which constitutes a condition sine qua non and on the fulfilment of which the client regularly relies and may rely) and in cases in which the defect was fraudulently concealed. To this extent, the statutory warranty periods shall apply.
- 3.8.** The limitations of liability arising from clauses II. 3.6 and II.3.7 shall not apply,
 - 3.8.1.** if NTT has fraudulently concealed a defect or if a defect concerns a quality guaranteed by NTT (Beschaffenheitsgarantie), or
 - 3.8.2.** to client's claims under the Product Liability Act (Produkthaftungsgesetz).
- 3.9.** In the case of the sale of used items NTT shall advise the client to the best of its knowledge about the service value of the item. Unless NTT assumes any liability under a mandatory provision of law or unless otherwise agreed, NTT shall not assume any warranty.

III. Joint provisions for services, repairs and sales

1. Prices and terms of payment

- 1.1.** The prices are quoted as ex registered office of NTT and do not include VAT. Any costs for insurance, freight and custom duties shall be invoiced separately.
- 1.2.** The prices agreed upon on the conclusion of the agreement – which are based on the cost factors presently in force – will be charged. Should these cost factors (in particular the cost of materials, energy or wages etc.) change between the time the agreement is concluded, and the agreed time service is provided/delivery is made NTT will be entitled to demand that a reasonable price adjustment be negotiated.
- 1.3.** All invoiced amounts shall be payable in one amount within eight (8) days after receipt of the invoice. Any hire purchase arrangements must be previously agreed in writing. In such cases the entire outstanding amount shall become immediately due for payment if the clients fail to pay at least two (2) consecutive instalments, in whole or in part. The pertinent date for the timeliness of the payment is the date on which the amount of the invoice or the installments are credited to NTT' account.
- 1.4.** Invoices for repairs shall be due immediately; ec-checks and bills of exchange will only be accepted in lieu of payment, the former only against presentation of a valid ec-card and the latter only after special agreement.
- 1.5.** If the client has failed to meet its payment obligations it shall be obliged to indemnify NTT for the damage caused by default according to the statutory provisions.
- 1.6.** Client's counterclaims may only be offset if they have not been contested or are awarded under a final court decision. The client may only assert a right of retention with regard to counterclaims existing under the same contract.
- 1.7.** The client may demand a supplementary offer or NTT may issue such supplementary offer in respect of services arranged for by the client which are not included in the Order or deviate from the original specification of services. If such supplementary offer is not made such services will be charged on the basis of the amount of work done and time spent. In respect of notification of and provision of evidence for time work sec. 15 no. 5 VOB/B shall apply to work on buildings (building work).
- 1.8.** In Orders the performance of which takes more than a month – according to contract or for reasons the client is responsible for – instalment payments shall be made in the amount of 90% of the respective value of the work performed depending on the progress of the work. NTT shall demand the instalments and the client shall effect payment within one (1) week after receipt of the invoice.

2. Period of delivery, delay in delivery, impossibility of performance

- 2.1.** The period of delivery/time of performance to be agreed separately shall commence upon the conclusion of the contract, but not before the client has obtained all records, permits and releases to be obtained by it and not before receipt of an agreed deposit, if any. A prerequisite for the fulfilment of the time of performance/period of delivery on the part of NTT is the client's fulfilment of its contractual obligations.
- 2.2.** The period of delivery is deemed observed if, until its expiry, the item has left the works of NTT or a notification was provided that the item is ready for dispatch, in cases where items supplied are also installed or assembled the period of delivery is deemed observed after assembly is completed. The time of performance/period of delivery shall be reasonably extended if the client has supplementary requests for modification or amendment. The same shall apply to unforeseeable obstacles which are beyond NTT' control such as force majeure, labor disputes, strikes, lockouts, delays in the delivery of essential raw material, materials or parts if such obstacles influence the completion or delivery of the item considerably. The same applies if the above circumstances occur with subcontractors. NTT shall not be responsible for the above circumstances not even if they occur while there is already a delay.
- 2.3.** If a delay in performance/delay in delivery exists which was caused by NTT the client may grant a reasonable grace period in writing indicating that it refuses to accept the item after expiry of that grace period. After unsuccessful expiry of the grace period the client will be entitled to withdraw from the contract by written declaration or to claim damages instead of performance in cases of intent or gross negligence. Further damage claims shall be excluded except in cases of intent or gross negligence. In cases of simple negligence NTT shall only assume liability
- 2.3.1.** for damage to life and limb;
- 2.3.2.** for damage resulting from a breach of material contractual obligations (obligation the proper fulfilment of which constitutes a condition sine qua non and on the fulfilment of which the client regularly relies and may rely); in such case NTT' liability shall be limited to payme med a warranty for the quality of the sold item or
- 2.3.3.** to claims of the client under the Product Liability Act (Produkthaftungsgesetz).
- 2.4.** If the client fails to make payment or if there are concrete indicators suggesting that there is the imminent danger of client's insolvency NTT may stop work on current Orders and demand immediate payment in advance of all amounts including debts not due and including bills of exchange and amounts for which an extension was granted and may demand corresponding provision of security. If the client fails to comply with the request for advance payment or provision of security within a reasonable time limit NTT will be entitled to withdraw from the contract (or the

contracts, respectively) and charge the client for the costs incurred by that point of time including any lost profit.

3. Liability for collateral duty

- 3.1.** The advice provided by NTT in terms of application technology both orally and in writing as well as suggestions, calculations, projections etc. made by NTT are only intended to explain the client how the products and services can be used best. It does not release the client from its obligation to satisfy itself by own examination that the products and services are suitable for the intended purpose.
- 3.2.** If the subject matter of the contract cannot be used according to contract for negligent infringement of collateral duty incumbent on NTT, even if such infringement is committed before the conclusion of the contract, e. g. by failure to advise or by the provision of incorrect advice or false instructions, NTT shall only be liable (both contractually and extra-contractually) in cases of intent and gross negligence. In cases of simple negligence NTT shall only assume liability
 - 3.2.1.** for damage to life and limb;
 - 3.2.2.** for damage resulting from a breach of material contractual obligations (obligation the proper fulfilment of which constitutes a condition sine qua non and on the fulfilment of which the client regularly relies and may rely); in such case NTT' liability shall be limited to payment of the typically foreseeable damage.
- 3.3.** The statute of limitations for warranty claims as set out in clauses I. 4.1 and II. 3.1 shall also apply to claims of the client, if any, resulting from the breach of such collateral duty, but any such statutory limitation shall be excluded in cases of damage to life and limb, infringements of duty by intent or gross negligence, in cases of damage resulting from a breach of material contractual obligations (obligations the proper fulfilment of which constitutes a condition sine qua non and on the fulfilment of which the client regularly relies and may rely) and if a defect is fraudulently concealed. To this extent, the statutory warranty periods shall apply.
- 3.4.** The limitations of liability resulting from clauses III. 3.2 and III.3.3 shall not apply
 - 3.4.1.** if NTT has fraudulently concealed a defect or has assumed a warranty for the quality of the sold item, or
 - 3.4.2.** to client's claims under the Product Liability Act (Produkthaftungsgesetz).

4. Modification of the General Terms and Conditions, specification of services and prices (unless separately agreed)

- 4.1.** If NTT intends to modify the General Terms and Conditions, the specification of services or the prices, it shall provide the client with a written offer for the modification of the contract. If the client fails to object to the offer or fails to object to it in due form and time (cf. clause III. 4.2) the offer is deemed accepted. In such case the contract amendment shall take effect one (1) month after receipt of the offer. If the client, however, opposes the offer in due form and time the contract shall continue without any changes on the previous terms.
- 4.2.** The client's objection (cf. Clause III. 4.1) shall only be deemed to be in due form and time if it is made in writing and is received by NTT within one (1) month after receipt of the offer. In the offer NTT will expressly refer to the requirements applying to the objection and the legal consequences set out in clauses III. 4.1 and III. 4.2.
- 4.3.** If the client has opposed in due form and time and NTT notifies the client in writing that it will be unreasonable for NTT to continue the contract without the changes for technical or economic reasons the client is entitled to terminate the contract within a period of one (1) month from receipt of such notification. Termination shall be made in writing. If the client (a) fails to issue notice of termination or fails to do so in due form and time or (b) fails to expressly declare in writing within a period of one (1) month from receipt of the notification that it demands fulfilment of the unchanged contract this is deemed as a permanent waiver by the client of the service the provision of which is unreasonable for NTT according to the provided notification. In such case, NTT is entitled to execute the contract as if the contract modification had taken effect.
- 4.4.** If the client has terminated the contract (clause III. 4.3) in due form and time the contract will thereby be terminated upon expiry of the month in which NTT received the notice of termination. In the offer NTT will expressly refer to the requirements applying to the notice of termination and declaration under clause III. 4.3 (b) and the legal consequences set out in clauses III. 4.3 to III. 4.4.
- 4.5.** NTT may adjust the prices accordingly if the statutory VAT rate or the labor costs are changing, evidence of which has to be furnished in the latter case.

5. Place of jurisdiction; applicable law and deviating terms

- 5.1.** The exclusive place of jurisdiction for all present and future claims arising from the business relationship with businessmen, public law entities and institutions of special funds under public law (Träger von öffentlich-rechtlichem Sondervermögen) shall be

the registered office of NTT. The same place of jurisdiction applies if the client has no general place of jurisdiction in Germany, if it relocates its place of residence or habitual abode to a foreign country or if its place of residence or habitual abode is not known at the time an action is filed.

- 5.2.** The contractual relationship between the parties shall be governed by German law, excluding the United Nations' Convention on Contracts for the International Sale of Goods (UN-Kaufrecht).
- 5.3.** Deviating terms of the client do not apply. This shall also apply if NTT fails to expressly oppose any terms of contract of the client or if NTT provides the service owed being aware of any terms of contract of the client that deviate from or are contrary to those of NTT.
- 5.4.** Agreements made upon the conclusion of the contract, which deviate from the above provisions, shall be confirmed in writing by NTT to be effective.

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As of: 1. Mai 2020