



NTT

General terms and conditions for the sale of goods

NTT Czech Republic s.r.o.

14 February 2020

General terms and conditions for the sale of goods

1. Introductory provisions

The provisions of these general terms and conditions for the sale of goods (hereinafter referred to as the **“Terms and Conditions”**) are valid for the sale of goods of **NTT Republic s.r.o.**, registered address: Milevská 2095/5, 140 00 Prague 4, reg. no.: 26175738, registered in the commercial register maintained by Prague City Court in section C, entry no. 77064 (hereinafter referred to as the **“Seller”**) to its business partners (hereinafter referred to as the **“Buyer”**), unless stated otherwise in a separate contract.

2. Order and creation of contract

2.1 An individual purchase contract (hereinafter referred to as the **“Contract”**) shall be concluded on the basis of the Buyer's order which has been made out by the Buyer according to the Seller's valid offer (hereinafter referred to as the **“Order”**). The Seller's offer (hereinafter referred to as the **“Offer”**) and the Buyer's Order also include these Terms and Conditions. By making out an Order the Buyer confirms that it has read these Terms and Conditions and that it considers them to be part of the Contract concluded between the Buyer and the Seller. By making out an Order the Buyer also agrees that these Terms and Conditions are the only ones applicable to the Contract concluded on the basis of its Order. For the avoidance of doubt, any business or other contractual conditions printed or otherwise referred to or accompanying the Buyer's Order shall not be used for the Contract (the purchase of goods from the Seller).

2.2 In certain cases the Seller's Offer may also include a Scope of Work document (hereinafter referred to as **“SOW”**), which specifies in detail the Seller's subject of performance under the Contract. The SOW shall be binding for the Seller's performance in the same way as other parts of the Offer.

2.3 The Buyer's Order made out on the basis of the Seller's Offer must be in writing and may be in the following form: (i) the original written Order delivered to the Seller, for example by post or in person, (ii) a copy (scan) of the original written Order delivered to the Seller by email, (iii) a PDF document that has been created in the Buyer's internal information system, delivered to the Seller as an email attachment or otherwise electronically, (iv) the Buyer's e-mail accepting the Seller's Offer with an express reference to the Seller's valid Offer, which can be clearly identified from such reference (e.g. by the Offer number and / or Offer title and price of the goods). The Order must always (with the exception of the case in point (iii) and (iv) of this paragraph) be signed by the Buyer's authorised representative. An Order made out in this way by the Buyer shall be deemed binding.

2.4 The Order must contain at least these basic requirements:

- a) the Buyer's business name and registered address (place of business in the Czech Republic);
- b) contact person, his/her email and phone number;
- c) registration number; tax registration number if the Buyer is registered as a VAT payer;
- d) name and code of the goods that uniquely identifies the subject of the Order (numerical designation of the goods, i.e. the product codes listed in the Seller's current price list/Offer);
- e) amount of items of the goods required;
- f) delivery method;
- g) total price of the Order;
- h) signature of the Buyer's authorised representative (if appropriate, also the company stamp), with the exception of paragraph 2.3 above.

The Buyer's Order shall also be deemed sufficient if it does not contain the information according to letters d), e), f) and g), provided it contains an express reference to the Seller's valid offer, which can be clearly identified from such reference, and if the Offer contains various options for goods, the reference shall also specify which option the Buyer has chosen.

2.5 Individual contracts are concluded on delivery of an Order to the Seller if the Order fully matches the Offer and does not contain any deviations, additions, reservations, limitations or other changes compared to the Offer (Section 1740 (3) of the Civil Code does not apply and therefore the possibility of accepting an Offer with an addition or deviation is ruled out).

2.6 If an Order contains deviations, additions, reservations, limitations or other changes compared to the Offer, such Order shall be considered as a new offer and shall be binding for the Seller only if the Seller sends the Buyer confirmation of the order confirming delivery of the goods under the conditions specified in the order, or confirming that the Buyer's Order has been accepted by the Buyer, including with the changes compared to the Offer. The Seller shall send the Buyer confirmation of the Order by email. In such case a Contract shall be concluded on delivery of confirmation of the Order to the Buyer.

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- 2.7 If the Seller's confirmation of an Order is required by the Buyer, the Seller shall confirm the Order without undue delay after receiving it by email. However, if the Order fully matches the Offer, the Contract shall be concluded as soon as the Order is received (see paragraph 2.5 above). If the Order does not match the Offer, the procedure specified in paragraph **Error! Reference source not found.** above shall apply.
- 2.8 For the purpose of concluding a Contract an email shall be deemed delivered as soon as it is received by the other Contracting Party's email server according to the email system records of the Contracting Party that has sent the email; an email may be sent to any email address of the other Contracting Party listed in the Offer or Order or otherwise given to the other Contracting Party on concluding the specific business case.
- 2.9 The subject-matter of a Contract concluded in the above manner is the Seller's commitment to deliver the goods specified in the Offer (or in the Order confirmation) to the Buyer and to transfer the ownership right to these goods to it and the Buyer's commitment to take possession of the delivered goods and to pay the agreed purchase price for them, all according to these Terms and Conditions.

3. Electronic Orders in the E-Shop

- 3.1 For the sale of selected goods the Seller operates a closed and secure electronic trading system – the E-Shop.
- 3.2 When using electronic orders in the E-Shop the Buyer must use the identification password that it has been allocated, on its request, by the Seller and which is used to identify the Buyer. The Buyer is obliged to secure the confidentiality of the password against unauthorised entities and is responsible for its misuse.
- 3.3 Through the electronic ordering system in the E-Shop an Order is automatically entered into the system operated by the Seller. The system for receiving electronic orders is in continuous operation.
- 3.4 The Buyer shall be bound by an electronic Order made in the E-Shop and shall not be entitled to unilaterally withdraw it. A Contract shall be concluded as soon as the electronic Order is delivered to the Seller. The goods delivery date specified in the Buyer's electronic Order is binding for the Seller only if it is confirmed by the Seller after it has received the electronic Order. The Seller shall confirm the delivery date in an email sent to the Buyer. If the delivery date given in the electronic Order cannot be met by the Seller, the Seller shall send the Buyer notification of a new delivery date in an email or suggest another delivery solution to the Buyer. The date given to the Buyer by the Seller according to the previous sentence shall be binding for the Seller.
- 3.5 An electronic order in the E-Shop is equivalent to written form and shall have the same legal value as written form for both Contracting Parties.

4. Place and date of delivery

- 4.1 The performance deadline given in the Offer (or in the Order confirmation) shall be used to determine the performance deadline. If no performance deadline is listed, the performance deadline in the Order shall apply. If no performance deadline is listed in either of these documents, the Seller shall deliver the goods to the Buyer within ten (10) weeks of the conclusion of the Contract. In exceptional circumstances the Seller may extend the performance deadline; however, in this case it is required to inform the Buyer of this fact, within 21 days of the conclusion of the Contract.
- 4.2 The place of performance given in the Offer (or in the Order confirmation) shall be used to determine the place of performance. If it is not listed therein, the place of performance listed in the Order shall apply. If no place of performance is listed in either of these documents, the place of performance shall be the Buyer's registered address. The goods shall be delivered to the Buyer by a standard delivery service.
- 4.3 If a delay in the delivery of the goods is caused by:
- (i) force majeure, or
 - (ii) any conduct, omission, inaction or other delay by the Buyer, or
 - (iii) any other event beyond the Seller's control,
- the performance deadline shall be extended by the period agreed between the parties, whereas this period may not be shorter than the duration of the event specified above, unless the parties agree otherwise.

5. Price and terms of payment

- 5.1 The Buyer agrees to pay the Seller the purchase price for the ordered goods. The price shall be paid by bank transfer into the Seller's account on the basis of the Seller's issued tax document (invoice).

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- 5.2 The prices listed in the Seller's offers do not include VAT which shall be added according to applicable legislation, unless it is expressly stated in the Offer that the price is inclusive of VAT.
- 5.3 The price is considered the Seller's trade secret.
- 5.4 Unless stated otherwise in the Offer (or in the Order confirmation), invoices shall be payable within fourteen (14) days of the date of issue. The Buyer shall be required to pay the amount in such a way that it is credited to the Seller's bank account on the due date. If the Buyer is in default of payment of an invoice, it agrees to pay the Seller default interest of 0.1 % on the amount owed for each day of the delay.
- 5.5 The cost of transporting the goods from the Seller's warehouse to the Buyer (at the named place of destination) shall be paid in accordance with the INCOTERMS rules "DAP" (Delivered at Place) by the Seller, with the exception of the customs costs which shall be paid by the Buyer, unless the Contracting Parties agree otherwise in writing.
- 5.6 If there is a change by more than 3% in the exchange rate for the currency, in which the Seller purchases goods, against the Czech crown on the date the Buyer is invoiced compared to the exchange rate on the date the Offer (or the Order confirmation) is sent, the Seller shall be entitled to amend the invoice price accordingly, if this price is set in CZK. The exchange rate announced by CNB shall be relevant for calculating exchange rate differences.

6. Delivery and receipt of goods

- 6.1 The receipt of goods shall be confirmed by the Buyer's authorised representative by signing the delivery note.
- 6.2 If goods specified for "personal collection" are not collected on the agreed purchase date or if the Buyer fails to take the goods from the delivery service, the Seller shall be entitled to withdraw from such delivery of the goods, in a unilateral withdrawal statement delivered to the Buyer. In such case the Buyer shall be required to pay the Seller a contractual fine equal to 10% of the purchase price of the goods that have been bindingly ordered but not purchased.
- 6.3 The Buyer shall be required to inspect the goods delivered by the Seller immediately on receiving them from the Seller and inform the Seller of any defects found in the goods. If the goods are sent by a delivery service the Buyer shall also be required to check the consignment on receiving it, but before signing the consignment note. If the data does not correspond to the facts, the original packaging is broken or otherwise damaged, etc., the Buyer shall indicate this on the delivery service's consignment note and write out a damage report with the delivery service or refuse the goods as a whole. The Buyer shall notify the Seller of this fact, i.e. the damage report or the refusal of the goods, without undue delay. The Buyer is also required to check the factual content of the consignment according to the attached delivery note. If the content of the consignment does not match the delivery note, the Buyer shall be required to write the discrepancies on the consignment note and have them confirmed by the delivery service. If the delivery service refuses to do so, the Buyer must refuse the delivery of goods as a whole. By signing the delivery service's list the Buyer confirms receipt of all the goods that are included in that particular delivery.
- 6.4 The Buyer shall be required to inform the Seller of any defective goods without undue delay, i.e. within two (2) working days from the moment when it could have discovered the defect. The Buyer shall report the defect in writing or by email.

7. Other contractual terms and conditions

- 7.1 The Seller reserves the ownership right to the goods and the Buyer shall acquire the ownership right to the goods once 100% of the purchase price has been credited to the Seller's account.
- 7.2 The risk of damage to the goods or their loss or theft shall pass to the Buyer upon delivery of the goods to the place of performance.
- 7.3 The Seller hereby declares that it meets all the conditions set out in Act No. 477/2001 Coll., on Packaging, and the relevant authorisation is available to the Buyer for inspection at the Seller's registered office.
- 7.4 The Buyer shall not be entitled to further sell or otherwise transfer ownership or other rights (for example licence) to the goods to any third party without the Seller's prior written consent.
- 7.5 The Seller agrees that the delivery of goods under the Contract can be used as a public reference indicating the performance or subject of performance, trademarks and generally known facts. This consent is of unlimited duration and shall also remain valid after the termination of the Contract. The Seller shall also be entitled to include the Buyer in its list of references.

8. Liability for defects and warranty

- 8.1 The Seller shall be liable for defects in the goods when they are handed over to the Buyer.

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- 8.2 The Seller shall not be liable for defects in the goods if the defect appeared after the goods were handed over and it was found that (i) the goods were placed in an unsuitable environment; (ii) during the operation of the goods the instructions on proper operation set out in the documentation or otherwise provided by the Seller were not followed; (iii) the goods were used in a way or for a purpose for which they were not intended; (iv) the goods were interfered with by a third party without the Seller's prior consent, including cases where the goods were modified or repaired by a third party without the Seller's prior consent; (v) the goods were used in conjunction with any product (HW or SW) that has not been approved by the Seller; (vi) the defect occurred due to external influences, including excessive physical force, a power or air-conditioning failure, accident, incorrect handling, or force majeure.
- 8.3 The Buyer shall be required to notify the Seller of any defects in writing or by email within two (2) working days after discovering the defect.
- 8.4 The Seller shall provide the same warranty for the goods supplied under the Contract as the manufacturer of the goods provides, to the extent where it is possible legally and on the basis of the contractual relationship between the manufacturer of the goods and the Seller for the Seller to transfer such warranty to the Buyer. The Seller shall inform the Buyer of the warranty on the goods in the Offer or when the goods are handed over. For the avoidance of doubt, the Seller states that it is not the manufacturer of the goods and does not provide any warranty on the goods (unless expressly stated otherwise in the Offer), in particular it does not provide any warranty regarding the satisfactory or usual quality of the goods or the suitability to use the goods for a particular purpose, or a guarantee of non-infringement of third party rights in connection with the use of the goods.

9. Software and protection of industrial property rights and copyrights

- 9.1 The use of any software, whose manufacturer/copyright owner is not the Seller and which is delivered to the Buyer under the Contract, shall be governed by the licence terms that are supplied with such software. The licence agreement for the use of third parties' software shall be directly between the Buyer and the owner/holder of the copyright to the software. All third party software that is supplied is listed by the Seller in its Offer (including SOW).
- 9.2 Unless it is expressly stated in the Offer (including SOW) that the Seller is the holder of the copyright to the supplied software, the Seller shall not be a party to any licence agreement regarding the software and so it shall not provide any guarantee or declaration concerning this software, including (but not exclusively) guarantees regarding ownership/authorship, use or operation of such software.
- 9.3 The Buyer shall not have the right to use the trademarks, trade names, company signs, patents or other intellectual property rights of the Seller or other companies, whose goods (products) are contained in the Seller's Offer, unless expressly stated otherwise in a separate contract.

10. Compensation for loss

- 10.1 The Seller's obligation to compensate the Buyer for damage caused by a breach of obligations arising from the Contract (including these Terms and Conditions) or the law is limited to an amount equal to 100 % of the price of the goods supplied under the Contract. This restriction also applies to non-pecuniary damages which the Seller might be obliged to pay by law and to compensation in special cases under Section 2920 et seq. of the Civil Code.
- 10.2 The Seller shall be exempt from the obligation to pay compensation and shall not be required to pay damages if it shows that the damage occurred due to (a) an exceptional, unforeseeable and insurmountable obstacle independent of the Seller's will (a Force Majeure Event), or (b) conduct by the Buyer or other third party beyond the Seller's control, or (c) a lack of cooperation from the Buyer. Furthermore, the Seller shall not be required to pay the Buyer or any third party for damage if any of the facts in paragraph **Error! Reference source not found.** occurred.
- 10.3 The Seller shall not be liable and therefore shall not be obliged to compensate for (i) loss of profit, unrealised revenues, lost business opportunities, unrealised anticipated savings and/or loss of goodwill, loss of data or damage thereto, (ii) any accidental, subsequent or other indirect damages or losses. This restriction shall apply regardless of the form in which the claim is made, whether it be a claim based on an obligation to pay compensation due to a breach of law or a breach of contract, and regardless of whether the Seller was warned of the possibility of such damages or losses.
- 10.4 The above restrictions shall not apply to the obligation to (i) compensate for a loss on the death or injury of a person, or (ii) compensate for a loss caused intentionally or through gross neglect; or other obligation to compensate for a loss where the exclusion or restriction of this obligation would by law be invalid or unenforceable.

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10.5 The Buyer and the Seller shall be required to mitigate or reduce the impact of any losses, damages, fines, costs, expenses (including legal expenses) or other obligations and liabilities that may arise due to any breach of law or the Contract.

11. Force Majeure

11.1 "Force Majeure Event" means an obstacle that temporarily or permanently prevents a Contracting Party from fulfilling its obligations under the Contract and which is exceptional, unforeseeable and insurmountable and was independent of the will of either Party. Force Majeure Events include floods, earthquake, war, terrorist attack, sabotage, revolution, invasion, insurrection, strike, lockout or other event during plant operation, rebellion, civil riots, mob violence, blockade, embargo, boycott, use of military force, fire, explosion, quarantine, and/or conduct or constraints by the government, including the imposition of restrictions or embargoes on imports and exports.

11.2 A Party affected by a Force Majeure Event shall not be in default of meeting its contractual obligations or otherwise responsible for any delay in meeting or the failure to meet its contractual obligations (with the exception of any payments under the Contract), if the delay in meeting or the failure to meet the obligation was as a direct consequence of the Force Majeure Event and provided that:

(a) the Party affected by the Force Majeure Event has notified the other Contracting Party of the Force Majeure Event, its nature and probable duration, including its impact on the other Contracting Party, in writing and without undue delay;

(b) the Party affected by the Force Majeure Event has taken all reasonable measures to mitigate the impact of the Force Majeure Event.

11.3 As soon as the Force Majeure Event ends, the Party affected by it shall immediately notify the other Contracting Party that the Force Majeure Event has ended and renew the fulfilment of its contractual obligations affected by the Force Majeure Event.

11.4 If a Force Majeure Event lasts for more than thirty (30) consecutive days and the fulfilment of contractual obligations is prevented/delayed for this period, the Party that is not affected by the Force Majeure Event shall (i) be entitled to terminate the Contract by written notice, which shall take effect on the delivery of notice to the other Contracting Party, and (ii) shall not be liable for damages that might arise in this context.

12. Termination of Contract

12.1 The Contract may be terminated by (i) written agreement between the Contracting Parties, and/or (ii) a withdrawal from the Contract. The Seller and the Buyer are entitled to withdraw from the Contract in the cases specified in the Offer (or in the Order confirmation) and in these Terms and Conditions. The option to withdraw from the Contract on the expiry in vain of an additional period to provide performance is expressly excluded. A withdrawal from the Contract must be made by the Parties explicitly, in a written withdrawal notice.

12.2 The Contracting Parties are entitled to withdraw from the Contract in the event of a substantial breach of Contract by the other Contracting Party under the conditions below, unless stated otherwise in these Terms and Conditions. Prior to a withdrawal from the Contract, the Contracting Party that intends to withdraw from the Contract shall first be required to summon the other Contracting Party in writing to redress the situation and to give it a reasonable period to do so, which shall not be less than fifteen (15) working days. If the breach of Contract is not rectified even within this additional period, the other Contracting Party shall be entitled to withdraw from the Contract by written notice. A withdrawal from the Contract shall take effect on delivery of the written withdrawal notice to the other Contracting Party.

12.3 The following cases are deemed a substantial breach of Contract:

- a delay of more than 30 days by the Seller in delivering the goods,
- the delivery of goods with defects that prevent their use and which have not been repaired by the Seller by the agreed deadline,
- a delay or more than 30 days by the Buyer in paying the purchase price or part thereof,
- a delay or more than 30 days by the Buyer in taking possession of the goods.

12.4 If a Contracting Party is bankrupt or if insolvency proceedings are initiated against a Contracting Party under Act No. 182/2006, on Bankruptcy and Settlement (the Insolvency Act), as amended, or if it is in liquidation or administration, or it is unable to meet its financial obligations, the other Contracting Party may withdraw from this Contract immediately with effect on the date the written withdrawal notice is delivered to the other Contracting Party.

13. Final Provisions

13.1 These Terms and Conditions are binding for the contractual relations on the sale of NTT Czech Republic s.r.o. goods, as of their date of publication.

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- 13.2 If the Buyer does not agree to the wording of these Terms and Conditions (also included in the E-Shop), it is not entitled to order goods, either under Article **Error! Reference source not found.** of these Terms and Conditions or in the E-Shop.
- 13.3 The Contract (including these Terms and Conditions) shall be governed by and interpreted according to Czech law. In interpreting the Contract (including these Terms and Conditions) the provisions of the law shall take precedence over trade practices maintained generally and in the specific sector.
- 13.4 The Parties agree to take every effort to settle amicably any and all disputes arising from this Contract or in connection with it (including the provisions of these Terms and Conditions). Disputes that cannot be settled amicably shall be resolved by the Court of Arbitration attached to the Commerce Chamber of the Czech Republic and the Agrarian Chamber of the Czech Republic in accordance with the Court of Arbitration's Rules. The arbitration tribunal shall comprise three arbitrators and its award shall be final and binding. The arbitration proceedings shall be held in Prague, the Czech Republic, and shall be conducted in Czech.
- 13.5 All official notices, requests or communications between the Contracting Parties concerning this Contract shall be made in writing in Czech and sent by letter signed by the Contracting Party's authorised representative or by e-mail, which shall be confirmed immediately by letter. All notices shall be deemed validly delivered on the third working day after sending, if they are sent by registered post to the Contracting Party's registered address.
- 13.6 Any change to the terms of the Contract (including these Terms and Conditions) must be made in writing.
- 13.7 Neither Contracting Party shall be entitled to assign its claims under the Contract concluded in accordance with these Terms and Conditions, or allow the assumption of a debt by a third party, or transfer its rights and obligations under the Contract (assign the Contract) without the other Contracting Party's prior written consent. Any assignments or transfers made without the other Contracting Party's prior consent shall be deemed invalid and ineffective towards the other Contracting Party. This provision shall not be interpreted in such a way that the Provider is not entitled to use a subcontractor to fulfil its obligation. The Provider shall also be entitled to assign the Contract to another entity in the *NTT* Group (Concern).
- 13.8 Under the terms of Section 630 of the Civil Code the Contracting Parties agree on a ten-year limitation period for financial obligations arising under this Contract.

These Terms and Conditions are valid and effective from 1 November 2019.