

General Terms and Conditions for Hardware Rental

1. Scope

- 1.1 These General Terms and Conditions for Hardware Rental ("GTCH") shall apply to all contracts for the rental of hardware and, if applicable, included software between us, Noyes Technologies GmbH (hereinafter "**Noyes**" or "**we**"/"**us**") and our customers ("**Customers**"), irrespective of whether we manufacture these ourselves or purchase them from suppliers.
- 1.2 Unless otherwise agreed, the GTCH in the version valid at the time of the Customer's order or, in any case, in the version last notified to the Customer in text form shall also apply as a framework agreement for similar future contracts without us having to refer to them again in each individual case.
- 1.3 Our GTCH apply exclusively. Deviating or conflicting terms and conditions shall not be recognized by us unless we have expressly agreed to them.
- 1.4 Individual agreements and specifications in our order confirmation take precedence over the GTCH.
- 1.5 Legally relevant declarations by the Customer (such as setting of deadlines, notification of defects or withdrawal) must be made in writing or text form (e.g. letter, e-mail, fax). Legal form requirements and further proof, in particular in the event of doubts about the legitimacy of the person making the declaration, shall remain unaffected.
- 1.6 References to the applicability of statutory provisions shall only have clarificatory meaning. Therefore, even without such clarification, the statutory provisions shall apply unless they are directly amended or expressly excluded in these GTCH.

2. Conclusion of Contract

- 2.1 Our offers are subject to change without notice (*freibleibend*) and are non-binding, unless they are expressly designated as binding or include a specific acceptance period.
- 2.2 The order by the Customer shall be deemed to be a binding contractual offer. Unless otherwise stated in the order, we shall be entitled to accept this contractual offer within two weeks of its receipt by us. Acceptance may be declared either in writing (e.g. by order confirmation) or by delivery to the Customer.
- 2.3 The legal relationship between us and the Customer shall be exclusively governed by the rental agreement concluded in writing, including this GTCH. This rental agreement fully reflects all agreements between the contracting parties on the subject matter of the contract. Verbal commitments on our part prior to the conclusion of the rental agreement are legally non-binding and verbal agreements between the contracting parties are replaced by the written contract, unless expressly agreed otherwise between the contracting parties in each case.
- 2.4 Information on the object of the delivery or service (e.g. weights, dimensions, utility values, resilience, tolerances and technical data) as well as our representations of the same (e.g. drawings and illustrations) are only approximately authoritative, unless

usability for the contractually intended purpose requires exact conformity. Customary deviations and deviations that occur due to legal regulations or represent technical improvements, as well as the replacement of components with equivalent parts, are permissible insofar as they do not impair the usability for the contractually intended purpose.

- 2.5 We retain ownership or copyright (as the case may be) of all offers and cost estimates submitted by us as well as drawings, illustrations, calculations, brochures, catalogs, models, tools and other documents and aids made available to the Customer. The Customer may not make these items available to third parties, either as such or in terms of content, disclose them, use them himself or through third parties, or reproduce them without our express consent. At our request, he shall return these items in full and destroy any copies made if they are no longer required by him in the ordinary course of business or if negotiations do not lead to the conclusion of a contract. An exception to this is the storage of data provided electronically for the purpose of normal data backup.

3. Scope of Services

- 3.1 The rental items provided by us result from the order or the offer (as the case may be) (cf. Sec. 2.1 and 2.2).
- 3.2 The rental items are provided for the purpose described in the order/offer.
- 3.3 Insofar as the rental items include software, this shall, unless expressly agreed otherwise, only be provided in object code, i.e. the source code shall not be made available.

4. Provision

- 4.1 The rental items are provided by us pre-installed with the operating system software.
- 4.2 We deliver the rental items free of charge to the agreed location and installation site of the Customer.
- 4.3 The Customer shall grant us access to the premises at the installation site upon delivery and shall establish the spatial and technical prerequisites for the installation in due time.

5. Installation/Operational Readiness

- 5.1 We set up the rental items at the installation site, connect it to the power and data network with the Customer's cooperation and make the rental items ready for operation.
- 5.2 We do not owe any additional services (such as training), unless otherwise agreed.

6. Rights of Use

With respect to the software covered by the rental item, we grant the Customer the simple (non-exclusive) right (*einfaches Nutzungsrecht*) to use it in conjunction with the rental item during the agreed term within the scope of the purpose of the contract.

7. Rent, Terms of Payment

- 7.1 The Customer shall pay us the agreed rent for the rental item.
- 7.2 The rent is due in advance on the third working day of each calendar month.

- 7.3 The obligation to pay the rent shall commence in the calendar month following completion of the operational provision of all rental items. If we are not responsible for a (partial) untimely operational provision, the Customer owes the rent from the scheduled date of completion of the operational provision of the rental items.
- 7.4 The rent is fixed for a period of three years from the month of the first due date. At the beginning of the third rental year and then at the beginning of each subsequent rental year, we may demand negotiations on the conclusion of a follow-up rental agreement for new hardware and/or an adjustment of prices and conditions for the further transfer of use of the used hardware.
- 7.5 Invoicing will be effected by sending an invoice. The Customer must raise objections in writing or in text form within a period of eight weeks after receipt of the invoice. After expiry of this period, the invoice shall be deemed to have been approved by the Customer. We shall specifically draw the Customer's attention to this consequence when sending the invoice.
- 7.6 Notwithstanding our claim to commercial due date interest (Sec. 353 German Commercial Code – *Handelsgesetzbuch* – “HGB”), the Customer shall be in default at the latest if he does not make payment within 10 days of the due date. The outstanding rent shall bear interest from the first day of default at a rate of 9 percentage points above the base interest rate. If the Customer is more than one month in arrears with a monthly rent, we can claim the quarterly advance payment of the agreed rent.
- 7.7 All prices are subject to the applicable statutory sales tax.
- 7.8 Offsetting and rights of retention are excluded unless the underlying counterclaim is recognized or has been established by a court.
- 8. Duties of the Tenant**
- 8.1 The Customer shall handle the rental items with the care of a prudent businessman, which he is accustomed to apply in his own affairs. The Customer shall provide sufficient instruction and training or otherwise ensure that his vicarious agents use and operate the rental items in accordance with their customary use.
- 8.2 Markings, manufacturer's instructions, serial numbers, seals, software license information or the like may not be removed or changed by the Customer without our prior consent.
- 8.3 The Customer shall grant us access to the rental items for the purpose of repair and maintenance work to be carried out at the place of installation, taking into account his justified security interests.
- 8.4 The Customer undertakes to insure the rental items appropriately against damage, destruction and theft and to provide evidence of the conclusion and existence of the insurance policy to us upon request.
- 8.5 The Customer shall notify us without delay of any changes to his contractual data (e.g. changed addresses, etc.).

9. Maintenance Obligation/Defects

- 9.1 The statutory provisions shall apply unless otherwise stipulated below.
- 9.2 For the duration of the rental period, we shall maintain the rental items in a condition suitable for use in accordance with the contract and shall carry out the necessary maintenance and repair work ourselves or have it carried out by commissioned third parties.
- 9.3 The Customer shall notify us without undue delay of any defects, malfunctions or damages. We are not responsible for delays resulting from gaps and inaccuracies in the error description.
- 9.4 We shall remedy defects by rectifying or repairing the rental items free of charge. We shall be granted a reasonable period of time for this purpose. We have the choice of attempting to remedy the defect by telephone or by remote maintenance as a first step. With the Customer's consent, we may replace the rental items or individual components of the rental items for the purpose of remedying the defect. The Customer shall not unreasonably withhold his consent to this.
- 9.5 The Customer shall not be entitled to claim a reduction by deducting the reduction amount from the current remuneration by himself. The Customer's claim under the law of enrichment (*Bereicherungsrecht*) to reclaim the portion of the remuneration paid in excess due to a justified reduction shall remain unaffected by this.
- 9.6 Termination by the Customer pursuant to Sec. 543 para. 2 sent. 1 no. 1 German Civil Code (*Bürgerliches Gesetzbuch* – “**BGB**”) due to failure to provide use in accordance with the contract shall only be permissible if we have been given sufficient opportunity to remedy the defect and this has failed. The rectification of defects shall only be deemed to have failed if it is impossible, if we refuse to rectify the defect or if it is unreasonably delayed, if there are reasonable doubts as to the prospects of success or if it is unreasonable for the Customer for other reasons.
- 9.7 The Customer's rights due to defects shall be excluded insofar as the Customer makes or procures changes to the rental items without our consent, unless the Customer proves that the changes do not have any effects on the analysis and elimination of the defect that are unreasonable for us. The Customer's rights due to defects shall remain unaffected, provided that the Customer is entitled to make changes, in particular within the scope of exercising the right of self-remedy pursuant to Sec. 536a para. 2 BGB, and that these changes were carried out professionally and documented in a comprehensible manner.

10. Changes to the Rental Item or the Installation Site

- 10.1 We are entitled to make changes to the rental items, provided that these serve the purpose of preservation (*Erhaltung*). We may carry out measures for improvement (*Verbesserung*) if they are reasonable for the Customer and the contractual use of the rental items is not impaired as a result. We shall inform the Customer in good time in advance of any such measures.

10.2 Modifications to the rental items by the Customer require our prior consent. This applies in particular to the connection of the rental items with other devices, IT systems or networks. Actions of the Customer that do not require our consent with regard to the rented software pursuant to Sec. 69d German Copyright Act (*Urheberrechtsgesetz*) shall remain unaffected. Upon return of the rental items, the Customer shall restore the original condition at our request.

10.3 The installation of the rental items at a location other than the original installation location requires our prior consent. We will only refuse this consent for good cause. We may demand that the transport and reinstallation is to be carried out by qualified specialists. The expenses and consequential costs associated with a change of location shall be borne by the Customer.

11. Liability

11.1 We shall not be liable for defects already existing at the time of conclusion of the contract, unless a case of Sec. 11.2 is given.

11.2 We shall be liable without limitation a) in the event of malice, intent or gross negligence; b) within the scope of a guarantee expressly assumed by us; c) for damages arising from injury to life, limb or health; d) for the breach of an essential contractual obligation, the fulfillment of which is a prerequisite for the proper performance of the contract and on the observance of which the Customer regularly relies and may rely (cardinal obligation (*Kardinalpflichten*)) - in this case, however, limited to the damage reasonably to be expected at the time of the conclusion of the contract - and e) in accordance with the provisions of the Product Liability Act (*Produkthaftungsgesetz*).

11.3 We shall not be liable for the loss of data insofar as the damage is due to the Customer's failure to perform data backups and thereby ensure that lost data can be restored with reasonable effort.

11.4 In all other respects, our liability is excluded.

11.5 The above liability rules apply accordingly to the conduct of and claims against employees, legal representatives and vicarious agents of us.

12. Term and Termination, Liquidated Damages in Case of Default

12.1 The contract begins with the conclusion of the contract and runs, unless otherwise agreed, for an indefinite period. Unless otherwise agreed, it may be terminated with three months' notice to the end of the calendar month.

12.2 Subject to Sec. 12.3, the right to extraordinary termination shall remain unaffected.

12.3 We may terminate the contract without notice if the Customer is in default of payment of the remuneration for two consecutive billing periods or of a not insignificant part of the remuneration or, in a period extending over more than two billing periods, is in default of payment of the remuneration in an amount equal to the remuneration for two billing periods. In this case, we may additionally demand liquidated damages (*pauschalierter Schadensersatz*) due immediately in one sum in the amount of one quarter of the monthly

basic charge remaining until the end of the regular contract period. The Customer has the right to prove a lower damage.

13. Return

13.1 Upon termination of the contractual relationship, the Customer shall return the rental items to us in proper condition. The obligation to return also includes the software provided, including manuals and documentation. Any copies of the software provided must be deleted completely and permanently.

13.2 Upon return of the rental items, a protocol will be drawn up in which any existing damage and defects to the rental items will be recorded. The Customer shall reimburse the costs of restoration in case of damage or defects for which he is responsible.

13.3 Unless otherwise agreed, we shall bear the costs for dismantling, packing and return transport of the rental items.

14. Subcontractor

Unless otherwise agreed, we shall be entitled to use third parties to perform our contractually owed services.

15. Force Majeure

15.1 In the event of and for the duration of force majeure, we shall be released from our performance obligations. Force majeure is any event beyond our control that prevents us from fulfilling our obligations in whole or in part, such as fire damage, floods, epidemics, strikes and lawful lockouts as well as operational disruptions not negligently caused by us or official decrees.

15.2 We shall notify the Customer without undue delay of the occurrence and cessation of the force majeure and shall use our best efforts to remedy the force majeure and to limit its effects as far as possible.

15.3 If the force majeure lasts longer than four weeks, the Customer is entitled to terminate or withdraw from the contract.

16. Confidentiality

16.1 Confidential information is information expressly designated as confidential by the party providing the information and such information whose confidentiality is clearly evident from the circumstances of its provision ("**Confidential Information**"). Excluded from the confidentiality obligation is such information

- which were demonstrably already known to the recipient at the time the contract was concluded or subsequently become known to it from a third party, without this violating a confidentiality agreement, statutory regulations or official orders;
- which are public knowledge at the time of conclusion of the contract or are made public thereafter, insofar as this is not based on a breach of this contract;
- which must be disclosed due to legal obligations or by order of a court or authority. To the extent permissible and possible, the recipient obligated to

disclose shall inform the other party in advance and give it the opportunity to object to the disclosure.

- 16.2 The parties shall treat all Confidential Information as confidential. Any use of the Confidential Information shall be limited to use in connection with the Agreement. The receiving party shall refrain from commercially exploiting or imitating (e.g. by means of "reverse engineering") the Confidential Information itself or through third parties outside this purpose, in particular from applying for industrial property rights to the Confidential Information disclosed.
- 16.3 The parties shall only grant access to Confidential Information to those consultants who are subject to professional secrecy or to whom obligations corresponding to the confidentiality obligations of these GTCH have previously been imposed. In addition, the parties shall only disclose the Confidential Information to those employees who need to know it for the performance of the contract and shall also oblige these employees to maintain confidentiality to the extent permitted by employment law for the period after their departure.
- 16.4 To the extent required by applicable law, the recipient shall be entitled to disclose and share Confidential Information. To the extent permitted by law, the recipient will inform the other party before disclosing Confidential Information.
- 16.5 The obligation to maintain confidentiality shall apply for the term of the contract and for a period of three years after its termination.

17. Final Provisions

- 17.1 The Customer may not assign the rights to which he is entitled under the contract to third parties, either in whole or in part, without our prior written consent.
- 17.2 These GTCH and the contractual relationship between us and the Customer shall be governed by German law excluding international uniform law, in particular the UN Convention on Contracts for the International Sale of Goods, and is to be interpreted exclusively consistent with German law and usage of terminology. Where these GTCH contain a German term as a translation for an English term, the German term shall be binding for the interpretation.
- 17.3 If the Customer is a merchant within the meaning of the HGB, a legal entity under public law or a special fund under public law (*öffentlich-rechtliches Sondervermögen*), the Regional Court Munich I (*Landgericht München I*) in Germany shall be the exclusive - also international - place of jurisdiction for all disputes arising directly or indirectly from the contractual relationship. The same shall apply if the Customer is an entrepreneur within the meaning of Sec. 14 BGB. However, we shall always also be entitled to bring an action at the place of performance or a prior individual agreement or at the general place of jurisdiction of the Customer. Overriding statutory provisions, in particular regarding exclusive jurisdiction, shall remain unaffected.

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