

**General Sales Conditions**  
**Next Generation Analytics GmbH, Landplatz 1, 4710 Grieskirchen**

**I. Scope of Application**

1. The following conditions are valid excluding all possible deviating sales conditions of our contractual partner (hereinafter: CUSTOMER) for the business relationships between us (NGA) and the CUSTOMER in connection with one of our products/services or lines offered (hereinafter: PRODUCT). The following conditions apply analogously for both, for the delivery of products (especially lines) and for other services (consulting services, preparation of line concepts, engineering etc.).
2. Orders placed by us, based on purchase conditions of the CUSTOMER are always considered as concluded in accordance with our sales conditions also if we do not expressly reject the conditions of the CUSTOMER.
3. If the CUSTOMER does already know our sales conditions, they are valid even without notification for future contracts. Receiving our deliveries or services as well as the execution of orders is considered as acceptance of our conditions.
4. Agreements modifying or completing these conditions, side agreements as well as conditions of the CUSTOMER are only valid if we confirm them in written form. Our agents and employees (e. g. during a FAT or SAT) are not authorized to issue binding statements beyond the scope of services of the order confirmation.

**II. Offers**

1. Our offers are subject to change without notice and not binding, unless otherwise stipulated in the concrete offer text. Also after having submitted the offer, modifications of the specification with an simple notification by us are possible at any time until the CUSTOMER places the order. Also after having placed the order, modifications of the specification due to technical necessity are subject without notice.
2. The offer omits in every respect, if there is no order from the CUSTOMER at the latest 14 days after having submitted the offer, unless otherwise stipulated in the concrete offer text.
3. Cost estimates, drawings and other documents (hereinafter: documents) related to the offer are only used as orientation for the CUSTOMER but not as quality agreement or acceptance of a quality guarantee regarding the PRODUCTS resp. services described. The documents are subject to unreserved proprietary rights as well as copyrighted rights of exploitation. The documents may only be passed on to a third party with our prior written agreement and have immediately to be returned to us at request at CUSTOMER expense if the order has not been placed with us.
4. The reasonable effort for the preparation of the offer as well as drafts, diagrams or samples prepared on request has to be replaced immediately, even if the prospective order won't be placed.
5. Cost estimates are only binding in written form and only if they are expressly called "binding". All other information about expected costs (also repair costs) are not binding. Defined periods of performance shall be understood as reference values; however, fixed dates cannot be drawn.
6. If an offer or cost estimate refers to repairs, this does not mean an acknowledgement of the obligation to repair (for whatever legal reason) in no case.

**III. Orders, order confirmations**

1. In principle, orders are accepted by us by a written order confirmation. Furthermore, orders are considered to be accepted if we have executed the order. The customer will immediately check the order confirmation, especially if all necessary information regarding the adaptation of possible interfaces by the CUSTOMER regarding his infrastructure and also regarding dimensions, weight, etc. as well as possible safety equipment are considered in the offer. In the absence of anything to the contrary, within 10 working days from receipt, it is considered to be fully accepted. This also includes full acceptance of all requirements regarding the necessary infrastructure including system environment at the CUSTOMER.
2. At the latest when placing the order, NGA has to be informed about possible modifications of the specifications as well as inquiries for supplementary information. If modifications should be necessary, NGA will check them regarding their feasibility. If they are feasible, but this would result in a modification of the scope of supply, NGA reserves the right to correct the offer, including the price. Later information which will result in a modification of the scope of supply resp. costs are considered to be chargeable requests for changes in any case.
3. The customer is obliged to provide NGA with all documents necessary for the fulfilment and realisation of a development or consulting order or the like on time, also without special request and to inform NGA about all circumstances which are important for the realisation of the order. This also applies for all documents, events and circumstances which only have become known during the activity of NGA.

#### **IV. Delivery/service, dispatch and transfer of risk**

1. Unless there is a written agreement to the contrary, service will be provided in the head office of our company, delivery (in case of services) will be made ex works Grieskirchen, otherwise ex works the factory stipulated by us (**EXW** according to Incoterms 2010). In principle, we are not responsible for dispatch or insurance of the **PRODUCT**, unless there is a concrete written different agreement in individual cases.
2. The risk of accidental loss or accidental deterioration shall be transferred to the **CUSTOMER** with the notification of provision. If, in individual cases dispatch by us has been agreed, the transfer of risk to the **CUSTOMER** is made with the notification of the readiness for dispatch resp. at the latest if the **PRODUCT** has been transferred to the freight carrier. In all cases, the risk is transferred to the **CUSTOMER** at the latest when the **PRODUCT** is transferred to the freight carrier. If, in individual cases dispatch by us has been agreed, the **CUSTOMER** bears the costs for transport and the shipping risk. Bearing the costs shall apply in particular for dispatch and shipping package as well as regarding using the working time of our employees, which has to be charged reasonably. Type of dispatch and dispatch route are chosen by us, unless a concrete agreement exists. If there are other requests of the **CUSTOMER**, the corresponding costs will be borne by him. If an additional packaging of the **PRODUCT** should be necessary due to special requests of the **CUSTOMER**, the **CUSTOMER** will be charged for the work input of our employees for this additional packaging.
3. If the **CUSTOMER**, when we have provided him with the notification of provision resp. shipment should not approve the delivery items immediately, we will store them, if possible, for the **CUSTOMER** at his risks and costs. The storage does not release the **CUSTOMER** from his liability to pay. We will inform the customer at the latest 14 days in advance about the readiness for delivery.
4. We are entitled to make advance and partial deliver and to charge it. Unless the invoicing goes above or below 10% of the total quantity, the contractual partner is obligated to accept this excess or short delivery at the aliquot price charged.
5. We are entitled to place sub-orders with sub-suppliers at the discretion of us.
6. Place of fulfilment is our head office in Grieskirchen.

#### **V. Delivery time/point of time of service provision**

1. The delivery time e. g. in the offer is considered to be approximate only. Delivery time is also the point of time of service provision.
2. If there is a delay in timely delivery due to unforeseeable or involuntary events, which, also with reasonable care are unavoidable (all cases of force majeure, war, authority intervention, delay in transport and customs clearance, transport damages, energy shortfall, labour disputes etc.), also if that occurs at our suppliers, as well as in case of delay in delivery of our suppliers, the delivery time is extended accordingly. We will inform the **CUSTOMER** accordingly, who, if necessary, has to grant us a reasonable extension at least twice. If an end of such events is not foreseeable, we are entitled to withdraw from the contract.
3. The delivery time starts with sending the order confirmation, however, not before we have received an agreed advance payment, not before all technical details are clear and not before the **CUSTOMER** has fulfilled the requirements for the realization of the business, for which he is responsible, especially not before we have received the down payment stipulated or before a letter of credit has been opened.
4. The delivery time is considered to be met if until its expiry the notification of provision has been made. If a dispatch has been agreed upon, the delivery time is considered to be met if the delivery item has left the works or if the notification of the readiness for dispatch has been given.
5. Possible delays in delivery, which are from the **CUSTOMER**'s sphere, especially due to possible requests for changes by the **CUSTOMER** do not represent a delay and result in a corresponding extension of the delivery time.
6. If delivery on call has been agreed upon, one year after placing the order, we can consider the **PRODUCT** to be called and claim performance owed by the customer in such case.

#### **VI. Products, services, scope of delivery, interfaces**

1. The **PRODUCTS**/services correspond to the expressly referenced and relevant product descriptions, brochures, assembly plans, order confirmations etc. in the description/offer or information about characteristics of prototypes (as capacity, dimensions, material etc.) as far as they are provided by NGA and as far as we have explicitly confirmed them, in the relevant and confirmed scope. Moreover, information regarding the **PRODUCT** are only roughly applicable.
2. In any case, the replacement by equivalent components, differences which are customary in the trade, which are the result of legal provisions resp. represent technical improvements is acceptable and remains reserved, as long as the usability of the contractually intended purpose is not impaired.

3. Unless otherwise specified in an individual agreement in written form, the liability of NGA only includes the expressly described PRODUCTS up to the corresponding specified interface to the infrastructure resp. the services of the CUSTOMER and does not include the duty to interface adaptation, integration resp. connection. NGA is not obliged to consider the infrastructure provided by the customer/by another party. Insofar as not otherwise expressly agreed in written form, transport and/or installation of the PRODUCTS are not part of the service and must be organized by the CUSTOMER. Furthermore, the CUSTOMER is responsible for obtaining any necessary approvals. This also applies for additional CE declarations of conformity, additional (safety) measures during the installation of the line on site etc.
4. Unless otherwise explicitly confirmed by NGA, lines from NGA are designed for a connection to a customer's power supply system: 400 Volt, 50 Hz. TN-S-net according to IEC 364-4-41 (L1, L2, L3, N, PE; N loaded; max.  $\pm 10\%$  mains fluctuations. The paint of the product is in RAL 1007 and RAL 9002, the labelling is in the language specified in the EU machinery directive EU 2006/42 EG, otherwise in English.
5. The technical design corresponds to the applicable legal provisions at the time of delivery in the country, in which the product is delivered, i.e. Federal Republic of Germany or the Republic of Austria. Here, the German (Austrian) Product Safety Act (ProdSG), the Machinery Directive 2006/42/EG as well as the relevant regulations/standards in the version valid upon delivery are considered. The safety responsibility is only assumed as defined by the quoted provisions but not for possible divergent requirements at the CUSTOMER.  
The scope of delivery is considered as machine as defined by the EU machinery directive 2006/42/EG – EMC directive 2014/30/EU as well as the low voltage directive 2014/35/EU. At the time of delivery, an EG declaration of conformity is presented. The line is assigned with a CE marking. Exceptions are components, which are mounted into a complete plant by the CUSTOMER. Here, the CUSTOMER, as system integrator, is responsible for compliance with EU machinery directive and for a complete CE marking. A complete CE marking by NGA during mounting the components by the customer is only possible after an express written agreement in advance and for an additional fee. If our delivered products are modified by the customer or by a third party commissioned by him, the CE conformity given by us is no longer valid. Then, the customer is responsible for a new complete CE marking.
6. The offered price includes a basic documentation for the line according to the valid EU machine directive (onefold in German language in the format DIN A4 (assembly drawings larger) and 1 x electronic on a CD), which includes a technical description of the PRODUCT as well as its operation. Additional documentations according to special requirements of the CUSTOMER, for example in translated form, will be invoiced separately.

## **VII. Prices and Terms of Payment**

1. All prices are ex works (in case of services ex works head office of our company), including packaging, plus legal value added tax, which is valid on the delivery day, however, excluding loading and insurance. If delivery to the final destination is agreed, the price does not include unloading and carrying. Arising cash expenditures, charges, travel costs have to be replaced additionally on account.
2. If no price has been agreed upon, prices valid at the time of delivery resp. service shall be applied.
3. Should an alternative regulation not have been determined between us and the CUSTOMER, payments have to be made in EURO either by remittance or – by prior written agreement by NGA – in EURO by irrevocable letter of credit. NGA reserves the right to agree only after confirmation of the offered letter of credit by a bank accepted by NGA. An authorization for a cash discount deduction does not exist for the CUMSTOMER. Date of payment is the day on which we or our paying agent have received payment.
4. Unless otherwise agreed, the following terms of payment shall apply:
  - 30% on receipt of the order confirmation by NGA
  - 60% upon notification of the readiness for dispatch and before transfer to transport
  - 10% after installation and start-up, but at the latest 60 days after products have been ready for pick-up
 For other services (consulting services, engineering, etc.):
  - 30 % on receipt of the order confirmation by NGA
  - 30% after an agreed intermediate step (milestone)
  - 30% before submission of the project
  - 10% after delivery of the project resp. service delivery
 As alternative, we are entitled to issue intermediate settlements based on the progress of the service provision and to ask for corresponding payments on account. These payments are due on the date of our invoice. In case of

default of intermediate settlements, NGA is exempted from delivering further service. The enforcement of further entitlements resulting from the non-payment is not affected.

5. In case of late payment of just one single instalment, payment target shall be deemed to have been missed and the entire residual amount will become due immediately.
6. If the CUSTOMER, after prior written agreement by NGA, pays in another freely convertible currency other than the invoice currency, the CUSTOMER bears the foreign exchange risks and all currency translation differences resulting from the payment obligation; especially, he does not have the right to refund of any currency exchange rate advantages. Bank charges shall be borne by the CUSTOMER.
7. We are entitled to charge reasonable fines as well as costs of a commissioned debt collection agency and from the due date default interest of 9% above the current basis rate of interest.
8. Subject to the regulations in the order confirmation, we won't increase prices within the first 6 months effective from the conclusion of the contract. Furthermore, we are entitled to adapt prices if the order differs from a complete offer or if the costs have changed up to the time of delivery. In case of a conclusion of the contract with prices not stipulated, the ruling price on the day of delivery or completion will be charged.
9. We are entitled to withhold the service until the corresponding payment has been made in full. The CUSTOMER is not entitled to exercise a right of retention due to counterclaims, which are not based on this contractual relationship. The CUSTOMER may only exercise a right of retention due to undisputed resp. legally determined counterclaims.
10. A compensation of the CUSTOMER is only possible due to undisputed resp. legally determined counterclaims.
11. The event of a significant deterioration of the financial circumstances of the CUSTOMER or other circumstances, which affect his creditworthiness considerably results in the immediate maturity of all our debts even if the CUSTOMER has provided us with a bill of exchange. The immediate maturity of or debts especially occurs if:
  - the customer is in default of payment of not only inconsiderable debts longer than 4 weeks or
  - a significant deterioration or serious threat of the financial circumstances of the CUSTOMER or his personally liable partner or the intrinsic value of the securities given for this contract occurs;
  - the CUSTOMER or his personally liable partner has provided incorrect information about his financial circumstances;
  - the CUSTOMER or his personally liable partner dies or changes or in case of insolvency of the CUSTOMER;
  - the CUSTOMER or his personally liable partner has not fulfilled his obligation to publish his financial circumstances following an appropriate deadline.Furthermore, upon immediate maturity of our debts, we are entitled to perform only after payment of the outstanding debts as well as against advance payment or against security and after unsuccessful request for that, we are also entitled to withdraw from the contract.
12. Violates the CUSTOMER continuously or materially the payment conditions and after an unsuccessful expiry of an adequate payment period, we are entitled to withdraw from the contract and specially to claim compensation instead of service. The liability for damage caused by default will remain unaffected.
13. Place of performance for payment obligations of the CUSTOMER is our head office in Grieskirchen.
14. Our agents or salesmen are not authorized for debt collection or respite agreements.

#### **VIII. Reservation of title**

1. The right of ownership of the PRODUCT remains with NGA until the purchase price has been paid in full by the CUSTOMER. In the event that the CUSTOMER fails to meet his payment obligations, by declaring the withdrawal from the contract, NGA can reclaim the PRODUCT and the CUSTOMER has to return it on first request. Intellectual property is never transferred.
2. Without prior written approval by NGA, the CUSTOMER shall not be entitled to pledge, to transfer of title for the purpose of securing a debt or to create similar legal positions. Should the PRODUCTS be subject of distrains, impoundments and/or be the justification of comparable legal positions of a third party, the CUSTOMER will immediately inform NGA in writing, including all information.
3. A resale is only allowed in a proper course of business. In case of such a resale and until the purchase price has been paid in full, the CUSTOMER assigns the debts caused by the resale of the product – in a separate form or as component of a whole product - to the extent of the value of the PRODUCT to NGA. Until cancellation, the CUSTOMER shall be entitled and obligated to collect the debts assigned from its customers; at the same time, NGA's rights to collect the assigned book account itself remain unaffected.
4. NGA can inform the CUSTOMER'S customer about the assignment at any time and NGA shall be entitled to secure the PRODUCT resp. the whole item resp. to apply the customers for direct payment of the corresponding amount to NGA if the CUSTOMER does not fulfil its contractual obligations, especially if he is in default with paying the purchase price or if NGA becomes aware of circumstances, which are likely to reduce the CUSTOMER'S credit worthiness. The performance of returning and securing shall not be deemed to be a withdrawal from the contract and do not abrogate the CUSTOMER'S obligations, especially payment of the purchase price.

5. A treatment or processing of the PRODUCT under retention of title is always made for NGA as proprietor. If the PRODUCT is processed, connected or mixed with foreign goods as inseparable part of the resulting item, NGA obtains joint ownership of the whole item according to the value ratio of the components. Possible rights, rights to remuneration or claims of the CUSTOMER from such an integration against a third party are assigned to NGA by the CUSTOMER already upon integration.
6. The CUSTOMER will maintain the PRODUCT, which is under reservation of title and keep it in a correct condition, especially, he will immediately inform NGA about repairs which become necessary and maintenance and inspection works and he will have such works carried out and contract appropriate insurance. NGA reserves the right to inspect the goods subject to reservation of title at any time.
7. In case of a reasonable withdrawal from the contract by NGA, NGA is entitled to take back the PRODUCT under retention of title, can use it and can allocate the proceeds to the existing claims against the CUSTOMER.

#### **IX. Acceptance Test (FAT), Installation, Start-Up**

1. Unless otherwise agreed upon, an acceptance test of the PRODUCT (provided it is a line) is made in the head office designated by NGA. NGA will inform the CUSTOMER in writing about the completion of the PRODUCT and the expected acceptance date in time. Unless otherwise agreed upon, the FAT paragraphs apply as stipulated in the order confirmation.
2. The CUSTOMER is obligated to organize the presence of a person for the performance of the acceptance, who has the technical knowledge required for the acceptance and who has such a power of representation given by the CUSTOMER so that this person, with binding effect can decide for the CUSTOMER whether the acceptance has been successful or not regarding the following provisions.
3. Shall the CUSTOMER prevent the planned and timely acceptance by, for whatever reason, delaying the acceptance date by more than one week and/or shall the CUSTOMER fail to send a person resp. send such a person to the acceptance, who does not have the necessary power of representation (paragraph 2 above), nevertheless, the term of payment continues to run. Damages, delays and/or other circumstances during the acceptance, which are caused by the person send by the CUSTOMER are borne by the CUSTOMER and entitle NGA, in addition to the expense allowance according to point XI. 10. (see below) to demand an appropriate compensation from the CUSTOMER.
4. The acceptance test is made according to the criteria agreed upon in each individual case. Unless otherwise agreed upon, the PRODUCT is ready for acceptance if it corresponds to the scope of supply defined in an order confirmation. If the offer contains specific specifications which are expressly confirmed/accepted by NGA in writing, these specifications must also be fulfilled. Irrelevant deviations from the corresponding acceptance test criteria – those which do not prevent the proper operation resp. the use agreed of the corresponding PRODUCT – do not preclude an acceptance test. The burden of proof for the existence of essential defects lies with the CUSTOMER.
5. A report on the acceptance test is created, which has to be signed by NGA and the CUSTOMER on site. At any forfeiture of a corresponding right, any malfunction resp. functional defects have completely to be stated resp. described in the acceptance test report.
6. Transport and installation of the product in the CUSTOMER'S plant have to be organised by the latter at its own expense. Also any transport and/or installation insurance has to be contracted by the CUSTOMER who has to bear the corresponding costs. The CUSTOMER is not responsible for the organization of the installation only if setup and installation of the PRODUCT is realized by NGA after prior written agreement.
7. The setup and installation in the CUSTOMER'S plant are made without the presence of any NGA employees if the PRODUCT consists of one or more single standard equipment(s). Upon the CUSTOMER'S wish and at the CUSTOMER'S expense, NGA can submit a separate offer for installation service or installation advisory service. If the PRODUCT is a complete line, installation is made by NGA according to the scope of services agreed upon and the prices quoted therein.
8. If the acceptance or another acceptance is made in the CUSTOMER'S plant, the following shall apply. Any damages to the PRODUCT caused by the delivery to the CUSTOMER'S plant by the CUSTOMER do not result in a delay with which NGA is reproached resp. in a failure to achieve the acceptance test. If a delay is caused in the course of an installation which has to be realized by NGA, the burden of proof lies with the CUSTOMER.
9. In any case, the CUSTOMER is not entitled to put the PRODUCT into operation prior to a successful acceptance. In the case of a breach, all still outstanding payments become immediately due, also in the event that the acceptance test has failed for reasons for which NGA is responsible. Regarding damages and other consequences in conjunction with a start-up of a successful acceptance, NGA assume no liability.
10. As reimbursement of expenses, which is the result of the delayed acceptance, NGA is entitled to charge least the following to the CUSTOMER's account:
  - Costs for additional storage of the PRODUCT (at NGA or a third party) an amount of EUR 500.00 plus value added tax

- Personnel expenses (for storage of the PRODUCT at NGA, at a third party or at the CUSTOMER an amount of EUR 1,500.00 plus value added tax

NGA is entitled to charge these additional costs per started day, calculated from the last day of the acceptance agreed upon, regardless of whether at NGA (FAT) or at the CUSTOMER (SAT). The amounts stipulated represent minimum amounts. Any additional expenses or damage has also to be compensated if evidenced by NGA.

## **X. Examination and Defect Notification Obligation**

1. The CUSTOMER has to check the PRODUCT immediately and has to provide us [not our commercial agents and salesmen] with his notification of defects immediately in written form, however, at the latest 10 days after the PRODUCT has reached the point of destination. Here, the CUSTOMER is obligated to provide detailed information how and when the defect occurred.
2. Hidden defects have to be notified at the latest 3 working days after their detection in written form.
3. To ensure the notice period, it will be sufficient to send the written notice of defects in time and written form by stipulating the exact description of the defect. In case of a notification of complaints or notice of defect, which has not been send in time, delivery is considered to be approved. Together with the enforcement of defects, samples of the defect PRODUCTS as well as evidence have to be sent if desired by us.
4. The CUSTOMER has – if necessary, with a sample processing – to check immediately whether the delivered PRODUCT is suitable for the intended use.
5. If the CUSTOMER does not fulfil his obligation to inspect the items in time or properly, warranty claims for defects or other claims for damages of the CUSTOMER to us are excluded insofar as the testing of occurred damages would have prevented or reduced the damages.
6. From the date of detection of the defect by the contractual partner, any further disposition of the delivered PRODUCT is unauthorized without our express written approval. If the CUSTOMER, without prior inspection and/or written approval by NGA, makes any modifications, disassembling or any other works at the PRODUCT, resp. re-programs, adapts, modifies or processes the software in some way and/or integrates it into a complete system and/or if a third party makes these activities for the CUSTOMER or if the occurred defect is the result of inadequate use of the PRODUCT, disregarding of operation and service notes resp. if it occurred due to other influences/circumstances outside the sphere of NGA, for example a modification of the operation resp. system environment of the CUSTOMER, the liability for defects of NGA is not applicable insofar as the defects are caused as a result of this. Arbitrary modifications by the CUSTOMER result in the termination of the CE conformity.
7. The enforcement of the defect does not release the contractual partner from his liability to pay.
8. Returning the rejected PRODUCT, excluded samples requested by us, is not admissible without our prior written agreement. However, should the PRODUCT be returned, in principle, any kind of costs arising from that have to be compensated. By accepting the returned PRODUCT, the contractual partner cannot deduce entitlements or other legal consequences. Also checking the defect by us does not result in any rights of the contractual partner or other legal consequences. The risk of using the PRODUCT for a certain purpose or in a certain way is borne by the contractual partner, unless there exist an acceptance letter from us stipulating the contrary.

## **XI. Owed Condition of the Product and Warranty**

1. The owed condition of the delivered PRODUCT is only defined by our binding, written indications of quality, e. g. by our data sheets, which we deliver in connection with the concrete contractual relationship towards our CUSTOMER. Any objectives of the CUSTOMER, which have not been agreed upon as owed condition expressly in written form do not define the owed condition of the product. This also applies for delivered software.
2. If the delivery item, during the passing of risk is not free from material defects, the CUSTOMER has the right of repair/rework or replacement delivery. NGA is entitled to decide repair/rework or replacement delivery will be granted.
3. We are entitled to refuse the rework or replacement delivery if it causes disproportionate effort. Then, the CUSTOMER has the rights described under section 4. A disproportionate effort for the chosen type of supplementary performance is especially then the case if the costs for the supplementary performance exceed the value of the item by 20 % during the passing of risk.
4. If we do not manage to eliminate the defect within a reasonable period of time, the CUSTOMER is entitled to reduce the purchase price at his option, to withdraw from the contract or to request compensation for damages according to point XII. If the supplementary performance is unacceptable for the customer, he has immediately the rights of sentence 1. In the case of irrelevant defects, the entitlement to withdrawal from the contract and to compensation for damages is excluded. For warranty work in the premises of the contractual partner, the contractual partner has to provide us with auxiliaries, auxiliary material and tools free of charge. By warranty works and deliveries, the warranty is not extended.
5. In the area of B2B, warranty is 12 months, for services 3 months. Normally, the period shall start with the date of notification of the readiness for dispatch of the ordered PRODUCT, in case of dispatch agreed upon, with the notification provision. Warranty expires immediately if the delivery item is modified or repaired without our written agreement.

6. A warranty for defects is especially then not the case if and as far as defects of the delivery item or other legal interests of the CUSTOMER are caused by the following reasons:
  - Incorrect data regarding intended use, site of operation resp. conditions of operation of the delivery item,
  - Incorrect further processing, mounting, treatment,
  - Normal or excessive wear and tear, which is not the result of production or material defects (e. g. V-belts, heating bands, thermal sensors, filter mats etc.),
  - Excessive stress and inappropriate treatment of the delivery item,
  - Product deviations, which influence the product suitability or the value of the PRODUCT only unessentially.
7. If the CUSTOMER does not meet his obligations to inspect, notify of defects and check according to point X immediately, not timely or not correctly, his rights of warranty for defects shall not apply.
8. Of the direct costs arising from the rework resp. supplementary delivery, we bear – if the complaint proves to be justified - the direct costs, which have been necessary for the rework, especially the costs of the replacement part including dispatch as well as the adequate costs for disassembly and assembly. Otherwise, the CUSTOMER has to bear the costs.
9. Replaced parts will become property of NGA.
10. In case of defects of built-in components of third-party manufacturers, NGA is entitled to optionally assert his warranty claims against the third-party manufacturer for account of the customer or to transfer them to the CUSTOMER. A direct claim against NGA does only exist if the legal enforcement of the claims against the third-party manufacturer has not been successful within a reasonable period of time or if it has not been possible from the start (e. g. in case of bankruptcy).
11. In case of defects of title, it shall apply that the title of the PRODUCTS, including software of protective rights of third parties (copyright, patent and utility model, other industrial property rights) is only owed at the place of delivery. In case of defects of title, NGA can, within an adequate period of time, optionally modify or exchange the PRODUCT in such a way that rights of third parties are no longer infringed or deliver an alternative product with the same function or to provide the CUSTOMER with the necessary right of use in another way, for example by a conclusion of license contracts. The regulation of point XI.4. analogously applies.
12. In any case, NGA does not assume any liability and is not liable for the violation of property rights, especially patents or utility models of third parties by using the PRODUCTS by applying manufacturing or other procedures as well as by the results manufactured by the CUSTOMER by using the PRODUCTS. In fact, the CUSTOMER is responsible that due to his use of the PRODUCT – especially the applied procedures and the produced results – property rights of third parties are not violated. In case of culpable violation of this obligation by the CUSTOMER and corresponding laying claims to NGA by a third party due to an infringement of an industrial property because of the delivery of PRODUCTS to resp. their use by the CUSTOMER resp. the final products/results produced with them, the CUSTOMER will indemnify NGA from all claims of the third party and make good the damage resulted in this context. In case the claims mentioned above have been forfeited, the CUSTOMER will immediately inform NGA in written form if claims are made against him due to the infringement of such rights, won't submit any declaration of acknowledgement, leave possible defensive measures or negotiations to NGA and will wait for instructions from NGA.
13. In any case, the elimination of material defects or defects of title is made ex gratia.

## **XII. Claims for Damage**

1. In case of a merely negligent breach of duty by us or our vicarious agent, if there is no grossly negligent breach of duty, our liability is limited to typical, foreseeable damages. This shall not apply for a violation of essential contractual obligations and injury to life, body or health.
2. Unless otherwise stipulated in these conditions, in all cases, our liability is limited to these damages, which have incurred on the subject of our performance. Any damage going beyond that, especially for consequential damages (including collateral damages, lost profit, failure, data loss, indirect damage as well as damage to property) is excluded, unless we are accused of gross negligence. The disclaimer does neither apply to cases, in which, according to the Product Liability Act, in case of errors of the delivery item, there is a liability for personal or material injury in items used by consumers. However, the limit for our liability is the insurance sum of the liability insurance, which exists in favour of NGA.
3. In any case, claims for damage are excluded caused by modifications of the PRODUCT, non-compliance with the instruction manuals, improper use, non-compliance with the product information, the use of non-original parts from NGA, incorrect use and/or external influences/circumstances, which are outside the sphere of NGA.
4. In any case, claims are excluded due to errors and/or damages, which are caused by malware, computer virus and/or breaking of the law by a third party. Also excluded are claims due to errors and/or damages, which are the result of improper use resp. non-compliance regarding the corresponding software resp. the adequate diligence



necessary for the PRODUCT considering the technological possibilities. This especially applies for e.g. the use of improper data medium and/or system components, a missing suitable virus protection resp. safety precaution.

5. Any payment of damages on our part is made without ex gratia.

### **XIII. Industrial Property Rights**

1. NGA is entitled to all industrial property rights resp. intellectual property rights in connection with the resp. of the PRODUCTS and their manufacturing processes, their application and/or the performed procedure as well as of components, software resp. the corresponding source and object code as well as the user documentation, procedures, plans, sketches, descriptions, drawings, manuals, assembly instructions, calculations, offers, cost estimates and other technical documents as well as samples, prototypes, catalogues, brochures, images and the like – especially patent rights, trademark rights, design rights, copyright and other design rights and/or rights to know how and commercial, technical and operational information shall remain with NGA. With the exception of a single entitlement to designated use of the PRODUCT in its concrete configuration and design by the CUSTOMER and as provided by NGA, the CUSTOMER is not entitled to any rights, especially no license rights or rights of use.
2. Only the CUSTOMER shall be entitled to these rights and these rights are not transferable or sublicensable. Only NGA is entitled to use and dispose these rights and to apply property rights and/or to protect his rights elsewhere. Also without express agreement of the partner, we are entitled to imprint a company or brand name on the PRODUCTS. The CUSTOMER shall not be entitled to modify the appearance of the PRODUCT, including packaging and/or accompanying documents in any way; in particular, he must not remove or modify any brands or other signs of NGA. If the CUSTOMER resells a PRODUCT, he must not modify or remove the attached labels.
3. If the CUSTOMER is provided with manuals, end-user documentations or comparable instructions resp. other information, these will only be provided as support for proper operation of the PRODUCT. If the delivery item is a software resp. if the PRODUCT contains a software, the right of use only applies to that PRODUCT for which the software has been purchased resp. with which the software has been delivered for the purpose of operation for and only for the period of time of the active use of that PRODUCT and is limited to the period of time of the use of the PRODUCT by the CUSTOMER himself.
4. The CUSTOMER is not entitled to use these documents resp. software and/or their source resp. object code in any further way than the operational use of the PRODUCT, in particular analyse, copy, disseminate, process resp. modify, provide, send or list them regardless of what form and on which data carrier and regardless whether known or unknown at the time of conclusion of the contract. Excepted from this are only any, mandatory legal accorded rights as part of the use of the software especially such rights according to Directive 2009/24/EG of 23 April 2009, Article 5 and 6, under the conditions and requirements specified therein.
5. Should NGA, at the CUSTOMER'S request, release the transfer of NGA documents to the CUSTOMER'S customers, the CUSTOMER is obligated to inform its customers about the aforementioned rights of NGA and oblige them to comply with and to pass on the aforementioned regulations. In case of violations, the CUSTOMER shall be liable for the conduct of its customers as it is for its own. Any advertising material, including in particular product brochures, catalogues or leaflets, with which the CUSTOMER is provided by NGA for passing it on to customers who are end-customers shall be passed on in the form received by NGA without prior approval by NGA.
6. All rights to services, knowledge, developments, inventions etc. which are created as part of service provision by NGA are exclusively and overall those of NGA, irrespective of whether the CUSTOMER was involved in service provision by some means or other. Any rights created on the CUSTOMER'S side are automatically transferred and passed on to NGA with the origination of services, knowledge, developments, inventions etc. and moreover, NGA owns the exclusive worldwide user rights. In particular, NGA also has the exclusive right to apply for protective rights. With regard to the application for protective rights, the CUSTOMER won't assert any rights, especially also no right of prior use.

### **XIV. Data Protection**

1. The CUSTOMER agrees that his personal data, including data of his employees or the customers or business partners of the CUSTOMER from NGA and/or companies affiliated with NGA, namely name, title, address, date of birth etc. will be processed for the purpose of fulfilling the contract (Art. 6 Par. 1 lit. b GDPR – conclusion of contract, fulfilment of contract) resp. due to legitimate interest (Art. 6 Par. 1 lit. f GDPR) and will be stored by the responsible party for the period of validity of warranty, statute of limitation and legitimate safekeeping period or if necessary, until the termination of possible litigations for which the data is required as evidence. The CUSTOMER guarantees that, for this data use, he has obtained the agreement of his employees, customers and business partners and indemnifies and holds NGA and/or with NGA affiliated companies harmless regarding all possible claims. Next Generation Analytics GmbH is responsible for the processing.

2. For detailed information on rights to information, correction, deregistration, limitation of processing, data transfer and complaint to the data protection authority, please see the privacy statement of NGA Next Generation Analytics GmbH: <https://www.nga.at/datenschutzerklaerung>.

#### **XV. Confidentiality**

1. The parties obligate themselves to absolute confidentiality of the trade and company secrets obtained during the business relationship as far and as long as they are or become not open to the public. The CUSTOMER obligates himself not to pass on such trade and company secrets to a third party and to take all suitable precautions for a confidentiality. The CUSTOMER is not permitted to use such trade and company secrets outside the intended use of the PRODUCT as well as after termination of the use of the PRODUCT.
2. The CUSTOMER is obligated to transfer this obligation of secrecy also to his employees, instructed third parties etc. and to provide NGA with an evidence in particular cases if requested.
3. This obligation of secrecy shall also apply after termination of the business relationship.

#### **XVI. General**

1. Should individual or several provisions of these GSC, for whatever reason, be declared void, inadmissible or unenforceable, this won't affect the other provisions. In such a case, instead of the void or ineffective provision, a provision must be chosen, which comes as close as possible to the economic intent of the void provision in a legally effective way.
2. Notices from the CUSTOMER are only binding, if they are sent in written, either in German or English language. Notices can also be transferred by fax or electronically. They become valid when either the addressee has received them or when they would have reached the addressee in normal circumstances with the chosen type of transmission. Notices, which we receive on Saturday, Sunday or another legal holiday, become only effective on the following next working day.
3. The CUSTOMER may transfer rights and obligations of this GSC and the order/purchase order to a third party only after prior written agreement from NGA in each individual case. At any time, NGA is entitled to transfer his rights and obligations of this GSC and a purchase order to a company affiliated to NGA or to a third party, without the need for an agreement or approval from the customer.
4. A provisional non-enforcement of a right stipulated for the business relationship of the contractual partners is, in principle not considered to be a waiver by the corresponding contractual partner for this or future cases. A waiver is only effective if relinquished by the party entitled to the claim in written form.
5. Should NGA, outside the scope of supply stipulated by contract, provide consultancy and/or give other technical information, this is made free of charge and without any liability. In principle, the consultancy is made without engagement, unless a written consultancy contract has been concluded, stipulating other provisions.

#### **XVII. Applicable Law, Court of Jurisdiction, Arbitration Clause**

1. German law is applicable to this contract, under exclusion of the conflict of laws as well as the UN Convention on Contracts for the International Sales of Goods.
2. Exclusive jurisdiction for all civil disputes arising from and/or in connection with the business relationship between the CUSTOMER and NGA is Munich, Germany, provided that the customer has its registered office in an EU Member State, Island, Norway or Switzerland.
3. If the CUSTOMER has its registered office in another country, all civil disputes in accordance with the Rules of Arbitration of the International Chamber of Commerce arising from and/or in connection with the business relationship between the CUSTOMER and NGA must be decided by an arbitrator appointed by mutual agreement by the CUSTOMER and NGA because of the lack of agreement according to this legal system. Place of arbitration is Zurich, Switzerland. Language of court is German.
4. Irrespective of the present jurisdiction agreement, NGA reserves the right to assert omission claims and/or claims for interim legal protection before any authorities whatsoever, state courts included, irrespective to the legal order.