

General Terms and Conditions of Purchase
Next Generation Analytics GmbH, Landlplatz 1, A- 4710 Grieskirchen
Status: 28/04/2023

I. Validity of these conditions

1. The following terms and conditions shall apply to the exclusion of all possibly deviating terms and conditions of purchase of our contractual partner (hereinafter: SUPPLIER) for the business relations between us (Next Generation Analytics GmbH, hereinafter shortly: NGA) and the SUPPLIER in connection with products, equipment and services (hereinafter: PRODUCT) purchased from us.
2. Orders placed by us on the basis of the standard terms and conditions of sale of the SUPPLIER shall always be deemed to have been concluded in accordance with our terms and conditions of purchase, even if we do not expressly reject the former.
3. If our terms and conditions of purchase are already known to the SUPPLIER, they shall also apply to future business transactions without further notification. Acceptance of our order as well as the execution of orders shall be deemed to be an acknowledgement of our terms and conditions.
4. Agreements which amend or supplement these conditions, subsidiary agreements and conditions of the SUPPLIER are only effective once they have been confirmed by us in writing. Our representatives and employees (e.g. in the course of a FAT or SAT) are not authorised to make binding declarations beyond the scope of performance of the order confirmation.

II. Orders

1. Any enquiries and orders placed by us must be in writing, in text form or transmitted by means of electronic data exchange, e.g. by email. Unless expressly agreed otherwise, offers or cost estimates addressed to us are binding and free of charge. In the event of an offer made to us, the supplier shall be bound by this for 12 weeks from receipt of this offer by us. We are entitled to make modifications to the specifications at any time by simple notification, even after the order has been placed and do so up until the order has been confirmed by the SUPPLIER.
2. The order shall be void in all respects if an order confirmation is not received from the SUPPLIER no later than 14 days thereafter, unless otherwise stated in the particular text of the order.
3. Cost estimates, drawings and other documents [hereinafter: documents] belonging to the order are to be regarded as an agreement on the quality of the PRODUCTS or service described. We reserve the unrestricted property rights and copyright exploitation rights to the documents. The documents may only be made accessible to third parties with our prior written consent and, if the order is not placed with us, they must be returned immediately upon request at the expense of the SUPPLIER.

III. Order confirmations

1. In principle, orders are to be accepted by the SUPPLIER by means of a written order confirmation. Moreover, orders shall be deemed to have been accepted once the order has been executed. The SUPPLIER shall immediately check the order, in particular to see whether all the required details for the adaptation of any interfaces by the SUPPLIER to our infrastructure have been taken into account in the order. This also applies regarding dimensions, weight, etc., as well as any safety-related equipment. In this context, all requirements we have made regarding the necessary infrastructure, including the system environment, shall also be deemed to have been expressly accepted.
2. Any changes to the specifications by the SUPPLIER, as well as requests for additional information, must be notified to NGA in good time prior to the order being placed. Should changes be necessary, NGA shall check these for their feasibility. If these are feasible, but would lead to a change in the scope of delivery and/or the agreed price, NGA must confirm these in writing.
3. Unless otherwise agreed in writing, the content of any existing framework/principle agreement between SUPPLIER and NGA with regard to all specifications must be complied with in the respective order.

IV. Delivery, shipping, transfer of risk, packaging

1. Unless expressly agreed otherwise in writing, delivery shall be made to the NGA site in A-4710 Grieskirchen, Landlplatz 1 (DDP in accordance with Incoterms 2020). We do not assume separate shipping costs or costs for transport insurance unless a specific written agreement to the contrary exists in individual cases.
2. Until delivery to us, the risk of accidental loss and accidental deterioration shall be borne by the SUPPLIER. If in individual cases collection by us has been agreed, the transfer of risk to us shall also only take place once the goods have been delivered to us. As a rule, the SUPPLIER shall bear the shipping risk and the costs of shipping. These costs shall be borne in particular by the SUPPLIER for shipping and shipping packaging as well as with regard to the working time involved by its employees. The mode and route of the shipment shall be chosen by us unless otherwise specifically agreed in writing.

3. Goods delivered must be clean and free of foreign bodies. Preference shall be given to environmentally friendly, preferably sustainable, packaging materials. Packaging must be selected in such a way as to avoid damage during transport, with particular attention to sensitive components or sensitive areas of components. No packaging materials are to be used (e.g. foils, anti-corrosion papers or adhesive tapes) that leave any residues on components. The SUPPLIER must either provide us with a binding packaging concept in writing when initiating the contract or confirm our packaging concept as binding in writing. If, according to the packaging concept, the SUPPLIER is obliged to take back the packaging used, the costs of return transport and recycling shall be borne by the SUPPLIER. Should it be necessary to repackage the PRODUCT due to special requests from us, the SUPPLIER must inform us in good time of any additional costs before repackaging. These must be confirmed by us in writing, failing which no additional costs will be owed.
4. Unless otherwise agreed in writing, the SUPPLIER is not entitled to make advance delivery and partial delivery and invoice them.
5. Place of performance is the NGA site in A-4710 Grieskirchen.

V. Delivery time, contractual penalty, shipping documents

1. The agreed delivery time stated is binding.
2. If the SUPPLIER is in default of delivery, it is obliged to notify us in writing. If the SUPPLIER is responsible for exceeding the delivery time, the SUPPLIER shall be in default without a reminder. In the event of a delay in delivery, we shall be entitled to the statutory claims, in particular to compensation for any damage incurred by us as a result of the delay or to rescission. Additional costs, in particular in the case of the purchase of goods in replacement, shall be borne by the SUPPLIER. The unconditional acceptance of the delayed delivery does not constitute a waiver of claims for compensation.
In the event of delay, a contractual penalty is agreed which is not to be regarded as a penalty. It shall amount to 0.5 % of the order value for each calendar week commenced, up to a maximum of 10 % of the order value. Compensation for damages exceeding the contractual penalty shall also be due.
3. All shipping documents shall be provided with the prescribed information, in particular with the order number, order item, commission number, planning number, dimensions as well as the number of pieces and weight per item. The SUPPLIER shall bear the costs arising from non-compliance with our shipping instructions. The values determined in the process of our incoming goods inspection shall be decisive for quantities, weights and dimensions.

VI. Products, scope of delivery, interfaces

1. The PRODUCTS must comply with the relevant product descriptions, brochures, assembly plans, order confirmations etc. expressly referenced in the description/order, or information on the properties of prototypes (such as performance, dimensions, materials, etc.), insofar as these originate from NGA.
2. The replacement by equivalent components, customary deviations as well as legally required deviations or technical improvements is only permissible after we have confirmed this in writing in advance.
3. Unless otherwise specified in writing in an individual agreement, the SUPPLIER's obligation to perform shall include the expressly designated PRODUCTS themselves, up to the correspondingly specified interfaces to the other infrastructure or services provided by us, and shall include the obligation for interface adaptation, integration or connection. Unless otherwise expressly agreed in writing, the transport and/or assembly of the PRODUCTS shall be part of the performance and shall be organised by the SUPPLIER. The SUPPLIER is also responsible for obtaining any permits that may be required. This also applies to any additional CE declarations of conformity, additional (safety) measures for the installation of the system on site or similar.
4. Unless expressly confirmed otherwise by NGA, all systems ordered by NGA are to be designed for connection to a mains supply: 400 volts, 50 Hz. TN-S mains according to IEC 364-4-41 (L1, L2, L3, N, PE; loadable N; max. $\pm 10\%$ mains fluctuation). The labelling shall be in English unless otherwise agreed in writing.
5. The scope of supply shall comply with the provisions of the German and Austrian authorities applicable at the time of the order as well as the supervisory bodies with regard to:
 - the safety test (of the trade association and GA responsible for the Plc) and the technical regulations applicable at the time of the submission of the offer,
 - the VDE standards
 - the Equipment Safety Act (9th Equipment Safety Ordinance (GPSGV), and
 - comparable regulations for Austria

The scope of delivery is considered to be a machine in the sense of the EU Machinery Directive 2006/42/EC - EMC Directive 2014/30/EU as well as the Low Voltage Directive 2014/35/EU. The SUPPLIER shall submit an EC Declaration of Conformity at the time of delivery. The equipment must be provided with the CE label. Assemblies which are installed by NGA in a complete system are considered exceptions to this.

6. The price offered shall include the basic documentation of the system according to the valid EU Machinery Directive (1 x in German in A4 format (assembly drawings larger) and 1 x electronically on a data carrier), which

contains a technical description of the PRODUCT and its operation. Other documentation according to special requirements of NGA, for example in translated form, are included in the agreed price, unless expressly agreed otherwise in writing.

VII. Prices, invoice and terms of payment

1. The price stated in the order is binding, unless otherwise expressly agreed in writing, and is based on the agreement "delivered duty paid" (DDP according to Incoterms 2020). All prices include packaging, plus the statutory value added tax applicable on the day of delivery, as well as loading and insurance. Any deviating price conditions of the SUPPLIER are expressly not accepted.
2. The invoice must match the designations in the order and contain our order number as well as our other details for identifying the order. Invoices without this information will be returned by NGA and will not constitute a due date. The period for payment of the invoice begins on the working day following receipt of a proper and verifiable invoice or acceptance of the goods or service - whichever is the later - but in any case, not before acceptance by us. The payment period for contracts for work also does not begin before acceptance. Should NGA determine that duties (e.g. withholding tax) are to be withheld, or should NGA be requested to do so by the authorities, NGA is entitled to deduct these amounts from the invoice amount. The SUPPLIER shall present documents concerning a corresponding exemption without being requested to do so. The right of the SUPPLIER to reclaim the taxes and duties from the authorities remains unaffected.
3. Unless otherwise agreed in writing between the SUPPLIER and NGA, payments shall be made in EURO either by bank transfer or - with the prior written consent of NGA - by means of an irrevocable letter of credit in EURO. At our discretion, payment shall be made within 10 days of receipt of the invoice with a 3% discount, within 30 days with a 2% discount or within 90 days without discount, without prejudice to our right to make complaints at a later date.
4. Should, with the SUPPLIER's prior written consent, NGA pay in freely convertible currencies other than the invoicing currency, the SUPPLIER shall bear the exchange rate risk and all currency differences arising from the payment obligation; in particular, the SUPPLIER shall not be entitled to reimbursement of any exchange rate advantages. All bank charges shall be borne by the SUPPLIER.
5. In the event of defective delivery, we shall be entitled to withhold payment pending proper fulfilment, without loss of rebates, discounts and similar payment concessions.
6. A set-off by the SUPPLIER is only possible on the basis of undisputed or legally established counterclaims. We do not recognise a ban on offsetting imposed by the SUPPLIER; rather, we are, in any event, entitled to offset against all claims to which we are entitled against the contractual partner.

VIII. Incoming goods inspection, acceptance, assembly, putting into service

1. Unless otherwise agreed in writing, an incoming goods inspection shall first be carried out at the NGA site, the positive completion of which is a prerequisite for acceptance. Acceptance of the PRODUCT shall also take place at the NGA site. NGA will notify the SUPPLIER in writing of the expected acceptance date in advance in good time. Unless otherwise agreed in writing, the FAT sections as contained in the order will apply.
2. In order to carry out the acceptance, the SUPPLIER is obliged to ensure, at its own expense, the presence of a person who has the technical knowledge required for the acceptance and who has been provided by the SUPPLIER with such a power of representation that this person can decide with binding effect for the SUPPLIER whether the acceptance was successful or not within the meaning of the following provisions.
3. Should, for whatever reason, the SUPPLIER prevent the scheduled and timely acceptance by delaying the scheduled acceptance date by more than one week the payment period shall continue regardless. This shall also be the case should the SUPPLIER fail to send a person to the acceptance or should it send a person who does not have the necessary authority to represent the SUPPLIER (paragraph 2 above). Damage, delays and/or other circumstances in the course of the acceptance which are attributable to the person sent by the SUPPLIER shall be borne by the SUPPLIER and shall entitle NGA to claim reasonable damages from the SUPPLIER in addition to compensation for expenses.
4. Acceptance shall take place in accordance with the criteria to be agreed in each individual case. Unless otherwise agreed, the PRODUCT is ready for acceptance if it complies with the scope of delivery as defined in the order. If certain specifications are included in the order, these specifications must also be met. The burden of proof for the non-existence of significant defects lies with the SUPPLIER.
5. Acceptance shall be recorded in a protocol to be signed both by NGA and the SUPPLIER on site.
6. Transport to NGA is to be organised by the SUPPLIER at its own expense. Any transport and/or assembly insurance must also be taken out by the SUPPLIER and the latter must bear the corresponding costs.
7. As a long period of time may often elapse between the delivery and commissioning of a component and, as a result, defects may not be detected until commissioning, NGA's obligation to give notice of defects does not commence until commissioning or the detection of the defect, whichever is the earliest.

IX. State of the product owed and warranty

1. The SUPPLIER warrants that the products supplied by it are free from defects, have the warranted characteristics and meet the requirements of NGA. The owed condition of the delivered PRODUCTS is determined exclusively by our binding written quality specifications, e.g. within the framework of our data sheets, which we submit to our SUPPLIER as part of the specific contractual relationship, in particular at the time of placing the order. This shall also apply to any software supplied.
2. Should the delivery item be defective at the time of transfer of risk, NGA is entitled to request repair/improvement or replacement of the delivery item. NGA shall exercise the right to choose between repair/improvement or replacement delivery.
3. Should the SUPPLIER fail to remedy the material defect within a reasonable period of time, we may, at our discretion, reduce the purchase price, rescind the contract or claim damages in accordance with clause X. The SUPPLIER shall provide us with the necessary assistants, auxiliary materials and tools free of charge for warranty work at NGA. Work and deliveries subject to warranty extend the warranty period in accordance with the statutory provisions.
4. The warranty period is 24 months. As a rule, the period begins with the delivery, but not prior to acceptance.
5. All costs arising from the improvement or replacement delivery, in particular the costs of the replacement part including shipping as well as the reasonable costs of dismantling and installation, shall be borne by the SUPPLIER.
6. Replacement parts shall become the property of NGA.
7. In the event of defects in title, the SUPPLIER warrants that it is the full owner of all items subject to the contracts and that no other rights of third parties (such as liens, other creditor positions from the assignment of claims or other loan securities, sale of claims, hire purchase, conditional purchase, but also industrial property rights or patents, etc.) are infringed or are opposed.
8. The SUPPLIER shall be liable for ensuring that the manufacturing or other processes used as well as the results produced by the SUPPLIER in using these PRODUCTS do not infringe upon any industrial property rights, in particular patents or utility models of third parties. In case of culpable breach of this obligation by the SUPPLIER and claims in this respect against NGA by a third party for infringement of property rights due to the delivery of PRODUCTS to or their use by NGA or the resulting end product/result, the SUPPLIER will indemnify NGA against all claims of the third party and compensate NGA for any damage incurred in this connection. The SUPPLIER shall immediately notify NGA in writing if any claims are made against it for the infringement of such rights. However, it shall be the sole responsibility of the SUPPLIER to defend against such claims.

X. Product liability, compensation

1. In the event of a claim for product liability by a third party, the SUPPLIER is obliged to indemnify NGA against such claims, if and insofar as the damage was caused by a defect in a delivery item. All of the costs relating to the defence against these claims, in particular also legal costs, shall be borne by the SUPPLIER. In the case of a merely negligent breach of duty by us or our vicarious agents, our liability shall be limited to the foreseeable damage typical for the contract, unless there is a grossly negligent breach of duty. This shall not apply in the event of a breach of an essential contractual obligation and in the event of injury to life, limb or health.
2. The SUPPLIER shall be liable to us for any damage, in particular for consequential damage (including incidental damage, loss of profit, loss of business, loss of data, indirect damage as well as pure financial loss).

XI. Industrial property rights

1. All industrial property rights or rights to intellectual property in connection with specifications provided by NGA are the sole property of NGA and remain with NGA. This applies to their application and/or the processes carried out with them as well as to components, software or the corresponding source and object codes as well as the user documentation, processes, plans, sketches, descriptions, drawings and other technical documents, as well as samples, prototypes, catalogues, brochures, illustrations and the like - in particular patent, trademark, sample, copyright or other design rights, and/or rights to know-how and commercial, technical and procedural information. The SUPPLIER is not granted any rights, in particular no licensing or usage rights.
2. These rights belong exclusively to NGA itself and are not transferable. Only NGA is entitled to use these rights, to exploit them and to apply for industrial property rights and/or to otherwise protect its rights. NGA is also entitled to print a company or brand name on the PRODUCTS which have been manufactured without the express consent of the SUPPLIER.
3. If the SUPPLIER is provided with manuals, end user documentation or comparable instructions or other information, these are provided solely as an aid to the proper manufacture of the PRODUCT or delivery of the agreed service.
4. The SUPPLIER is not entitled to use these documents or software and/or their source or object code in any way other than for the specific order of the PRODUCT, in particular not to exploit, reproduce, distribute, process or modify, make available, transmit or perform them, regardless of the form and data carrier, and regardless of whether they were known at the time of conclusion of the contract or not.
5. All rights to services, findings, developments, inventions, etc., which arise in the context of the provision of services by the SUPPLIER, belong exclusively and fully to NGA, irrespective of whether the SUPPLIER was involved in any way in the provision of such services. All rights arising on the part of the SUPPLIER are automatically transferred to NGA with the creation of the services, findings, developments, inventions, etc. and are

automatically transferred to NGA. NGA is also entitled to the exclusive and global rights of use of the works. In particular, NGA also has the exclusive right to file applications for industrial property rights. The SUPPLIER will not assert any rights with regard to applications for industrial property rights, in particular also to any right of prior use.

XII. Data protection

1. The SUPPLIER acknowledges that its personal data, including the data of its employees, or of the SUPPLIER's customers and its business partners in particular, name, title, address, date of birth, etc., shall be processed by NGA and/or companies affiliated with NGA, for the purpose of fulfilling the contract (Article 6 (1) (b) GDPR - conclusion and fulfilment of the contract) or as a result of legitimate interest (Article 6 (1) (f) GDPR) and shall be stored by the responsible party for the duration of the validity of guarantee, warranty, limitation and statutory retention periods or, if applicable, until the end of any legal disputes in which the data are required as evidence. The SUPPLIER guarantees that it has obtained the consent of its employees, customers and business partners for this use of data and shall indemnify and hold NGA and/or companies associated with NGA harmless against all possible claims. The controller of the processing is the NGA Next Generation Analytics GmbH.
2. The data protection declaration of NGA Next Generation Analytics GmbH contains additional information about the data subject's rights to information, correction, deletion, restriction of processing, data transfer and complaints to the data protection authority. It can be found at <https://www.nga.at/datenschutzerklärung/>.

XIII. Non-disclosure

1. The parties undertake to maintain absolute secrecy with regard to the business and trade secrets received by them as a result of the business relationship, insofar as and as long as these are not or do not become accessible to the public. Any separate non-disclosure agreements (NDA) agreed with the SUPPLIER must always be observed. The SUPPLIER undertakes not to disclose such business and trade secrets to third parties and to take all measures reasonably appropriate to maintain confidentiality. The use of such business and trade secrets by the SUPPLIER outside of the specific order and production or delivery of the PRODUCT is prohibited.
2. The SUPPLIER is obliged to transfer this non-disclosure obligation also to all employees, third parties commissioned by it etc. and to demonstrate such in individual cases upon request by NGA.
3. This non-disclosure obligation shall also apply after termination of the business relationship.
4. The SUPPLIER acknowledges that NGA usually has to conclude comprehensive non-disclosure agreements (NDA) with customers, which also provide for contractual penalties in the event of a breach of the non-disclosure obligation. The SUPPLIER acknowledges that in the event of a breach of its non-disclosure obligation, these contractual penalties will additionally be passed on to it and it is obliged to compensate NGA for any damage in excess thereof.

XIV. Compliance with all legal provisions

The SUPPLIER guarantees to comply with all applicable legal provisions and official regulations concerning it. This concerns in particular compliance with the German Supply Chain Act as amended or comparable provisions, the prohibition of child labour within the meaning of ILO Convention No. 182, the prohibition of wage dumping, the observance of human rights and environmental protection regulations.

XV. General

1. Should one or more provisions of these Terms and Conditions of Purchase be declared invalid, inadmissible or unenforceable, for whatever reason, this shall not affect the remaining provisions. In such a case, the invalid or unenforceable provision shall be replaced by a provision that comes as close as possible to the economic purpose of the invalid provision in a legally effective manner. Any gaps in the contract shall be filled in the same way.
2. Notices from the SUPPLIER to NGA are only binding if they are in writing in German or in English. The transmission of notices can also be made by fax or by electronic means. They become effective at the time when they either reach the recipient or would have reached the recipient under normal circumstances with the chosen method of transmission. Notices which reach us on Saturday, Sunday or on one of the public holidays in force shall not take effect until the next working day.
3. The SUPPLIER may only assign its rights and obligations under these GTCS and the Purchase Order/Order to third parties with the prior written consent of NGA in each individual case. NGA is entitled at any time to transfer its rights and obligations under these GTCS and an order to a company affiliated with NGA or to a third party without the need for the consent or approval of the SUPPLIER.
4. Provisional non-enforcement of a right established for the business relationship of the contracting parties shall in principle not be deemed a waiver thereof by the respective contracting party for this or future cases. A waiver of rights shall only be effective if declared in writing by the respective party entitled to claim.

XVI. Applicable law, place of jurisdiction, arbitration clause

1. This contract shall be governed by Austrian law, to the exclusion of the conflict of laws provisions and the UN Convention on Contracts for the International Sale of Goods.
2. The exclusive place of jurisdiction for all disputes arising from and/or in connection with the business relationship between the SUPPLIER and NGA shall be Wels, Austria, provided that the SUPPLIER has its permanent seat in an EU member state, Iceland, Norway or Switzerland.
3. If the SUPPLIER has its permanent seat in another country, all disputes arising out of and/or in connection with the business relationship between the SUPPLIER and NGA shall be finally settled under the Rules of Arbitration of the International Chamber of Commerce by an arbitrator appointed by mutual agreement between NGA and the SUPPLIER, in the absence of agreement under these Rules. The place of arbitration shall be Zurich, Switzerland. German shall be the language of arbitration.
4. Notwithstanding this agreement on the place of jurisdiction, NGA reserves the right to seek injunctive and/or interim relief before any authorities whatsoever, including state courts, in any jurisdiction.