

General Terms and Conditions of Business and Delivery of next layer Telekommunikationsdienstleistungs- und BeratungsGmbH

Status January 2024

1. Scope, validity and amendment

- 1.1. The General Terms and Conditions of next layer Telekommunikationsdienstleistungs- und BeratungsGmbH (hereinafter referred to as next layer) shall apply to all deliveries and services provided by next layer to the Contractual Partner. They shall also apply to future transactions, even if no express reference is made to them. They shall only apply to business customers and companies and not to consumers within the meaning of the Consumer Protection Act.
- 1.2. The General Terms and Conditions of Delivery of the Austrian Electrical and Electronics Industry and the Software Terms and Conditions of the Austrian Electronics Industry (published by the Austrian Electrical and Electronics Industry Association) shall apply in the respective current form as a subsidiary supplement to the General Terms and Conditions of Business and Delivery of next layer.
- 1.3. The obligations of next layer shall be based exclusively on the scope and content of an order accepted by next layer or an order confirmation issued by next layer, the associated service descriptions, and these "General Terms and Conditions of Business and Delivery" in the sections corresponding to the type of order.
- 1.4. Amendments to the GTC may be made by next layer and shall also be effective for existing contractual relationships. The current version is available on next layer's website (or will be sent to the Contractual Partner upon request).
- 1.5. If the change does not exclusively benefit the contractual partner, the changes will be announced at least three months before the new provisions come into effect. In this case, next layer shall inform the Contractual Partner of the essential content of the amendment at least one month before it comes into effect and in a suitable form, for example by printing it on a periodic invoice. next layer shall inform the Contractual Partner at the same time that they are entitled to terminate the contract until the amendment comes into effect.

2. Prices and payment

- 2.1. Unless otherwise agreed in the order, the prices stated in the quotation or order form shall apply. The statutory value added tax shall be charged additionally. We reserve the right to change prices after informing the customer in advance, in particular in the event of unusually high usage of Internet access and server housing/colocation connections that are not billed by volume.
- 2.1. Unless otherwise agreed, payments are due promptly upon receipt of invoice without deduction.
- 2.1. Compliance with the agreed payment deadlines is an essential condition for the performance of services by next layer. In the event of late payment, next layer shall be entitled to charge all resulting expenses and costs, including the costs of any necessary intervention by debt collection companies or lawyers, as well as default interest in the amount of 12% p.a.. If payment is made by credit card, the Contractual Partner shall ensure that the credit card is not blocked or has expired, otherwise any resulting delays in payment shall be charged to the Contractual Partner and interest on arrears may be charged. next layer assumes that the Contractual Partner will renew its credit card in good time before expiry.
- 2.1. In addition, next layer is entitled to suspend services from service contracts after written or electronic notification to the contractual partner and a grace period of two calendar weeks until full payment has been made or to terminate the contractual relationship with immediate effect.
- 2.1. Objections to the invoiced claims must be raised by the Contractual Partner within three months of the invoice date, otherwise the claim shall be deemed to have been recognized in terms of reason and amount. If, after an examination by next layer, the customer's objections prove to be unjustified from next layer's point of view, the customer has the option of applying for arbitration proceedings with the Broadcasting and Telecommunications Regulatory Authority. The application to the arbitration board must be submitted by the customer within one year of the date on which the complaint was submitted to the company.
- 2.1. Offsetting against outstanding claims against next layer and the withholding of payments due to alleged defects not recognized by next layer is excluded.
- 2.1. next layer reserves the right to change (increase or decrease) the fee in the event of major changes in the costs relevant to its calculation (e.g. personnel costs, interconnection fees, electricity costs, telecommunication line costs).
- 2.1. In addition to the contractual secondary obligation, the contractual partner shall ensure that all data necessary for billing (change of address, expiration date of credit cards, etc.) is kept up to date.

3. Contract duration and termination; blocking

- 3.1. Contracts concluded between the contracting parties for the purchase of services or other continuing obligations are concluded for an indefinite period or the agreed fixed term. In the latter case, the contractual relationship shall be automatically extended by the original contractual term unless terminated by either party by giving three months' written notice.
- 3.2. In addition to default of payment, in the event that insolvency proceedings are opened against the contractual partner, default of payment of a new claim that has arisen since then, an application for an out-of-court settlement attempt, the pendency of at least two enforcement proceedings by creditors of the contractual partner shall be deemed good cause for termination of the contract; the initiation of liquidation proceedings or the suspicion of misuse of the communication service; in the event of a breach of legal regulations, official requirements or contractual provisions; furthermore, if it causes a disproportionate data transfer beyond the contractual agreements; in the event of spamming, use of unsafe technical equipment or endangering the network integrity of third-party networks.
- 3.3. Next layer may, at its own discretion, take action not only by terminating the contract, but also by interrupting the service. next layer shall also be entitled to block the service not only completely, but also partially, in the event of suspected violations. In particular, next layer may remove the information stored on hosted websites or block access to it in the event of legal violations. next layer shall inform the Contractual Partner immediately of the measures taken and the reason for them. The right to extraordinary termination of the contract by next layer for good cause remains unaffected in any case.

4. Data protection and data security

- 4.1. next layer shall store access data and other personal traffic data required for the establishment of connections and the billing of charges or for technical reasons as well as for checking the functionality of services and facilities, in particular source and destination IP as well as all other log files due to its legal obligation pursuant to Section 167 (2) Telecommunications Act (TKG) 2021 until the expiry of the period of three months within which the invoice can be legally contested or the claim for payment can be asserted or as long as this is necessary for the aforementioned technical reasons or to check the functionality. In the event of a dispute, next layer shall make this data available to the deciding body. Until a final decision has been made, next layer will not delete the data. Otherwise, next layer will delete or anonymize traffic data immediately after termination of the connection.
- 4.2. next layer will not evaluate a subscriber connection beyond the purposes of billing according to the subscriber numbers called from this connection, except in cases specifically regulated by law.

- 4.3 The Contractual Partner acknowledges that next layer may be obliged pursuant to Section 162 TKG 2021 to participate in the monitoring of telecommunications traffic in accordance with the provisions of the Code of Criminal Procedure. The Contractual Partner also acknowledges that next layer may be obliged to set up an interception circuit or to cancel number suppression in accordance with Section 141 TKG 2021. Actions by next layer based on these obligations shall not give rise to any claims by the Contractual Partner.
- 4.4 Furthermore, the Contractual Partner acknowledges the provisions of the E-Commerce Act (ECG), according to which next layer is entitled and obliged to provide information regarding the Contractual Partner under certain conditions. The next layer shall endeavor to observe and comply with the "General Rules on the Liability and Duty to Provide Information of Internet Service Providers" developed by ISPA (Verein Internet Service Providers Austria), available at www.ispa.at.
- 4.5 Neither this data nor content or other data of the contractual partner will be passed on to third parties outside the scope of the legal requirements or the necessities for operating an Internet node. In particular, routing and domain information must be disclosed. The contractual partner expressly agrees to this.
- 4.6. next layer shall take all technically possible and known measures to protect the data stored with it. next layer shall not be responsible, however, if someone succeeds in obtaining this data in an unlawful manner and using it further. The assertion of claims for damages by the Contractual Partner or third parties against next layer in such a context is excluded by mutual agreement, except in cases of gross negligence and intent.
- 4.7. next layer reserves the right to physically and/or logically disconnect Contracting Parties from the Internet immediately and without prior warning if there is reasonable suspicion that network activities are emanating from their connection that are either a security or operational threat to next layer or other computers, illegal or harassing. The costs of detecting and tracking the activities, interrupting the connection and any repairs shall be charged to the Contractual Partner at the hourly rates normally charged by next layer at the time. Liability on the part of next layer, including towards third parties, due to disconnection from the Internet shall be excluded in such cases.
- 4.8. On the basis of the Data Protection Act and the Telecommunications Act 2021, the contracting parties undertake to store, process and pass on master data only within the scope of the provision of services and only for the purposes agreed in the contract. Such purposes are: Conclusion, execution, amendment or termination of the contract with the Contractual Partner, billing of fees, creation of subscriber directories, provision of information to emergency call carriers pursuant to Section 124 TKG 2021. insofar as next layer is obliged to pass on data pursuant to the TKG as amended, next layer shall comply with this legal obligation. next layer is authorized on the basis of Section 160 (3) Z 5 and Section 166 (1) TKG 2021 to determine and process the following personal master data of the Contractual Partner and subscriber: First name, surname, academic degree, residential address, date of birth, company, e-mail address, telephone and fax number, other contact information, creditworthiness, information on the type and content of the contractual relationship, payment modalities, as well as incoming payments to keep track of the contractual relationship. Master data shall be deleted by next layer in accordance with Section 166 para. 3 TKG at the latest after termination of the contractual relationship with the Contractual Partner, unless this data is still required to charge or collect fees, to process complaints or to fulfill other legal obligations.
- 4.9 The Contractual Partner agrees to receive advertising and information regarding products and services from next layer and its business partners by e-mail to an appropriate extent. The Contractual Partner's data, including its name and e-mail address, shall remain with next layer or a GDPR-compliant service provider bound by an order data agreement. The Contractual Partner may revoke this declaration of consent at any time. next layer shall give the Contractual Partner the option of refusing to receive further messages. The transfer of personal contractual partner data shall only take place on a legal basis. The Contractual Partner is informed that next layer may use Contractual Partner data in accordance with Section 103 TKG to create a list of subscribers.

5. Limitations of liability and exclusion, obligations of the contractual partner

- 5.1. The liability of next layer for slight negligence (except for personal injury) as well as for consequential damages and loss of profit is generally excluded.
- 5.2 The prerequisite for any claims against next layer is the immediate and detailed and specific written or electronic notification of the damage after the occurrence of the damage becomes recognizable.
- 5.3. next layer operates the services offered with the greatest possible care, reliability and availability. For technical reasons, however, it is not possible that these services will be accessible without interruption, that the desired connections can always be established, or that stored data will be preserved under all circumstances.
- 5.4 In particular, for technical reasons it cannot be guaranteed that e-mails will arrive or that error messages will be sent. In particular, the delivery of e-mails may be prevented due to spam filters (set up by next layer or by the Contractual Partner), virus filters, etc. next layer accepts no liability for this, unless next layer has acted with intent or gross negligence. The other exclusions or limitations of liability remain unaffected.
- 5.5. next layer reserves the right to impose temporary restrictions due to its own capacity limits, provided they are reasonable for the Contractual Partner, in particular because they are minor and objectively justified and are based on reasons that are independent of next layer's will.
- 5.6 In the event of force majeure, strikes, war, mobilization, revolution or uprisings, natural disasters, pandemics, sabotage or terrorism, restrictions on the services of other network operators or during repair and maintenance work, there may be restrictions or interruptions in the provision of services. next layer shall not be liable for such failures unless they were caused by it intentionally or through gross negligence.
- 5.7 In the event of unreasonably long interruptions or unreasonable restrictions, the contractual partner's right to terminate the contract for good cause remains unaffected. next layer assumes no liability whatsoever for content that is transported, is to be transported or is accessible via the Internet. No liability is assumed for loss of data.
- 5.8 Furthermore, next layer shall not be liable for data retrieved by the Contractual Partner from the Internet or for e-mails received by the Contractual Partner (not even for viruses contained therein) or for services of third party service providers, even if the Contractual Partner obtains access to these via a link from the next layer homepage or via information provided by next layer. The Contractual Partner acknowledges that the use of the Internet is associated with uncertainties (e.g. viruses, Trojan horses, attacks by hackers, intrusions into WLAN systems, etc.). Any damage and expenses incurred as a result shall be borne by the Contractual Partner.
- 5.9. next layer shall not be liable for damages caused by the Contractual Partner due to non-compliance with the contract and its components, in particular these General Terms and Conditions, or due to improper use.
- 5.10. The contractual partner is obliged to keep their passwords secret. It shall be liable for any damage caused by inadequate confidentiality of the passwords by the contractual partner or by disclosure to third parties.
- 5.11. The Contractual Partner shall be liable for all claims for payment arising from communication services, except those arising from the use of value-added services, as well as other claims arising from communication services resulting from the use of its connection or its access data (including by third parties), provided that next layer is not responsible for the misuse. Further claims for damages and any other claims by next layer remain unaffected.
- 5.12. The Contractual Partner undertakes not to use the contractual services in any way that leads to the impairment of third parties or that endangers the security or operation of next layer or other computers. In particular, spamming (aggressive direct mailing via e-mail) or any use of the service to transmit threats, obscenities, harassment or to harm other Internet users is therefore prohibited.
- 5.13. The Contractual Partner undertakes to use suitable and sufficiently secure technical equipment and settings. If difficulties arise for next layer or for third parties due to unsafe technical equipment of the Contractual Partner (e.g. open mail relays), the Contractual Partner shall be obliged to indemnify and hold next layer harmless; furthermore, next layer shall be entitled to immediately block the Contractual Partner or to take other suitable measures (e.g. blocking individual ports). next layer shall inform the Contractual Partner immediately of the measure taken and the reason for it.
- 5.14. The Contractual Partner undertakes to observe all legal provisions and to assume sole responsibility towards next layer for compliance with these legal provisions. The Contractual Partner undertakes to fully indemnify and hold next layer harmless in the event that the latter is justifiably held liable under civil or criminal law, in or out of court, for content placed on the market by the Contractual Partner. If a claim is made against next layer, the Contractual Partner alone shall be entitled to decide how to react (filing a lawsuit, settlement, etc.); the

Contractual Partner may not raise the objection of insufficient legal defense in this case - except in the case of gross negligence on the part of next layer.

- 5.15. The Contractual Partner is obliged to inform next layer immediately of any disruption or interruption of telecommunications services in order to enable next layer to rectify the problem before commissioning other companies to rectify the problem. If the Contractual Partner breaches this duty of notification, next layer shall not assume any liability for damages and expenses resulting from the failure to notify (e.g. costs of an external company unnecessarily commissioned by the Contractual Partner).
- 5.16. In the case of security systems (firewalls, IPS, VPNs, etc.) that have been set up, operated and/or checked by next layer, next layer shall in principle proceed with the greatest possible care within the framework of the respective state of the art. next layer points out, however, that absolute security cannot be guaranteed by security systems. Liability on the part of next layer under the title of warranty or compensation for damages is therefore excluded for any disadvantages arising from the fact that installed security systems are circumvented or rendered inoperative. next layer points out that no liability is assumed for application errors by the Contractual Partner or its assistants and employees, nor in the event of unauthorized changes to the software or configuration without the consent of next layer.
- 5.17. next layer's liability for disadvantages arising from the fact that security systems installed, operated or checked by the Contractual Partner are bypassed or rendered inoperative is excluded.
- 5.18. If the Contractual Partner is entitled to claims for damages because its rights have been infringed by information stored by next layer for other Contracting Parties, next layer shall not be liable (without prejudice to all other limitations and exclusions of liability) in any case if it has no actual knowledge of the infringement or the reference to the infringement is not qualified in the sense of A Code of Conduct - General Rules on Liability and the Internet Service Provider's Duty to Provide Information, available at www.ispa.at.
- 5.19. Unless otherwise agreed in the order, next layer's liability shall be limited to the equivalent of one year's turnover of the contract, up to a maximum of 70,000 (seventy thousand) EURO per contract.

6. Other provisions

- 6.1 Unless excluded by law, the statutory provisions applicable between entrepreneurs shall apply. Any disputes shall be subject to the local jurisdiction of the competent court in Vienna.
- 6.2 All notifications and declarations relating to this contractual relationship shall only be valid if they are made in writing and are uncontradicted by the recipient.
- 6.3. next layer is authorized at its own risk to commission other companies with the provision of services arising from this contractual relationship.
- 6.4. next layer is authorized to transfer its obligations in whole or in part, thus also with regard to individual services, or the entire contract to a third party with debt-discharging effect and shall inform the Contractual Partner of this.
- 6.5 The use of the contractual services by third parties and the transfer of these services to third parties against payment shall require the express written consent of next layer.
- 6.6 Sales partners or sales employees as well as next layer's technical advisors shall not be authorized to make statements, commitments or accept payments on behalf of ISP.
- 6.7 The Contractual Partner shall notify next layer immediately in writing of any changes to its name or address. If no notification of change is made, documents shall be deemed to have been received by the Contractual Partner if they were sent to the address last notified by the Contractual Partner. If, in the event of name changes that were not notified in good time, the contractual partner wishes a new invoice to be issued, next layer shall comply with this request as far as possible; however, this shall in no way prevent the original invoice from falling due.
- 6.8 Electronic declarations shall be deemed to have been received if they have been sent to the e-mail address last provided by the contractual partner.
- 6.9 Headings in these Terms and Conditions are for convenience only and have no normative meaning, do not limit or extend the scope of these Terms and Conditions and are not for interpretation.
- 6.10. The possible invalidity of individual provisions shall not affect the validity of the remaining General Terms and Conditions. The invalid provision shall be replaced by a valid provision that comes as close as possible to the economic purpose of the invalid provision.
- 6.11. Reference is made to the existence of the single European emergency number 112.

7. Additional provisions for the delivery of goods

- 7.1. Delivered goods shall remain the unrestricted property of next layer until full payment has been made.
- 7.2 If devices are provided to the Contractual Partner for use, these shall remain the property of next layer, even if they have been installed, and must be returned to the Contractual Partner immediately at the Contractual Partner's expense upon termination of the contract, otherwise the full purchase price shall be invoiced, unless otherwise agreed. The contractual partner and the persons under his responsibility must use these end devices or accessories with the greatest possible care; in the event of damage, the contractual partner shall not be released from his obligation to pay. Service and maintenance of rented end devices and accessories shall be carried out exclusively by next layer or its authorized representatives for the entire duration of the contract.
- 7.2 Unless otherwise agreed, the warranty period shall be 6 months.
- 7.3 Defects subject to warranty shall be remedied at the discretion of next layer either by repair or replacement. The warranty shall lapse if repairs or modifications have been carried out by third parties.
- 7.4 If the Contractual Partner withdraws from the contract for reasons for which next layer is not responsible, compensation shall be deemed agreed in the amount of the expenses demonstrably incurred by next layer, but at least 20% of the net order value.
- 7.5 Unless otherwise agreed, prices are ex next layer warehouse Vienna.

8. Additional provisions for the delivery of software

- 8.1. By ordering licensed software from third parties, the contractual partner confirms knowledge of the scope of performance of these software license terms.
- 8.2 No warranty of any kind is assumed for software classified as "public domain" or "shareware". The terms of use or any license regulations specified by the author for this software must be observed.
- 8.3 In the case of software created individually by next layer, the scope of services shall be determined by a service description (system analysis) countersigned by the Contractual Partner. The delivery includes the program code executable on the designated systems and a program description. The rights to the programs and the documentation shall remain with next layer.
- 8.4 next layer does not guarantee that the delivered software meets all of the Contractual Partner's requirements, that it works together with other programs in the selection made by the Contractual Partner and that the programs run uninterrupted and error-free or that all software errors can be rectified. The warranty is limited to reproducible defects in the program function.
- 8.5 The transfer of software to third parties, including its short-term transfer, is excluded in all cases.
- 8.6 If next layer delivers hardware and software at the same time, any defects in the software shall not entitle the Contractual Partner to withdraw from the contract on which the use or delivery of the hardware is based. The same applies to agreed services. In particular, defects in the hardware or software supplied shall not entitle the contractual partner to withdraw from the contract for the provision of Internet services. All this shall not apply if indivisible services within the meaning of Section 918 (2) Austrian Civil Code (ABGB) exist.

9. Additional provisions for services

- 9.1 IP connectivity to other network operators is subject to availability. The use of other networks is subject to the usage restrictions of the respective operators (Acceptable Use Policy).
- 9.2 The contractual partner recognizes the need to comply with the standards RFC1009, RFC1122, RFC1123 and RFC1250. If non-compliance with the above standards causes damage to next layer or other network participants, next layer reserves the right to restrict connectivity until the aforementioned standards are met and to charge the Contractual Partner for expenses incurred as a result of non-compliance with these standards at the hourly rate normally charged by next layer at the time.
- 9.3 The Contractual Partner acknowledges the necessity of complying with the contractual obligations to use the services in accordance with their intended purpose. If complaints about the Contractual Partner are made to next layer via the Internet, next layer shall be entitled to terminate the connection and the contractual relationship with immediate effect in the event of repeated complaints. Furthermore, the time required to process the complaints will be charged to the Contractual Partner at the hourly rate usually charged by next layer at the time.
- 9.4 Unless expressly agreed otherwise, access to network services or value-added services shall be deemed to have been agreed at the closest local point of presence.
- 9.5 These General Terms and Conditions shall apply to contracts for the use of network services insofar as these contracts do not expressly provide for other provisions.
- 9.6 The prices quoted do not include the costs of using transmission facilities up to the selected Point of Presence, the costs incurred at the Contractual Partner's location or the costs of equipment provided by next layer for the exclusive use of the Contractual Partner at the Point of Presence. Also not included are the costs that may be charged by third parties for the use of services that are accessed via the connection at the Point of Presence.
- 9.7 Unless agreed in better service level agreements (SLAs), disruptions to telecommunications services for which next layer is responsible shall be rectified within two weeks at the latest.
- 9.8 The Contractual Partner shall support next layer in localizing the location of the fault and error as far as possible and shall grant next layer or third parties commissioned by it the necessary access at all times to enable the fault to be rectified. If next layer or third parties commissioned by it are called to rectify a fault and it is determined that there is no fault in the provision of the contractually agreed services or that the fault is the responsibility of the Contractual Partner, the Contractual Partner shall reimburse next layer for any expenses incurred as a result.
- 9.9 next layer shall not be liable for the content of transmitted data or for the content of data that is accessible through next layer's services. The Contractual Partner of next layer undertakes to comply with Austrian and international legal provisions when using the services and data lines offered. If the contractual partner is a reseller, it shall impose this obligation on its contractual partners and take all reasonable measures to prevent the unlawful use of the services and data lines offered. next layer reserves the right, however, to prevent the transport of data or services that contradict Austrian laws or international obligations or morality, but does not undertake to do so.
- 9.10 In the case of other services on hardware and software provided, such as installations, functional extensions, etc., next layer shall provide the agreed services to the extent that is possible under the technical conditions provided by the Contractual Partner. next layer does not guarantee that all functional requirements of the Contractual Partner can be produced from the components provided.

10. Additional provisions for Resellers

- 10.1 The Reseller undertakes vis-à-vis next layer to impose the obligations assumed in the General Terms and Conditions on his Contractual Partner and shall be liable to next layer for damages arising from breaches of this obligation by his Contractual Partner.