

# General Terms and Conditions of Sale and Delivery

Effective from 1 October 2020

## 1. The scope of these Terms and Conditions

- 1.1 These Terms and Conditions regulate the relationship between the Parties, Logos Design A/S (hereinafter referred to as 'the Seller') and the Buyer of products, software, licences, equipment, accessories, services etc. from the Seller (hereinafter referred to as 'the Buyer').
- 1.2 When the Seller or Buyer in quotes, contracts, or other documents regarding the above refer to the fact that the Seller's Terms and Conditions apply, this shall be regarded as a reference to these Terms and Conditions.
- 1.3 These General Terms and Conditions of Sale and Delivery may be changed with thirty (30) days' notice. The applicable Terms and Conditions will at all times be available on the Seller's website.

## 2. Basis for the contract

- 2.1 All services and all products (in the following jointly referred to as 'the Product') are purchased from the Seller according to the Terms and Conditions of Sale and Delivery set out below. These Terms and Conditions are exhaustive unless additions or derogations have been accepted in writing by the Seller. The Product, subject to these Terms and Conditions of Sale and Delivery, shall include:
  - Individually developed computer applications, i.e., software that has been developed by the Seller on the basis of the Buyer's requirements, including detailed specifications and instructions
  - Standard software and standard components, i.e., software and equipment that has been developed by the Seller for the purpose of sale to several clients.
  - Hardware, including printed circuit boards, housing etc., developed/designed by the Seller.
  - Systems, software, or hardware developed and/or produced by third parties.
  - PSAM
  - Licences for software and gateway, irrespective of whether the software and payment solutions have been developed by the Seller or a third party, but sold through the Seller, including PSAM licences.
- 2.2 Neither the Buyer's standard terms and conditions or the Buyer's specification of special conditions in tender material, orders, correspondence etc. shall be regarded as derogation from or addition to the General Terms and Conditions set out below unless the Seller has explicitly accepted these in writing. The Buyer's reference to these in general or specifically in an order or in associated correspondence shall therefore not be sufficient for such terms and conditions to be regarded as having been accepted by the Seller.
- 2.3 If the Product includes products supplied by a third party, including e.g., software products, the third party's standard terms and conditions, including licence terms, shall likewise apply.
- 2.4 Software, gateway and PSAM licences are mandatory for payment solutions. The licence covers the Buyer's right of use to the software and payment solutions and the Buyer's access to updates of the software in the payment solution, including changes that ensure that the payment solution software fulfils the requirements set by Nets Denmark A/S.

## 3. Quote/order

- 3.1 Unless otherwise stated, quotes issued by the Seller shall be binding for thirty (30) days from the date of the quote.
- 3.2 An agreement between the Buyer and the Seller shall only be deemed to have been entered into when either the Buyer has received the Seller's written order confirmation or when the Buyer knows or should have recognised that the Seller has commenced work on the order. The above shall likewise apply to additions/subsequent orders to a previously placed order.
- 3.3 Objections made by the Buyer to the content of the order confirmation shall be made in writing and be submitted to the Seller within five (5) working days of the date of the order confirmation.
- 3.4 Cancellation or amendment of an order may only take place with the written consent of the Seller.
- 3.5 The Seller shall at any time be entitled to modify the choice of materials and design of the

products offered if the Product continues to meet the normal standard and specifications provided by the Buyer.

- 3.6 Cancellation of an order in whole or in part shall only be accepted on prior agreement and on payment of expenses incurred.

#### **4. The obligations of the Buyer**

- 4.1 The Buyer shall at his own expense and risk protect his own data.
- 4.2 The Buyer shall pay for licences for software, gateway and PSAM until these are cancelled with the Seller.
- 4.3 The Buyer shall be under obligation to update software and/or replace PSAM in the terminal when Nets and/or third parties release new versions that require a software update or replacement of PSAM. The Buyer shall accept that Nets and/or third parties are permitted to update or modify software. The customer will be informed if a software update requires the customer's active participation.
- 4.4 If an agreement has not been reached with the Seller on this, the Buyer shall himself be responsible for all costs related to the integration of the solution purchased from the Seller with the Buyer's other systems, including costs of communication, installation and power supply etc.
- 4.5 The Buyer may only on prior agreement remove, modify or cover brand names, patent labels, guarantee labels or other labels that have been applied by the Seller or a third party to the Product or other promotional material relating to the supplied equipment.
- 4.6 If the Buyer has provided the Seller with an e-mail address, notification of changes to prices and these General Terms and Conditions of Sale and Delivery shall be made electronically. The Buyer shall be under obligation to notify the Seller of changes to the Buyer's address and e-mail address. The Buyer shall be responsible if the Buyer does not receive notification of changes due to the fact that the Buyer has not notified the Seller of changes to his address or e-mail address.
- 4.7 The Buyer shall be under obligation to comply with the export control rules that apply under Danish and international law to the extent that the Product is to be exported or re-exported.

#### **5. Prices**

- 5.1 All prices exclude current value-added tax, other taxes, customs duty, public fees, and freight charges etc. Prices are subject to price increases by sub-suppliers and to changes to public taxes, customs duty, currency exchange rates, raw materials prices, and freight charges.
- 5.2 If no fixed prices have been agreed, the Product shall be sold at the Seller's current hourly rates and list prices.
- 5.3 All prices may be modified without warning.
- 5.4 Annual licences shall be invoiced annually on January 1st and shall for the first year be invoiced pro rata according to delivery date.
- 5.5 Prices shall be indexed automatically once a year on January 1st based on the development of the net price index published by Statistics Denmark from August to August where August 2015 = index 100. The Buyer shall not be notified separately of the indexing of prices.
- 5.6 An invoicing charge, freight charge and environmental charge may be added to all invoices, cf. the Seller's price list.

#### **6. Payment**

- 6.1 Unless otherwise agreed, the purchase price for the Product – both complete and partial orders – shall fall due for payment net cash twenty (20) days after receipt of invoice which is issued immediately after delivery. If the Buyer is unable to take delivery of the Product on the agreed date, an invoice shall be issued when the Seller states that the Product is ready for delivery.
- 6.2 The Seller may elect to invoice installation and delivery separately.
- 6.3 If a delivery or installation has a duration of more than one (1) month, the Seller reserves the right to invoice an on-account sum every month equivalent to the part of the Product that has been delivered on the invoice date.
- 6.4 If the Buyer does not pay an invoice on time, the Seller shall be entitled without notice to apply interest on overdue amounts according to current regulations, including the Danish Late Payment

of Commercial Debts (Interest) Act, and cancel all discounts that may have been applied to the total order. Reminder fees and interest rates shall be stated on the Seller's price list.

- 6.5 If the Seller after the commencement of the agreement should receive adverse credit information about the Buyer, the Seller shall be entitled to require advance payment or an on-demand guarantee for the purchase price with estimated additional charges, cf. point 6.4, and to discontinue further deliveries until these have been received. If the advance payment/guarantee should not be provided within three (3) working days of the Seller's written demand, the Seller shall likewise be entitled to cancel the agreement and invoke material breach of contract by the Buyer and/or require compensation.
- 6.6 The Buyer shall not be entitled to withhold any part of the purchase price without the Seller's consent. Whether such withholding of any part of the purchase price is as security for the fulfilment of any claims or on any other basis, such withholding shall be deemed to constitute material breach of contract.

## **7. Conditional sale**

- 7.1 The Seller shall retain ownership of the delivered Product until payment has been made to the extent that such conditional sale is permitted under applicable law. The Buyer shall solely achieve the right of use to supplied software.
- 7.2 The Seller shall be entitled to take back the Product – irrespective of whether the Product should include third-party data/assets – and dispose of the Product according to the general rules of Danish law.
- 7.3 The Buyer shall not be entitled to resell the Product or parts thereof before the purchase price has been paid. The Buyer shall likewise until then not be entitled to dispose of the Product, in fact or in law, in a way that may mean that ownership is set aside, e.g. by adding other products or removing parts of the Product.

## **8. Delivery**

- 8.1 Stated delivery dates are approximate and shall not be binding unless otherwise agreed in writing and confirmed in writing by the Seller. If a delivery date has not been set, either Party may in writing with suitable notice require that the order be executed.
- 8.2 The delivery date shall be set on condition that all the Buyer's specifications are available no later than on the Seller's issue of the order confirmation. If this is not the case, the delivery date shall be deferred by the number of calendar days counted from the date of the order confirmation until such specifications have been received from the Buyer. The delivery date shall be deferred correspondingly if the Seller is subsequently prevented from fulfilling the order for reasons that can be attributed to the Buyer, the Buyer's suppliers or force majeure. The Seller shall be entitled – in addition to the agreed prices – to invoice at list price any resources reserved for the order, which have not been used for the reasons stated above and which could not be reserved for other projects in the period(s) in question.
- 8.3 The Seller shall – without this being deemed to constitute a delay – be entitled with suitable notice in writing on one or more occasions to defer any time limit, including milestones, tests etc., by such a number of days that defers the delivery date(s) by up to sixty (60) working days.
- 8.4 The Seller shall be entitled without the Buyer's consent in whole or in part to leave the fulfilment of the Seller's obligations to sub-contractors.
- 8.5 Prior to handover of the Product, the Buyer shall not be entitled to use the Product in whole or in part. If the Buyer commences use of the Product in whole or in part without the Seller's consent prior to handover, the Buyer shall be deemed to have taken ownership of the Product.
- 8.6 The Seller's services shall be deemed to be supplied on an on-going basis; the Product shall be deemed to have been delivered when it has been physically handed over to the Buyer. Unless otherwise agreed, delivery and transfer of risk shall be Ex Works ('EXW') as defined in current Incoterms. Shipment shall be at the Buyer's risk. The Buyer shall be responsible for insuring the Product.

## **9. Expiry and termination of licences**

- 9.1 The right of use to software licences, gateway and PSAM shall run until it is terminated or cancelled by either Party.
- 9.2 The Seller and Buyer shall be entitled in writing to terminate the agreement on software licences and PSAM from Nets with three (3) months' notice. In the event of price changes implemented by Nets, the Buyer shall be entitled to terminate the agreement with one (1) months' notice.
- 9.3 Pre-paid licences shall not be refunded.
- 9.4 Termination of licences shall be made in writing by e-mail to [faktura@logos.dk](mailto:faktura@logos.dk). Such notification of termination shall at a minimum state the customer's name and serial numbers for payment solutions and PSAM number for PSAM.
- 9.5 Both Parties shall be entitled to terminate agreements in the event of the other Party's material breach of contract. The customer's failure to pay any amount due on time shall always be deemed to constitute material breach of contract which shall entitle the Seller to terminate the agreement in whole or in part without notice.
- 9.6 After the expiry of the agreement, the Buyer shall undertake without delay to cease using the software, gateway and PSAM.
- 9.7 In the event of the expiry of the agreement or the Buyer's failure to make payment, the Seller shall be entitled to block the use of the software and PSAM. The Seller shall be entitled to charge a fee for the unblocking of software, terminals etc.

## **10. Installation, service, and repairs**

- 10.1 If installation, service, and repairs take place at the Buyer's premises, the Buyer shall be responsible vis-a-vis the Seller for ensuring that installation can take place in conditions that comply with current legislation and regulations on working environment at the place of installation.
- 10.2 The Buyer shall ensure that the necessary safety measures are taken.
- 10.3 Unless otherwise agreed, the Buyer shall at his own expense and in a professional manner prepare works such as: concreting, foundations, and similar construction work as well as laying pipes, electrical cables, and other required connections.
- 10.4 Preparatory work shall be complete before the Seller's staff arrive at the place of installation. Foundations and other bases and surfaces shall be ready to bear the load for which they were designed.

## **11. Drawings and descriptions**

- 11.1 All drawings and technical documents pertaining to the Product or the production of the Product, including such documents that prior to or after the commencement of the contract have been supplied to the Buyer, shall remain the property of the Seller.
- 11.2 Such material shall not without the Seller's written consent be used for any other purpose than the installation, operation, and maintenance of the Product. The material above shall not without the Seller's written consent be otherwise used, copied, reproduced, transferred, or otherwise disclosed to a third party.
- 11.3 The Seller shall not be under obligation to issue the material on which the manufacture of the Product is based.
- 11.4 If drawings, descriptions etc. have been issued free of charge in connection with quotes, these shall remain the property of the Seller. Such material shall not in any way be misused or disclosed to third parties and shall be returned to the Seller if the quote is not accepted.
- 11.5 The Seller shall retain all rights to the know-how that the Seller has prepared and delivered. The Buyer shall solely be entitled to use such know-how in conjunction with the Seller's Product.

## **12. Claims**

- 12.1 It shall be the responsibility of the Buyer without delay on delivery to check the Product on a regular basis and in writing point out any defects/delays without delay after the defect/delay was or could have been discovered with a detailed description of the problem. The Buyer shall himself be under obligation to obtain test specifications and test data, if applicable.
- 12.2 Complaints about deficits or visible defects shall be made within ten (10) days of delivery of the Product. If not, the Buyer shall be precluded from invoking the defects.

- 12.3 Claims pertaining to invoices shall be submitted in writing within ten (10) working days of receipt of the invoice.
- 12.4 Delays may never be invoked later than ten (10) working days after delivery.
- 12.5 Defects may never be invoked later than twelve (12) months after delivery.
- 12.6 In the event of a claim, the Buyer shall only on agreement with the Seller be entitled to use the Product or otherwise dispose of or return it. If the Buyer has made a claim about the Product and it is later ascertained that no defect exists for which the Seller is liable, the Seller shall be entitled to compensation for the work and costs that the Seller may have incurred in connection with such claim.

### **13. Remedy**

- 13.1 Before requesting remedy, the Buyer shall implement troubleshooting procedures, as instructed, and the Buyer shall ensure the protection of applications, data and other valuables.
- 13.2 The Product shall be regarded as free of defects if it essentially corresponds to the documentation authorised by the Seller. In assessing whether functionality is deficient, it shall likewise apply that functionality must essentially be present, but the way in which it is achieved may not reflect the Buyer's requirements/wishes.
- 13.3 The Seller's obligation to remedy defects etc. does not include defects caused by materials supplied by the Buyer, including constructions that have been prescribed by the Buyer, or defects that are a result of natural wear and tear, damage, vandalism, fluids, faulty operation, faulty installation by the Buyer or a third party on the Buyer's behalf, inadequate maintenance, accidents, or other circumstances for which the Buyer bears the liability or risk.
- 13.4 If the Product should be defective, cf. point 13.1-13.2, the Seller shall undertake to commence remedy without undue delay after this has been ascertained on receipt of comprehensive claim from the Buyer. If remedy is impossible or in the Seller's opinion cannot take place within a reasonable time or at a reasonable cost, the Seller shall be entitled at his discretion in full and final settlement either (a) within an appropriate time limit to provide a replacement or (if replacement is not successful) (b) to grant the Buyer a proportionate reduction in price.
- 13.5 The Buyer shall ensure that the Product is returned to the Seller for repair. The Buyer shall defray the costs for transport and shipment in connection with such repair.
- 13.6 All remedies shall be void if the agreed payment terms are not met, or if the Buyer within the remedy period himself has changes made to or repairs carried out on the Product. The Buyer shall likewise lose his right to make a claim in respect of defects/delays if the Buyer fails to notify the Seller of a defect/delay within the set time limits.
- 13.7 The Seller's liability for products, including software, supplied by a third party shall be limited to the powers and sanctions that the Seller is able to pass on to the party in question.
- 13.8 If the Product has been modified or serviced by others than the Seller or the Seller's designated engineer, the Seller shall be entitled to refuse remedy free of charge.

### **14. Liability and limitation of liability**

- 14.1 The Parties shall be liable under the general rules of Danish law, subject to the limitations set out in this agreement.
- 14.2 The Seller shall solely be liable for his own services and circumstances. The Seller shall under no circumstances be liable for errors/defects or delays or otherwise for failure to fulfil the contract, to the extent this is due to circumstances attributable to the Buyer or a third party, including the Buyer's breach of contract or reckless conduct, the Buyer's user error, communication infrastructure or other hardware, the Buyer's modifications to or interference in the Product, errors or omissions in the data entered or provided by the Buyer (or the Buyer's customers/suppliers).
- 14.3 The Seller's liability for defects shall not include faults or defects in third-party software that may be included in the Product. The Seller shall solely pass on claims pertaining to such software to the seller of the software.
- 14.4 The Seller shall further under no circumstances be liable for indirect loss, including loss of goodwill, lost profits, operating losses, stoppages, loss of data, loss of interest etc.
- 14.5 The Seller shall bear product liability under the general rules of Danish law.
- 14.6 The Seller's total liability shall in any case be limited as the Buyer's total right to compensation

shall be limited to a total amount equivalent to the fees paid by the Buyer in the past twelve (12) months, to a maximum of DKK 500,000. This monetary limitation of liability shall include all forms of liability and claims, including compensation in and outside the contract, strict liability, warranty liability, fines and claims for the refund of fees paid.

- 14.7 Each order shall be regarded as an independent agreement with the Seller and shall not imply authority over other orders irrespective of whether such orders may be closely linked or interdependent.
- 14.8 The limitations to the Seller's liability shall not apply if the Seller has exhibited gross negligence.
- 14.9 The Seller's liability shall not extend further than one (1) year after delivery.
- 14.10 If the equipment and/or software sold has been modified or serviced by others than the Seller, the Seller shall not be liable for the Product or for the consequences of these modifications.

## **15. Force majeure**

- 15.1 Force majeure exists if one party or its subcontractors are prevented from performing this Agreement (or subcontractor agreements related hereto) as a result of war; civil war; insurrection; epidemics; pandemics, public restrictions, including, but not limited to orders and recommendations from public authorities, which one of the parties is obliged or chooses to follow; import or export bans; acts of God, including, but not limited to, earthquakes, storm surges, extensive flooding, tornadoes, volcanic eruptions; as well as widespread industrial action; fire or similar that should not or could not have been foreseen by the parties at the time of signing of this Agreement (or subcontractor agreements related hereto).

## **16. Rights to software, system development and design**

- 16.1 To the extent that software is a separate part of the Seller's Product or integrated in components that form part of the Seller's Product, the following provisions shall apply in addition to other sales and delivery provisions.
- 16.2 All rights to the supplied software shall solely remain with the Seller, including copyright, rights to commercial secrets and property rights. The above likewise applies to all rights to the development and design of hardware, including printed circuit boards. No rights to software, with the exception of the associated right of use, shall be conferred under these Terms and Conditions of Sale and Delivery. If the Buyer has contributed to the development of any part of the software in a way that implies that the Buyer obtains rights to the software under the Danish Copyright Act, the Buyer shall by his signature to this agreement accept that such rights pass to the Seller without additional charge.
- 16.3 The Buyer shall solely acquire non-exclusive and non-transferable right of use to the delivered software and documentation. This shall apply both to specially developed software and to standard software and standard components. The right of use shall be unlimited, provided, however, that the Buyer pays the annual software licences.
- 16.4 The software shall only be used in connection with the use of the components in which the software forms an integral part.
- 16.5 The transfer of software or the right of use to a third party, the reproduction, translation, adaptation, alteration, decompiling, reverse engineering, other than as permitted by mandatory law, circumvention of key devices or authorisation codes shall not be permitted.
- 16.6 The Product shall include the software in the version applicable on the date of the quote. The Seller shall not guarantee compatibility with other IT systems, including software, or with new software versions.
- 16.7 If the Product includes software to which others than the Seller own the copyright, the copyright holder's licence terms and conditions shall apply.
- 16.8 The Seller's development work does not, to the best of the Seller's knowledge, breach third party intellectual property rights. If a claim is made by a third party for such alleged infringement, the Seller shall be entitled on his own and on the Buyer's behalf to conduct the case at his discretion and settle in exchange for indemnifying the Buyer against any claims for payment. If the Seller deems that the claim has been rendered probable, the Seller shall be entitled at his discretion to acquire the right for the Buyer to continue to use the software or to cease the infringement by changing/replacing the developed software. The Buyer shall not otherwise be entitled to raise a

claim against the Seller vis-à-vis such infringement.

**17. Confidentiality**

- 17.1 Unless additional confidentiality has been agreed in writing, both Parties shall observe confidentiality as prescribed by the Danish Marketing Practices Act on any matter of which they may become aware while working on the fulfilment of the contract pertaining to the other Party and the Party's contractual partners. The Seller shall fulfil his obligation by ensuring that all the Seller's employees in writing undertake to observe confidentiality.
- 17.2 The Seller shall be entitled to include the Buyer in his list of references and inform others of non-confidential details relating to the Buyer's Product.

**18. Partial invalidity**

- 18.1 If one or more provisions of these General Terms and Conditions of Sale and Delivery is/are deemed to be invalid, illegal or unenforceable, the validity, legality or enforceability of the remaining provisions shall not be affected. The Parties shall undertake in this case to replace provisions that have been infringed with provisions that come closest to ensuring the legal position that was originally intended.

**19. Choice of law and venue**

- 19.1 The agreement shall be subject to Danish law. Disputes that cannot be resolved by negotiation may be brought before the Danish courts.