



General Terms and Conditions for the Provision of Services of NTT Germany AG & Co. KG, Horexstraße 7, 61352 Bad Homburg v. d. Höhe, Germany (“NTT”)

1 Scope of applicability

- 1.1 The present General Terms and Conditions shall apply in the context of business dealings with entrepreneurs, legal entities under public law, and special assets (*Sondervermögen*) under public law when it comes to any and all services not entailing technical work under high-voltage conditions that pertain to the construction and extension of telecommunications systems as well as other communications and data systems ("System") or the establishment of grid networks ("Installation"). They shall also apply to contracts for the repair, maintenance, testing, placement into service, and refurbishment of the corresponding Systems, insofar as these do not fall within the expressly agreed applicable scope of a separately concluded sales agreement, lease agreement or service agreement ("Customer Service").
- 1.2 Customer Service shall be performed on the basis of the defect descriptions provided by the customer, or otherwise on the basis of the defects identified by NTT. NTT reserves the right to replace any and all parts to the extent required for repairs, respectively to exchange such parts for good-as-new parts (replacement assemblies).
- 1.3 The customer shall provide free and unhindered access to the place of performance and shall ensure that any parts which the customer is to provide are delivered to the place of performance in a timely manner. Moreover, the place of performance must be in compliance with the applicable workplace safety regulations.

2 Claims for defects

- 2.1 NTT undertakes to remedy any defects, at no charge by way of subsequent contractual performance, of which the cause can be shown to have arisen before the devolution of the risk. The customer is to grant NTT the time and opportunity to perform that the latter may deem necessary, at its free discretion, for purposes of such subsequent contractual performance. Any parts replaced shall become the property of NTT. Once a defect has been identified, this must be promptly reported in writing to NTT. Liability for material defects shall be precluded for normal wear and tear as well as for damage resulting from any of the following: improper or negligent handling; modification by the customer or third parties of the programs delivered along with the Systems; use of unsuitable operating equipment or premises; any other circumstances that are not the fault of NTT; a deviation from the agreed characteristics that is merely negligible in scope and non-detrimental; or a merely negligible restriction of serviceability. The customer shall bear any expenditures arising because subsequent performance is to be delivered at a location other than the agreed place of performance.
- 2.2 Claims for defects shall become time-barred twelve months after the date of the corresponding service having been performed. If longer, compulsory limitation periods are mandated by law – e.g. under Section 438 (1) no. 2, Section 479 (1) and Section 634a (1) no. 2 German Civil Code (*BGB - Bürgerliches Gesetzbuch*), respectively – then these shall apply. The length of the respective operating/service life shall have no influence on the limitation period.
- 2.3 If the subsequent contractual performance provided fails to remedy the defect in question, customer shall be entitled to revoke the contract or reduce the price, whereby this shall in no way prejudice any other indemnification claims the customer may enjoy. There shall be no right to assert claims for compensation of damages unless the preconditions set forth in Clause 3 have been fulfilled.
- 2.4 NTT may also meet its obligation to satisfy claims for defects by means of remote access, provided it notifies the customer in advance and the required technical preconditions are given. The exchange of data between NTT's remote centre and the System of the customer shall occur in a manner compliant with the applicable statutory provisions regarding data protection.

3 Liability

NTT's liability shall be strictly limited as follows:

- 3.1 NTT shall be fully liable for cases involving wilful conduct, gross negligence or injury to life, limb or health, as well as for a failure to provide a characteristic for which NTT has assumed a guarantee, and for fraudulent misrepresentation.
- 3.2 NTT's liability for a slight negligent breach of a duty, the fulfilment of which is indispensable to the proper performance of the agreement and something upon which the customer should normally be able to rely, shall be limited to the damage that was foreseeable and customary upon conclusion of the agreement.
- 3.3 Unless the parties have demonstrably agreed that NTT is to be responsible for performing data backups, NTT shall assume no liability for any loss of data by the customer, except in those cases where NTT has wilfully or grossly negligently caused the data loss and the customer has ensured that the data files can be reconstructed at reasonable effort and expense using machine-readable data material kept available on a standby basis.
- 3.4 Liability for pecuniary losses caused by slight negligence, furthermore, shall be limited to the contract value. No liability shall be assumed for indirect damages, particularly for lost profits, production disruptions, investment-related interest costs, or financing costs.
- 3.5 In the event the customer receives consultancy services exceeding the commissioned scope, NTT shall be liable only for damages it has caused wilfully or grossly negligent. In particular, the customer shall not be released from its obligation to verify upon its own initiative that a given delivery is fit for its intended purpose. This shall apply also in those cases in which NTT are aware of the purpose intended by the customer.

3.6 Liability under the German Product Liability Act (*ProdHaftG - Produkthaftungsgesetz*) and the General Data Protection Regulation (*DS-GVO - Datenschutz-Grundverordnung*) shall remain unaffected.

4 Data protection

4.1 NTT and its subcontractors will comply with the applicable statutory provisions when processing any personal data pertinent to the conclusion and performance of the agreement; the address of the corresponding data recipients shall be disclosed upon re-quest.

4.2 NTT shall comply with the applicable statutory provisions regarding data protection, as e.g. the processing in good faith, transparency, appropriation, minimisation of data, correctness and integrity / confidentiality of personal data. The personal data will be protected by the necessary technical and organisational measures to the extent possible under the generally recognised codes of practice.

4.3 Any agents authorised by NTT have been contractually bound to observe these obligations. Those employees, respectively agents, of NTT who are to enjoy access to personal data in order to perform services have been carefully selected and have been instructed and contractually bound with respect to data protection in keeping with the applicable provisions of the law.

4.4 The customer is hereby advised that the provision of services may give rise to processing on behalf of others within the meaning of Article 28 General Data Protection Regulation, a situation for which the customer may have to conclude a separate agreement with NTT, as the case may be. Unless the customer issues instructions to the contrary, NTT shall perform its services under express reference to Article 6 (1) lit. b and f General Data Protection Regulation.

5 Prices

5.1 Materials shall be charged on the basis of the NTT price list in effect at the time of service performance. Services performed on site, including travel costs and the costs resulting from any delays for which the customer is responsible, shall be charged on the basis of timesheets documenting the number of hours worked. Any time increments of less than 30 minutes shall be rounded up to the next half hour.

5.2 Should NTT be contractually obligated under the agreement made to provide services exclusively via a NTT Repairs Depot (e.g. under a repair depot agreement or repair agreement), NTT shall charge two hours at the respectively hourly rate as a blanket charge to cover mileage and travel expense for any services performed on site at the customer's request. Services performed at a NTT Repairs Depot shall be charged on the basis of the time, effort and costs expended.

5.3 For the provisions of Customer Service NTT will bill a one-time-fee of EUR 190.00 (Incident-Handling-Fee), unless customer is an existing customer which has concluded a recurrent service contract with NTT. Additionally, the following billing rates shall be applied for services provided within Germany.

Description	Billing Rates
Incident-Handling-Fee	€ 190.00 / Incident
Technical Services	
Remote Support (within business hours ¹)	€ 190.00 / hour
Remote Support (Mo.-Fr. outside business hours - excluding legal holidays, subject to availability)	€ 240.00 / hour
Remote Support (legal holidays / weekends – subject to availability)	€ 380.00 / hour
Engineering Services (charging starts upon ticket opening)	
Daily Rate (within business hours)	€ 1,520.00 / day
Daily Rate (Mo.-Fr. outside business hours - excluding legal holidays, subject to availability)	€ 1,920.00 / day

Description	Billing Rates
Daily Rate (legal holidays / weekends – subject to availability)	€ 3,040.00 / day

6 List prices for data-set changes

Data-set changes that are defined in the respectively current Standard Change Catalogue of NTT shall be performed in keeping with the time units defined therein. The remuneration owed shall be governed by Clause 5.3.

7 Deployment of subcontractors

NTT reserves the right to also have the agreed services performed by suitable contractors. Also, in the event of subcontractors being deployed, NTT shall remain liable for the proper performance of the contractual services. The customer may refuse to allow deployment of specific subcontractors if it has serious cause for doing so.

8 Invoicing, payment terms

8.1 The commissioned services shall be billed to the customer on the basis of the above-referenced rates after they have been performed by NTT.

8.2 The remuneration for services (plus VAT at the respectively applicable rate) shall be due and payable within 30 days of the corresponding invoice date.

8.3 The customer shall be entitled to perform retention or offset only on the basis of counterclaims that are undisputed or that have been finally and conclusively determined by a court's declaratory judgment. The customer may not assign to third parties any of its claims against NTT. Section 354a of the German Commercial Code (HGB – Handelsgesetzbuch) shall remain unaffected.

9 Miscellaneous provisions

9.1 If any provision of these General Terms and Conditions should be or become invalid, this shall not affect the remaining provisions.

9.2 German law shall apply, to the exception of the UN Convention on Contracts for the International Sale of Goods (CISG) as well as international private law. The place of jurisdiction shall be Bad Homburg v. d. Höhe, Germany. NTT reserves the right to also bring suit at the customer's registered seat.