

Incepta AG

(This is an English translation of the German original version for information only. In case of any doubts, the German original version shall prevail)

§ 1 Subject Terms of Contract and Contract Formation Process

1. The General Terms and Conditions of Nova Incepta AG (hereinafter referred to as "NIAG") apply exclusively. Other terms and conditions shall not constitute part of this contract, even if NIAG has not explicitly stated otherwise.
2. NIAG provides a variety of services for the ICT-market and trades in new and second-hand merchandise.
3. Quotes submitted by NIAG are legally binding if a period of commitment is explicitly stipulated. In all other cases, quotes submitted by NIAG are issued without obligation and are subject to change without notice, in which case a contract is only then legally binding following the issuance of a written confirmation by NIAG or the respective fulfilment of the contract. The acceptance of the contract is subject to the customer's financial status.
4. The upload of information into the NIAG portal constitutes an order without formal confirmation.
5. Prior to accepting the offer, it falls within the responsibility of the ordering party to confirm that the specifications laid out in the contract are in accordance with his/her requirements. Should any doubt as to the suitability arise, the ordering party is obliged to seek appropriate expert advice before concluding the contract. NIAG can provide advisory services at a special fee.

§ 2 Execution of the Contract

1. NIAG undertakes to engage skilled employees to perform the agreed services based on specialist know-how and in accordance with current technology and standards.
2. NIAG is permitted to engage subcontractors to perform the agreed services and is also entitled to carry out, within reason, partial deliveries and invoice these accordingly.
3. NIAG is also permitted to submit documentation and instruction manuals in electronic form. The ordering party has no right to demand that printed versions be submitted.
4. As far as can be reasonably imposed on the customer, NIAG is entitled to supply or manufacture modified or adapted contractual goods or provide other miscellaneous services than stipulated in the agreement. Such a deviation from the subject of the contract can be termed reasonable in cases where the agreed functionality is not compromised in any way. NIAG particularly retains the right to deliver replacement products instead of repair when functional and form fit of the unit is given.
5. Should it become apparent, following the conclusion of the contract, that the return service is endangered by poor performance on the part of the ordering party, NIAG is entitled to withdraw its efforts until the return service has been executed.
6. The right of withdrawal for orders placed for merchandise is hereby excluded. This applies, in particular, to goods not comprising NIAG's normal inventory.

§ 3 Copyright and Rights of Use

1. All software, documentation and other documents, descriptions and materials submitted by NIAG are copyrightable. Within the bounds of the contractual relationship, NIAG is exclusively accorded all rights associated herewith. Should third party rights exist, NIAG has already been awarded the respective exploitation rights.
2. NIAG herewith grants the ordering party the right of utilisation for the contractual items. The ordering party is entitled to use the software in accordance with the provisions of the contract and also prior to conducting full payment. The extent to which this is permitted is set down in the individual contract. Unless otherwise agreed, the ordering party is herewith granted the non-exclusive authorisation necessary to use the software in his/her organisation as described in the instruction manuals and in adherence with the following:
 - a) The ordering party is authorised to load the software into the memory and onto the hard drive of those computers stipulated in the contract (number and type) and utilise it to the extent also stipulated in the contract. He/she is also permitted to make any backup copies of the software deemed necessary for securing reliable operation. The ordering party is only allowed to duplicate the software to this end. The instruction manuals may only be duplicated for internal use. § 11 applies to any duplicates made.
 - b) Modifications to the software to provide interoperability with other programmes is only permitted in accordance with the provisions set out in the German Copyright Act and only on the condition that despite having received a written request from the ordering party NIAG fails to provide the required information and documents at a reasonable fee and in a timely manner.
 - c) Any alternative exploitation of the software, in particular the decompilation, translation, editing and arrangement of or other modifications made to the software, are strictly forbidden. The rental, loan, distribution of the software via ASP (Application Service Providing) and other distribution of the software as well as its usage in the data processing centre are also non-permissible without obtaining NIAG's prior written consent.
 - d) Prior to the engagement of third parties (e.g. according to § 69 e para. 1 No. 1, para. 2 No. 2 of the German Copyright Act) the ordering party is required to provide NIAG with a written declaration that the third party pledges directly to NIAG to adhere to the rules set out in § 3 and § 11 above).
3. The ordering party has no right to demand the submission of either the source programmes or the documentation used in the development.
4. a) It is not allowed to forward the software on to third parties by way of software rental contracts.
b) In cases where software is purchased on the basis of a single payment the forwarding or further circulation of the licences is only permissible when
 - aa) upon concluding the sale the ordering party explicitly passes on the licensing terms applying to the licences, including any resulting restrictions hereof, and
 - bb) the ordering party sells all the licences purchased from NIAG to a single purchaser in one complete block in observance of the pricing system granted to the ordering party within the scope of the respective business relationship and when the ordering party undertakes to maintain the licence numbers on which the relevant pricing system was based, and
 - cc) prior to the actual transfer the name of the third party, including his/her full address, is communicated to NIAG, and
 - dd) the third party pledges directly to NIAG to comply with all the licensing, utilisation and forwarding conditions pertaining to the licences, including any resulting restrictions hereof, and when NIAG is in possession of the said declaration of commitment before the completion of the transfer. The splitting of software user rights or the licensing package received by the ordering party as well as the separate sale thereof are strictly forbidden.

5. A usage of the software extending beyond the rules set out in these General Terms and Conditions and the respective contract (e.g. superior computer class, higher number of workstations, processes) requires NIAG's prior written consent. An extended usage shall be remunerated in arrears according to the current price list and entitles NIAG to an immediate cancellation of the contract. Any further rights remain unaffected hereby.
6. Should a third party submit an ownership claim against the ordering party, the ordering party undertakes to immediately inform NIAG in writing. NIAG will then either defend or satisfy the claim according to its own judgement or replace the respective service with an equivalent one which fulfils the contractual conditions, if acceptable to the ordering party.
7. In as far as the producer of, or other owner of rights pertaining to, the software or other copyrightable product makes the transfer of the copyrightable product subject to his/her own copyright conditions or assignment of rights, these terms then proceed to replace paragraphs 2 to 5.

§ 4 Ordering Party Obligations

1. Cooperation on the part of the ordering party in providing the service is expected. He/she will provide NIAG in good time with all the information necessary to fulfil the contract.
2. The ordering party will provide support to NIAG free of charge where this is useful in helping to fulfil the contract, for example through providing staff, office space, hardware, operating systems and basic software as well as data and telecommunication devices and connections. The ordering party shall grant NIAG either direct or remote access to both hardware and software according to NIAG's specifications and will ensure the availability of the required technical environment.
3. The ordering party shall make appropriate arrangements to allow for the possibility that the contractual objects may stop functioning or not function properly, e.g. by carrying out documented data backups, diagnosing interruptions, regularly monitoring results, deploying an uninterruptible power supply, keeping journals etc. The ordering party shall either back up the data prior to the provision of service or other interventions on the computer system on the part of NIAG deemed essential for providing the service and prior to any other special incidents or otherwise ensure that all current data stored in machine-readable form may be reproduced at reasonable cost. NIAG will inform the ordering party of such interventions in a timely manner.
4. Should the ordering party fail to comply with his/her obligations to cooperate, NIAG is released from its fulfilment obligation. Should NIAG continue to provide the service the additional resulting effort will be invoiced according to the current price list.

§ 5 Performance Times, Delays

1. Only deadlines set in written form are binding. Reminders and the setting of deadlines on the part of the ordering party must be in written form. Deadline extensions must be reasonable and may not amount to less than two weeks.
2. For periods of time in which NIAG is kept waiting for information or cooperative support on the part of the ordering party, the agreed deadlines and fixed dates are postponed accordingly. The same applies to cases where NIAG is prevented from fulfilling the contract due to circumstances beyond its control. Examples of such circumstances are: A case of force majeure, official measures, non-issuance of public licences, strike action, sabotage, shortage of raw materials, delayed supply of data or materials from third parties for which it is not responsible and any other unpredictable hindrances which NIAG is unable to avert. NIAG undertakes to immediately inform the ordering party of the beginning, end and nature of any delay.
3. Should NIAG fall behind schedule, fail to perform or not provide the expected performance and should the ordering party have the right to choose between demanding fulfilment, withdrawal and/or compensation then he/she must exercise this right towards NIAG in written form within one week. Should the ordering party fail to do this, it is assumed that NIAG may continue with the provision of the service and that the ordering party shall not submit any claims regarding the delay in service.
4. Should a delay be caused by the ordering party, NIAG is entitled to invoice any additional costs incurred as a result.
5. Should shipment be delayed as a result of circumstances for which the ordering party is responsible, the risk is transferred over to the ordering party upon notification that the shipment is ready. NIAG shall only insure the merchandise when explicitly instructed to do so by the ordering party.
6. Supply of raw materials to the seller: Should NIAG engage the services of other service providers or suppliers, NIAG is only then responsible for ensuring a timely delivery if NIAG receives the required services/deliveries itself in good time. NIAG is entitled to a partial or full withdrawal from the contract closed with the ordering party in cases where the service provider/supplier fails to deliver, delivers only in part or delivers too late the service required by the ordering party, in which case NIAG cannot be held wilfully responsible or grossly negligent. NIAG undertakes to immediately inform the ordering party should such a case arise and to immediately reimburse any payments made in the case of a withdrawal from the contract.

§ 6 Receipt and Inspection of Deliveries and Services Provided

1. Subsequent to each delivery and following all services performed which do not require specific inspection, NIAG is entitled to demand a written confirmation from the ordering party that the delivery or service provided is correct, complete and free of defects (statement of acceptance). An inspection, with its respective legal consequences for NIAG, is otherwise only undertaken when specifically agreed.
2. If there are obvious defects, the ordering party is required to state these specifically in the statement of acceptance. Slight discrepancies with reference to the nature or quality agreed in the contract do not constitute a basis for refusing to issue the statement. The obligation to eliminate any faults in accordance with supplementary performance practice remains unaffected by this.
3. The statement of acceptance shall be submitted within a two week period following the original request. Failure to comply with these conditions presumes acceptance. NIAG undertakes to point out the legal consequences at the beginning of the respective period. Acceptance is also presumed where the contractual items have been used free of complaint for more than two weeks following their transfer or in cases where approval has been expressed in an alternate way, e.g. by unconditional payment of the remuneration.
4. In the case of a partial delivery the statement of acceptance does not extend to include those qualities of the contractual items which can only be examined in connection with deliveries or services to be completed at a later point in time. As soon as partial deliveries or partly-finished products are productively utilised by the ordering party these are considered accepted and approved.
5. Paragraphs 1 - 5 apply accordingly to the acceptance of services requiring acceptance and approval.

§ 7 Retention of Title

1. NIAG retains ownership of all goods delivered until full payment has been received. In cases where the purchaser is either a businessman according to the German Commercial Code with purchasing contracts constituting his business or a limited company or represents a special public fund, NIAG furthermore retains ownership of the delivered goods until all claims vis-à-vis the ordering party resulting from this business relationship at the time of the conclusion of the contract, including any claims resulting from subsequently closed contracts or repeat orders, have been satisfied. Should the purchaser's manner of conduct be contradictory to the conditions of the contract, in particular with regard to default in payment, NIAG is entitled to reacquire the purchased goods and to exploit them accordingly. The sales proceeds are then credited against the purchaser's liabilities following the deduction of a reasonable amount to cover the costs of exploitation.
2. The ordering party shall immediately inform NIAG in writing of seizures, confiscations or other court orders or interventions on the part of third parties and shall make NIAG's retention of title known to those third parties.
3. The purchaser is entitled to process the retained goods himself/herself or to sell them within the normal business process. NIAG may revoke the usage or sales authorisation should the purchaser be in default with his/her payment obligations towards NIAG. The purchaser agrees herewith to immediately surrender any accounts receivables resulting from the sale of goods vis-à-vis his/her purchasers or third parties, or any insurance claims resulting from the destruction or damage of the retained goods or through misconduct, to NIAG to the full amount by way of security. The purchaser is herewith revocably empowered to collect these debts. NIAG shall only revoke this and collect the ceded outstanding accounts itself should the purchaser either fall behind with his/her payments to NIAG, completely suspend payments or should bankruptcy or insolvency proceedings be filed. The purchaser is not permitted to pawn the goods, transfer ownership as security or undertake any other measures which could jeopardise the property of NIAG during the ownership rights retention period.
4. NIAG herewith undertakes to release securities upon the purchaser's request insofar as the securities resulting from the retention of title exceed the value of the secured claims by 20% (twenty percent) or more. NIAG shall decide at its own discretion which securities shall be released.

§ 8 Prices, Payments, Offsetting and Assignment

1. In cases where the contractual partners have not closed any individual agreements regarding the price of deliveries and services NIAG's price list valid at the time of delivery is applicable to all goods and services. Travel and other expenses, data media, shipment, telecommunication and all other related costs shall be invoiced by NIAG according to the currently valid price lists. Shipping costs will be charged depending on the type of shipment, number, size and weight of the units.
2. All prices are subject to value added tax at the current statutory rate in observance of the current value added tax regulations.
3. For cross-border transactions NIAG will not accept any taxes, duties or charges accrued in the recipient country.
4. NIAG is entitled to replace the price list which was valid at the time of the close of the contract with a new one or in the case of long-term contractual obligations to increase the agreed fees. However, this is not permissible within the first 12 months either following the conclusion of the contract or the last price increase. This right may be exercised more than once. The respective price list then applies to the subsequent fulfilment and settlement of the contract. Price increases shall be communicated in writing to the ordering party under observance of a four week notification period prior to the end of the month. Should the price increase for unaltered services amount to more than 5 % compared with the last settlement the ordering party is entitled to cancel the contract in writing without notice taking effect as per the introduction of the increased prices. The termination notice must reach NIAG a week prior to the actual price increase. In the case of the termination of the contract all services already provided prior to the cancellation of the contract shall be remunerated according to the old prices.
5. Where no fixed payment dates have been agreed, payments are due without deduction immediately upon receipt of the invoice and must be paid within 14 days. The provisions of the German Civil Code with reference to delayed payments and interest rates are also applicable. Payments submitted in the form of cheques, bills of exchange or other payment documents shall only be accepted by NIAG on account of performance. The claim shall not expire until NIAG can irrevocably dispose of the amount in question. Any costs incurred in this respect shall be borne by the ordering party.
6. Any offsetting of fees is permissible only against uncontested and legally-binding receivables of the ordering party. Payments on the part of the ordering party shall be calculated in accordance with § 366 para. 2, § 367 German Civil Code. Rights resulting from this contract may only be assigned to third parties upon prior written approval from NIAG. A right of retention may only be based on claims resulting from this contract.
7. In the case of a delayed payment NIAG is entitled to reacquire the delivered goods following an appropriate reminder, whereby the ordering party is then under obligation to surrender these goods accordingly. This also applies to any other case where the ordering party commits a major breach of contract.

§ 9 Liability for Defects

1. NIAG is committed to professionally and diligently fulfilling this contract. Representations in samples and public statements, in particular when included in product and project descriptions, in advertising and in the internet, neither represent a description of the quality of the actual service nor do they guarantee the quality thereof, unless they are explicitly referred to in the contract. The details contained in the price list, the order confirmation and these General Terms and Conditions are solely applicable.
2. A warranty for defects for second-hand goods delivered in accordance with this contract is herewith excluded. Any further claims remain unaffected in cases where defects are intentionally concealed or a guarantee for the quality is accepted.
3. The ordering party shall, within reason, undertake all necessary steps to determine, limit and document any defects. In the case of a defect, he shall provide NIAG with all the available information and shall support any remedial action within the scope of his contractual cooperation obligations.
4. NIAG is entitled to first eliminate the defect by way of supplementary performance (rectification of the defect or replacement thereof). In the case of supplementary performance for hardware, NIAG may choose between carrying out a repair or providing a replacement delivery. In the case of software, NIAG may provide supplementary performance by either choosing between submitting a new version of the programme or demonstrating how the effects caused by the defect can be avoided. It is not always possible to completely eliminate the defect through supplementary performance. A new programme version or replacement hardware must also be

accepted by the ordering party where this entails a reasonable amount of adaption effort on his part. NIAG shall not bear the travel and transport costs incurred through supplementary performance. In the case of a warranty claim, the ordering party shall correctly pack and ship the complete item to NIAG, thereby including a copy of the delivery note.

5. Should after three attempts supplementary performance finally fail to eliminate a specific defect despite a reasonable grace period having been fixed in writing, the ordering party is then entitled to reduce the respective remuneration or to rescind the contract. In the case of longterm contractual obligations the ordering party has the right to terminate the contract without notice instead of reducing the fee. Section "Other Liabilities" below applies to claims for damages. Any other rights of the ordering party related to the defect, in particular with respect to the reimbursement of expenses incurred through the elimination of the defect by third parties, through replacement deliveries and contract costs, are herewith excluded.
6. Should NIAG act as a result of interruptions in the environment where the contractual software or hardware is implemented and where the environment has either been changed by the ordering party or the interruptions caused by operating errors, NIAG shall invoice the expenses incurred accordingly. The same applies where the ordering party fails to fulfil his obligations with regard to giving notice of defects (§ 377 German Commercial Code).
7. Claims for defects are subject to a limitation period of 12 months following the passing of risk. If the purchaser is a private customer the limitation period for filing claims regarding defects is two years following the passing of risk unless the purchased object is second-hand; The limitation period for second-hand goods is 12 months following the passing of risk.
8. The parties may agree in the contract on shorter limitation periods.
9. NIAG is not liable to perform with regard to defects or damage resulting from improper or inappropriate usage, non-compliance with the instructions for use or incorrect or negligent treatment or usage. Details and information regarding the suitability or usage and/or the implementation of the supplied parts are non-binding if they do not explicitly describe the agreed characteristics; Neither do they release the ordering party from the obligation to undertake his/her own examinations.

§ 10 Other Liabilities, Damage Compensation Allowances

1. Claims for damages on the part of the ordering party, irrespective of the legal grounds, in particular as a result of an infringement of the contractual obligations or misconduct, are excluded except in the case of a mandatory legal liability, in cases of premeditation or gross negligence, where damage is done to life and limb or health is endangered or where there is a fundamental breach of contract.
2. NIAG is solely dependent on its suppliers for the timely and correct supply of data concerning third party products. NIAG, therefore, cannot be held responsible for the timely and correct delivery of such data and is only responsible for fulfilling its own obligations.
3. NIAG is only liable for data recovery where the ordering party has ascertained that this data can be reproduced from data stored in machine-readable form at a reasonable cost. This liability is limited to the cost of recovery unless the loss of data was either wilfully caused by NIAG or through gross negligence on its part.
4. In the case of a fundamental breach of contract, claims for damages are limited to such damage that is both foreseeable and typical of such a contract, insofar as the damage is not attributable to premeditation or gross negligence. Neither does this apply in cases where a liability either exists as a result of damage done to life and limb or where health has been endangered and where formal guarantees have been given concerning the absence of particular defects.
5. Should NIAG be liable for damages in accordance with these General Terms and Conditions or for other reasons, the liability is herewith limited to the average annual turnover amount usually achieved with the customer making the claim; The annual average figure resulting from the amounts invoiced to the customer during the last 36 calendar months prior to the damage is used to determine this amount. NIAG's maximum liability amounts to 1,000,000.00 Euros.
6. Should one of NIAG's insurance policies cover the damages, NIAG undertakes to transfer the full insurance payment amount received to the ordering party.
7. For all other claims filed by the ordering party based on the actual subject of the contractual relationship with regard to the liability for defects (please refer to the previous paragraph) a limitation period of one year is hereby agreed, unless NIAG is guilty of wilful misconduct. This period commences at the end of the year in which the claim arises and in which the ordering party gains knowledge of the damage event.
8. NIAG undertakes to provide specialised advice and services with regard to translations to the best of its knowledge and previous experience, but herewith rules out the acceptance of any kind of liability whatsoever in this respect.
9. The above rules apply accordingly to the personal liability of those legal representatives and persons NIAG engages in the fulfilment of its obligations.
10. Should, for reasons for which the ordering party is accountable, the order not be completed the ordering party shall reimburse NIAG for the expenditure incurred and loss of profit through the payment of an all-inclusive compensation fee amounting to 10 % of the purchase price. This all-inclusive compensation amount is to be reduced to the extent to which the customer is able to prove that costs or damage have not been incurred. In the case of an exceptionally high level of loss or damage NIAG retains the right to assert a claim to this amount instead of the all-inclusive compensation fee.

§ 11 Confidentiality and Safekeeping

1. The contractual partners herewith undertake to treat all information and documentation which they have received or which has become known to them from the other contractual partner in connection with the contract as confidential. This also applies during the period following the fulfilment of the contract. The contractual partners undertake to store and secure these items in such a way as to prevent misuse through others.
2. Both parties undertake to return any documentation and information received from the other contractual party with the purpose of fulfilling the contract back to the latter when requested to do so. A retention right in this respect is herewith excluded from the contract.
3. Any employees of either the contractual parties or third parties involved in the fulfilment of the contract who have access to those items quoted in paragraph 1 shall be informed in writing of their confidentiality obligations. This also applies to the employees of the ordering party with respect to the rights pertaining to the software and rights of the ordering party.

§ 12 Data Privacy Protection

Personal customer data shall only be used by NIAG within the scope of completing customer orders. A further usage, e.g. for advertising purposes, without the customer's explicit consent is herewith ruled out. The customer's e-mail address shall only be used for messages containing information related to the orders and - if desired by the customer - for their own newsletters. No personal customer data may be communicated to third parties. Exempt from this ruling are those service partners who require the transfer of this data in order to be able to process the orders. In the latter

case, the amount of data transferred is restricted to the absolute minimum deemed essential. There is an explicit referral to the privacy policy statement available on the NIAG website.

§ 13 Termination

1. Any cancellation or withdrawal from the contract must be made in writing.
2. Written notification of the cancellation for an important reason must first follow, including details as to the cause and setting an appropriate deadline for eliminating the cause, unless a further delay cannot be reasonably accepted. The following are considered, among others, as being important reasons for termination:
 - Delayed payment of more than three months;
 - Infringement of the obligations incumbent upon the ordering party;
 - Filing of insolvency proceedings or rejection of such owing to a lack of mass.
3. In the case of a long-term contractual relationship (continuing obligation), NIAG has an extraordinary termination right which shall be exercised no later than three months prior to the end of the month, when technology (hardware, software) purchased by NIAG from a supplier or other service provider
 - a. is no longer to be further developed by the third party or no longer supplied to NIAG, or
 - b. no longer runs on advanced hardware or when using current operating systems or other software, or
 - c. is subject to a general contract closed between NIAG and a third party and which has been terminated by the third party.NIAG must announce the termination within six months of notifying the ordering party that one of the above provisions has come into effect.
4. Should the commercial credit insurance with respect to the fulfilment of the contract be denied, or should payments be suspended, insolvency or bill or cheque proceedings filed or should there be other obvious signs that the financial circumstances of the ordering party are deteriorating, NIAG is assigned a special right of withdrawal which must be exercised within two weeks of gaining the respective knowledge.
5. Following the termination of the contract the ordering party shall return all the respective contractual items as well as the complete documentation and other information already submitted. The proper return also includes the deletion and destruction of any duplicates made of the software included in this contract. NIAG is entitled to forego the return of the items and instead order their deletion and destruction.

§ 14 Concluding Provisions

1. Side agreements and changes to the contract must be submitted in writing. The waiver of the written form also has to be declared in writing. A confirmed e-mail also fulfils the written form requirement.
2. Place of performance and legal dispute is the registered office of NIAG
3. This contract is subject to the law of the Cantone of Schwyz in Switzerland exclusively. The use of the UN Convention on Contracts for the International Sale of Goods is explicitly precluded.
4. All previously-issued General Terms and Conditions expire herewith.

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