

# General Terms and Conditions of NetModule AG, Meriedweg 11, CH-3172 Niederwangen, Switzerland



Valid for shipments to destinations in Europe, Asia, Australia, Oceania, Africa and Middle East

## 1 General

All orders and shipments are made subject to the terms and conditions outlined below. Any conditions stipulated by the Customer which are in contradiction of our general conditions of supply shall be valid only if expressly acknowledged by us in writing. Any local general terms and conditions or specific conditions of sales shall take precedence over the terms stipulated herein; however, these terms and conditions as outlined herein shall be applicable if any loopholes, contradictions or uncertainties should arise.

## 2 Software and Firmware

Special conditions apply for firmware and software. We guarantee that firmware and software can be operated under the specified computer operating systems, or in the case of embedded firmware, the specified platform. We do not grant any warranty for functionality, completeness, accuracy or timeliness. The purchase or provision of firmware and software provides the right for use on one system only. The firmware and software may not be reproduced, copied, reverse-engineered, transmitted or redistributed in any way whatsoever.

## 3 Price

All prices are listed in the indicated currency. Prices are valid as of the day of purchase. If valid shipping account information is specified in the order, then shipment is Ex Works (EXW Winterthur / Switzerland, Incoterms 2000), packing included, non-insured. Otherwise, NetModule adds a shipping surcharge and shipment is Carriage Paid To place of destination (CPT, Incoterms 2000), packing included, non-insured. For destinations in Switzerland and Principality of Liechtenstein, the Swiss VAT is included. For all other countries, VAT and any other taxes, duties and local administrative fees are excluded. Shipment and related costs are invoiced separately from the product price. We reserve the right to modify prices and shipping surcharges for goods not yet shipped as circumstances demand and to notify the Customer as soon as possible unless otherwise stated in the order confirmation.

## 4 Payment Terms

Bank transfer within 30 days from date of invoice, net, without deduction.

If the Customer delays in payment, he shall be liable, without reminder, for default interest at the rate of 5% above the actual interest rate of the Swiss National Bank at the place of his business with effect from the agreed date on which the payment was due. Additionally, starting with the 2<sup>nd</sup> reminder, charges of CHF 30.- per reminder apply.

NetModule reserves the right to process a delivery only after having received pre-payment. After receipt of the order an order confirmation and an invoice are issued.

Bank charges are at the full expense of the customer.

Bank details:

Valiant Bank Bern, Swift-Code VABECH22, Clearing-Nr. 6300

Price setting in CHF: IBAN: CH94 0630 0016 6120 7050 5

Price setting in EUR: IBAN: CH56 0630 0016 6126 7850 6

Price setting in USD: IBAN: CH40 0630 0166 3196 0468 4

## 5 Limitation of Shipment Destinations

Shipments to North, Central and South America are processed under separate terms and conditions.

## 6 Shipment Times

Whilst we will do our best to adhere to any promise of shipment time, shipment shall not be deemed to be of the essence of the contract nor shall the delay be a cause for claims for damages nor cancellation.

## 7 Quantities Shipped

Shipment is performed according to actual product availability. Partial shipments are allowed.

## 8 Order Cancellation

In the event Customer cancels all or any part of an order or fails to meet any obligations hereunder, causing cancellation of any order or portion thereof, Customer agrees to pay a cancellation charge of 50% of the product price. This global fee covers our expenses and is not a penalty.

## 9 Return Material

We accept returned material only if a Return Material Authorization Number has been obtained from us. Material received without any prior authorization will be returned at the Customer's expense. A fee for administrative cost and product inspection will be levied on the customer's expense.

## 10 Warranties and Guarantees

Any other claims excluded and upon written request of the Customer, we undertake at our discretion to repair, replace or credit as quickly as possible any parts of the goods which, before the expiry of the guarantee period - a maximum of 24 months from the date of shipment - are proved to be defective due to bad material, faulty design or poor workmanship. Replaced parts shall become our property. The Customer shall bear the costs of remedying (i.e. removing, transporting, and re-installing) the defective parts. Excluded from our guarantee and liability are all deficiencies in the goods shipped by us, which cannot be proved to have their origin in bad material, faulty design or poor workmanship, those resulting from normal wear (e.g. current consumption, recuperation, weather conditions, air pollution, prohibited electromagnetic effects), repair, improper maintenance, lack of fitness for a particular use, failure to observe the user manual and mounting instructions, excessive loading, testing, use of any unsuitable material, influence of chemical or electrolytic action, or resulting from other reasons beyond the supplier's control. All claims on the part of the Customer, irrespective of the grounds on which they are based, which are not allowed under these general conditions, in particular any claim not expressly mentioned, such as for damages, reduction of price or withdrawal from the contract, are excluded. In no case whatsoever shall the Customer be entitled to claim damages, in particular but not only for loss of production, loss of use, loss of orders, loss of profit and other direct or indirect or consequential damage. This exclusion of liability, however, does not apply to unlawful intent or gross negligence on our part, but does apply to unlawful intent or gross negligence of persons employed or appointed by us to perform any of our obligations. It is the customer's responsibility to arrange and pay for the return shipment to us or to our local representative.

## 11 Claims (Complaints)

Customer claims must be submitted in written form immediately upon receipt of goods or immediately upon detection of hidden faults.

## 12 Ownership of Goods

Ownership of the goods sold shall, notwithstanding shipment, or attachment of these to other property, remain with us until we have received full payment for them.

## 13 Refusal

NetModule reserves the right to refuse orders without providing an explicit justification.

## 14 Pledge or Retaining Lien

The Customer shall have no right for pledge or retaining lien on NetModule property.

## 15 Law

Any contract between the Parties shall be construed in accordance with Swiss material Law. Place of venue is Kőniz, Switzerland.

## 16 Technical Specifications

Unless otherwise agreed upon, brochures and catalogues are not binding. Data provided for in documentation are only binding if expressly stipulated as such. We reserve the right to modify any specification without notice.

## 17 Property Rights

Information and drawings delivered in addition to the sales documentation may not be transmitted to any third party. The customer may not transmit or make use, in any form whatsoever, of any information concerning the design and the functionality. In the event of infringement of this clause we retain the right to claim damages.

Issue of 19<sup>th</sup> July 2016

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If an unpaid balance is placed with an attorney for collection, Customer shall pay all costs, including reasonable attorney fees. Customer waives right to trial by jury. NetModule reserves the right to pursue collection of unpaid invoices through the use of any legal process, irrespective of any arbitration provision contained herein.

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## **5 Security Interest**

NetModule reserves, and the Customer grants, a purchase money security interest to secure the performance by the Customer of its liabilities and obligations to NetModule. The Customer agrees to deliver such documents as may be requested in order to perfect a security interest in all goods sold and all proceedings to secure the full payment.

## **6 Shipment Terms**

All goods are shipped at Customer's risk. NetModule assumes no responsibility for damage, loss, or delay of delivery. Title passes to Customer when the goods are delivered to the carrier, to Customer, or to Customer's agent, whichever occurs earlier. Unless otherwise stated, shipment will be made EXW Winterthur, Switzerland according to Incoterms 2010.

Whilst we will do our best to adhere to any promise of shipment time, shipment shall not be deemed to be of the essence of the contract nor shall the delay be a cause for claims for neither damages nor cancellation.

## **7 Quantities Shipped**

Shipment is performed according to actual product availability. Partial shipments are allowed.

## **8 Order Cancellation**

In the event Customer cancels all or any part of an order or fails to meet any obligations hereunder, causing cancellation of any order or portion thereof, Customer agrees to pay a cancellation charge of 50% of the product price. This global fee covers our expenses and is not a penalty.

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## **11 Warranty Disclaimer**

NetModule's expressed warranty to Customer constitutes NetModule's sole liability and the Customer's sole remedy with respect to the goods, and is in lieu of all other warranties, liabilities, and remedies.

## **12 Patents**

NetModule shall have no liability of any kind with respect to any actual or alleged infringement of any patent, trademark, or similar rights.

## **13 Claims (Complaints)**

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## **13 Ownership of Goods**

Ownership of the goods sold shall, notwithstanding shipment, or attachment of these to other property, remain with us until we have received full payment for them.

## **14 Authorized Use of Goods**

Customer agrees not to translate, rent, or timeshare the goods of NetModule, and further agrees not to reproduce, imitate, reverse engineer, or otherwise directly or indirectly duplicate the product or any of its components. Customer shall not use or disclose any technical data delivered or maintenance of goods purchased, without prior written consent of NetModule. No right to designs or IP takes place, even where NRE is paid, unless specifically agreed to by NetModule.

## **15 Export**

Customer certifies that it will not export or re-export the goods furnished hereunder unless it complies fully with all liens and regulations of the United States relating to such export or re-export, including but not limited to applicable U.S. Export Administration rules and regulations.

## **16 Refusal**

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## **17 Pledge or Retaining Lien**

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Issue of July 19<sup>th</sup>, 2016