

**Address:**

NetCat SYSTEMS GmbH - Weissdornweg 24 - 59174 Kamen - Telefon: +49 2307 96 10 0  
District Court Kamen HRA 726 Tax No. 322/5247/1080 - Turnover Tax ID No. DE813733538

## 1. Applicability

- 1.1 The services and deliveries of NetCat SYSTEMS are performed on the basis of these General Terms and Conditions.
- 1.2 Individual agreements are not governed by these General Terms and Conditions.

## 2. Delivery Date, Partial Delivery

- 2.1 If the non-observance and/or delay of an agreed delivery time is due to force majeure, strike, fire, unforeseen events or other circumstances not to be justified by NetCat SYSTEMS, the delivery period is extended for the duration of these events. This applies accordingly in case NetCat SYSTEMS is in delay of delivery at the onset of such an event.
- 2.2 In case of a performance prevention in the sense of No. 1.1 of more than 1 month, NetCat SYSTEMS and the customer are entitled to withdraw from the contract with respect to the delayed delivery. In case of non-observance of the delivery date for reasons other than those stated in No. 1.1, only the customer has the right to withdraw from the contract. In order to withdraw from the delivery, the customer must set NetCat SYSTEMS an adequate grace period of at least two weeks in writing threatening to turn down the delivery.
- 2.3 NetCat SYSTEMS is entitled to make partial deliveries.

## 3. Delivery, Transport, Transfer of Risks

- 3.1 The risk is transferred to the customer with the surrender to the shipping company. This also applies for partial deliveries or in case NetCat SYSTEMS has taken over additional services, e.g. transport costs or transport.
- 3.2 The surrender to the shipping company discharges NetCat SYSTEMS of its duty to perform. The goods are transported at the customer's risk and for account of the customer, unless other arrangements were made previously in writing between NetCat SYSTEMS and the customer.
- 3.3 NetCat SYSTEMS selects the shipping company excluding liability for the selection of the most economic and fastest shipping type.
- 3.4 If the customer delays acceptance of the delivery, NetCat SYSTEMS is entitled to demand compensation for the damage incurred, whereby the customer has the right to prove a lesser damage.
- 3.5 The goods are insured by the respective shipping company.

## 4. Contract Conclusion

- 4.1 All offers by NetCat SYSTEMS are subject to confirmation. The contract is first concluded with the order confirmation or delivery by NetCat SYSTEMS.  
The customer is tied to the order.
- 4.2 All prices include all taxes and other price components. Depending on the agreement, delivery and shipping costs may be charged additionally to the customer.

## 5. Right of Withdrawal

- 5.1 Pursuant to § 355 German Commercial Code, the customer has a right of withdrawal. The withdrawal period starts with the moment at which the customer was provided with clear instructions about his right of withdrawal, which make his rights clear to him in accordance with the demands of the applied communication medium. However, this period does not commence prior to the day the customer receives his goods. The withdrawal period is two weeks.  
The withdrawal does not have to be substantiated. To observe the deadline, it is sufficient to despatch the withdrawal in due time in writing to the stated address of NetCat SYSTEMS or returning the goods to this address or alternatively returning the goods to an address in the delivery note stated by NetCat SYSTEMS.
- 5.2 The customer has to pay the costs for the return shipment of the delivered goods correspond to the ordered ones and if the price of the returned goods does not exceed an amount of 40 Euro or, in case of a higher price, if the customer has not yet rendered the return service or paid a contractually agreed instalment at the time of withdrawal.
- 5.3 In case of an effective withdrawal, both sides have to return the mutually services received. The customer has to pay compensation for the deterioration of the goods occurred with use according to purpose unless the deterioration is exclusively attributable to the inspection of the goods. In the scope of avoiding a deterioration of the goods with commissioning according to purpose, we recommend having authorised experts install individual components in computer systems.

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General Terms and Conditions of NetCat SYSTEMS GmbH  
for hardware deliveries, status 01 January 2005



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District Court Kamen HRA 726 Tax No. 322/5247/1080 - Turnover Tax ID No. DE813733538 6. Warranty, Duty to Inspect

6.1 In the scope of the following regulations, NetCat SYSTEMS warrants that deliveries and services are free of errors/defects in the sense of the warranty for the duration of the statutory warranty period.

6.2 Apparent defects have to be reported in writing no later than 14 days after receipt of the delivery. Commercial business transactions require that the commercial customer has duly met his inspection and defect notification obligations pursuant to §§ 377, 378 German Commercial Code.

6.3 The warranty does not cover defects and damage caused by the customer's non-observance of the installation, hardware and software environment regulations and the application/application conditions, unless the customer proves that the circumstances did not cause the reported defect/error.

6.4 Inasmuch as there is a defect/error concerning the delivery or service, NetCat SYSTEMS decides whether to remedy of the defect/error or make a replacement delivery. In order to prevent the loss of data in case of repair or defects of the goods, we recommend making regular data backups. Liability for such consequential damage is excluded. This liability exclusion does not apply in case of intent or gross negligence. If the remedy of the defect or a replacement delivery (subsequent performance) is tied to disproportionately high costs for NetCat SYSTEMS, the customer's claim is limited to the other type of subsequent performance.

6.5 In order to ensure processing, the return shipment has to include a copy of the bill/delivery note, the duly completed RMA form, which the customer previously obtained from NetCat SYSTEMS, and a detailed description of the error.

6.6 In this context, the customer has to return the objected goods duly and completely, including all supplied parts and accessories to NetCat SYSTEMS, if possible in the original packaging. We shall not be held liable for damage caused by the customer due to improper packaging.

6.7 The settlement of inadmissible warranty and/or guarantee claims, inasmuch as these are attributed to intent or gross negligence, takes place under reserve of an additional charge for the expenditure incurred by us in this context. NetCat SYSTEMS reserves the right to charge flat fees of its suppliers in these cases.

6.8 Devices not purchased from NetCat SYSTEMS will be returned and the costs incurred by us charged to the customer.

6.9 Repairs outside of the warranty period are subject to charges.

### 7. Retention of Ownership

7.1 NetCat SYSTEMS retains the ownership of the delivered goods until these are paid in full.

7.2 With respect to the claims and compensations due to the customer for the conditional goods (e.g. for unauthorized action, insurance claims), the customer already assigns these to the amount of the invoice for the conditional goods at this point to NetCat SYSTEMS.

7.3 The customer may only resell, pledge, assign, rent or relocate the goods abroad with the previous written permission of NetCat SYSTEMS.

### 8. Payment, Delay in Payment

8.1 Delivery and surrender of the goods is subject to the previously agreed delivery and payment terms. Payments have to be made free of charge to the accounts of NetCat SYSTEMS stated on the invoice.

NetCat SYSTEMS is also entitled to engage a third party for collection via COD.

8.2 A retention right and a denial of service right of the buyer is excluded in commercial transactions with the exception of undisputed or legally valid counter-claims.

### 9. Liability and Liability Restrictions

9.1 NetCat SYSTEMS is liable for the violation of essential (main) obligations. For the remainder, NetCat SYSTEMS is only liable in case of intent and gross negligence.

9.2 If and inasmuch the liability of NetCat SYSTEMS is excluded, this also applies for the personal liability of the staff, employees, representatives and vicarious agents of NetCat SYSTEMS.

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### 10. Place of Performance, Place of Jurisdiction

10.1 The place of performance for all claims arising from the contractual relationship between the customer and NetCat SYSTEMS is the seat of NetCat SYSTEMS.

10.2 Inasmuch as the customer is a merchant, legal entity of public law or a separate estate of public law, the seat of NetCat SYSTEMS is the exclusive place of jurisdiction for all disputes resulting directly and indirectly from the contractual relationship.

### 11. Software, Literature

Deliveries of software or literature are additionally subject to the special licensing and other conditions of the manufacturer beyond these General Terms and Conditions.

Their validity is expressly recognized by acceptance of the aforementioned merchandise.

### 12. Applicable Law, Data Protection, Effectiveness

12.1 The applicable law is the law of the Federal Republic of Germany excluding the validity of the Uniform International Purchasing Law (UNCITRAL agreement).

12.2 NetCat SYSTEMS has the right to save and process the electronic data received from the customer. The deletion of this data must be requested in writing. NetCat SYSTEMS has the right to pass on customer data resulting from the contract or required in order to perform the contract to third parties, especially financial institutions and contracting partners inasmuch as this serves the fulfilment of the order. NetCat SYSTEMS observes the valid regulations of the data protection laws.

12.3 Should one or several of these clauses be invalid, this does not affect the effectiveness of the remaining clauses.