

General Terms and Conditions of Business

I. General Provisions

1. Scope of Validity

1.1 These Terms and Conditions are applicable to all existing and future business relations between the client and S.NOW sa. These Terms and Conditions in effect at the time of the transaction apply. A client in the context of these Terms and Conditions, are natural or legal entities or partnerships of legal capacity with whom business relationships are started and who exercise a commercial, independent or freelance activity. We will only accept the client's Terms and Conditions of Business that deviate from, or contradict, ours if we have expressly agreed to same in writing. The provisions in clauses II-IV herein supplement and/or modify the General Terms and Conditions in clause I herein.

1.2 These Terms and Conditions of Business also apply to all future business transactions with the client provided they are legal transactions of a related type.

2. Our Goods and Services

Our goods and services include selling hard- and soft-ware such as Smiley boxes, query displays and concentrators/gateways (hereinafter called articles for sale), rendering services concerning recording, evaluating and making available client information and data (hereinafter called information), consultancy goods and services connected with improving service quality and employee satisfaction, staff training and coaching and carrying out surveys/polls and mystery shopping (hereinafter collectively called consultancy goods and services).

3. Making Contract

3.1. Our offers are non-binding unless otherwise explicitly labelled binding or they contain binding promises. They are an encouragement to place orders. Clients are bound to honour their orders as requests to make contract for 14 days from the date of our receipt thereof unless they must regularly allow for later acceptance by us.

3.2 Contract is only made - including in current business - if we confirm the client's order in writing or in text form (i.e. per e-mail or facsimile) or render our goods and services as commissioned by the client. Our confirmation may be replaced by an invoice issued by us for goods and services rendered within the period in 3

4. Prices, Price Adjustment, Payments and Invoices

4.1 Unless otherwise agreed in writing our prices are ex works without VAT.

4.2. Payment of our remuneration must be made solely to the account of S.NOW sa. Discount for early or punctual payment may not be deducted without our specific approval.

4.3. Unless otherwise agreed our invoices must be settled within fourteen days of issue. Arrears of payment attract interest of 8% above the base rate. This does not affect the right to assert damages in law.

4.4 Unless otherwise agreed if a client must make regular repetitive payments at e.g. monthly intervals then same are due and payable on the third of every month at the latest for the current month. The agreed regular payments apply for 24 months from their coming into force. We are hence entitled to adjust our prices without client agreement being needed at most once annually by up to 5% of the aforementioned total repetitive payment amount if legal, technical or financial reasons require this be done and the client does not suffer unreasonable damage thereby. If an adjustment is envisaged that exceeds the maximum aforementioned then we will advise the client thereof two months in advance. If the client does not agree with any price adjustment as in sentence 3 above then they are entitled to serve extraordinary notice of termination of the contract. Said notice must in such case be advised the vendor at least two weeks before the adjustment in question comes into force.

4.5. The client will be sent a monthly invoice by e-mail free of charge. Clients can be sent a printed invoice on request for a fee. This will be sent monthly to the billing address given in the relevant order.

5. Setoff and Retention Rights

Clients may only apply setoff if the counter claims in question are undisputed or *res judicata*. Clients may only exercise any right to retention if the counter claim/s in question concern/s the same contractual relationship.

6. Time / Date of Performance

6.1. The beginning of the delivery period quoted by us or the date of rendering of contractual goods and/or services predicates punctual and correct fulfilment of the client's obligations. The right to assert the defence of non-fulfilment of contract is reserved.

If the client falls into default of acceptance or culpably breaches other cooperation duties we shall be entitled to demand compensation for the loss resulting to us in this respect, including any extra expenditure incurred. The right to assert further damages is reserved. If the conditions above are met then the risk of accidental loss or deterioration of the articles for sale is transferred to the client at the time he or she is first in arrears or in default of acceptance.

7. Confidentiality

7.1. Both parties will maintain confidentiality on the content of the contract, particularly on prices.

7.2. The client will treat the information we disclose to him/her, especially all elements that are any part of our intellectual property such as our product/s, methodology, design, equipment etc. in its/their entirety as confidential throughout the term of the contract and thereafter.

8. Miscellaneous

8.1. We are always entitled without chronological time limit to use the client's name and the commercial description/s used by them for our own advertising purposes as references.

8.2. This contract and the legal relationships of the parties are entirely subject to Swiss law. The UN Convention on the International Sale of Goods does not apply.

8.3. Place of jurisdiction and of performance of this contract is our head office location.

8.4. Should any provision herein be or become null and void for any reason whatsoever, or there be any loophole herein, then this shall not affect the remainder. The parties hereto undertake to replace any such provision or loophole with a legally permissible one that comes as close as legally possible to their original financial intent or fills the loophole.

8.5. FeedbackNow is a registered trademark of S.Now S.A. and protected in trademark law. No licence/s applicable to said trademark/s is/are granted under the provisions of this contract.

II. Special Provisions on Purchasing our Articles for Sale

1. Hard- and Soft-ware

- 1.1. The articles for sale are hard- and soft-ware products.
- 1.2. The client may not reverse engineer hardware supplied by us.
- 1.3. We grant the client a single licence to utilise the software on the hardware sold them. Said licence is non-transferable; this also applies to the granting of utilisation rights to third parties.
- 1.4. The client may not copy the programming of the functional principle/s of the hard- and soft-ware we supply. The client may not pass the articles for sale hereunder to any third party. Specifically, they may not be sold, rented out or loaned in any way whatsoever.
- 1.5. The client will install the contractual hard- and soft-ware. Details and costs of installation by our experts is a matter for a separate contract.

2. Condition and Procurement Risk

- 2.1. The client must advise us in writing in good time before making contract if they have any special requirements to make of the articles to be sold in said contract. Such information does not amend or supplement our contractual obligations in any way whatsoever.
 - 2.2. Assumption of procurement risk or guarantee is not part of our obligation to supply any article specified only by type. We can only accept procurement risk if this is the subject of a written agreement that includes the words "we assume the procurement risk"....
 - 2.3. If acceptance or shipment of any article for sale by us is delayed for any reason for which the client is liable then we are entitled at our discretion to demand immediate payment of the purchase price or credit, to withdraw from the contract or reject contract performance and demand damages compensation on the expiry of a period of grace of fourteen days set by us. The period of grace must be set in writing or sent in text format to be effective. We do not need to refer again herein to the rights under this provision. If damages are asserted as aforementioned then they shall amount to 30% of the net price in contracts of sale and 30% of the agreed net credit in service contracts. Both parties have the right to prove their having suffered greater damage or that no damage was involved. The foregoing provision does not reverse the burden of proof.
 - 2.4. If goods are sent a client at their request then the risk of accidental destruction or worsening of the condition thereof passes to the client when the goods in question leave the works/warehouse. This applies regardless of whether such shipment is from the place of performance or not or who bears the shipping costs.
 - 2.5. If shipment is delayed for reasons for which the client is liable or at his/her request then we shall be entitled, on expiry of a period of grace set by us in writing or text format beginning with the date of the client being advised of the readiness for shipment of the goods in question, to store same and invoice 2% of the net invoice amount per week of storage or part thereof to cover storage costs. The right to assert further claims is reserved. The client has the right to prove that either no costs were incurred or much lower costs than alleged. We are also entitled on expiry of the aforementioned period of grace to dispose of the contractual goods concerned as we think fit and to supply the client anew within an appropriate period.
 - 2.6. If an order or its pickup is delayed by the client we shall be entitled to delay the shipment/s concerned by the same time plus a disposition period of four working days at our head office location.
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3. Reservation of Title

3.1. We retain title in the goods and/or services supplied until their purchase price has been paid in full. We are entitled to take the article/s sold back if the client breaches the contract where same is/are concerned.

3.2. The client has a duty to treat the article/s bought with care until they assume title therein. They are in particular obliged to insure same at their own expense against fire, theft and water damage at new value. If any maintenance or service work is carried out then the client is responsible for paying for it. The client must advise us promptly in writing if the goods and/or services supplied are hypothecated or subjected to any other form of third party intervention before title passes to them. If the third party is unable to recompense us our legal expenses for asserting a claim in law then the client shall be liable for same.

3.3. The client is not entitled to sell goods and/or services subject to retention of title in the course of their normal business.

4. Guarantee / Warranty and Defect Complaints

4.1. The orderor's guarantee rights predicate their having properly met their inspection and defect notification obligations.

4.2. Defect claims become statute barred 12 months after delivery of the articles for sale supplied by us.

4.3. If, despite due care and attention, the articles for sale supplied for us have any defect that existed when the risk therein passed to the client then we will either repair same or supply replacement/s at our discretion provided the client advised us of this punctually. We must always be allowed the opportunity to render delayed contract performance within an appropriate period of grace. Our rights to recourse in law remain unaffected by the foregoing.

4.4. If delayed performance fails at least twice the client may withdraw from the contract or reduce the payment due. This does not affect their right to assert damages claim/s in law.

4.5. No right to assert any claim for defect exists in the case of minor deviation from the agreed characteristics, minor restriction to usability, natural wear and tear or damage due to incorrect or negligent treatment, excessive strain or use, use of unsuitable operating equipment or media, defective construction work, an unsuitable building site or unusual external factors not envisaged in the contract and detected after the risk passed to the client. If the client or any third party carries out repairs or modifications improperly then no right to assert any claim for defect/s or consequential damage exists.

4.6. Client claims for costs due to delayed contract performance - particularly shipment, travel expenses and labour and material expenses - are excluded if they increased due to the article/s for sale supplied by us being later moved from the client's premises unless this complies with the intended use of said article/s.

5. Installation of the Article/s Sold on the Client's Premises

The articles sold must be so installed on the client's premises that our logo on the hardware (i.e. Smiley Box) and the feedback question are visible.

III. Special Rules on the Recording, Evaluation and Making Available of Information

1. Transmission of Information

The information in question is sent us via mobile communications systems. It is then processed by us and stored on our servers indefinitely. It, and reports based on it, are made available to clients. The reports are made available to clients daily. We cannot accept any liability whatsoever for any lack of information or reports due to *force majeure*, a lack of power or raw materials, electricity shutdown, labour dispute, any measure taken by the authorities or other cause interrupting business activity; if such interruption lasts several days then the affected contracts with clients shall be extended by the same time.

If any such event makes contract performance unreasonable for any party to it then that party may serve notice of termination of it for important reasons in law in accordance with clause III sub-clause 4.3 above.

2. Information Utilisation

2.1. The client has unrestricted use of the information for the term of the contract, particularly for advertising purposes. The client may not pass said information on to any third party.

2.2 We guarantee information security and confidentiality. The client authorises us to utilise the data in consolidated form solely for comparison purposes and without reference to the identity of the client.

2.3. The client has a duty when using passwords, user names or other security precautions supplied in association with our goods and/or services to do so with the greatest possible care and to ensure that no third party gains knowledge of them. The user is liable for any and all damage caused by use of passwords by any unauthorised third party.

3. Monthly Service Fee

The monthly service fee is due and payable on the third of every month for that month.

4. Contract Duration and Termination

4.1. Unless otherwise agreed in writing the contract on the recording, evaluation and making available of information is made for an indefinite term.

4.2 Unless otherwise agreed in writing each party is entitled to serve notice of termination of said contract with a period of one month to the end of any month.

4.3. This does not affect any party's right to serve notice of immediate termination for important reasons in law.

4.4. Notice of termination must be in writing to be effective.

IV. Special Rules on Consulting Services

1. A contract for works and services is herewith made

Our consultancy work constitutes a service. We cannot hence accept any liability whatsoever for failure.

2. Payment

Our remuneration for consultancy services is due and payable 2 weeks after rendering same at the latest.

3. Contract Duration and Termination

3.1. The contract for consultancy services ends when same have been rendered. The contract cannot be terminated in law during its validity.

3.2. The right of any party to it to serve extraordinary notice of immediate termination for important reasons in law remains unaffected.

3.3. Notice of termination must be in writing to be effective.
