

Terms and Conditions of Use

Version of May 08, 2001



General Terms and Conditions of Use for newtron Trading Platforms

§ 1 General Rules, Offered Services

1.1

newtron AG, Freiburger Straße 39, 01067 Dresden, Germany (hereafter called "newtron"), offers merchants pursuant to the Commercial Code, public law legal entities, and separate public law funds (hereafter called "users"), within the framework of a service agreement, the use of the newtron business-to-business trading system (hereafter also called "system") on newtron-operated online trading platforms pursuant to the provisions of these terms and conditions of use. The online trading platforms (hereafter also "trading platforms") are currently available to the user at the following Internet addresses:

www.newtron.net/mp/CompoNET
www.newtron.net/mp/Automotive
www.newtron.net/mp/MRO

The services and functionalities of the system available to the user on the trading platforms are described more in detail in the newtron services catalogue, which may be accessed (i) centrally for all trading platforms through link **<http://www.newtron.net/downloads/en/leistungskatalog.pdf>**, and (ii) on the respective trading platforms under the heading **Downloads**, and (iii) they are described in these terms and conditions of use. The user may obtain additional information and explanations regarding the services and functionalities offered on the trading platforms by calling the newtron hotline at **+49-(0) 180-5234700** or per e-mail at **support@newtron.net**. The user agrees to ensure the proper use of the services and functionalities in accordance with these terms and conditions of use.

1.2

On the trading platforms, inquirers (hereafter also called "buyers") may obtain offers from different offerors (hereafter also called "suppliers") about products and product groups (hereafter also called "goods and services") selected by them and enter into contracts with suppliers. The trading platforms are trading and communication platforms through which buyers and suppliers may self dependent conduct contract negotiations in accordance with their individual requirements. newtron provides only the instrument in the form of the services and functionalities of the system. The contracts entered into on the trading platforms are contracts between the respective users; they are solely responsible for the content and legal effect; and they are performed and processed outside the trading platforms by the users without the cooperation of newtron. newtron cannot warrant to the users that the contracts between the users come into existence at the actual and/or legal conditions intended by the users and/or that the contracts entered into by the users are performed.

1.3

newtron offers buyers consulting services to be separately agreed upon for the support and optimization of auctions and requests for quotes. The consulting services include the performance of so-called "consulted transactions," in which a newtron consultant assists and supports the buyer in requests for quotes and auctions. In addition to support in the proper selection of product groups, bundling of different buying positions and supplier selection and training, results of the requests for quotes and actions are evaluated jointly with the buyer, and recommendations for the setup of transactions are made. Additional details regarding the – separately to be agreed upon – "consulted transactions" may be accessed in the public area of the trading platforms in the area "forthcoming auctions."

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1.4

Finally the terms and conditions of use contain the terms and conditions applicable between newtron and the user for the services offered by newtron within the umbrella of this service agreement. Any agreements that deviate from these terms and conditions apply only if they are confirmed by newtron in writing. In particular the general terms and conditions of the user do not apply to the contract with newtron if they are in conflict with these terms and conditions of use. With the admission pursuant to § 2.2, the user accepts these terms and conditions of use as binding.

1.5

newtron reserves the right to change these terms and conditions of use at any time without giving any reasons. In such a case the users of the trading platforms will be appropriately informed about the change in the terms and conditions of use.

§ 2 Registration, Admission, Contract with newtron, and Access to the Trading Platforms

2.1

The prerequisite for the use of the trading platforms is the admission by newtron to the respective trading platform. The trading platforms are open only to merchants pursuant to the Commercial Code (HGB), public law legal entities, and public law separate funds. No legal right to the admission or use of the trading platforms exists.

2.2

The application for admission to the respective trading platforms can be submitted by the user either directly on the respective trading platform web site www.newtron.net/mp/CompoNET, www.newtron.net/mp/Automotive, www.newtron.net/mp/MRO; by telephone **+49-(0)180-5234700**; or in writing to newtron AG, Freiburger Strasse 39, 01067 Dresden, Germany; or by fax to 0049-351-43958-177. In the application for admission, the user must state his company data (i.e., company name, address, telephone and fax number, and e-mail), billing information, and contact person. It must also be stated whether the trading platform will be used for selling and/or purchasing. The acceptance of the application for admission by newtron will become effective for the supplier only when newtron has sent a corresponding written admission confirmation per e-mail or fax to the supplier and the latter logs in for the first time on the respective trading platforms using the log-in (master log-in) and password submitted with the written admission confirmation and accepts these terms and conditions again on the respective trading platforms. On the other hand buyers receive, after receipt of the application for admission by newtron and before mailing of the confirmation of admission, a written offer by newtron via e-mail, mail, or fax to use the selected trading platforms. The offer contains different service alternatives for the buyers, possibly among others a "test package" for three months (hereafter also called "test package"). As soon as newtron receives a legally signed and written acceptance from the buyer, the buyers receive the admission confirmation from newtron. The effective acceptance of the application for admission for the buyer occurs only after the buyer has logged in for the first time on the respective trading platform and accepts the terms and conditions of use again.

2.3

Through the master log-in that confirms the admission, the user may grant its employees a separate admission confirmation to the trading platforms and configure it according to his wishes to allow them optimum work on the trading platforms. This access authorization for employees (hereafter "employee log-in") contains, in addition to personal data of the employees, a number of authorizations and areas of responsibilities to use the functionalities and services of the system through which the possibilities of the employee can be determined by the master log-in. The right to create employee log-ins may be transferred from the master log-in to an employee log-in. The user of each log-in who is authorized to create additional employee log-ins is responsible for the creation and configuration of the employee log-ins and is responsible for all transactions that are made through a log-in created by that user. In

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particular the user agrees to take care that the employees admitted by him follow these terms and conditions of use. newtron is not in a position to check whether employees of the user who open transactions, participate in transactions, and make or accept offers through an employee log-in assigned by the user have the necessary authorization and, therefore, cannot warrant the existence of proper authorization.

2.4

The user guarantees that the information provided by him, in particular within the scope of application for admission pursuant to § 2.2 to newtron, and other users is true and complete. The user agrees to immediately inform newtron of all future changes in the information provided. The same applies to all information given by the user during the creation of employee log-ins.

2.5

The admission pursuant to § 2.2 creates a compensable service agreement for an indefinite period between newtron and the respective user in accordance with these terms and conditions of use. If a buyer has decided to buy the test package offered by newtron, the term of the contract is limited to three months. The compensation payable by the user depends on the respective individual agreement of buyer with newtron and, with regard to suppliers, on the current newtron price terms for sellers that can be looked up on the trading platforms under "**General Information – Pricing.**"

2.6

newtron may withdraw the admission from a user and/or temporarily block access to the trading platforms until proof of violation by newtron, if there are justified doubts with regard to the power of representation, the accuracy or completeness of the information provided by the user, or with regard to the legal existence of the user and the user has not removed the justified doubts at its expense after having been requested to do so by newtron by submitting appropriate proof. newtron may also temporarily block access to the trading platform if there is sufficient evidence that the user violates these terms and conditions of use.

2.7

With the admission pursuant to § 2.2, a user warrants vis-a-vis newtron and all other users that, with regard to the data transferred by the user, the data protection requirements have been complied with by that user, and it releases newtron from all claims, including public law claims. In particular, the user must take care that all required consents from employees are obtained before employee personal data are input into the platform within the scope of the creation of employee log-ins or in any other manner.

2.8

All log-ins are individualized and may be used only by the authorized user. The user is obligated to keep log-in and password confidential and to protect it against unauthorized access by third parties. The user is also responsible for the confidentiality of employee log-ins, and each user will instruct its employees correspondingly. In case of suspension on account of an abuse by a third party, the user shall immediately inform newtron. As soon as newtron obtains knowledge of the unauthorized use, newtron shall block the access by the unauthorized user. newtron reserves the right to change log-in and password of a user; in such case newtron shall immediately notify the user of this action. All statements made by a user through using the respective log-in are valid, unless the recipient of the statement knows of declarant's lack of power of representation.

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§ 3 Function of Trading Platforms; Contracts between Buyer and Supplier

3.1

The system made available by newtron on the trading platforms allows the use of a multitude of services and functionalities. The trading platforms are a platform for buyers and suppliers to trade goods and services and the offer or sale of which does not violate these terms and conditions of use or the statutes. All trading platforms have an integrated, automated communication system to simplify communication between buyer and supplier as well as extensive functionalities for the administration and supervision of all current business transactions. A detailed presentation of the different services and functionalities is contained in the services catalogue, which can be downloaded on the trading platforms under the heading **Downloads** as well as through link <http://www.newtron.net/downloads/en/leistungskatalog.pdf>. Additionally each user of the trading platform has detailed online help available.

3.2

Buyers have the opportunity to open requests for quotes and auctions and to invite suppliers based on individual criteria to make binding offers. The different varieties of requests for quotes and auctions are listed in the services catalogue that can be downloaded on the trading platforms under the heading **Downloads** and in the **Online Help**, as well as by using link <http://www.newtron.net/downloads/en/leistungskatalog.pdf>. Requests for quotes and auctions may be opened by buyers only and do not contain a binding offer pursuant to § 145 BGB, but are invitations to make an offer only. Buyers may under no circumstances participate as a supplier in an auction or request for quotes opened by them. Also buyers may not participate in an auction or request for quotes opened by them by a third party acting on their behalf.

3.3

Suppliers have the possibility to select buyers according to individual criteria and to make binding offers to their requests for quotes and auctions. The details of the different possibilities to make offers are contained in the services catalogue that can be downloaded on the trading platforms under the heading **Downloads**, in the **OnlineHelp**, as well as by using link <http://www.newtron.net/downloads/en/leistungskatalog.pdf>. The offers of a supplier are binding and irrevocable declarations to enter a contract based on the buyer's request for quotes. If there is no other agreement between a supplier and buyer, a supplier continues to be bound by its offer for another 30 days after the expiration of the request for quotes period set by the buyer. Within the scope of auctions, suppliers also remain bound by their respective offers for an additional 30 days after the expiration of the auction period or possibly extended period set by the buyer, unless the parties have agreed otherwise. § 156 BGB (closing of contracts in case of auctions) is expressly excluded. Suppliers are not entitled to be invited to participate in request for quotes and auctions. The same applies with regard to announced requests for quotes and auctions.

3.4

A buyer is free to select whether and if so which of the received offers it wants to accept. If a buyer and a supplier do not agree otherwise, a contract becomes effective when a buyer accepts the offer of a supplier by initiating or sending a (direct) order in the context of a negotiation of one-time contracts or by sending a frame-contract order in the context of a negotiation of frame contracts. The processing of the contract occurs solely between buyer and supplier. newtron does not assume responsibility for the existence, quality, or legality of the offered or sold goods or services. newtron can neither control the accuracy and legality of the offers nor the right of an offeror or buyer to sell or buy the goods and services.

3.5

The system time of the respective platform applies exclusively to all transactions on the trading platform. Offers may be submitted only within the request for quotes and auction time permitted by a buyer.

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3.7

newtron reserves the right to change or expand the content and structure of the platform and the relevant user interfaces if this does not or at least not substantially affect the satisfaction of purpose of the contract entered with the user. newtron will appropriately inform the users of the trading platforms of the changes.

§ 4 Obligations of Buyer and Supplier

4.1

All users shall comply with all applicable laws, public orders, and similar government acts.

4.2

The users place their transactions on the corresponding trading platform. Obviously incorrectly entered transactions may be removed by newtron after consultation with the respective user.

4.3

No requests for quotes, auctions, or offers may be opened if: a) the information is so incomplete that the item and price cannot be determined; b) the opening or implementation of the request for quotes, auction, or sale in accordance with the intended rule of law would violate statutory provisions, official orders, or public policy. In particular no items may be offered the offer or sale of which violates third-party rights, in particular protected rights; the same applies to pornographic items or youth-endangering items, weapons, drugs, propaganda material of organizations and parties hostile to the constitution, live animals, etc. If in spite of this, such a request for quotes, auction, or offer is posted, newtron may remove it from the trading platform immediately.

4.4

Goods or services that may be sold only in exchange for prescribed proof may be offered or requested on the trading platforms only if the proof was included in the description of the goods and services and the goods or services are sold only in exchange for the legally prescribed proof.

4.5

The suppliers warrant to newtron and the buyers at the time of making the offer a) that they are the legal owner or authorized person of the offered goods and services; b) that they are able to dispose freely of the goods and services; c) that the offered goods and services and their offer or the sale do not violate statutory provisions or official orders or protected rights of third parties.

§ 5 Compensation for Use and Payment Method

5.1

The individual fee of a buyer results from the contract offer of newtron signed by the buyer; the fees for suppliers result from the current price and compensation list that can be viewed on the trading platforms under "**General Information**"- "**Prices**". Those fees are a material part of the contract between newtron and the user.

5.2

The respective payments shall – except when otherwise stipulated – be accounted for annually in advance and immediately after invoicing without deduction but plus value added tax at the respective tax rate. The user agrees that the accounting data are stored for evidence purposes and/or within the statutory period during which files need to be retained.

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§ 6 Warranties, Force Majeure

6.1

newtron assumes neither a warranty for the performance of the contracts entered between the users on the trading platforms nor does it warrant that the goods and services offered are free from defects. In particular the information provided to the users and taken over onto the platform does not constitute any property warranted by newtron. newtron has no duty to ensure the performance of the contracts entered between the users.

6.2

newtron cannot assume any warranty for the true identity of the users. In case of doubt the contracting partners shall take appropriate steps to determine the true identity of the contracting partner.

6.3

The warranty does not apply to impairments of the contractual use of the services provided by newtron on the trading platforms and the platform that have been caused by the improper or defective use of the user.

6.4

Continuous operating disturbances due to force majeure outside the reasonable control of newtron, such as natural catastrophes, fire or network collapse, entitle newtron to an extraordinary notice of cancellation of the contract with the user.

§ 7 Liability

7.1

newtron does not assume any liability for disruptions in the network not caused by any fault of newtron.

7.2

newtron is liable without restriction for wrongful misconduct and gross negligence. In case of light negligence, it is liable only if a material contract obligation has been violated. Liability for material contract obligations is limited to damages typical for the contract that had to be expected by newtron at the time it entered into the contract based on the circumstances known to newtron at that time.

7.3

newtron is liable only for the loss of data in accordance with the above paragraphs if the loss could not have been avoided by appropriate data protection measures of the user.

7.4

The above limitations of liability apply correspondingly in favor of newtron's employees and representatives.

7.5

To the extent the trading platforms provide the possibility to refer to databases, web sites, services, etc., of third parties, e.g., through the insertion of links or hyperlinks, newtron is not liable for either accessibility, existence, or security of these databases or services, nor for the content thereof. In particular newtron is not liable for their legality, accuracy of content, completeness, being up-to-date, etc.

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7.6

Claims under the product liability act are not affected by the above liability restrictions; this also applies to claims on account of initial inability, legal defects, and lack of guaranteed properties.

§ 8 Third Party Contents, Links, Viruses

8.1

The users are prohibited to insert contents in the trading platforms that violate statutory provisions or that violate public policy. Moreover, they are prohibited from inserting contents that violate rights, in particular copyrights or trademarks of third parties.

8.2

newtron reserves the right to block third-party contents if they violate existing criminal laws or are conspicuously used to prepare criminal acts.

8.3

The user agrees to omit measures that endanger or interfere with the platform or its integrity or to access data which the user is not entitled to access. Moreover, the user shall take care that the information transferred through the platform and inserted data do not have any viruses, worms, or Trojan horses. The user agrees to reimburse newtron for all damages caused by the violation of this figure 8.3 and to release newtron from all third-party claims, including attorneys' fees and court costs, that third parties assert against newtron on account of the violation of this figure 8.3 by a user.

§ 9 Other User Obligations

9.1 Each user is obliged to

a) provide for and maintain the required data protection measures during the entire term of the contract. This refers primarily to the careful and conscientious handling of log-ins and passwords; b) immediately inform newtron of technical changes in the user area if they may impair the rendering of services and/or security of the trading and information systems of newtron; c) participate in the discovery of third-party attacks to the platform if the cooperation of the user is required; d) handle transactions on the trading platforms exclusively within the scope of his business for business purposes.

9.2

The user shall hold newtron harmless of all claims asserted by third parties against newtron for violation of their rights or on account of legal violations of the offers and/or contents of offers entered by that user. The user assumes the costs for the legal defense by newtron including all court and attorneys' fees.

§ 10 Data Security and Data Protection Declaration

10.1

The servers of newtron are state -of-the-art; in particular they are secured by firewalls. Nevertheless the user knows that the danger for all participants exists that transmitted data may be intercepted during transmission. This situation applies not only to the exchange of information via e-mail that leaves the system, but also to the integrated communication system described in § 3.1 of the services catalogue as well as to all other data transmissions. Therefore, the confidentiality of the data transmitted within the scope of use of the trading platforms cannot be guaranteed.

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10.2

The user consents that newtron saves information and data regarding the course of requests for quotes and auctions and the conduct of buyers and suppliers in these transactions in anonymous form and may use it exclusively in this anonymous form for marketing purposes, e.g., the preparation of statistics and presentations.

10.3

newtron is entitled to process and save the data received from the user in connection with the business relationship during the term of the contract observing the provisions of the applicable data protection provisions. In particular the user agrees that newtron

a) saves and processes the information provided by users pursuant to § 2.2 within the scope of the application for admission regarding company data, invoice data, and contact persons of the user as well as the corresponding updates provided by that user;

b) saves the data independently inserted by a user in connection with the company presentation desired by him in the trading area under administration and keeps them available in the public and closed area of the trading platforms for other registered and unregistered users;

c) saves any personal data used in the course of transactions and passes them on to other users and – to the extent the affected user so desires by the selection of a public transaction – keeps them available in the public area for registered and unregistered users; d) saves non-personal data regarding the content of transactions and passes them on to other users and – to the extent the affected user so desires by the selection of a public transaction – keeps them available in the public area for other registered and unregistered users.

10.4

Use of personal data going beyond the above-mentioned use requires the separate consent of the user. The user may revoke his consent pursuant to § 10.3 at any time to the extent the consent was granted to use personal data. The revocation may be sent in writing by letter to newtron AG, Freiburger Strasse 39, 01067 Dresden, Germany, or by telecopier to +49-351-43958-177, or by e-mail to support@newtron.net.

10.5

Otherwise newtron will treat all user-related data that have been marked confidential by the user as confidential and use them only in accordance with these terms and conditions of use. newtron reserves the right to deviate from this if newtron, on account of statutory or public orders, must reveal user data.

§ 11 Assignment and Offset

11.1

The partial or complete assignment of the rights of the user under this contract with newtron to third parties is excluded.

11.2

User may offset only uncontested or finally adjudicated counterclaims against newtron.

§ 12 Term of Contract

12.1

The contract underlying these terms and conditions of use is entered for an indefinite time, in case of the test package for three months. It starts with the admission by newtron pursuant to § 2.2.

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12.2

With the exception of the three months' test package, either party may terminate the contract by giving three months' notice previous the end of a contract year.

12.3

Each party may terminate the contract for cause without complying with the notice requirements. Cause exists in the case of newtron in particular if

- a) the user violates a provision of these terms and conditions of use and the violation is not removed after a grace period;
- b) a criminal act of a user or the attempt of such, e.g., attempted fraud;
- c) more than six weeks default by the user in making a payment pursuant to § 5.

12.4 Every termination must be in writing. Terminations by fax or e-mail satisfy the writing requirement.

§ 13 Final Provisions

13.1

This contract is governed by the laws of the Federal Republic of Germany. The application of the United Nations code of sales is excluded. Venue for all legal disputes is Frankfurt/Main. newtron may also use the general venue of the user.

13.2

Should any provision of these terms and conditions of use be or become invalid and/or conflict with statutory provisions, the validity of the remaining provisions shall not be affected. The contracting parties shall replace the invalid provision by a valid provision, which corresponds as closely as possible to the economic intent and purpose of the invalid provision. The above provision applies correspondingly in case of a gap.