

Terms and Conditions of Use

Version of May 23rd 2006



General Terms and Conditions of Use for newtron AG

§ 1 Subject of the contract

- 1.1 Subject matter of these general terms and conditions of use is the online use of the trading platform, that is offered exclusively to commercial users by newtron AG, Freiburger Straße 39, 01067 Dresden, Germany (hereafter called "newtron"). The online trading platform (hereafter also "trading platform") is currently available to the user at the following Internet address:
www.newtron.net/web/nmarkets
- 1.2 With the admission of the user by newtron pursuant to § 3.2, these general terms and conditions of use become integral part of the contract. Regulations of the user to the contrary or different to these general terms and conditions of use have no validity.
- 1.3 The terms and conditions of use apply only to companies (§ 14 BGB), corporate bodies of public law or a special asset under public law in terms of § 310 para. 1 phrase 1 BGB. They also apply to all future businesses between the user and newtron.
- 1.4 newtron reserves the right to change or to complement these terms and conditions of use with an alteration term of one month by the end of each calendar month. It is incumbent upon the user to be informed about modified terms and conditions of use at the newtron pages at regular intervals. newtron will give sufficient notice of the changed general terms and conditions of use to the user via e-mail or via an explicit reference at the newtron homepage. The modified general terms and conditions of use come into operation adverse the user when he accepts them, unless the changes are not connected to commercial disadvantages of the user and thus reasonable. The latter become also integral part of the contract without acceptance of the contractual partner. For the rest an acceptance to the general terms and conditions of use is considered as given, if the user is not objecting within one month after acquisition of the modification notice and accepted the modified terms and conditions of use by activating the button "agreed" respectively. In the modification notice to the user newtron will point out the right of objection, the term of objection and its consequences of a non-given or not-in-time objection.

§ 2 General rules, offered services

- 2.1 The services and functionalities of the system available to the user at the trading platform are described more in detail for suppliers in the newtron supplier brochure are available (i) centrally via the link http://www.newtron.net/en/downloads/Supplier_Brochure_2006_eng.pdf and (ii) at the newtron trading platform under the menu **general information → downloads** as well as (iii) described more detailed in these terms and conditions of use. The available services and functionalities of the system for purchasers are deposited in the buyer services catalogue, which can be requested via e-mail at **support@newtron.net**. The user may obtain additional information and explanations regarding the services and functionalities offered at the trading platform by calling the newtron hotline at **+49-(0)351 43958 538** or via e-mail at **support@newtron.net**.
- 2.2 At the trading platform, inquirers (hereafter also called "buyers") may solicit a bid 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 platform is a trading and communication platform 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 at the trading platform 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 platform 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 concluded by the users are performed.

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2.3 newtron offers buyers consulting services to be separately agreed upon for the support and optimisation of requests for information, requests for quotes and auctions. The consulting services include the performance of so-called "consulted buyer transactions," in which a newtron consultant assists and supports the buyer in requests for information, 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 negotiation are evaluated jointly with the buyer, and recommendations for the setup of transactions are made.

§ 3 Admission, conclusion of the contract and access to the trading platform

3.1 The prerequisite for the use of the trading platform is the admission by newtron to the respective trading platform. The trading platform is only available to commercial users. There is no legal right to the admission or use of the trading platform. At supplier side there are 2 types of access to the trading platform: free of charge access with view-only ability but without user rights (so-called guest membership – insight into negotiation but no active participation at negotiations possible) as well as accesses with costs (e.g. standard and premium membership – active participation at negotiations plus further rights concerning type of membership).

3.2 The application for admission to the trading platform can be submitted by the user either directly at the trading platform www.newtron.net/web/nmarkets; by telephone **+49-(0)351 43958 538**; in writing to newtron AG, Freiburger Strasse 39, 01067 Dresden, Germany; or by fax to 0049-351-43958-178. In the application for admission, the user must state his company data (i.e., company name, address, e-mail, telephone and fax number), billing data, and contact person. It must also be stated whether the trading platform will be used for selling and/or purchasing. After entry of the application for admission at newtron and before sending the confirmation of admission the user initially receives a written information by newtron via e-mail, mail or telefax concerning the use of the trading platform and the different service alternatives. As soon as newtron receives a legally signed and written acceptance from the user concerning his selected service alternative, the user receives the confirmation of admission by newtron.

3.3 The acceptance of the application for admission by newtron becomes effective for the user not until newtron has transmitted a corresponding written confirmation of admission via e-mail or via telefax to the user and not until he logs in for the first time at the trading platform using his transmitted login and password and he there accepts the terms and conditions of use.

3.4 Through the master login, that was transmitted in the confirmation of admission, the user may grant the employees of his company a separate access authorisation to the trading platform and set them up by his own account, to enable them an optimised processing at the trading platform. This access authorisation for employees (hereafter "employee login") contains, in addition to personal data of the employee, a number of authorizations and areas of responsibilities, through which the possibilities of the employee in order to use the functionalities and services of the system can be determined by the master login. The right to create employee logins may be transferred from the master login to an employee login. The user of each login who is authorized to create additional employee logins is responsible for the creation and configuration of the employee logins and is responsible for all transactions that are made through a login created by that user. In 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 login assigned by the user have the necessary authorization and, therefore, cannot warrant the existence of proper authorization. If newtron is assigned to integrate contact data of suppliers into the trading platform, it may happen that new logins are installed (if the appropriate contact person does not yet exist) or existing logins are synchronised. In both cases newtron assumes no warranty for correctness of the data.

3.5 The user guarantees that the information provided by him, in particular within the scope of his application for admission pursuant to § 3.2 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 logins.

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- 3.6 With the admission pursuant to § 3.2, a user warrants adverse 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 entered into the platform within the scope of creating a employee login or in any other manner.
- 3.7 All logins are individualized and may be used only by the authorized user. The user is obligated to keep login and password confidential and to protect it against unauthorized access by third parties. The user is also responsible for the confidentiality of employee logins, 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 login 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 login are valid, unless the recipient of the statement knows of declarant's lack of authorisation for representation.

§ 4 Functionality of trading platform; conclusion of contract between buyer and supplier

- 4.1 The system provided by newtron at the trading platform permits the use of a multitude of services and functionalities. The trading platform is a platform for buyers and suppliers to trade goods and services. The newtron trading platform disposes 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 deposited for suppliers in the newtron supplier brochure via the link http://www.newtron.net/en/downloads/Supplier_Brochure_2006_eng.pdf as well as at the trading platform under the menu **general information → downloads**. For buyers the different services and functionalities are covered in the buyer services catalogue, which can be requested via e-mail at **support@newtron.net**.
- 4.2 Buyers have the opportunity to open requests for information, requests for quotes and auctions and to invite suppliers based on individual criteria to make binding offers. Requests for information, 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 ("invitatio ad offerendum"). Buyers may under no circumstances participate as a supplier in a request for information, request for quotes or auction opened by them. Also buyers may not participate in a request for information, request for quotes or auction opened by them by a third party acting on their behalf.
- 4.3 Suppliers have the possibility to select buyers according to individual criteria and to make binding offers/answers to their requests for information, requests for quotes and auctions. The details of the different possibilities to make offers are contained in the RFQ-Guide (Guide for submission of quotation at newtron), which is deposited online at the trading platform per negotiation in the selected login language. The offers of a supplier are binding and irrevocable declarations to enter the tendered contract of the buyer. The entered prices at newtron are net prices according to the German Commercial Code (HGB). Suppliers remain bound by their respective offers like the supplier entered it online while quoting. § 156 BGB (closing of contracts in case of auctions) is expressly excluded. Suppliers are not entitled to be invited to participate in requests for informations, requests for quote or auctions. The same applies with regard to announced requests for informations, requests for quotes and auctions.
- 4.4 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.
- 4.5 To all transactions at the trading platform applies exclusively the system time applicable at the trading platform, which is synchronised regularly with diverse Internet time servers. The durations of

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requests for informations, requests for quotes and auctions is determined by the buyer – offers and answers may be submitted only in this permitted time frame.

4.6 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 platform about the changes.

§ 5 Obligations of the user

5.1 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.

5.2 No requests for information, 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 supplier is no legal owner or authorised person of the offered goods and services;
- c) the supplier is not able to dispose freely of the goods and services;
- d) the demanded or offered goods and services do offend against statutory provisions or official orders or morality or violate protected rights of third parties.

5.3. If nevertheless such a request for information, request for quote, auction or offers occurs, newtron has the right to delete these immediately from the trading platform.

5.4. Goods or services that may be sold only in exchange for prescribed proof may be offered or requested at the trading platform 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.

5.5. The user indemnifies newtron from all claims, that third parties assert against newtron for violation of their rights or for legal contempt because of quotations submitted by a user and/or other contents. In the regard the user also accepts the costs that emerge to newtron – costs of legal defense based on the statutory payment regulation including possible arising court fees.

5.6. The user is further obliged to promptly communicate to newtron possible technical changes that interfere the newtron range, if they are capable to interfere with the service provision and/or security of the trading and information system of newtron.

5.7. The user is also obliged to participate in the clarification of facts in case of platform attacks from third parties, as far as this contribution of the user is necessary.

§ 6 Compensation for use and payment method

6.1 The extent of the fees results for buyers from the individual user contract with newtron; and for suppliers from the registration form of newtron signed by the supplier. The respectively current registration offer for suppliers is visible at the trading platform under the menu **general information → prices**.

6.2 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.

§ 7 Warranties, force majeure

7.1 For any contracts concluded between buyers and suppliers at the trading platform newtron assumes neither warrenty for the completion nor for defects of the offered goods and services. In particular the information provided to the users and taken over into the platform does not constitute any property warranted by newtron.

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- 7.2 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.
- 7.3 During the duration of the user relationship newtron assures that the software used to develop the trading platform has no defects, that would minimise or cancel the value or the efficiency for the contractual purpose. An only insignificant contraction remains out of consideration. The warranty does not apply to impairments of the contractual use of the services provided by newtron at the trading platform and the platform that have been caused by the improper or defective use of the user.
- 7.4 Errors and disturbances have to be communicated immediately, including a detailed and reproducible description to newtron.
- 7.5 newtron will correct interferences at accessibility to the trading platform as far as possible within a period of 48 hours. newtron reserves an appropriate extension in individual cases. Errors at the provided software to access the trading platform will be corrected within an appropriate period of time. newtron will conduct maintenance work at regular intervals.
- 7.6 Continuous operating disturbances due to force majeure outside the reasonable control of newtron, such as natural catastrophes, fire or network collapse, entitle newtron to a extraordinary notice of cancellation of the contract with the user.

§ 8 Liability

- 8.1 Claims of damages of any kind by the user, unconcerned of legal ground, that result indirectly or directly in connection with the services performed by newtron or with other services, are excluded. This exclusion of liability does not apply in case of violation of a fundamental contract obligation (cardinal obligation). The liability of newtron is by all means limited to compensation of the contract typical, predictable damage.
- 8.2 The preceding exclusions and restrictions of liability do not apply for damages from violation of life, body or health that result from a neglect of duty caused by intention or negligence of newtron or its legal representatives or its auxiliary persons. The preceding exclusions and restrictions of liability do also not apply for other damages, that result from a neglect of duty caused by intention or gross negligence of newtron or its legal representatives or its auxiliary persons or if the other damage results from the absence of a guaranteed state or from malicious concealment of a defect.
- 8.3 To the extent the trading platform provides 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.
- 8.4 Claims under the product liability act are not affected by the above mentioned exclusions and restrictions of liability.

§ 9 Foreign contents, links, viruses

- 9.1 The users are prohibited to insert contents in the trading platform that violate statutory provisions or that violate morality.
- 9.2 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.

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9.3 The user agrees to reimburse newtron for all damages caused by the violation of this figure 9.2 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 9.2 by a user.

§ 10 Data security

10.1 The user is self-responsible for backup of its data, that he enters in the system in the context of its use according to agreement. newtron merely provides software, memory capacity and computing power for the processing of data.

10.2 The backup system of newtron for the trading platform is state-of-the-art. At regular intervals – at least once per week – newtron will also save the user data. In case of a data loss caused by newtron the data entered by the user are restored up-to-date of the last backup. Restorage of data in other cases, e.g. in case of data loss by the user, is not possible as a basic principle.

10.3 Claims for damages of any kind towards newtron by reason of data loss are excluded, unless an act of gross negligence or intention is shown.

§ 11 Data protection

11.1 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.

11.2 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.

11.3 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 in connection with the designated company presentation independently inserted by a user into the trading area via the menu administration and keeps these data available in the public and closed area of the trading platform 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.

11.4 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 § 11.3 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.

11.5 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.

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§ 12 Assignment, offset, right of retention

- 12.1 The partial or complete assignment of the rights of the user under this contract with newtron to third parties is excluded.
- 12.2 The exercise of an offset or a right of retention by a user adverse newtron is valid, only if the user's claim is uncontested or legally adjudicated.

§ 13 Term of contract and termination

- 13.1 The user contract is concluded for the time period deposited in the contract. It starts with the user's first login after receipt of confirmation to admission by newtron and the acceptance of these terms and conditions of use by the user.
- 13.2 The period of cancellation is regulated in the underlying user contract.
- 13.3 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 fundamental contract obligations;
 - b) more than six weeks default by the user in making a payment;
 - c) an essential deterioration of the user's assets proportion occurs or if insolvency proceedings or similar procedures concerning the user's assets are opened or refused in default of matter.
- 13.4 In cases of preceding § 13.3 a) and b), instead of a cancellation of contract, newtron reserves the right to only block the trading platform for a user – completely or partially.
- 13.5 Every termination must be in writing. Terminations by fax or e-mail satisfy the writing requirement.

§ 14 Applicable law, jurisdiction, written form, severability clause

- 14.1 This contract is governed by the laws of the Federal Republic of Germany. The application of the United Nations code of sales is excluded. Place of jurisdiction for all legal disputes is Dresden as far as legally permitted. newtron may also file suit at another legally provided place of jurisdiction.
- 14.2 Modifications and amendments of the contract conditions require written form. This also applies to the abrogation of the written form requirement.
- 14.3 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 regulation gap.