

## **1 ELIGIBILITY FOR INSTALLATION**

1.1 Before installation NextiraOne shall - in accordance with the customer - determine those conditions which are required for smooth and safe installation as well as for the operation of the equipment. The following pre-conditions shall be fulfilled:

1.1.1 General constructional pre-conditions for existing facilities:

- completion of all construction and adaptation works,
- clean, arid, dust-free and sufficient ventilated installation resp. operation sites,
- proper condition of the installation site and/or existence of all necessary equipment by which condensation of the equipment is prevented.

1.1.2 Special constructional pre-conditions for equipment in separate room:

- The thermal condition of the room shall comply with the thermal power loss of the equipment installed; in case of external devices installed in the same room the so lost heat shall be included in the thermal balance. The room temperature shall be between 5°C and 35°C and the relative humidity (not precipitating) must not exceed 80%.

- No condensation of the equipment may occur; the temperature and humidity proportion is specified in the annex (climate chart).

- Adequate flooring shall be used for protection from electrostatic charge.

- Rooms in which vibrations, industrial gases and steams or dust exposures may occur are not eligible for installation or operation sites.

- For equipment to be installed in offices a lockable depository shall be supplied for the documentation appendant to the equipment and which is provided to the customer; the customer has to provide sufficient lighting and adequate workspace.

- For wall-mounting the customer has to provide an adequately compact and flat wall considering the installation technique used. Otherwise sufficient space in a 19" rack adequate to the space required for the system including patch panels has to be provided.

1.1.3 Electrical pre-conditions

- The customer has to provide a separate eligible power supply; this includes:

- electric circuit adequately secured to the connected load and the switch-on current,

- precautions against over-voltage in endangered tracts; consultation with NextiraOne is recommended,

- in case of inductive or capacitive injected malfunctions ("spikes") which lead to breakdown of equipment an adequate precaution is necessary and shall be installed by NextiraOne at the expense of the customer,

- installation of telecommunication ground wire in case of such requirement according to ÖVE and the respective relevant telecommunication provisions,

- in case of battery mode if the battery location shall be the room of the equipment: use of completely gas proof batteries,

- in case of other battery types an adequate location according to the relevant ÖVE provisions for battery location,

- if client specific information is necessary for programming of the equipment this information shall reach NextiraOne in due time before the agreed date of delivery,

- that the equipment to be installed and installation sites are not located close to interfering fields (e.g. transformer station, radio equipment),

- compliance with the adequate installation and material provisions in case of services on customer's account (installation of the network is not performed by NextiraOne); construction supervision of this external service is necessary at the expense of the customer; any necessary acceptance test after completion is at the expense of the customer,

- any necessary back staff, lifting gear, scaffoldings and incidentals.

1.2 Services provided by the customer or third persons

1.2.1 The following services are excluded from the NextiraOne services:

- any handcraft (e.g. digging, bricklaying, chiselling, woodcraft, plastering, wallpapering, painter work etc.),

- any materials necessary therefore,

- duct and cable duct barrier,

- protection devices,

- any operation materials which are necessary for testing and for putting into operation,

- cleaning including removal of rubble and other dirt.

1.2.2 The electricity necessary for the operation of tools (drill machine, soldering gun etc.) and lighting of the installation site as well as water and heating shall also be provided by the customer at no charge.

1.3 If tools or equipment to be provided by the customer or third persons have to be installed, these shall either be stored at the installation site or short term disposal must be guaranteed.

1.4 Custody of tools and material

On demand a lockable storage room for tools and materials at the installation site shall be provided free of charge by the customer. The customer shall be liable for any loss or damage incurred by housebreaking and force majeure.

## **2 WORKING HOURS**

Working Hours are Normal Working Hours of NextiraOne unless otherwise agreed. If a change of the Working Hours is necessary in the interest of the customer NextiraOne will endeavour to comply with this request. Any additional costs arising thereof will be charged separately.

## **3 SERVICE CONTENTS**

Installation services comprise connection and putting into operation of the delivered equipment according to the agreed service-level. Unless otherwise agreed they in particular do not include wire laying and cabling, pipe and conduit laying, circuit of distribution frames and instruction of third party companies. Additional services shall be agreed in the contract. Installation services also are considered to be provided if the putting into operation is omitted due to missing of necessary interconnection to other systems and equipment which should have been set by the customer.

## **4 PERFORMANCE TERM**

Performance Term, start of installation and completion date shall be agreed in the order form.

In case of non-existence of pre-conditions for installation or in case of other delays beyond NextiraOne's control the terms and fixed dates shall be extended adequately, taking into account that the extension may exceed the duration of the delay.

## **5 PRICES**

5.1 Lump Sum

Installation will be provided for a lump sum if the agreed price covers the fee for the complete scope of services.

The lump sum contains:

- the fee for the spent and agreed working hours as well as for travel time,

- all extra pay for installation and difficult working conditions,

- all travel expenses (transportation costs and costs of room and board).

Additional work beyond NextiraOne's control resp. provided by separate agreement will be charged separately.

5.2 Installation on a time and material basis

For services not provided under a lump sum the installation rates per hour and applicable surcharge and/or deployment lump sum of NextiraOne will be charged. Installation material will be charged according to material spent.

Services on customer's interest resp. for separate agreement exceeding normal working hours will be charged separately as overtime, night hours, Sunday and public holiday hours.

5.3 Services charged separately in any case:

- Additional services - see Article 5.1 und 5.2.

- Extraordinary services - see Article 6.

- Additional services provided due to non-existence of pre-conditions for installation or other delays beyond NextiraOne's control.

In case of services pursuant to Article 1.2 resp. 1.3 are to be provided by NextiraOne, additional agreements shall be reached in this regard; unless differing prices are defined the prices and conditions for Extraordinary Services shall be applied.

## **6 EXTRAORDINARY SERVICES**

6.1 Definition

Extraordinary Services shall mean services which exceed the services agreed in the contract, i.e. services which were not foreseeable on basis of the circumstances underlying the calculation and technical documentation, resp. which were demanded by the customer additionally after conclusion of the contract (see Article 11.3, 12.1 – 12.3).

6.2 Rates for Extraordinary Services

The normal working hours, resp. overtime, night hours, Sunday and public holiday rates will be charged (see Article 5.2).

6.3 Installation material

Installation material shall be charged according to material spent.

## **7 STABLE VALUE CLAUSE**

- 7.1 Work  
The installation fee shall be subject to the stable value clause according to Article 7.3 of the Terms and Condition for Services.
- 7.2 Material  
The prices for material are based on the actual costs of NextiraOne and may change accordingly.
- 7.3 Installation-rates and rates for Extraordinary Services are net prices according to the VAT Act. VAT in the statutory amount shall be added to all prices.

## **8 ACCEPTANCE AND PASSING OF RISK**

- 8.1 Tools and equipment  
The risk for equipment and assets located at the installation site is borne by the customer; when in doubt about damages occurring during installation of equipment and assets it is assumed that these are incurred during a service provision by NextiraOne. The same shall apply if NextiraOne staff did not use storage opportunities.
- 8.2 Installation services and materials  
The risk concerning installation services and installed materials shall basically pass to the customer at time of commissioning. In case of customers default of acceptance the risk shall pass to the customer at 24:00 of the day on which commissioning should have taken place.
- 8.3 Commissioning  
Upon notification of completion the acceptance by the customer has to take place immediately, but not later than within 8 days, otherwise the commissioning shall be deemed to have taken place at time of completion. In case of services provided on a time and material basis the services rendered shall be confirmed to the contractor by counter-signature of the time sheet at least weekly and shall be considered as accepted therewith. This confirmation shall take place at the latest the working day following the completion of the services.  
If the customer detects substantial deficiencies at the acceptance test he is entitled to cancel the commissioning test and to call on NextiraOne in writing to remedy the defect. After removal of the defects the commissioning shall take place anew. In case of insignificant defects commissioning shall be performed irrespective of any warranty provisions.

## **9 ACCOUNTING**

NextiraOne is entitled to invoice for partial service delivery according to the progress of provision. From these partial invoices the respective installation services or the respective Extraordinary Services rendered shall be apparent.  
For contracts on basis of lump sums partial invoicing is possible according to a percentage of the actually services rendered.

## **10 PAYMENT TERMS**

All invoices (partial invoices, final invoices) are strictly net payable upon receipt.

## **11 LIMITED WARRANTY**

- 11.1 Scope of Warranty  
NextiraOne warrants appropriate and accurate provision of services. The warranty period shall be twelve (12) months and shall begin on the day of acceptance.
- 11.2 Termination of warranty obligation  
Warranty expires:  
- upon expiration of time,  
- if the customer or a third party undertakes modifications or other operations on any item delivered without explicit consent of NextiraOne,  
- if the customer fails to comply with any operating conditions for the equipment,  
- if damages occur on the equipment beyond NextiraOne's control (e.g. outside influences or force majeure).
- 11.3 Services excluded from warranty  
If on the occasion of remedying a defect NextiraOne detects that this defect is not covered by warranty, services provided resp. services necessary to remedy the defects, will be charged according as Extraordinary Services.

## **12 DELAY AND INTERRUPTION**

- 12.1 Delay in starting installation  
In case of any delay of the start of the installation without NextiraOne's fault NextiraOne is entitled to make use of an adequate extension of the term of performance; in case the delay is in the customer's responsibility NextiraOne is moreover entitled to charge compensation for any additional accrued expenses. If NextiraOne agrees to an abbreviation of the performance term favoured by the customer NextiraOne has the option to charge compensation for any verifiable additional expenses (overtime, increased travel expenses, additional machinery usage etc.) by making an additional or a supplementary offer or by charging the whole contract as service on time and material basis.
- 12.2 Obstruction  
If provision of services is hindered due to any circumstances beyond customers reasonable control (force majeure, obstruction by a third party, delay in procurement of material etc.) NextiraOne is entitled to make use of an adequate extension of the term of performance and is in case of obstruction due to customers responsibility entitled to charge any additional expenses. If NextiraOne agrees to the request of the customer to provide the service until the original fixed date despite the obstruction NextiraOne has the option to charge compensation for any verifiable additional expenses by making an additional or a supplementary offer or by charging the services still to be provided as services on a time and material basis. In the latter case the part of services that have been provided up to the time of occurrence of obstruction shall be charged according to the time elapsed since start of installation in proportion to the complete term of performance. However, NextiraOne shall not be held responsible for any consequences of delay in performance if (in this case) the fixed date is exceeded.
- 12.3 Interruptions  
Interruptions shall be any cases in which installation cannot be performed in one go due to reasons beyond NextiraOne's control; unless such interruption has initially been agreed when fixing the performance date. In case of interruption NextiraOne shall resume work within 14 days upon notification of ending of the interruption. Agreed performance terms shall extend by the time between the beginning of interruption and resumption of work. NextiraOne is moreover entitled to charge compensation for any additional accrued expenses. If NextiraOne agrees to shorten the performance terms as aforesaid at customer's request the provisions concerning obstruction shall apply analogously.

## **13 LIABILITY**

- 13.1 Outside the scope of the Product Liability Act NextiraOne shall be liable only if the damage in question is proved to be due to intentional acts or acts of gross negligence, within the limits of statutory provisions. NextiraOne shall not be liable for damage due to acts of ordinary negligence nor for consequential damages or damages for pure economic loss, loss of profits, loss of savings or interest or damage resulting from third-party claims against the customer.
- 13.2 NextiraOne shall not be liable for damages in case of non-compliance with instructions for assembly, commissioning and operation (such as are contained in user guides) or non-compliance with regulatory approval requirements.

## **14 JURISDICTION**

- 14.1 The validity, construction and performance of and any disputes arising out of or in connection with this contract shall be governed by the substantive laws of Austria (and excluding choice-of-law rules). The Parties exclude the application of the United Nations Convention on Contracts for the International Sale of Goods (Vienna, 1980) if and to the extent otherwise applicable.
- 14.2 Any dispute arising under this contract shall be submitted to the jurisdiction of the competent courts of the 1<sup>st</sup> district in Vienna, Austria.