

# Proximus NXT IT

## General Terms & Conditions of Purchase

### 1. Definitions

**“Affiliate”** any legal entity in relation to the Customer, any subsidiary or holding company and any subsidiary of that holding company. A company is a subsidiary of another company, its holding company, if that other company, directly or indirectly, holds a majority of the voting rights in it or is a member of it and has the right to appoint or remove the majority of its board of directors.

**“Customer”** shall mean the legal entity ordering the Deliverable indicated in the Purchase Order.

**“Supplier”** shall mean the person or legal entity to which the Purchase Orders is issued.

**“Deliverables”** shall mean all products, services, and performance of work covered by the Purchase Orders.

**“Purchase Orders”** Customer’s Purchase Orders to which these General Purchase Terms apply.

**“Agreement”** shall mean the agreement between Customer and the Supplier consisting of the Purchase Orders, the General Purchase Terms and any other document specified in the Purchase Orders.

### 2. Scope

Unless expressly agreed otherwise by the parties, all purchases or leases of Deliverables by the Customer shall be governed by these General Terms and Conditions and the other provisions of the Agreement, to the exclusion of any other provisions, including any terms and conditions of the Supplier.

Any term or condition on an invoice, correspondence or any other document of the Supplier that provides otherwise shall be considered null and void and shall be unenforceable towards the Customer.

The Parties acknowledge that in execution of the back-to-back principle, each of the Parties will execute its obligations in a professional manner according to the highest market standards. This implies, among other that the Partner will:

- execute, in good faith, its obligation in a timely manner
- act in order to minimize the prejudice of the other party
- remedy any default at its full expense
- support any costs associated to the replacement of the sub-contractor by the Prime contractor in case of persistent default
- accept compensation and netting of the said prejudice with any open amount between the Parties.

The Customer enters into the Agreement on its own behalf and on behalf of and for the benefit of each of its Affiliates. Except where provided otherwise, expressly or by implication, references to the Customer in the Agreement are to the Customer and each of its Affiliates.

### 3. Quality and standards

Supplier shall perform the Agreement in a timely and professional manner with due skill and care in accordance with the state of the art and all applicable industry practices and standards and engaging competent staff and representatives having the expertise required for their assignment.

In addition to the specific requirements set out in the Purchase Orders, all Deliverables shall meet normal industry standards, are made of suitable materials and are free of design, construction, material and assembly faults.



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The Products are accompanied with manuals including the instructions in English, Dutch, and French according to the legal requirements.

The Supplier warrants that the Products are manufactured without child labour efforts. Upon Customer request, the Supplier will supply immediately a "No Child Labour"-certificate, according to article 1 of the International Convention of the Rights of the Child stated by the United Nations.

### 4. Compliance with law

The Supplier undertakes to execute the Agreement in compliance with the applicable laws and regulations, including fiscal, social security, health and safety and environmental, import and export requirements. During the execution of the Agreement, the Supplier shall be responsible for the observance and enforcement of all current laws and regulations and undertake all actions necessary to ensure that its subcontractors, agents or employees comply with the applicable laws and regulations. The Supplier shall compensate Customer for all fines, penalties and sanctions resulting from any non-observance of the applicable laws or regulations.

More in particular the Deliverables delivered by the Supplier shall comply with: (i) the European Directive 2002/96/EG of 27 January 2003 on waste electrical and electronic equipment (WEEE) and (ii) the Directive 2002/95/EC on the restriction of the use of certain hazardous substances in electrical and electronic equipment or the applicable national laws, regulations and administrative provisions transposing the European Directives (ROHS). The Supplier warrants that the Deliverables delivered are CE-marked and conform to all safety and environmental requirements as they are defined in the European Directive (93/68/EEC). The Supplier warrants that at the time of delivery the Products are accompanied with a certificate of origin as required by the European Regulation (EEG) nr 2913/92.

The Supplier shall comply with the Limosa regulation as specified on [www.limosa.be](http://www.limosa.be) (Royal Decree of 20.03.2007). Before starting performance of the Agreement, the Supplier shall provide Customer with a copy of a valid Limosa declaration certificate (general certificate with an overview of all the persons declared). The Supplier shall provide Customer with a copy of the Limosa declaration certificate of each person concerned before involving these persons in the performance of the Agreement. The Supplier shall ensure that Customer possesses at all times a copy of an up-to-date and valid Limosa certificate for every declaration. Upon Customer request the persons involved in the execution of the Agreement shall produce a valid, up to date Limosa certificate and identification document. All costs resulting from non-compliance of these rules and any other legal requirements shall be fully borne by the Supplier.

### 5. Order procedure

The Purchase Order shall bind Customer upon Supplier's confirmation of the Purchase Orders by signing it for approval within 8 days from the date of the Purchase Order ("Order Confirmation"). In case of default, Customer has the right to cancel the Purchase Order without any compensation for the Supplier.

The content of the Purchase Order shall not be amended without prior written approval of Customer. Cancellation charges for a Purchase Order for customized Deliverables, after receipt by Customer of an Order Confirmation, shall not exceed 5% of the total value of the cancelled portion of the Purchase Order.

### 6. Packaging

Supplier shall pack the Products sufficiently to prevent them from being damaged, irrespective of the means of transportation. Any damage incurred to the Products caused by unsuitable packaging shall be chargeable to the Supplier. This applies also to purchases ex-works.

The Supplier will mention clear and visible, production date and storage life on each single article unit as required by any law or regulation.



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Pursuant to the European Directive 94/62/EC and the regional cooperation agreement of 30 May 1996 on the prevention and management of packaging waste, the Supplier shall provide Customer with all the information and fill in the necessary documents.

The Supplier will use EURO-pallets only for the delivery of Products.

### 7. Delivery

The Purchase Order shall set out the requested delivery date. The Supplier shall confirm the requested delivery date in the Order Confirmation (“Agreed Delivery Date”). The Supplier shall deliver the Deliverables on the Agreed Delivery Date. The Supplier will notify Customer immediately in writing if he is unable or expects to be unable to execute the Agreement or to perform the Purchase Order on the Agreed Delivery Date. In that case, Customer will be entitled either to cancel the whole or any portion of the Purchase Order without compensation or agree with Supplier on a new delivery date (Newly Agreed Delivery Date). If the Supplier does not respect the Agreed Delivery Date, the Newly Agreed Delivery Date or in case of non-delivery or partial delivery, Supplier will reimburse Customer for any additional cost incurred. In case of late delivery, Customer may claim ipso jure 2% of the total Purchase Order value per 7 days delay in delivery, with a maximum of 25% of the total Purchase Order value.

The Deliverables are delivered DDP (Delivery Duty Paid – incoterm 2020) to: H.Essers - Proximus NXT IT Warehouse - Hal 4, Rue de Liège 70, B-6180 Courcelles, Belgium during office hours from 08.00 AM until 16.00 PM CET or to any other address agreed in the Purchase Order after which a POD (Proof Of Delivery) mentioning (1) the manufacturer part numbers, (2) the serial numbers and (3) the name and signature of the person receiving the deliverables will need to be sent to “proc.ict@proximus.com”.

Upon the delivery of Deliverables in Courcelles, the Supplier shall provide Customer with a delivery note mentioning the Purchase Order number, article number, the Suppliers’ reference, product description and quantity and number of parcels. Transport documents and delivery notes shall be attached to the outer packaging of the delivery. Upon Customer’ request, the Supplier shall provide all other relevant documents, including but not limited to the certificates set out in clause 3 and 4. Customer or any party authorized by Customer shall take receipt of the delivery and sign a delivery note.

### 8. Acceptance

Without prejudice to any other right of Customer to reject the Deliverables, Customer shall accept or reject the Deliverables within fourteen (14) days of their delivery Product and/or completion of the performance of the Services. The Acceptance shall not cover the hidden defects Deliverables.

If Customer finds the Deliverables not in conformity with the terms and conditions of the Purchase Order, Customer shall be entitled either to cancel the Purchase Order and the Supplier shall take back the Deliverables delivered or request the Supplier to replace the Deliverables delivered with Deliverables that comply with the requirements of the Purchase Order within an agreed period. In these cases, Customer shall be entitled to withhold payment. The making of payment shall not prejudice Customer’ right of rejection.

The return of Suppliers’ Deliverables not accepted by Customer shall be at the Supplier’s risk and cost.

### 9. Transfer of risk

Risks for loss and damage to the Deliverables shall pass to Customer upon delivery. In case of return of the non-accepted Deliverables the risk for loss and damage shall shift to the Supplier from the date of notice of non-acceptance.

### 10. Transfer of Title and license



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Title to the Deliverables shall pass to the Customer upon acceptance of the Purchase Order by the Supplier as specified in clause 5, without prejudice to the Customer's right to reject the Deliverables in accordance with clause 8.

The Supplier authorizes Customer to purchase, license and/or resell the Deliverables to any third party. If the Deliverables include software, firmware, documentation or any other title to property, the Supplier shall grant to the Customer a non-exclusive, royalty-free, worldwide license under all intellectual

property rights to use, reproduce, modify, communicate to the public (distribute, market, rent, sublicense and/or exploit) such Deliverables and/or any part or component thereof, separately and/or in any combination, on its own or through a third party, for its internal use and for any activities deemed necessary by the Customer within the scope of its business, including to create and/or supply products and/or services to third parties, in any way whatsoever and on any and all supports, at its sole discretion and for all the period over which such Deliverables are protected by an intellectual property right. The license under this Article shall be effective upon acceptance of the Purchase Order by the Supplier as specified under clause 5.

### 11. Intellectual property rights

The Supplier shall defend and hold harmless Customer against any claim for infringement of intellectual or industrial property rights related to the Deliverables delivered. The Supplier shall indemnify from any damages, loss, expenses or liabilities which Customer and/or its customers may incur or become liable for such infringement. Customer shall give to Supplier prompt notice of the claim threatened or brought against Customer and/or its customers. Supplier shall take all necessary action to settle or conduct any litigation that may ensue there from.

### 12. Return delivered Products

If requested by Customer, the Supplier will take back standard Products which have been replaced by newer versions or models, up to a maximum of 10% of the total value of Purchase Order during the previous 12 months.

### 13. Warranty and indemnity

The Supplier shall within 15 days following notification of Customer repair or replace all Products or re-execute all Services, without additional cost to Customer, which are or become defective or aren't fit to be used for the purpose they are intended for, during the Period of 12 months from delivery, or if appropriate putting into service, whichever is the latest (Warranty Period). The warranty applies to defects occurring under proper usage or due to faulty design, Supplier erroneous instructions as to use or faulty materials or workmanship, or any other breach of Suppliers warranties, expressed or implied, statutory or otherwise (Warranty). Repair and replacements are subject to the Warranty for a period of 12 months as from the date of delivery. The Warranty also include the obligation of the Supplier to remedy at no charge to Customer any defect in Services that are not due to Customer and which appear within a period of 12 months after completion of the Services. If the Supplier fails to comply with its warranty obligations, Customer has the right to have executed the repairs or replacements by a third party at Supplier's expense or return the goods to the Supplier at Supplier's expense and reimbursement by the Supplier of the price paid.

The Supplier warrants that the expertise and capacity required for the repair and replacement will be available during the warranty period. The Supplier will allow Customer to inspect his quality assurance system on request.

The Supplier warrants the continued availability of spare parts at market prices for ten years after the last delivery.



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The Supplier warrants the free and undisturbed use of the Deliverables inclusive the delivered software. Supplier shall keep Customer harmless against any claim of third parties relating to these Deliverables.

The Supplier will indemnify Customer against all losses, liabilities, claims and costs resulting from loss of or damage to any property, or injury to or the death of any person that may arise out of any act or omission or negligence of the Supplier in connection with the Agreement.

### 14. Prices

Supplier's price quotation is valid for Customer during a minimum period of 90 days from receipt by Customer.

Unless otherwise agreed, the Price is quoted in EURO.

The price is fixed and not subject to any revision. The price is the complete consideration for the execution of the Agreement, inclusive the use of intellectual property rights. Value Added Tax, where applicable, shall be shown separately.

Price reductions apply immediately. The price will be at all times Supplier's lowest prevailing market price.

The Supplier bears the cost of quotations, samples, trial shipments and specimen materials.

### 15. Invoicing and payment

The Supplier shall send the Invoices to: [APC.PDF.TEL.invoices@proximus.com](mailto:APC.PDF.TEL.invoices@proximus.com).

A valid invoice includes Customer and Supplier's VAT registration number, the Purchase Order number, description of the Deliverables delivered, invoice date, name and address of Supplier, product code, serial numbers, total number of delivered units, total price payable, unit price, carrier name and bill of lading number or any other information reasonably requested by Customer. Customer shall pay valid invoice only. Invoices lacking aforementioned information or sent to a different address shall not be paid. Customer does not accept partial invoices.

Period. Invoices shall be paid within sixty (60) Calendar Days following the invoice date provided that the invoice complies with the present general terms and conditions and subject to acceptance of the Deliverables by the Customer in accordance with the acceptance procedure. The Customer reserves the right to refuse any invoice and/or to postpone payment until the aforementioned conditions have been fulfilled. If Customer makes payments to the Supplier before the Agreement has been performed, the Supplier will furnish adequate security, such as bank guarantee, if requested by Customer.

In the event Customer exceeds a due date or withholds payments on grounds of alleged inaccuracy in the content of the invoice or unsatisfactory delivery or non-acceptance of the Deliverables, the Supplier will be entitled, solely through intervention of the court, to suspend or terminate performance of the Agreement.

If Customer fails to pay the undisputed and due invoices, Supplier serves notice upon Customer by registered letter. If Customer fails to remedy within thirty (30) days after receipt of the dunning notice, Supplier shall be entitled to charge interest at the current statutory interest rate, as from the receipt of such notice of default.

The Law of August 2nd, 2002 on combating late payment in commercial transactions will not apply.

### 16. Term and Termination



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The Agreement shall be effective as from the Order Confirmation by Supplier, unless provided otherwise by the Parties. In the event (i) the Supplier has not remedied a material breach within 15 days from the written notice thereof; (ii) the Supplier becomes insolvent or bankrupt or makes an arrangement with its creditors or the administrative receiver or an administrator has been appointed, or commences a liquidations procedure, Customer is entitled to terminate the whole or any portion of the Agreement, without compensation for the Supplier, by notice to the Supplier.

### 17. Applicable law and Jurisdiction

The Agreement shall be governed by Belgian law. In the event of a dispute the Brussels courts have the exclusive jurisdiction.

### 18. Proximus Group Rules

Documents on Supplier Portal [www.proximus.com/en/suppliers](http://www.proximus.com/en/suppliers) that are accepted by Supplier:

- a. Supplier Code of Conduct
- b. Invoicing charter
- c. Proximus Circular Manifesto
- d. Health & Safety
- e. Delivery Instructions

### 19. Miscellaneous

**Notices.** To be valid, all notices under the Agreement shall be in writing and sent by registered mail, courier, fax or email or delivered in person at the invoice address set forth in the Purchase Order, unless otherwise provided for in the Agreement.

**Amendment.** Save as expressly provided otherwise in the Agreement, the Agreement may be amended or modified only by written agreement of the Supplier and Customer.

**Discontinuance of Products.** The Supplier shall provide at least twelve (12) months written notice to Customer prior to the discontinuance of any Product. Such notice shall include, as a minimum, the full reference of the Product concerned, the Deliverables in substitution and the last date for Customer to issue Purchase Order for such Deliverables.

**Set off.** Customer shall be entitled at any time to set off any liability of the Supplier against any liability of Customer towards the Supplier.

**Headings.** Section headings are included for convenience or reference only and are not intended to define or limit the scope of any provision of this Agreement.

**Waiver.** No delay, failure or waiver of either Party's exercise or partial exercise of any right or remedy under this Agreement shall operate to limit, impair, preclude, cancel, waive or otherwise affect such right or remedy.

**Cumulative remedies.** Except where expressly stated otherwise in this Agreement, the remedies under this Agreement shall be cumulative and are not exclusive. Election or non-election of one remedy shall not preclude pursuit of other remedies available under this Agreement or at law or in equity.



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**Severability.** The provisions of the Agreement are severable. Should one or more such provisions be found by a court of competent jurisdiction to be invalid, unlawful or unenforceable under applicable law, that shall not affect the validity, legality or enforceability of the remaining portion of such provision(s) or any other provision of this Agreement, and the provision(s) found invalid, unlawful or unenforceable shall be construed to the maximum extent possible in a manner consistent with applicable law to reflect, as nearly as possible, the original intentions of the parties.

**Successors.** This Agreement shall be binding upon, and inure to the benefit of, the Parties and their respective successors and assigns.

Company Name: \_\_\_\_\_

Name: \_\_\_\_\_

Function: \_\_\_\_\_

Date: \_\_\_\_\_

Signature: \_\_\_\_\_