

# GENERAL TERMS AND CONDITIONS

## GENERAL INFORMATION

### § 1 SCOPE

- (1) These Terms and Conditions apply to software license agreements, license agreements, , contracts of sale of other products and for the purchase of services between NXTGN Music Technology GmbH (in the following referred to as NXTGN) and the customer, both with respect to consumers and entrepreneurs alike. Regulations that apply exclusively to consumers or entrepreneurs are explicitly identified as such.
- (2) In accordance with Section 13 BGB (German Civil Code), a consumer is any natural person who concludes a legal transaction for purposes that predominantly are outside his trade, business or profession.
- (3) In accordance with Section 14 BGB, an entrepreneur is a natural person or legal entity or a legal partnership which, in concluding a legal transaction, exercises his or its trade, business or profession.

### § 2 WARRANTY AND LIABILITY

- (1) Statutory warranty rights apply to all goods in the shop of NXTGN provided that the goods are used in accordance with the article description. Except in cases where damages result from intent or gross negligence, or in the event of injury to life, body, or health, or in cases of breach of guarantees or material contract obligations all as per subsection (2), the warranty period is limited to 12 months.
- (2) With regard to limitation of liability, the following applies:
  - a) In the case of intent or gross negligence and lack of a guaranteed property, the vendor has unlimited liability for any damage arising therefrom.
  - b) In the case of slight negligence, the vendor has unlimited liability in the event of injury to life, body or health. Should the vendor be in default in its performance due to slight negligence, should performance become impossible or should the vendor breach a material obligation, liability for the resultant property damage and financial loss is limited to the foreseeable damage typical to the contract. A material obligation is an obligation whose fulfilment makes the proper execution of the contract possible, the breach of which endangers the purpose of the contract and on whose compliance the contracting partner may regularly rely.
  - c) The liability for all other damages is excluded, whereby liability under product liability law remains unaffected.
  - d) The objection of contributory negligence remains available to NXTGN. The customer is however responsible for regularly backing up data. In the event of loss of data caused by NXTGN, NXTGN is therefore liable only for the cost of copying the data for the backup copies which are to be made by the customer and for the restoration of the data that would have been lost even with a standard

data backup procedure, as this is regularly foreseeable and typical damage when it comes to the proper backing up of data.

- e) If the customer alters the software or product supplied or has it altered by third parties, warranty claims are waived unless the customer can prove that the actual error is not due to the alteration.
- (3) NXTGN can withdraw from the contract if NXTGN should be unable to deliver the goods ordered at no fault of its own due to the supplier not fulfilling its contractual obligations. The customer shall be informed immediately in this case.
- (4) If a guarantee is referred to in the item description, the statutory warranty rights of the customer towards NXTGN remain unaffected. The content of the guarantee and all the relevant information necessary for the enforcement of the guarantee can be found in the respective item description.

### **§ 3 CONTRACT AND ORDERING STAGES**

- (1) The presentation of the products in each online shop does not constitute any legally binding offer. To order goods from the NXTGN online shop, the customer must put the goods in the "cart" (by clicking on the corresponding button). The cart represents a list of all goods that the customer has clicked on to select for the purpose of ordering. Goods can be changed according to quantity or removed from the cart.
- (2) If the cart contains all the goods desired in the right quantities, the order process can be continued by pressing the appropriate button. The customer will be asked for his billing and delivery address, the desired payment and, where appropriate, the shipping method. Before the final order, all details of the order are displayed again in a summary and can be corrected by the customer.
- (3) The order is binding for the customer as soon as the customer has entered the payment details and has clicked on the order button or has sent his order against payment by invoice, wire transfer or cheque. The customer receives a confirmation in the case of the successful transmission of the order by email, through which the offer is accepted. With this email, confirmation of the purchase contract has been concluded. This confirmation can be printed out.

### **§ 4 SAVING THE ORDER, LANGUAGES AND ABILITY TO ACCESS THE T&CS**

- (1) The order, including the customer's personal details, is saved electronically by NXTGN. The customer can view the order data after ordering if a login area has been set up.
- (2) The customer shall find the General Terms and Conditions of NXTGN in the confirmation email sent to the address provided by the customer. The T&Cs can also be viewed in the shop and printed out by the customer at any time.
- (3) Languages in which the T&Cs can be accessed are available to the customer for conclusion of the contract.

### **§ 5 PRICES, PAYMENT CONDITIONS, RESERVATION OF OWNERSHIP AND RIGHT OF RETENTION**

- (1) All prices are stated on the order page as total prices including, if applicable, shipping costs and taxes and are quoted in the currency chosen by the customer himself or which are

displayed on the website and which he can access. Upon the conclusion of the contract with consumers, the statutory value-added tax is included in the price or is accounted for as such.

- (2) Upon the conclusion of the software provision contract, purchase agreement or service contract, the customer shall owe a payment, license fee or a purchase price. If payment by credit card is offered, this takes place subject to a positive credit check.
- (3) When paying by credit card, the customer agrees that NXTGN will settle the order with the relevant credit card company. The chargeback fees arising from chargeback from credit institutions, which can be attributed to the fault of the consumer, shall be borne by the customer.
- (4) Cash payments are due upon receipt of the goods. Invoices are payable within the time stated on the invoice after receipt of the invoice. It is presumed that the invoice will have been received by the customer within a period of 3 days after sending by post unless the customer proves later receipt.
- (5) The purchase item or service delivered or provided in any way remains the property of NXTGN until full payment has been made.
- (6) A lien can only be exercised by the customer if the claims result from the same contractual relationship.
- (7) The customer shall only have the right of offset if his counterclaims are legally established or recognized by NXTGN in writing.
- (8) Credit card payments will be settled by PAYONE GmbH.  
Fraunhoferstraße 2-4  
24118 Kiel, Germany  
Managing Directors: Carl Frederic Zitscher, Jan Kanieß  
Registered in the German Commercial Register  
Register Court: Amtsgericht Kiel HRB  
Register No.: 6107  
Ust-IdNr.: DE295958974  
Part of Sparkassen Finanzgruppe

## § 6 DELIVERY AND DELIVERY TIME

NXTGN does not deliver to countries or persons if such a delivery violates applicable export laws or other legal regulations.

- (1) Unless otherwise stated on the item page, all products are immediately deliverable and all services immediately performable. Where software has been provided, delivery is limited to the object code (executable form) with the documentation, installation and usage instructions provided by the manufacturer, where applicable. If the delivery is provided via download, no physical data carriers or documentation or manufacturer's instructions in paper form are supplied and are also not owed.
- (2) For deliveries of goods and the rendering of services within Germany, the maximum delivery time is 14 days
- (3) The period begins
  - a) upon receipt of payment by NXTGN for payments by wire transfer and cheque.
  - b) for all other payment methods, upon the conclusion of a contract

- c) for downloads, only after successful payment and not before the receipt by NXTGN of required additional information to be provided by the customer for licensing.
- (4) For deliveries to other countries, paragraphs 2, and 3 apply, with the proviso that the order is delivered within 28 days.
- (5) Events of force majeure, measures in the context of labour disputes and other unforeseen circumstances, including non-delivery by the suppliers, for which NXTGN is not at fault, entitles NXTGN to extend delivery deadlines for the duration of the disability accordingly. This shall however be for a maximum period of two weeks from the order being placed. Delays only occur only after a reasonable grace period has been set. Should the delay last longer, the customer may set a reasonable time limit for performance and withdraw from the contract following fruitless expiry. After six weeks of the order, NXTGN is likewise entitled to withdraw from the contract. Claims for damages are excluded unless the delay is caused by NXTGN.
- (6) No shipping costs are invoiced by NXTGN when software is downloaded. The customer has to set up the remote communications link to the NXTGN server (Internet connection) required for the download and bear the resulting costs of use of the distance communications link as part of the access.

## **§ 7 RIGHT OF USE IN THE ACQUISITION OF SOFTWARE**

- (1) The software provided by NXTGN is licensed subject to the application and recognition by the customer of the user license and terms of use of the software manufacturer (generally named "End User License Agreement"). To read the End User License Agreement please click here: <https://www.virtualguitarist.com/legal/en/end-user-license-agreement/>
- (2) The customer is entitled to use the licensed software only in accordance with the Terms of End User Licence Agreement.

## **§ 8 DATA PROTECTION**

NXTGN complies with the relevant data protection laws and handles information and personal data in accordance with the provisions of the NXTGN Privacy Policy which can be accessed here: <https://www.virtualguitarist.com/legal/en/privacy-policy/>

## **§ 9 SEVERABILITY CLAUSE AND CHOICE OF LAW**

- (1) The parties agree to the application of German law under exclusion of the UN Sales Convention.
- (2) Should individual provisions of these Terms and Conditions or the contract concluded between the parties be wholly or partially invalid, the validity of the remaining provisions shall remain unaffected.

# INFORMATION ON THE RIGHT OF REVOCATION FOR CONSUMERS

## §10 RIGHT OF REVOCATION

### (1) Right Of Revocation

If You are a Consumer You have the right to revoke your contractual acceptance in writing within fourteen (14) days without stating any reasons. The fourteen-day revocation period commences upon the day you or a designated third party have received the good. In order to exercise your right of revocation you must inform us with an explicit declaration (e.g., via letter, telefax, e-mail) of your decision to revoke this contract. Please send this to:

NXTGN Music Technology GmbH  
An der Reeperbahn 6  
28217 Bremen  
Germany  
Tel: +49 421 89 80 97 - 0  
Fax: +49 421 89 80 97 - 09  
Email: [support@virtualguitarist.com](mailto:support@virtualguitarist.com)

You can use the template withdrawal form under <https://www.virtualguitarist.com/legal/en/withdrawal-form/> for this purpose, which is not mandatory, however.

To avoid exceeding the end of the revocation period it will suffice if you send this notice or return the merchandise before the fourteen-day revocation period has expired.

### Legal consequences of revocation

Should you revoke this contract, we must immediately refund you all payments that we have received from you, including delivery costs (with the exception of the additional costs arising from the fact that you have chosen a type of delivery other than the cheapest standard delivery offered by us), at the latest within fourteen days from the date on which we receive the communication concerning your withdrawal of this contract. For this refund, we use the same means of payment that you used for the initial transaction, unless explicitly agreed otherwise with you; in no case will you be charged fees for this refund.

### (2) Premature expiration of the right of revocation

NXTGN is very eager, including in the case of digital content, for the customer to essentially have the possibility to return digital content if they are not satisfied and to withdraw from the contract. The legislator, however, provides that the right of withdrawal shall expire if the entrepreneur has started the execution of the contract, after

- a) the consumer has expressly agreed that the entrepreneur begins the execution of the contract before the end of the withdrawal period, and
- b) has confirmed his knowledge that he loses his right of withdrawal by his agreement regarding the start of execution of the contract.

## **SPECIAL TERMS AND CONDITIONS FOR CONTRACTIONS IN ACCORDANCE WITH SECTION 14 BGB**

### **§11 LIMITATION OF THE WARRANTY PERIOD, ASSIGNMENT OF THE WARRANTY RIGHTS OF THE MANUFACTURER TOWARDS THE CUSTOMER**

The warranty period is limited to 12 months. For damages and expenses arising from intent, gross negligence, warranty, malice and in the case of injury to life, body and health and for claims under the Product Liability Act, the statutory limitation periods apply.

### **§12 INVESTIGATION DUTY AND NOTIFICATION DUTY**

The customer - if he is an entrepreneur - must examine the goods or service immediately upon receipt and immediately register a complaint should a deficiency be noticed. Section 377 HGB (German Commercial Code) applies.

### **§13 VALIDITY OF T&CS, PLACE OF FULFILMENT AND COURT OF JURISDICTION**

- (1) The terms and conditions of the customer only apply with the explicit and written agreement of NXTGN.
- (2) Bremen is agreed as the place of fulfilment and court of jurisdiction. NXTGN may however also select the general court of jurisdiction of the customer.