

GENERAL TERMS AND CONDITIONS OF AV STUMPFL GMBH

1. Scope:

1.1. These General Terms shall govern all supplies, services as well as any preliminary legal agreements (e.g. quotations) and shall form the subject matter of the contract. These General Terms shall also apply to all future transactions, including any subsequent or spare part deliveries as well as future supplementing or follow-up orders, even if they are not explicitly referred to. They are an integral part of cost estimates, offers and invoices. Any departures from the terms and conditions mentioned in 1.1. above shall be valid only if expressly agreed in writing.

1.2. Any departures or conflicts with the terms and conditions or any other restrictions shall not form the subject matter of the contract.

2. Conclusion of contract:

2.1. Our offers shall be deemed offers without engagement. Particulars appearing in catalogs, folders, on the Internet, etc. as well as any other statements concerning our products, services and projects shall only be binding if they are expressly referred to in the confirmation of the order. Technical information in data sheets, brochures, and the like are reference values customary in the industry.

2.2. An order is deemed a binding offer. We reserve the right to accept the offer either within 2 weeks by submitting a confirmation of order or by supplying the ordered goods to the Buyer within this period. After the end of this period, the offer is regarded as rejected. An automatic confirmation of receipt does not constitute a binding acceptance of the order. Cost estimates are non-binding and chargeable, unless it is expressly agreed that they are free of charge. For the preparation of cost estimates, the customer shall pay the agreed, but nonetheless, reasonable fees. If an order is placed for all services included in the cost estimate, the fee paid for the cost estimate is set off against the relevant invoice.

2.3. Any subsequent amendments or additions to the contract shall be subject to written confirmation.

2.4. Tender documents and project documentation must not be duplicated nor made available to third parties without our permission. They may be claimed back at any time and shall be returned immediately - even without being demanded to do so - if the order is placed elsewhere.

2.5. The Buyer shall be obliged to maintain secrecy with respect to all tender, project and product information he has become acquainted with.

3. Prices:

3.1. Unless the order confirmation contains any other information, our prices shall be ex works or ex warehouse, respectively. The Buyer shall be liable for any and all charges, fees and or other duties levied.

3.2. The Buyer shall be responsible for shipment of the goods. In case of shipment being organized by us, the transport costs are to be paid directly to the carrier. Carriage paid delivery shall only be possible upon separate agreement. The deliveries shall be packaged as usual in the trade. Any special packaging material required for special shipment (for seaworthy packaging or airfreight, for example) must be specified in the order and the corresponding costs be borne by the Buyer.

3.3. We reserve the right to increase the prices for contracts with a delivery time of more than 4 months in accordance with the cost increases incurred due to collective agreements or increases in material costs. In the case of the increase amounting to more than 5 % of the agreed price, the Buyer shall have the right to cancel the contract within 3 days of receipt of the order confirmation.

3.4. For shipment to EU countries a net invoice shall only be made out for Buyers holding a VAT number. The VAT number must be disclosed at the latest by the time the order confirmation is returned.

3.5. The Buyer shall be liable to pay the costs for any cost estimates; the same applies to the expenditure incurred for drawing up repair offers or for inspections.

4. Conditions of payment, offset:

4.1. Unless otherwise agreed, our invoices must be paid immediately after receipt in the specified currency without the Buyer being entitled to any cash discount deduction. Payment shall be made without any discount; any bank expenses or expenses for bank transfers shall be borne by the Buyer. Payments can only be made with a discharging effect into the accounts indicated on the commercial documents used or to persons who have a written power of collection. In the event of partial deliveries, partial invoices are always permissible.

4.2. The Buyer shall not be entitled to withhold or offset payment on the grounds of any warranty claims or any other claims whatsoever. A right of offsetting only exists if the counter-claims have been finally adjudicated by a court or recognized by us.

4.3. In the case of default of payment, we shall be entitled to charge interest for default of presently 5 % p.a. on top of the interest rate in accordance with Sect. 1333 Para. 2 ABGB (Austrian civil code); this shall also apply to consumers in terms of the Law on Consumer Protection. Any costs incurred in connection with the request for payment, in particular dunning costs in the amount of € 40.00 per reminder, collection charges and attorney's fee, either in the course of pre-judicial or judicial proceedings or any other costs incurred by a credit institution, a debt collection agency or a lawyer due to this, shall be charged to the party in default.

4.4. If the Buyer is in default of payment, we shall be entitled to postpone fulfilment of our obligations until the outstanding payment has been made. If it has been agreed that the invoice amount can be paid in instalments, the Buyer is in default of payment if only one installment has not been paid, and in this case, the entire outstanding residual amount is due and payable immediately.

4.5. The Buyer and any other business partners shall renounce the right of retention they may be entitled to in accordance with the regulations of the ABGB (civil code) or the UGB (commercial code).

5. Warranty and liability:

5.1. We accept responsibility for delivery in an appropriate and professional manner. In case of a service we accept responsibility for providing the service in an appropriate and professional manner.

5.2. If an article is manufactured or a service rendered on the basis of design data, design drawings, models or other specifications supplied by Buyer, our warranty shall be restricted to compliance with the agreed specifications.

5.3. No warranty or damage claims shall arise from the specifications in catalogues, brochures, on the Internet, etc. with regard to our products, services and projects or from any other written or oral statements unless they have been included in the contract in writing.

5.4. Warranty claims must be laid down in writing immediately after acceptance of the delivery, giving a detailed account of the defects, otherwise they shall be forfeited. The warranty period for transactions with corporate customers is 12 months, for transactions with consumers it is two years. It commences upon collection of the goods ex works.

5.5. Our warranty obligation shall not extend to any defects due to assembly and installation work not undertaken by us, inadequate equipment, or due to non-compliance with installation requirements and operating conditions, overloading of parts in excess of the design values stipulated by us, negligent or faulty handling or the use of inappropriate materials. The same applies to defects attributable to material supplied by the Buyer. We shall not be liable for damage due to acts of third parties, atmospheric discharge, excess voltage or chemical influences. The warranty does not cover the replacement of parts subject to natural wear and tear. We do not accept warranty for the sale of used goods.

5.6. In the case of a defect covered by the warranty we shall have the option to repair the defective good or grant a price reduction. If the customer is an entrepreneur, he shall bear any expenses incurred in connection with rectifying defects (e.g. expenses for assembly or disassembly, transport, travel and site-to-quarters time); this shall also apply if the customer has given a warranty to a consumer for goods he purchased from us. For warranty work on the Buyer's premises the Buyer shall make available free of charge any assistance and devices (e.g. lifting platforms) that may be required. Replaced parts shall become our property.

5.7. The Buyer is responsible for transport and collection of the goods ex works; we therefore do not accept any liability for any damage by or during transport.

5.8. Within the scope of our warranty, our warranty obligation shall be restricted to intentional acts and acts of gross negligence and we shall only pay monetary compensation up to the current value. We shall not be liable for any claims whatsoever going beyond that, in particular for any damage like loss of earnings, loss of profits, recourse claims by third parties, etc. We shall not be liable for damage due to slight negligence. Damage claims of corporate customers are to be brought before a court within six months from discovery of the damage; otherwise they are forfeited.

5.9. In case of warranty and damage claims being asserted, the Buyer undertakes to have the defective good immediately inspected by us.

5.10. The warranty obligation shall lapse immediately, if, without prior written consent by us, the Buyer or any other third party not expressly authorized by us undertakes modifications, settings, repairs or any other manipulations at the supplied goods. Any possible claims for damages shall also lapse immediately, if the Buyer does not comply with the conditions for usage, assembly or starting up or conditions or regulations imposed by the authorities.

5.11. The provisions of paragraphs 5.1 to 5.10. shall apply mutatis mutandis in the case of a liability for other legal grounds.

6. Collection of goods:

6.1. The goods shall be collected ex works during our normal opening hours. Any other deviating agreements require confirmation in writing.

6.2. Enjoyment and risk shall pass to the Buyer at the time the goods are collected ex works, independent of whether shipment was agreed.

6.3. The Buyer undertakes to immediately check the goods including packaging and to give immediate notice in writing on the delivery note of any defects that have become apparent, otherwise such claims shall be forfeited. When a defect is not immediately apparent although a thorough inspection was carried out, notice about the presence of a defect shall be given in writing within 7 days of delivery, otherwise warranty is excluded.

7. Default in delivery and performance:

7.1. We shall not be held responsible for any delay in delivery due to force majeure or any other reasons beyond our control. In case of force majeure, we shall be entitled to extend the period of delivery for the duration of such circumstances or to withdraw wholly or partly from the contract. Force majeure incidents are deemed any circumstances which considerably impair delivery (performance) or make it entirely impossible (e.g. war, traffic blockages, raw material shortages, breakdown, strike, floods, natural disasters, etc.).

7.2. Claims for damage for non-delivery or late delivery shall be excluded for whatsoever reason.

8. Presentation through the Buyer:

8.1. In the event of a Buyer assuming the role of a reseller, the Buyer undertakes to present the goods in an agreeable, suitable and customer-oriented way and to draw the customer's attention to the fact that the goods are produced and developed by our company.

8.2. The Buyer takes note of the fact that every packaging unit includes written information and pictures of our products.

8.3. The goods supplied shall always be marketed as our registered trademarks and contain reference to our company. The Buyer undertakes to mention our registered trademarks in advertising for our products; the registered trademarks must not be modified. This limited usage shall not support a license claim or any other claims by the Buyer with regard to our trademarks; any other usage requires our written approval.

9. Return of goods:

9.1. Goods and objects can only be returned by the Buyer in agreement and after consultation with us. The costs for returning the return goods shall be borne by the Buyer.

9.2. Appropriate wrapping must be ensured when returning the goods; the goods must be returned in their original packing.

9.3. A credit note will only be issued if the returned objects and goods are unused and in their original condition.

9.4. Any risk in connection with the return of the goods, in particular as regards damage and loss of the goods and objects, shall be borne by the Buyer.

10. Industrial property right and copyright:

10.1. The Buyer shall indemnify us and hold us harmless against any claims for any infringement of industrial property rights raised against us if we manufacture an article pursuant to any design data or other specifications made available to us by the Buyer.

11. Termination of a contract

11.1. We shall be entitled to terminate the contract if performance is further delayed for reasons within the responsibility of the Buyer although an additional period of grace of 14 days was granted, if doubts have arisen as to the Buyer's creditworthiness or willingness to pay, if the Buyer although demanded to do so does not make an advance payment or if bankruptcy proceedings are instituted against the Buyer or an application for bankruptcy proceedings is not granted for insufficiency of assets.

11.2. For the reasons given above termination of the contract shall also be possible in respect of any outstanding part of the delivery or service contracted for. Without prejudice to our claim for damages, any open accounts in respect of deliveries made or services rendered shall in such a case, be settled by the Buyer.

11.3. Any claims against us due to a justified termination of the contract on our part shall also be excluded.

11.4. Termination of the contract shall be via registered letter or fax to the last known address of the Buyer.

12. Retention of title:

12.1. We retain the title to the goods supplied or resale profit until all payments resulting from the contracts have been made.

12.2. This retention of title shall not become extinct due to resale, transfer, processing or combination with other goods in any form or at any location whatsoever. In such a case, the Buyer undertakes to make a corresponding entry in his books and, at any rate on his invoice so as to inform third parties about our retention of title.

12.3. In the case of the Buyer behaving in violation of the contract we shall be entitled to take back the object of the contract. Taking back the good subject to retention of title constitutes a termination of the contract.

12.4. Any extraordinary provisions, such as pledging, chattel mortgage, assignments, etc. shall be inadmissible.

12.5. The Buyer shall immediately inform both us about access of third parties to the goods and receivables subject to retention of title as and the third party about our reserved property.

12.6. To secure our purchase claim, the Buyer herewith assigns his claims out of a possible resale of reserved goods to us, even if they are processed, transformed or combined with other goods. Upon request the Buyer has to notify the assigned claim and the debtor thereof to us, and to make all information and material required for his debt collection available free of charge and to notify the assignment to the third-party debtor.

13. Right of cancellation

13.1. In respect of contracts concluded in the context of distance selling, a consumer has the right to cancel the contract without giving a reason within 14 days, calculated from acceptance of the goods (in the event of partial deliveries, from acceptance of the last goods delivery) by the consumer or by the third party designated by the consumer, the third party not being a carrier. In order to safeguard the consumer's right of cancellation, consumers shall notify their decision by way of an unequivocal declaration (e.g. sent by mail, fax or email) to us, AV Stumpfl GmbH, Mitterweg 46, 4702 Wallern, phone number: +43 (7249) 42811-0, fax number: +43 (7249) 42811-4, email: Info@AVstumpfl.com, prior to the end of the cancellation period. The sample cancellation form ([link](#)) can also be used for this purpose. Use of this form is not mandatory.

13.2. In the event of cancellation of this contract by the consumer, we have to reimburse all payments received by us, including delivery costs (except for additional costs resulting from the consumer having chosen a type of delivery other than the most economical standard delivery offered by us), without undue delay and, at the latest, within 14 days from the date of receipt of your notice of cancellation of this contract. For repayment, we will use the same means of payment that the consumer used for the original transaction, unless otherwise explicitly agreed upon. In no event will we charge any fees for repayment.

We are entitled to refuse repayment, until we have received the returned goods or until the consumer has proven that the goods have been returned, whichever occurs earlier. The consumer has to return or hand over the goods to us immediately and, in any case, within 14 days from the date on which it notified us of cancellation of this contract. This deadline is deemed to be adhered to if the consumer dispatches the goods prior to the end of this 14 day period. The consumer shall bear the direct costs for returning the goods. The consumer shall be liable for a loss of value of the goods if this loss of value is due to a treatment of the goods, which was not necessary in order to check of the condition, quality and functionality of the goods.

If the consumer requests that provision of the services shall commence during the cancellation period, consumers have to pay us a reasonable amount that corresponds to the ratio of services already provided by the date on which we were notified of the exercise of the right of cancellation to the total scope of services provided in the contract.

13.3. However, a consumer has no right of cancellation pursuant to Section 18 Long Distance Sales Act [FAGG] in the event of contracts for goods that are produced in accordance with customer specifications or are clearly tailor-made to the personal requirements of the customer as well as in the event of contracts for sound or video recordings or computer software that is delivered in a sealed package, where the seal was removed after delivery.

14. General

14.1. Should individual provisions of the contract or of these provisions be invalid the validity of the other provisions shall not be affected. The invalid provision shall be replaced by a valid one, which comes as close to the target goal as possible.

15. Place of performance, jurisdiction and applicable law:

15.1. The place of performance is our domicile. Any litigation - either direct or indirect - arising under the contract shall fall within the jurisdiction of the competent court in Wels. It is herewith agreed that the contract shall be subject to Austrian law. Furthermore, the application of the international jurisdiction standards and the collision standards, as well as the UN Convention on Contracts shall be expressly renounced.

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