

# GENERAL TERMS AND CONDITIONS OF AV STUMPFLE 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 a binding offer. We can accept this offer at our discretion within 2 weeks by sending an order confirmation or by sending the ordered goods to the customer within this period. If we send neither an order confirmation nor the ordered goods, the offer shall be deemed rejected after expiry of this period. An automatic confirmation of receipt is not a binding acceptance of the order.

2.3. 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. The expenses for the preparation of repair offers or for assessments will also be invoiced.

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

2.5. 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.

2.6. The customer shall be obliged to maintain secrecy with respect to all tender, project and product information he has become acquainted with. Even if these are not expressly marked as secret or confidential.

## 3. Prices:

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

3.2. Unless expressly agreed otherwise between the contracting parties (e.g. lump sum price agreements) our services shall be invoiced on an hourly basis. Additional expenses, waiting times, etc. will be invoiced additionally.

3.3. The transport is in the responsibility of the customer. If this is organized by us at the customer's request, transport costs are to be paid directly by the customer to the carrier. Freight-free delivery only against separate agreement. 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 customer.

3.4. 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 customer shall have the right to cancel the contract within 3 days of receipt of the order confirmation or our information about the increased price.

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

3.6. If the customer makes use of services in order to install a software update on his system these will be invoiced separately.

3.7. The expenses of all kinds incurred in the execution of the order, such as travel expenses, overnight accommodation, work time supplements, etc. shall be charged separately according to actual expenditure. The recording of working hours shall be carried out by us and made available to the customer for each accounting period.

## 4. Conditions of payment, offset:

4.1. Unless special terms of payment have been agreed in writing our invoices are due for payment immediately upon receipt in the specified currency and the customer is not entitled to a discount. Payment shall be made without any discount; any bank expenses or expenses for bank transfers shall be borne by the customer. 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 customer 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 in payment we are entitled to charge consumers within the meaning of the KSchG (Austrian consumer protection law) with interest on arrears in accordance with § 1000 paragraph 1 ABGB (Austrian civil code) and with entrepreneurs in accordance with § 456 UGB (Austrian commercial code). 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 customer 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 customer is in default of payment if only one instalment has not been paid, and in this case, the entire outstanding residual amount is due and payable immediately.

4.5. The customer or our other business partners waive any right of retention to which they may be entitled in accordance with the provisions of the ABGB (Austrian civil code) or the UGB (Austrian commercial code).

## 5. Warranty and liability:

5.1. We shall be liable for proper and professional delivery and provisions of an agreed service in accordance with the following conditions. We guarantee the customers that the services provided by us have the expressly stipulated and usually presumed characteristics and correspond to the current state of the technology. The warranty obligation exists only for such defects which occur in compliance with the operating conditions specified or expressly agreed by us and in the case of proper use. In addition, the warranty obligation requires that the systems be operated within the specifications that we have pre-approved or released.

5.2. No guarantee shall be given that the agreed performance is economically or technically usable for the purpose of the customer, unless otherwise agreed in writing.

5.3. Corrections and additions which prove necessary until the agreed service is handed over due to organizational and programmatic defects - for which we are responsible - shall be carried out by us free of charge.

5.4. If the goods or services have been manufactured or rendered on the basis of design data or specifications of the customer our liability shall extend only to the agreed execution.

5.5. No warranty claims or claims for damages can be derived from information in catalogues, brochures, on the internet or similar about our products, services and projects or from other written or oral statements that have not been included in writing in the contract.

5.6. Warranty claims must be - in case of other loss - notified in writing immediately after acceptance of the delivery or acceptance of the service, with a comprehensible and precise description of the defects. If the customer is an entrepreneur within the meaning of the UGB (Austrian commercial code) and fails to notify the defects, the legal consequences of § 377 paragraph 2 UGB shall apply. In the case of hidden defect which is not immediately recognizable the notice of defect must also be made in writing immediately after it is recognizable.

5.7. Warranty claims shall only exist in the case of defects that can be reproduced by us and if the defects are of a nature that disrupts the function of the goods.

5.8. If there is no formal acceptance by the customer our performance shall be deemed accepted one month after performance.

5.9. The warranty period for business transaction is 12 months, for consumer transactions two years. The customer waives his right of recourse according to § 933b ABGB (Austrian civil code) and the applicability of § 924 ABGB is excluded by mutual agreement.

5.10. Excluded from the warranty are defects resulting from arrangements and assembly not effected by us, insufficient equipment, non-compliance with installation requirements and conditions of use, overloading of parts beyond the load or performance specified by us, negligent or incorrect handling and use of unsuitable operating materials. This shall also apply to such defects which are attributable to the material provided by the customer. We shall not be liable for damage caused by actions of third parties, atmospheric discharges, overvoltage or chemical processes. The warranty does not apply to the replacement of parts which are subject to natural wear and tear. We accept no guarantee for the sale of used items.

5.11. If third-party software/foreign hardware is used, if our product interacts with the third-party system, in the event of short-term malfunctions and failures, improper operation by the customer or third parties, or unauthorized modifications to the system by the customer or third-parties, there shall be no warranty or compensation obligations on our part.

5.12. If there is a defect for which we are responsible we shall be entitled at our discretion to improve or reduce the price. If the customer is an entrepreneur, he shall bear all costs incurred in connection with remedying the defect (e.g. lifting platforms) must be provided by the customer free of charge for work at the customers premises. Replaced equipment shall become our property.

5.13. In order to be able to guarantee a professional removal of defects the customer undertakes to support us in the removal of defects by providing all necessary documents and information. Furthermore, the customer must grant us access to the system within normal working hours (weekdays from 8:00 to 12:00 or 13:00 to 16:30). The customer shall take all precautions necessary for the examination of the defect and the remedy of the defect and shall cooperate to the extent necessary.

5.14. Costs for assistance, error diagnosis as well as error and fault rectification for which the customer is responsible, as well as other corrections, changes and additions shall be carried out by us against payment. This also applies to the rectification of defects if program changes, additions or other interventions have been made by the customer himself or by a third party. Repairs carried out by the customer on his own authority shall result in forfeiture of the warranty claim.

5.15. If a service already rendered by us is supplemented or modified by us, warranty claims shall only arise for this supplement or modification. If we fulfil our warranty obligations, the original warranty period shall not be extended.

5.16. As transport is the responsibility of the customer and the goods are to be collected ex works, we shall not be liable for damage during or caused by transport.

5.17. We shall only be liable for damages demonstrably caused by us and this only in the case of intent and gross negligence. Liability for slight negligence is excluded in any case. This shall also apply mutatis mutandis to damages caused by third parties called in by us. In the case of culpable personal injury, we shall be liable without limitation.

5.18. For damages - with the exception of personal injury - caused by intentional or gross negligent conduct on our part, the liability is limited to 25% of the value of the goods or to a maximum liability sum of EUR 50.000.00. However, the liability sum may never exceed the amount of the actual damage incurred. If several damages a single damage event. The limitation of liability applies per case of damage.

5.19. Liability for indirect damage and consequential damage - such as loss of profit; costs associated with business interruption, loss of interest, savings not made, financial loss, loss of data or claims by third parties - is expressly excluded.

5.20. Claims for damages by business customers must be asserted in court within six months of becoming aware of the damage, otherwise they shall expire.

5.21. If the customer demands the assignment of a specific subcontractor/third party, we shall not be liable for damages caused by such third parties.

5.22. Any further claims for damages by the customer other than those specified in the General Terms and Conditions - irrespective of the legal basis - are excluded.

5.23. The customer shall be obliged to allow us to inspect the defective goods immediately when asserting warranty claims or claims for damages.

5.24. The warranty expires immediately if the customer himself or a third party not authorized by us makes changes, adjustments, repairs or other manipulations to the delivered items without our written consent. Any claim for damages shall also expire immediately if conditions for use, assembly, installation or repair are not met or commissioning or official requirements or regulations are not complied with by the customer.

5.25. The provisions 5.1. to 5.10. shall also apply mutatis mutandis to liability on 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 customer at the time the goods are collected ex works, independent of whether shipment was agreed.

6.3. The customer 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 customer:**

8.1. In the event of a customer assuming the role of a reseller, the customer 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 customer 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 customer 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 customer 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 customer in agreement and after consultation with us. The costs for returning the return goods shall be borne by the customer. Appropriate wrapping must be ensured when returning the goods; the goods must be returned in their original packing.

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

9.3. 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 customer.

## **10. Industrial property right and copyright:**

10.1. If goods or services are manufactured or rendered by us on the basis of design documents or specifications of the customer, the customer shall indemnify us completely and comprehensively against any infringements of industrial property rights.

10.2. We or our licensors are entitled to all copyrights to the agreed services (programs, documentation, etc.). The customer is granted the non-exclusive right, after payment of the agreed fee, to use the software exclusively for his own purposes, only for the hardware specified in the contract and to the extent of the acquired number of licenses for simultaneous use on several workstations or end devices. The present contract merely acquires a work usage permit. The customer is not entitled to make changes. No rights over the use specified in the contract are acquired through the cooperation of the customer in the production of the software.

10.3. Should it be necessary to disclose the interfaces in order to create the interoperability of the software, the Purchaser shall apply to the Contractor this against reimbursement of costs. If the contractor does not comply with this requirement and decompilation is carried out in accordance with copyright law, the results are to be used exclusively for the creation of interoperability.

## **11. Termination of a contract**

11.1. We shall be entitled to withdraw from the contract if our performance is further delayed for reasons for which the customer is responsible despite the setting of a grace period of 14 days, if we have concerns regarding the customer's solvency or willingness to pay and the customer does not make a down payment despite being requested to do so and if insolvency proceedings are opened against the customer's assets or the opening of such proceedings is rejected for lack of assets.

11.2. Withdrawal can also only be declared with regard to a still open part of a delivery or service for the above reasons. Irrespective of any claim for damages to which we are entitled, in such a case the customers must pay for the services already rendered and the goods delivered.

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 customer.

11.5. The customer has no right to cancel the order. It is our sole decision to agree to any cancellation request by the customer. A cancellation request shall be declared to us in writing (by registered letter or fax). In the event of our consent to the cancellation of the order, the customer shall pay a minimum cancellation fee of 15% of the net order value, unless we have agreed otherwise in writing.

## **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 customer 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 customer 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 customer 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 customer 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 customer 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 the case of a consumer transaction the consumer has the right to withdraw from distance contracts within 14 days of the date on which the consumer or a third parties other than the carrier designated by the consumer takes over the goods (in case of partial deliveries, the date in which the last goods were taken over) without giving reasons. In order to protect the consumer's right of withdrawal, the consumer must make his decision to withdraw from the contract by means of a clear declaration (e.g. sent by post, fax or e-mail) to us, AV Stumpfl GmbH, Mitterweg 46, 4702 Wallern, telephone: +43 (7249) 42811-0, fax: + 43 (7249) 42811-4, e-mail: [info@AVstumpfl.com](mailto:info@AVstumpfl.com), before the expiry of the revocation period. The following sample revocation form (<http://avstumpfl.com/SampleRevocationForm>) may also be used for this purpose. The use of this form is not mandatory.

13.2. In the event of cancellation of this contract by the consumer, we shall repay all payments we have received, including delivery costs (with the exception of additional costs resulting from the consumer choosing a different type of delivery than the cheapest standard delivery offered by us), without undue delay and at the latest within 14 days of the day on which we received notifications of cancellation of the contract by the consumer. For this repayment, we use the same means of payment that the consumer used in the original transaction, unless expressly agreed otherwise. In no case will we charge for this refund.

13.3 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.

13.4 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.

13.5 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 any of these provisions be invalid, the remaining provisions shall remain valid in their entirety. The ineffective provisions shall be replaced by such provisions or these terms and conditions shall be interpreted in such a way that they come as close as possible to the objectives of the ineffective provisions.

## **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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