

# GENERAL TERMS AND CONDITIONS OF AV STUMPFL GMBH

## 1. Scope of application:

- 1.1. These General Terms and Conditions ("GTC") apply to all our deliveries, services and pre-contractual legal relationships (e.g. submission of offers) and form part of the contract. These General Terms and Conditions shall also apply to all future transactions, including any subsequent or replacement deliveries and future supplementary or follow-up orders, even if no express reference is made to them. They form an integral part of cost estimates, quotations and invoices. Deviations from this shall only be binding if we have acknowledged them in writing.
- 1.2. Conflicting or deviating terms and conditions or other restrictions shall not become part of the contract.
- 1.3. For software (alone or in combination with other deliveries/services), the respective end user licence agreement ("EULA") also applies. For online orders, e.g. via our "PIXERA platform", the respective supplementary terms and conditions for online orders or online platforms also apply

## 2. Conclusion of the contract:

- 2.1. Our offers are non-binding. Information about our products, services and projects provided in catalogues, brochures, on the Internet or similar media, as well as other written or verbal statements, shall only be binding if expressly stated in the order confirmation. Technical specifications in data sheets, brochures, software documentation, etc. are standard industry guidelines.
- 2.2. An order constitutes a binding offer. We may 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 do not send either an order confirmation or the ordered goods, the offer shall be deemed rejected after this period has expired. An automatic confirmation of receipt does not constitute binding acceptance of the order.
- 2.3. Cost estimates are non-binding and subject to a fee, unless expressly agreed otherwise. The customer shall pay the agreed, in any case reasonable, fee for the preparation of cost estimates. Similarly, the cost of preparing repair estimates or assessments will be invoiced. If an order is placed for all services included in the cost estimate, the fee for the cost estimate will be credited to the invoice in question.
- 2.4. Our offer and project documents, documentation, etc. may not be reproduced or made available to third parties without our consent. They may be reclaimed by us at any time and must be returned immediately - even without request - if the order is placed elsewhere.
- 2.5. The customer must maintain confidentiality regarding all offer, project and product information that becomes known to them, even if this information is not expressly marked as "secret", "confidential" or similar.

## 3. Prices:

- 3.1. Unless otherwise stated in the order confirmation, our prices are ex works or ex warehouse, or for online transactions (e.g. via the PIXERA platform) as stated on the platform. Should any fees, taxes or other charges be payable, these shall be borne by the customer in any case.
- 3.2. Unless expressly agreed otherwise between the contracting parties (e.g. flat-rate price agreements), our services shall be invoiced on an hourly basis. Additional expenses, waiting times, etc. will be invoiced separately.
- 3.3. Transportation is the responsibility of the customer. If this is organised by us at the request of the customer, transport costs are to be paid directly by the customer to the carrier. Freight-free delivery is only available by separate agreement. We deliver in standard packaging. Special packaging required for special transports (e.g. seaworthy packaging or air freight) must be specified when placing the order and shall be borne by the customer.
- 3.4. For contracts with an agreed delivery time of more than 4 months, we reserve the right to increase prices in line with cost increases resulting from collective agreements or material price increases. If the increase exceeds 5% of the agreed price, the customer reserves the right to cancel the contract within 3 days of receiving the order confirmation or our notification of the increased price.
- 3.5. For shipments to EU countries, net invoicing will only be used if a VAT ID number is provided. The VAT ID must be provided when returning the order confirmation at the latest.
- 3.6. Should the customer make use of services to install a software update on their system, these will be invoiced separately.
- 3.7. All expenses incurred in the realisation of the order, such as travel expenses,

accommodation fees, working time surcharges, etc., shall be invoiced separately according to actual expenditure. We record working hours and provide this information to the customer for each billing period.

## 4. Terms of payment, offsetting:

- 4.1. Unless special terms 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 deduction; any bank and/or transfer charges shall be borne by the customer. Payments can only be made with debt-discharging effect to the bank accounts specified on the business documents used or to persons with written collection authorisation. In the case of partial deliveries, partial invoices are always permissible. For online transactions, the payment methods offered on the respective platforms apply.
- 4.2. The customer is not entitled to withhold payments due to warranty claims or other claims of any kind whatsoever, or to offset them against counterclaims. A right of set-off shall only exist insofar as counterclaims have been established by a court of law or acknowledged by us.
- 4.3. In the event of late payment, we reserve the right to charge default interest consumers as defined in the Consumer Protection Act (KSchG) in accordance with s. 1000 (1) Austrian Civil Code (ABGB) and enterprises in accordance with s. 456 Austrian Commercial Code (UGB). All costs incurred in the recovery of the debt, in particular reminder fees of € 40.00 per reminder, collection and legal fees, whether judicial or pre-litigation, or any costs incurred by a credit or collection agency or a lawyer, shall be borne by the defaulting party.
- 4.4. If the customer is in default with payment, we may postpone the fulfilment of our obligations until the outstanding payment has been made. If payment of the invoice amount in instalments is agreed, arrears shall apply if payment of an instalment is late and, in the event of default, the entire outstanding balance shall become due for payment immediately.
- 4.5. The customer or our other business partners waive any right of retention to which they may be entitled under the provisions of the ABGB or UGB.

## 5. Warranty and liability:

- 5.1. We are liable for the proper and professional delivery of goods and provision of agreed services in accordance with the following terms and conditions. We guarantee to the customer that the services we provide have the expressly stipulated and usually assumed characteristics and correspond to the current state of the art. The warranty obligation only applies to defects that occur if the operating conditions specified or expressly agreed by us are met and when used for the intended purpose. Furthermore, the warranty obligation requires that the systems are operated within the specifications provided or approved by us.
- 5.2. Unless otherwise agreed in writing, no guarantee is given that the agreed service will be economically or technically viable for the customer's purposes. It is strongly recommended that a functional test be carried out before actual use.
- 5.3. Corrections and additions that prove necessary prior to delivery of the agreed service due to organisational and technical defects for which we are responsible will be carried out by us free of charge.
- 5.4. If the goods or services were manufactured or provided on the basis of design specifications or requirements provided by the customer, our liability shall extend only to the agreed realisation.
- 5.5. No warranty or compensation claims can be derived from information in catalogues, brochures, on the internet or similar sources about our products, services and projects, nor from other written or verbal statements that have not been included in the contract in writing.
- 5.6. Warranty claims must be reported in writing immediately after acceptance of the delivery or service, otherwise they will be forfeited, with a comprehensible and accurate description of the defects. If the purchaser is an enterprise as defined in the Austrian Commercial Code (UGB) and fails to report the defects, the legal consequences of s. 377 (2) UGB shall apply. In the event of a hidden defect that is not immediately apparent, the complaint must also be made in writing immediately after it becomes apparent.
- 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 impairs functionality.
- 5.8. If no formal acceptance by the customer takes place, our service shall be deemed to have been accepted one month after provision.

- 5.9. The warranty period for business transactions is 12 months, and two years for consumer transactions. The purchaser waives any recourse claims pursuant to Section 933b of the Austrian Civil Code (ABGB) and the applicability of s. 924 ABGB is mutually excluded.
- 5.10. The warranty does not cover defects resulting from installation and assembly not performed by us, inadequate equipment, failure to perform regular software updates, failure to observe 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 also applies to defects attributable to the material (hardware or software) provided by the customer. We are not liable for damage caused by third-party actions, atmospheric discharges, power surges or chemical processes. The warranty does not cover the replacement of parts that are subject to natural wear and tear. We do not provide any warranty for the sale of used items.
- 5.11. We shall not be liable for any warranty or damages in the event of the use of third-party software/hardware, interaction between our product and third-party systems, short-term malfunctions and failures, improper operation by the customer or third parties, or unauthorised modifications to the system by the customer or third parties.
- 5.12. If there is a defect for which we are responsible, we reserve the right, at our discretion, to remedy the defect or reduce the price. If the customer is an enterprise, they shall bear all costs incurred in connection with the rectification of defects (e.g. for installation or removal, transport, travel and travel time); this also applies if they have provided a warranty to a consumer for goods purchased from us. All necessary personnel and equipment (e.g. lifting platforms) for work at the customer's premises shall be provided free of charge by the customer. Replaced devices shall become our property.
- 5.13. In order to ensure that defects are remedied correctly, the customer shall support us in remedying the defects by providing us with all necessary documents and information. Furthermore, the customer must grant us access to the system during normal working hours (weekdays from 8:00 a.m. to 12:00 noon and 1:00 p.m. to 4:30 p.m.). The customer shall take all necessary measures to investigate the defect and remedy it, and shall cooperate to the extent necessary.
- 5.14. We shall charge the costs of assistance, fault diagnosis, as well as for troubleshooting and correcting malfunctions for which the customer is responsible, as well as for other corrections, changes, and additions. This shall also apply to the rectification of defects if programme changes, additions or other interventions have been made by the customer himself or by third parties. Repairs carried out by the customer without authorisation will result in the forfeiture of the warranty claim.
- 5.15. If a service already provided by us is supplemented or modified by us, warranty claims shall only arise for this supplement or modification. In the event that we fulfil our warranty obligations, the original warranty period shall not be extended.
- 5.16. As transport is the responsibility of the purchaser and the goods are to be collected ex works, we are not liable for damage during or caused by transport.
- 5.17. We shall only be liable for damages for which we are demonstrably at fault, and only in cases of malice and gross negligence. Liability for slight negligence is excluded in all cases. This shall also apply *mutatis mutandis* to damage caused by third parties engaged by us. We shall be liable without limit for personal injury, for which we are responsible.
- 5.18. For damages - excluding personal injury - caused by malice or grossly negligent behaviour on our part, the liability amount is limited to 25% of the value of the goods or a maximum liability amount of EUR 50,000.00. However, the liability amount may never exceed the amount of the damage actually incurred. If several instances of damage can be attributed to the same damaging event, all instances of damage shall be considered as a single damaging event. The liability limit shall apply per claim.
- 5.19. Liability for indirect damage and consequential damage - such as lost profits; costs associated with business interruption, loss of interest, lost savings, financial losses, data loss or third-party claims - 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 lapse.
- 5.21. If the customer requests the engagement of a specific subcontractor / third party, we shall not be liable for any damage caused by this third party.
- 5.22. Claims for damages by the customer beyond those specified in these General Terms and Conditions - regardless of the legal basis - are excluded.
- 5.23. When asserting warranty or compensation claims, the customer is must permit us to inspect the defective goods without delay.
- 5.24. The warranty shall expire immediately if the customer itself or a third party not authorised by us makes changes, adjustments, repairs or other modifications to the delivered items without our written consent. Similarly, any claim for damages shall lapse immediately if the customer fails to comply with the conditions for use, assembly or commissioning or with official requirements or regulations.
- 5.25. Provisions 5.1 to 5.10 shall apply *mutatis mutandis* to liability arising from other legal grounds.
- 6. Collection:**
- 6.1. The goods must be collected from the factory during our respective valid opening hours. Any other agreements that deviate from this must be made in writing.
- 6.2. In any case, the benefits and risks shall pass to the buyer upon dispatch of the goods ex works, regardless of whether delivery has been agreed.
- 6.3. The purchaser shall inspect the goods, including the packaging, immediately upon receipt, and shall report any defects in writing on the delivery note without delay, otherwise all claims will be forfeited. Defects that are not immediately apparent upon careful inspection must be reported to us in writing within 7 days of delivery, otherwise they will be excluded.
- 7. Delivery and service delays:**
- 7.1. We shall not be liable for any delay in delivery resulting from *force majeure* or other causes beyond our control. *Force majeure* shall entitle us to postpone delivery for the duration of the hindrance or to withdraw from the contract in whole or in part. *Force majeure* refers to all circumstances that significantly impede or render impossible the delivery of goods or services (e.g. war, traffic disruptions, raw material shortages, operational disruptions, strikes, flooding, catastrophic weather conditions, etc.).
- 7.2. Claims for damages due to non-delivery or delayed delivery, regardless of the reason, are excluded.
- 8. Presentation by the purchaser:**
- 8.1. If the purchaser acts as a reseller of our products, they shall present the goods in a customer-oriented manner that is appealing and appropriate, and shall refer to the production and development by our company.
- 8.2. The customer acknowledges that we include written information with a pictorial representation of our product in each packaging unit.
- 8.3. The delivered goods must always be distributed under our protected trademarks and with reference to our company. The customer shall always cite our protected trademarks in their own advertising for our products and shall refrain from making any changes to these trademarks. Any licence claims or other claims by the customer to our trademarks are not established through this limited use; any other use is only permitted with our written consent.
- 9. Returns:**
- 9.1. The return of goods and items by the customer is only permitted after consultation with us and with our consent. The costs for the return shipment shall be borne by the customer in any case.
- 9.2. When returning goods, please ensure that they are properly packaged and returned in their original packaging.
- 9.3. We will only issue a credit note if the items and goods are returned in their original condition and unused.
- 9.4. The customer shall bear all risks associated with the return shipment, in particular for damage to or loss of the goods and items.
- 10. Industrial property rights and copyright:**
- 10.1. If we manufacture a product or provide a service on the basis of design documents or specifications provided by the customer, we shall be indemnified and held not liable in full by the customer in the event of any infringements of property rights.
- 10.2. All copyrights to the agreed services (programmes, documentation, etc.) are vested in us or our licensors. **Upon payment of the agreed fee**, the purchaser shall receive the non-exclusive right to use the software **exclusively for their own purposes, only for the hardware specified in the contract and to the extent of the number of licences purchased for simultaneous use on multiple workstations or end devices.** This agreement merely grants a licence to use the work. The customer is not authorised to make any changes. The purchaser's involvement in the production of the software does not confer any rights beyond those specified in the contract.
- 10.3. If disclosure of the interfaces is necessary to ensure the interoperability of the software, the customer shall apply to the contractor for this, subject to reimbursement of costs. If the contractor fails to comply with this requirement and decompilation is carried out in accordance with copyright law, the results may only be used to establish interoperability.

consumer shall be liable for any loss in value of the goods if this loss in value is attributable to handling of the goods that is not necessary for testing their condition, properties and functionality.

#### **11. Withdrawal, cancellation:**

- 11.1. We reserve the right to withdraw from the contract if our performance is further delayed for reasons for which the customer is responsible despite setting a grace period of 14 days, if we have concerns about the customer's solvency or willingness to pay and the customer does not pay a security deposit 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 due to lack of assets.
- 11.2. Withdrawal may also be declared for only part of a delivery or service that is still outstanding for the reasons stated above. Notwithstanding any claim for damages to which we may be entitled, the customer shall pay for the services already rendered and goods already delivered in this case.
- 11.3. Any claims against us arising from a justified withdrawal declared by us are excluded in any case.
- 11.4. Withdrawal must be declared by registered letter to the customer's last known address.
- 11.5. The customer does not have the right to cancel the order. It is solely our decision whether to agree to any cancellation request made by the customer. Any request for cancellation must be made to us in writing (by registered letter). If we agree to cancel the order, the customer shall pay a minimum cancellation fee of 15% of the net order value, unless agreed otherwise in writing.

#### **12. Retention of title:**

- 12.1. We retain title to the delivered goods, delivered software and the proceeds of resale until all payments under the contract have been received.
- 12.2. This retention of title shall not be affected by resale, transfer, processing or installation in any form or at any location whatsoever. In such cases, the customer shall make a corresponding note in its records and, in any event, on its invoice, so that the third party is made aware of our retention of title.
- 12.3. In the event of conduct by the purchaser that is in breach of contract, we reserve the right to take back the purchased item. Reclamation of the reserved item shall constitute a withdrawal from the contract.
- 12.4. Extraordinary dispositions, such as pledges, transfers by way of security, assignments and the like, are not permitted.
- 12.5. The customer must immediately notify us of any access by third parties to the goods and claims subject to our retention of title, and the customer must also inform the third party of our retention of title.
- 12.6. To secure our purchase price claim, the customer shall also assign his claims from any resale of the goods subject to retention of title to us, even if these have been transformed, installed or processed. Upon request, the customer shall notify us of the assigned claim and the debtor, provide us with all information and documents required for the collection of the claim free of charge, and notify the third-party debtor of the assignment.

#### **13. Right of withdrawal**

- 13.1. In the case of a consumer transaction, the consumer has the right to withdraw from distance contracts within 14 days, calculated from the day of receipt of the goods (in the case of partial deliveries, from receipt of the last goods) by the consumer or a third party designated by the consumer who is not the carrier, without giving reasons. In order to exercise their right of withdrawal, consumers must notify us before the expiry of the withdrawal period, at: AV Stumpfl GmbH, Mitterweg 46, 4702 Wallern, telephone: +43 (7249) 42811-0, Email: Info@AVstumpfl.com,. The following withdrawal form [\[Link\]](#) may also be used for this purpose. Use of this form is not mandatory.
- 13.2. If the consumer revokes this contract, we shall reimburse all payments 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), immediately and no later than within 14 days from the day on which we received notification of the consumer's withdrawal from the contract. We will use the same means of payment for this refund as the consumer used for the original transaction, unless expressly agreed otherwise. Under no circumstances will we charge any fees for this repayment.
- 13.3. We may refuse to refund until we have received the goods back or the consumer has provided proof that they have returned the goods, whichever is earlier. The consumer must return or hand over the goods to us immediately and in any case no later than 14 days from the date on which we were notified of the cancellation of this contract. The deadline is met if the consumer sends the goods before the expiry of the 14-day period. The consumer shall bear the direct costs of returning the goods. The

- 13.4. If the consumer has requested that the services should commence during the withdrawal period, consumers shall pay a reasonable amount corresponding to the proportion of the services already provided, up to the point in time at which we are informed of the exercise of the right of withdrawal compared to the total scope of the services provided for in the contract.

- 13.5. However, according to s. 18 FAGG, the consumer does not have a right of withdrawal for contracts for goods that are manufactured according to customer specifications or clearly tailored to the personal needs of the customer, nor for contracts for audio or video recordings or computer software that is delivered in a sealed package, insofar as the seal was removed after delivery.

#### **14. WEEE take-back**

Users of our electrical and electronic equipment (B2B) can return it to us at the end of its service life. We shall then dispose of them properly in accordance with the WEEE Directive (Waste Electrical and Electronic Equipment). To arrange for the return of old equipment, users can contact us at [info@avstumpfl.com](mailto:info@avstumpfl.com).

#### **15. Secrecy/Confidentiality**

- 15.1. The customer shall maintain absolute confidentiality regarding any business and trade secrets disclosed to them in the course of the business relationship, insofar as and for as long as these are not or do not become publicly available. They shall not disclose such business and trade secrets to third parties and shall take all reasonable measures to ensure confidentiality. The use of such business and trade secrets by the customer outside the intended use of the ordered item and after the end of its use is prohibited.
- 15.2. The customer shall impose this confidentiality obligation on all employees, third parties commissioned by him, etc., and shall provide evidence of this at our request in individual cases.
- 15.3. This confidentiality obligation shall remain in force even after termination of the business relationship.
- 15.4. AV Stumpfl will not disclose the customer's personal data to third parties unless this is necessary for the fulfilment of the contract. The personal data and information provided by the customer will be protected with the utmost care against unauthorised access by third parties. AV Stumpfl will take all reasonable measures to ensure the security of personal data. However, the customer is advised that the world wide web is accessible to everyone worldwide and that misuse in particular cannot be ruled out, meaning that unauthorised access to such data and information by third parties cannot be ruled out either.

#### **16. Data protection**

- 16.1. The customer acknowledges that their personal data, including the data of their employees or the customer's customers and business partners, will be processed by us and/or our affiliated companies, namely name, title, address, date of birth, etc., will be processed by us and/or our affiliated companies for the purpose of fulfilling the contract (Art. 6 (1) lit. b) GDPR - conclusion and fulfilment of the contract) or as a result of legitimate interest (Art. 6 (1) lit. f) GDPR), and stored by the controller for the duration of the of guarantee, warranty, limitation and statutory retention periods or, if applicable, until the conclusion of any legal disputes in which the data is required as evidence. The customer guarantees that they have also obtained the consent of their employees, customers and business partners for this use of data and indemnifies and holds us and/or our affiliated companies harmless with regard to any claims. AV Stumpfl GmbH is the responsible person for processing.
- 16.2. Further information on your rights to information, correction, deletion, restriction of processing, data transfer and complaints to the data protection authority can be found in the privacy policy of AV Stumpfl GmbH at [\[Link\]](#) .

#### **17. General information**

- 17.1. Should any of these provisions be invalid, the remaining provisions shall remain valid in full. The invalid provisions shall be replaced by provisions that come as close as possible to the objectives of the invalid 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 invalid provisions.
- 17.2. Subsequent amendments or additions to the contract must be made in writing to be valid.

**18. Place of performance, place of jurisdiction and applicable law:**

18.1. The place of performance is our registered office. For all disputes arising directly or indirectly from this contract, the jurisdiction of the relevant court in Wels is agreed. The application of Austrian law is agreed. Furthermore, the exclusion of international jurisdiction rules and conflict of law rules as well as the UN Convention on Contracts for the International Sale of Goods is expressly agreed.

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