

# GENERAL TERMS OF BUSINESS of AWF Vertriebs GmbH

## I. General

The subject Terms of Business are applicable to all business relationships between our company and our customers and third parties. For relations with suppliers and contractors hired by us only article I., VIII. and IX. shall apply. General Terms of Business of our contractual partners shall not be valid; silence on our part cannot be considered to be consent.

## II. Cost Estimates

1. In case of doubt all our estimates are non-binding cost estimates exclusive of VAT. A cost estimate does not represent a quotation and does not covenant us to carry out the services in question; indicated prices are relative to the actual expense.
2. In case of doubt the cost of an estimate shall be remunerated based on the hourly rates indicated in article III.2.
3. All drafts, plans, calculations and other documents shall also remain the intellectual property of our company where an order has been placed and shall only be utilized or transmitted to third parties with our explicit written consent. In the case of non-compliance we shall be entitled, unless otherwise agreed, to claim a contractual penalty irrespective of fault and not subject to reduction by judgement, to the extent of 10 % of the calculated or agreed gross order amount, however amounting at least to double the costs of the preparation of that cost estimate. We reserve the right to claim damages exceeding such a level or to any further claims.

## III. Quotations, Orders and Prices

1. The quotation prepared by us shall be valid for the customer for a maximum of two weeks from the time of our submission. In case of doubt prices indicated shall be deemed to be net amounts.
2. Unless a flat rate has been explicitly agreed we shall charge according to actual expenses, with material being charged at our usual sales prices including any other cash expenses and services per hour or part thereof.
3. The extension of an order shall also be valid if expressed orally and subsequently accepted by us in writing or by execution of the order. The existing agreement shall be applicable to the extension. The written confirmation of order (and written supplements thereto) shall be determinative of the scope of delivery and service.
4. In case material costs related to the items in question indicated in the agreement increase by more than 3 %, we shall be entitled to adjust prices if and so far as we are not to blame for the increase.
5. As far as obtaining approvals from the authorities is required before executing the order, the customer / purchaser thus explicitly authorizes AWF to inspect such files of the authorities, or the customer / purchaser undertakes to inform AWF in time of any stipulations which might impede the realization of the order. In case such information is not forwarded or not forwarded in time AWF shall be entitled to charge any additional costs arising therefrom to the customer.

## IV. Delivery and Service

1. The delivery and provision of services shall be at the risk and for account of the customer to and at the agreed place of performance. Unless agreed otherwise the place of performance shall be our company domicile. Partial delivery shall be permitted. Making use of subcontractors for partial or also total realization of the order shall be permitted at any point of time.
2. Delivery schedules agreed shall not be deemed to be fixed schedules. The customer shall only be entitled to cancellation due to default after a minimum four-week period of grace notified in writing by means of registered letter. Claims for damages due to default shall be excluded except in the case of gross negligence.
3. The customer shall be obliged to provide on site an adequate (high voltage) power supply and water supply at his own expense and he shall also bear the costs of power and water consumption. Furthermore, the customer shall provide us with appropriate storage and parking areas free of charge. The costs for any utilization of third-party estate shall also be borne by the customer.
4. a) In case the provision of services is delayed due to reasons for which we are not to be held responsible, particularly if advance services by the customer or third parties have not been concluded to the extent agreed, we are exempted for the duration of the impediment from the obligation to provide service without the contractual partner being entitled to withdraw, claim damages or any other claim whatsoever against us.  
b) If the realization of the work is unfulfilled due to reasons for which our customer is held responsible, we shall be entitled, irrespective of the assertion of claims in excess thereof, particularly (article 1168 Civil Code of Austria [ABGB]) to charge the entire material costs, labour costs to date, as well as 30 % of the expected labour costs according to the order.  
c) If the provision of service is not possible in part or in total due to reasons for which neither we nor the customer are held to be responsible, we shall be entitled to charge the material used to date including cash expenses and the work performance already provided.
5. The acceptance of the service by the customer shall be carried out no later than three work-days after the notification of completion. The occurrence of minor defects only shall not entitle the customer to refuse acceptance. If acceptance within this period is not effected the acceptance shall be deemed effected upon the expiry of the third day after the notification of completion.

## V. Warranty

1. Obvious defects which can be detected immediately shall be claimed by the customer immediately, however no later than seven days after acceptance or, in the case where acceptance is refused, according to article IV.5. and hidden defects shall be claimed within the same term after their occurrence in qualified form and in writing indicating the defects in question, failing which all warranty claims and other claims based thereon claimed by the customer shall expire.
2. Minor deviations, particularly regarding the composition of the surface and the hues of the construction are not deemed to be defects within the framework of usual tolerances in commerce and shall not entitle the customer to assert warranty claims. Malfunctions and defects due to imperfect and/or unstable advance services, particularly of power supplies, grids etc. shall be excluded entirely from warranty and/or damage claims. An obligation for us to issue warnings is explicitly excluded. The warranty shall expire completely in case of modifications and/or work on the subject of the purchase by the customer or third parties.
3. In the case of warranty claims we shall have the alternative to eliminate the defect at our discretion either by improvement or replacement. The customer shall only be entitled to convert or reduce the contract price if the defect concerned cannot be eliminated within one month after notification. The improvement may be carried out at a place of our choice. The type of improvement is exclusively incumbent on us.  
Warranty does not apply to:  
a) Any additional costs in connection with correcting defects (e.g. assembly and disassembly, transport of the repaired or new product/s, disposal, travel time, lifting gear, scaffolding). These costs shall be borne by the customer.

- b) Wear and tear parts, such as batteries and starters for lamps with magnetic ballast or components with mechanical wear and tear parts.
- c) Electronic components, products and lamps which are articles traded and sold by AWF.
- d) Settings or parameter settings of systems that change due to wear and tear, fatigue or dirt.
- e) Possibly necessary services such as restarting operations, software replacements and updates thereof.
- f) Additional specifics for LED products:  
Warranty applies exclusively to mortality (failure of single LEDs in relation to the total number of LEDs) exceeding the nominal failure rate (0.2% per 1000 operating hours). With LED modules, a reduction in luminous flux up to 0.6% per 1000 operating hours is normal and consequently not covered by guarantee. Therefore variations in terms of lighting quality compared to the original product may occur in case of additional deliveries.

4. In case of [construction] plans, calculations, authority approvals and similar documents transmitted to us by the customer or by persons commissioned by the customer or operating in any other way for the customer, there is no obligation on our part to check the correctness of the appropriate calculation, preparation and execution thereof, nor are we affected by any obligations to issue warnings in this respect.
5. Unless explicitly charged with obtaining approvals from the authorities required for the work in question exceeding the extent mentioned in article III.5., the legal and official prerequisites of the order in question need not be verified by us in detail and we shall be entitled to assume their fulfilment and compliance.
6. Claims for damages against us shall be excluded explicitly and entirely in the case of slight and/or gross negligence.
7. Whatever the legal reason we shall only be liable for damage covered by our liability insurance; liability for loss of profits, direct or consequential damage or claims by third parties is explicitly excluded. In any case liability for damage caused to the customer while any improvement is being made shall be excluded.

## VI. Terms of payment

1. If not otherwise agreed, our invoices are due for immediate payment without any deduction, after acceptance according to article IV.5. Money orders, cheques and bills of exchange shall only be accepted in settlement of all expenses connected thereto by separate agreement, however, only as a matter of payment. The existence of warranty claims or claims due to non-performance shall not entitle the customer to withhold payments.
2. We are entitled to issue preliminary invoices to the extent of 80 % of the costs agreed or to be expected before execution of service. Furthermore, as from the beginning of the execution we shall be entitled to issue weekly preliminary invoices for services rendered and material used, the extent of such preliminary invoice being, in case of flat rate agreements, at the rate of the expense relative to the overall price, and for the rest in accordance with the effective material costs and hours of direct labour employed. Preliminary invoices shall be due for immediate payment.
3. If a respite was agreed or granted and the payment is delayed, we shall be entitled to charge interest to the extent of 10 % p.a. as well as dunning charges amounting to € 15.00 in each case.
4. Incoming payments are at first assigned against costs incurred for the recovery of outstanding payments (dunning and collection expenses, lawyer's and court fees), thereafter against interest and finally on the outstanding capital.
5. Any offset with possible counterclaims of the customer against claims on our part shall be excluded. Pleading defence due to uncertainty on the part of the customer shall be excluded.
6. If the customer is in default for more than three weeks with a payment that is due we shall be exempted from all obligations whatsoever until the payment/s has been received. If the customer does not make an agreed down payment within 30 days after the contract has been signed or after the payment schedule agreed upon separately, we shall be entitled to rescind the contract with immediate effect. Claims by the customer for damages resulting therefrom shall be excluded explicitly; we shall however be entitled in such a case to claim a contractual penalty irrespective of fault and not subject to reduction by judgement, to the extent of 10 % of the gross order amount agreed.

## VII. Reservation of title

1. We reserve exclusively the title to all goods supplied until complete payment of the agreed price and any other claims.
2. In the case of delayed payment in spite of maturity the customer irrevocably grants us herewith the right, even without withdrawal from the contract, to remove the construction, even if it is attached solidly to the ground or to a building and to reclaim it. We shall only be obliged to redeliver the construction after complete payment of the outstanding claims, as well as of the costs of disassembly, storage and the expected costs of re-assembly.

## VIII. Licence

All intellectual property rights of any kind whatsoever, particularly copyrights, patent rights, trademark rights, etc. shall remain with us or our supplier.

## IX. Miscellaneous terms

1. The customer undertakes to fulfil the relevant legal provisions affecting him in connection with the order in question, particularly provisions under any building law and the rules of the Austrian Construction Work Coordination Act (Bauarbeitenkoordinationsgesetz) and to indemnify and hold us harmless.
2. Modifications and amendments of the agreement in question shall require the written form subject to the provision of article III.3. This shall also be applicable should that article be abandoned. Oral subsidiary agreements have not been made and are deemed cancelled by mutual consent with the conclusion of the contract in question.
3. Stringent statutory provisions have priority over the validity of the subject terms of business. Ineffective legal provisions shall not affect the validity of the rest of the contract. Ineffective legal provisions shall be substituted by agreeing on new, legally effective provisions which are economically as close as possible to the legally ineffective ones.
4. Any controversy of whatever nature arising out of this agreement or on its validity shall be governed exclusively by the court of the city of Salzburg having subject matter jurisdiction. Austrian law shall be exclusively applicable to this contractual relationship without the incorporation of the reference norm of international private law. The application of the United Nations Convention on Contracts for the International Sale of Goods (UN-Kaufrecht) is explicitly excluded.
5. The contractual parties undertake to keep business and operating secrets confidential for an unlimited term. In case of any violation by the customer or persons attributed to him, the customer undertakes to pay a contractual penalty irrespective of fault and not subject to reduction by judgement, in the amount of 20 % of the gross order amount.
6. The rights and obligations resulting from this agreement shall pass to the respective legal successors and the parties undertake to assign rights and obligations resulting from this agreement in a legally effective manner to legal successors.