

Scope of Application, Definition of terms

1. The services and project activity of ADN – Advanced Digital Network Distribution GmbH Austria (hereinafter known as ADN) shall be rendered solely on the basis of the following General Terms and Conditions for Service and Projects.
2. The terms Service and Projects will be used as synonyms, whereby the designation Project shall, as a rule, refer to more than one associated services, that is, will be more complex.
3. These terms and conditions of business shall apply for the services of ADN. If the supply of products or the provision of licences are also associated in connection with the service, the General Purchasing Terms and Conditions of ADN shall apply for these integral components of the contract.
4. These terms and conditions of business alone shall apply to businesses, legal entities established under public law or public law special funds.
5. Amendments or supplements must be made in writing when the contract is signed. In particular the amendment of the requirement for written form must be made in writing.
6. ADN shall not recognise the Customer's terms and conditions of business if they are contrary to or differ from ADN's general terms and conditions of business, unless ADN has expressly agreed to them in writing. ADN's General Terms and Conditions for Service and Projects (hereinafter known as T&Cs Service) shall also apply in those cases in which ADN renders the performance for the Customer without expressing any reservations in the knowledge that the Customer's terms and conditions of business are contrary to, or differ from, his own.

II. Conclusion of the contract

Offers submitted by ADN shall be subject to change without notice, unless the offer has been designated in writing as being binding. A legal commitment shall only be established if a contract has been signed by both Parties or if ADN confirms an order in writing, and in addition to this, if ADN begins to render a service in accordance with a contract or if the Customer takes delivery of the goods supplied.

III. The Manufacturer's contractual terms shall also apply as a supplement to these T&Cs

1. The Manufacturer's contractual terms and terms of use shall apply accordingly in addition to ADN's contractual terms and conditions. These have extensive terms of use (also known as including licensing terms and conditions, general terms and conditions of business or similar) associated with its copyright for the products. The Customer shall undertake to take these terms of use into account not only in his relationship with ADN and the Manufacturer. As a rule these terms and conditions shall be passed over to the Customer together with the product. At the Customer's request the respective terms of use of the Manufacturer shall be provided by ADN.
2. If the terms contradict the terms and conditions of ADN, the terms and conditions of ADN shall prevail over the Manufacturer's terms.
3. The Customer shall take the Manufacturer's copyrights and patent rights into account and shall refrain from every act which could affect these rights adversely.

IV. Subject-matter of the Contract

1. ADN shall render the performance described in detail in the contract as a service. Success shall only be owed in those cases in which this has been expressly specified in the contract.
2. The Customer has to provide the necessary workstations and the necessary workstation set-up (Space for a PC, software etc.). Provided that the requirements are not specifically shown in the contract, the Customer shall have to agree them with ADN at the preparatory stage. Reference is made to the other duties of the Customer to co-operate with ADN in accordance with these terms and conditions of business.
3. Unless agreed otherwise, the service shall be rendered at the Customer's premises.

V. Duty of the Customer to pass over information, Additional costs

1. The Customer shall be obliged to inform ADN in full and in detail of his project / the service to be rendered, the project environment and the important factors relevant to the project, thus enabling ADN to calculate its expenditure (in terms of time, staff etc.) effectively.
2. If, after the contract is signed, it turns out that important statements made by the Customer in connection with the project are incorrect or incomplete, ADN shall be entitled to recalculate the additional expenditure on the basis of the new findings and to renegotiate the project price. During the term of the negotiations for the additional expenditure, ADN shall be entitled to suspend the project. The contractually agreed project time shall be extended accordingly.
3. ADN shall undertake to notify the Customer without undue delay of circumstances resulting in additional expenditure and to calculate the additional costs as soon as possible.

VI. Contact person

1. ADN shall assign a project / service manager for the tasks assigned to him. He shall be responsible for the staff assigned by ADN and he shall be at the Customer's disposal should any questions arise.
2. The Customer shall name a responsible employee on his side with whom ADN will agreed a detailed approach in detail. He shall be available throughout he agreed working hours to deal with questions and problems arising as a competent contact person authorised to made decisions.
3. The persons authorised by the Principal to be contact persons shall be authorised to submit all contractual statements relating to the project for the Customer, in particular also those necessary for prompt progress to be made in carrying out the work.

VII. The Customer's obligation to co-operate

1. The Customer shall provide all the support and co-operation required free of charge to carry out the services to be rendered (such as information, material resources, computing time, test data, workstations etc.).
2. The Customer shall be responsible for satisfying all the IT requirements within his sphere of operations to ensure that the employees of ADN are able to carry out their work and render their performance properly. In particular, the Customer must provide the information necessary on time for carrying out the work.

3. The Customer shall have to provide the work equipment and means of communication including a suitable workstation so that the service can be rendered.
4. In so far as staff familiarisation is necessary or is a component of the performance, the Customer shall have to provide sufficiently qualified staff for these components of the performance over the period of time in which the performance is to be rendered by ADN.

VIII. Prices and Terms and Conditions of Payment

1. In the absence of an agreement otherwise, ADN's price list and terms and conditions in force at that time shall apply. They may be read at www.adn.at. Unless stated otherwise, the prices are net prices, to which the rate of VAT in force at that time must be added.
2. Provided that the service is to be conducted at the Customer's premises, travelling expenses will also have to be paid by the Customer. The travelling expenses consist of the fares and overnight expenses. Overnight expenses shall have to be paid by the Customer if, given the hours worked at the Customer's premises and the distance to ADN's headquarters, it is unreasonable to expect ADN's employees to travel to and from the Customer's premises on days on which they are working at the Customer's premises. In so far as the lump sums charged are not shown in the contract or in ADN's general price list, normal costs shall be paid by the Customer, no less however than the sums recognised for taxation purposes.
3. The agreed remuneration shall be payable in full after the performance has been rendered and following receipt of invoice by the Customer and is to be paid within 14 days.
4. The Customer may only offset claims or a right of retention not contested by ADN or which have been adjudicated. The Customer shall only be entitled to exercise a right of retention or raise the objection that the contract has not been completed within this contractual relationship.
5. In spite of the Customer having other terms and conditions of payment, ADN is entitled to count payments first of all towards the Customer's oldest debts. If costs or interest have already been incurred as a result of late payments, ADN shall consequently be entitled to count the payment first of all against costs, then against interest and finally against the main performance.
6. The terms of payment granted shall apply in keeping with the credit limits granted by ADN for each individual order. If the current credit limit stipulated in each case is exceeded, ADN shall reserve the right to call in the rest of the order value as cash in advance. In the event of a subsequent change in the Customer's credit rating, ADN shall be entitled to demand payment or the furnishing of adequate securities concurrently with delivery and in the event of non-fulfilment, to withdraw from the contract.

IX. Deadlines

1. Compliance with deadlines by ADN shall presuppose that the Customer fulfils his obligations to co-operate independently, professionally and on time in accordance with the agreed schedule and in particular hands over the information, documents, approvals and clearances requested by ADN.
2. If these duties are not fulfilled or if the work is delayed as a result of the Customer ignoring his obligation to co-operate, or as a result of other circumstances, for which the Customer is responsible, the timetable shall be extended accordingly and the periods of time shall be extended appropriately, but at least by the length of the delay however.
3. The Customer shall undertake to give notification in good time of any deadline delays there may be so that ADN is able to make arrangements to take this information into account. Rescheduled waiting times shall be regarded as working hours, unless ADN is responsible for the unscheduled waiting time.

4. ADN shall inform the Customer if work cannot be carried out for reasons for which ADN is not responsible or if other situations arise jeopardising deadlines when handling the order. The information shall be passed on to the project manager or contact person responsible for the project.

X. Acceptance and Confirmation of Performance

1. The Customer shall undertake to acknowledge work carried out to ADN's employees.
2. In so far as acceptance is necessary in exceptional cases for invoicing the work completed, a hand-over record shall be drawn up by ADN and it is to be signed by a person authorised by the Customer to sign it. The Customer shall confirm with his signature that all work has been carried out and handed over in line with the order and that the order has been completed. The signed hand-over report shall entitle ADN to raise an invoice. The same shall apply accordingly for partial acceptance.

XI. Data security prior to Work commencing

The Customer shall make data sufficiently secure with a security system which is operational before work commences in line with state-of-the-art technology. The security system must be capable of restoring the system once more to its status prior to work commencing in the event that system problems arise. ADN shall not check that this data security system is complete and fully operational before work commences.

XII. Liability

1. ADN shall only pay compensation for damages or make good wasted expenditure, regardless of whatever reason (e.g. from contractual obligations and quasi contractual relations, quality and legal defects, breaches of duty and unlawful acts) to the following extent:
 - a) Liability in cases of intent and under guarantee is unlimited;
 - b) In cases of gross negligence ADN shall be liable for the amount of the typical damages and damage foreseeable when the contract was concluded;
 - c) In cases of a breach not attributable to gross negligence of a duty of such importance so that the achievement of the contractual objective is jeopardised (cardinal duty; in particular default) ADN shall be liable for the amount of the typical damages and damage foreseeable when the contract was concluded.
2. ADN shall be able to raise the objection of joint guilt. The Customer shall be obliged, in particular, to make data safe and to protect it from malicious software in accordance with state-of-the-art technology.
3. In the event of death, personal injury or physical harm, and if claims are asserted under the Product Liability Act, the statutory regulations shall apply without limitation.
4. ADN shall only be obliged to refund pure financial loss, in particular business interruption or loss of profits in the event that it is guilty of intent or gross negligence.

XIII. Data Protection and Credit Check

1. ADN shall comply with the data protection regulations when processing personal data. Further information about the processing of personal data by ADN are available at any time under www.adn.de/at/datenschutz.
2. For the purposes of checking the Customer's credit rating from credit reference agencies or credit insurance companies, ADN shall be entitled to obtain information with regard to the Customer's creditworthiness and to report data - restricted to the event that the contract has not been handled in accordance with the contract e.g. an application has been submitted for a court order if an account has not been disputed, if an enforcement order has been issued, or if enforcement measures have been taken. Data shall only be forwarded provided that this is necessary to protect the legitimate interests of ADN and the interests of the Customer meriting protection are not adversely affected. In doing so ADN shall comply with the relevant data protection regulations.

XIV. Prohibition of Poaching and Employment

1. The Customer shall undertake to refrain from poaching staff working for ADN and other persons having a contractual commitment to ADN who are involved as part of this contract between the Parties with rendering a performance for the Customer, for their own business or for third parties. The Customer shall also refrain from assisting attempts to poach such persons.
2. The obligation to refrain from poaching shall apply for the entire duration of the contract entered into between the two Parties to the contract plus an additional six months after said contract has ended.
3. Poaching as described above covers all indirect or direct influence exerted on a staff member of ADN or other persons under a contractual commitment to ADN with the objective of urging the latter to establish a new employment arrangement or to enter into a contract of employment with the Customer or third party.

XV. General Provisions

1. The customer is not entitled to assign his claims under the contract.
2. The place of fulfilment and the place of jurisdiction for all disputes, also in so far as they concern the validity of the contract or these General Terms and Conditions of Business, is Vienna (Wien).
3. The law of the state Austria shall apply with the exception of the UN Convention on the Contracts for the International Sale of Goods [CISG].
4. Should one or more of the provisions of these General Terms and Conditions of Business be or become invalid, or should they have a gap, the Parties to the contract shall consequently replace the invalid or incomplete provision with an appropriate provision is, or add an appropriate provision to fill a gap. Such new provisions shall, as far as possible, have the same economic objective of the intended provision. The validity of the remaining provisions shall not be affected by the foregoing.