

General Terms and Conditions (B2B)

ANDTEK GmbH
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- hereinafter referred to as „ANDTEK“ -

1. Scope, Priority, Amendments

- 1.1. The following provisions shall be effective, with respect to existing and future business connections, for all contracts between ANDTEK and the customer, as well as any other arrangements, and pre-contractual negotiations the parties agree upon.
- 1.2. Conflicting terms and conditions of the customer will not become part of the contract, even in case ANDTEK does not explicitly disagree or delivers the service without contradiction. Before the conclusion of the relevant contract the customer must inform ANDTEK in writing in case he wishes to object to these general terms and conditions.
- 1.3. ANDTEK is entitled to customize these terms and conditions, in cases of unforeseeable circumstances which have not been caused by ANDTEK and which cannot be influenced by ANDTEK, also to the disadvantage of the customer, as long as the customization is reasonable to the customer and the circumstances are disturbing the relationship between performance and counter-performance in a not inconsiderable way. In addition to this, ANDTEK is entitled to customize unintended omissions incurring out of these terms and conditions which are leading to severe difficulties regarding the execution of the contract, in case the customization seems mandatory.
- 1.4. If any customization will become necessary, ANDTEK will notify the customer in reasonable time about the intended customization using electronic communication (e.g. e-mail). The customer is entitled to object to the customization within a period of one month after receiving the notification. In case the customer objects, the original terms and conditions will stay unaffected. ANDTEK is then entitled to terminate this agreement with prior notice of one month. If the customer is not objecting to the customization within the aforementioned term, the customized general terms and conditions will become effective.

2. Conclusion of Contracts, Written Form

- 2.1. The contract shall become effective upon ANDTEK's confirmation of the customer's order and transmission of the contractual documents or upon delivery of the goods. Offers from ANDTEK are subject to change.
- 2.2. ANDTEK only accepts contractual obligations when the scope and character of the performance and counter-performance with respect to both contractual parties are settled in written form. Oral amendments and customizations made hereafter will only become effective on mutual agreement in written form. This also applies to all ex-

3. Priority of the Contracts, Special Provisions

- 3.1. The scope of the performances owed by ANDTEK is exclusively determined through the contracts and agreements in written form. To the extent to which they may be applicable, agreements and conditions will be effective in the following order: The Partner Agreement, the End User License Agreement (EULA), the General Terms and Conditions for IT-Support Services, and supplementary these General Terms and Conditions.

4. Software Enhancements and Software Customizations

- 4.1. The customer may separately mandate ANDTEK to perform enhancements and customizations to the software.
- 4.2. As long as nothing else has explicitly been stipulated, the customer must formulate, within reasonable time, his requirements with respect to the software in an appropriate form and manner in writing. The customer shall provide to ANDTEK all necessary information with respect to the creation of the software in a well arranged manner and shall explain this information orally to ANDTEK upon request. In case that the requirement analysis, specification sheet or performance details do not comply with the requirements the customer actually demands, he must notify ANDTEK without delay in written form and offer alternative proposals. The parties will then mutually agree on amendments or customization to the original requirements. To all of these duties of cooperation the customer shall comply on his own costs. In case ANDTEK notices that the information or specifications of the customer are incomplete or insufficient or unqualified for the execution of the contract, ANDTEK will inform the customer without delay in writing. The customer shall immediately decide about necessary amendments or customizations, as far as the creation process of the software is affected. Both parties shall specify qualified professional contacts, which are authorized to make the necessary decisions with respect to the creation of the software.
- 4.3. As long as the software has not been delivered to the customer, he can request changes to the requirements in writing, to the extent that the request for change is in a reasonable relation to the overall order and is based upon objective considerations. Unless the specific operational situation seems unacceptable, ANDTEK shall fulfill the customer's request. In case the request for change leads to an impairment of performance and counter-performance in a not only inconsiderable way, the parties shall amend the contractual provisions with respect to the essential

content of the contract (in particular fees, compensation, and delivery date) without delay in writing.

In case the parties cannot reach a mutual agreement within four weeks after the request of change, the order will be completed without the requested changes.

- 4.4. With respect to the acceptance of the software, the regulations according to sec. 5 of these General Terms and Conditions shall apply.

- 4.5. The customer is granted a non-exclusive, non-transferrable, limited right to use the enhancements and customizations of the software. All copyrights and other proprietary rights remain with ANDTEK. With respect to the remainder, the provisions of the EULA shall apply. The parties agree that the customer is only entitled to use the software after declaring his consent to the EULA.

5. Installation of ANDTEK Software

- 5.1. ANDTEK shall only perform installations on separate assignment for an additional fee. The following provisions shall be applicable for all installations.
- 5.2. The customer is bound to review and test the software installation for possible errors after completion of the installation without delay. ANDTEK is entitled to attend the review or test. The customer shall declare the acceptance of the work without delay in writing, in case the installation is run-capable with respect to the main functions of the consented performances.
- 5.3. In case the customer denies the declaration of acceptance, he is bound to explain to ANDTEK the errors he complains to in writing without delay to the extent of 10 working days. The declaration must include a description to the customer's best endeavors about the errors. In case ANDTEK does not receive any declaration within the term of 10 working days, the installation shall be regarded as accepted. The denial of acceptance cannot be based upon insignificant errors.
- 5.4. The customer is responsible to fulfill the requirements arising out of any data protection regulations with respect to the place of the installation. The customer is not entitled to deny the acceptance of the work in case data protection requirements are not met.

6. Trainings

- 6.1. ANDTEK offers trainings to his customers on separate assignment for an additional fee.
- 6.2. Depending on the content of the training, ANDTEK will impart knowledge and information to the customer regarding the requirements and procedures when using the delivered software on a user and/or administrator level, and if applicable to distribute ANDTEK software.
- 6.3. As far as nothing else has been agreed, trainings shall be performed within online sessions or at the ANDTEK training classrooms.

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- 6.4. In case the training shall be performed in the customer's premises, the customer shall take care that the required technical equipment is held available for free.
- 6.5. Participants must meet the necessary elementary knowledge requirements with respect to IP Telecommunication.
- 6.6. The customer shall compensate ANDTEK all costs with respect to accommodations or other necessary expenses upon provision of evidence. Travel expenses shall be reimbursed by the customer.
- 7. Intellectual Property**
- 7.1. As long as nothing else has been agreed in writing, ANDTEK shall grant the customer a non-exclusive, non-transferrable, limited right to use the software as set forth in the EULA. The customer does not gain any further going rights. ANDTEK reserves all intellectual property or trademark rights of the software, including the documentation.
- 7.2. The customer shall only be entitled to use the software for demonstration or testing purposes within his own company, as far as ANDTEK hands out demo- or test versions of the software. For these purposes, ANDTEK shall grant the customer a non-exclusive, non-transferrable, and limited right to use the demo or testing software. ANDTEK reserves all intellectual property or trademark rights of the software, also including the documentation. For the remainder, the EULA shall apply.
- 8. Rights of Third Parties**
- 8.1. The customer will inform in writing and without delay ANDTEK about all claims of third parties with respect to the infringement of copyright or trademark rights. The customer shall not accept these claims and may only take defensive actions, including any amicable arrangement, upon ANDTEK's approval. ANDTEK is entitled to take over the defense on her own costs and own discretion.
- 8.2. In case the customer stops to use the software on behalf of a damage reduction or other important reasons, he shall notify any third party that the dismissal does not mean the approval of the claimed infringement.
- 8.3. ANDTEK is entitled to amend or change the software upon infringement claims, even in case the software was already paid and delivered to the customer.
- 9. Cooperation Duties of the Customer**
- 9.1. The customer is bound to comply with any hints and notes given by ANDTEK with respect to the description, isolation, diagnose and notification of errors. When indicated, the customer is bound to make use of ANDTEK's checklists and standard forms.
- 9.2. The customer shall specify to ANDTEK contact persons for the joint work. The contact persons must be reachable on working days during normal business hours (Monday to Friday, 9 am to 5 pm CET).
- 9.3. In case the customer intends to sell ANDTEK products or services to an end customer, he is bound to notify ANDTEK on this subject matter in advance. The customer is bound to specify the end customer in his order to ANDTEK. ANDTEK shall license software product or services directly to the end customer according to the information given by the customer. The customer is not granted any right to use the software or service for own operational reasons. The customer is bound to inform his end customer about the necessity to agree on ANDTEK's EULA prior to using the software in order to be entitled to use the software. The current EULA can be reviewed through <http://www.andtek.com/eula.html>. For the remainder, the provision of the EULA shall apply.
- 10. Confidentiality and Data Protection**
- 10.1. Both parties agree on not revealing trade secrets of the respective contractual partner to any third parties and to treat these secrets with the necessary confidentiality. In particular, the parties agree on not utilizing trade secrets of the respective contractual partner for any own business purpose. All documents, drawings or other information received by the respective contractual party shall only be used according to the contractual purpose.
- 10.2. The customer is bound to label all confidential information as such using a „confidential“ label.
- 11. Rights upon Termination**
- 11.1. All goods received, including lent or leased hardware shall be returned to ANDTEK on the customer's own expense with respect to transport or insurance costs, after termination of the contract(s).
- 11.2. In case ANDTEK granted limited rights to use the software, the customer is bound to delete the software which is installed on his own data media upon termination of this contract and to hand out ANDTEK the deletion protocols. In case the data media belongs to ANDTEK, he is bound to hand out to ANDTEK the relevant data media including the software.
- 11.3. All documents belonging to the program's documentation, - including all source programs and development documentation, when indicated – are to be returned to ANDTEK in their original form, including all transcriptions.
- 11.4. ANDTEK is entitled to demand an official affirmation that the customer completely complied with all of his returning obligations.
- 12. Delivery and Shipping Expenses**
- 12.1. All statements concerning deadlines for contractual services or performances, as well as delivery deadlines are estimated deadlines.
- 12.2. The delivery deadline shall be extended for a reasonable time in case the customer demands amendments or customizations after placing his order. The same shall apply in case of any circumstances, ANDTEK is not liable for and upon which ANDTEK cannot comply with agreed contractual delivery deadlines.
- 12.3. For acts of god, including disruptions of ANDTEK or her suppliers regarding the supply, fabrication or delivery which prevent ANDTEK from fulfilling her contractual obligations, the regular legal provisions shall apply, provided that after one month the customer is entitled to set ANDTEK a deadline of another six weeks. In case the delay is verifiable caused due to mobilization, war, revolt, strike or lockout or any other cause for which ANDTEK is not liable according to general principles of law, the deadline shall be extended for a reasonable time. The customer is entitled to withdraw from the contract in case he sets a new deadline after expiration of the reasonable extended deadline. The withdrawal must be declared in written form, in case ANDTEK does not deliver within the reasonable extended deadline. In case ANDTEK cannot fulfill her obligations out of the contract with respect to the aforementioned reasons, ANDTEK shall be released of her delivery obligations.
- 12.4. The customer must bear all shipment and transport insurance costs. ANDTEK is entitled to choose on her own discretion type and route of the transport. The customer is bound to examine the delivered goods with respect to any noticeable damage in transit or other damages to packaging and shall notify ANDTEK in writing without delay within 10 working days after receipt. This shall also apply in case of any hidden damage upon their discovery. The customer shall be held liable for any breach of his examination duties with respect to ANDTEK's claims against the insurance or the sub-supplier. For online delivery or downloads, sec. 17 shall apply.
- 12.5. Upon leaving the plant or storage of ANDTEK the risk of accidental destruction or damage of goods lies with the customer.
- 13. Payment**
- 13.1. Payments for services or goods are due within 14 days after invoice, as long as nothing else has been stipulated.
- 13.2. The amounts invoiced are excluding VAT, as declared within the invoice.
- 13.3. In case the customer is in default with a payment, ANDTEK is entitled to demand a default interest of 8 percentage points above the prime rate, as far as ANDTEK does not prove a higher damage, or the customer does not prove a lower damage.
- 14. Retention of Property**
- 14.1. All hardware delivered remains the property of ANDTEK until full payment of all demands and claims arising out of the contractual relationship with respect to both main and minor matters.
- 14.2. All goods delivered with retention of prop-

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erty shall be properly insured by the customer on his own costs (insurance against theft, fire, water). The customer must provide ANDTEK a proof of proper insurance on demand. In case of damage the customer's claim against his insurance shall be considered as transferred to ANDTEK.

14.3. The customer is not entitled to dispose of the goods within the scope of the retention of property. In case of seizure or attachment, the customer is bound to inform ANDTEK in writing without delay and must inform any third party about ANDTEK's retention of property in due form. In case the customer is selling the delivered goods and ANDTEK would approve this, the customer is transferring all claims against the buyer to ANDTEK already upon conclusion of the contract.

14.4. The customer is bound to hand out to ANDTEK all information needed for enforcement of these rights and shall cooperate accordingly.

15. Delay in Acceptance

15.1. In case the customer is in delay of acceptance with respect to ordered goods or services, ANDTEK shall set a reasonable new deadline. If the aforementioned period expires without success, ANDTEK is entitled to withdraw from the contract and claim compensation.

16. Warranty

16.1. Defects (factual and legal positions) will be resolved by ANDTEK within one year after delivery and a corresponding notice of the customer. ANDTEK reserves the right to choose at its own discretion between resolving the defect of the goods delivered (rectification of defects) and the delivery of faultless goods (replacement). The customer has to bear the costs of transport, in case the return of the goods is necessary for the replacement.

16.2. In case the defect cannot be resolved in reasonable time, or in case the resolving can be considered as failed, the customer is on its own discretion entitled to reduce the price (reduction), withdrawal from the contract (withdrawal), claim compensation for damages or compensation of wasted expenses. For all claims of compensation article 18 shall apply. The withdrawal does not exclude the customer's right to claim compensation.

16.3. The rectification or replacement shall only be considered as failed in case ANDTEK was given reasonable time and opportunity to attempt the rectification or replacement and the desired results were not achieved, in case the rectification or replacement is impossible, in cases ANDTEK denied or unreasonable delayed the rectification or replacement, in case of reasonable doubts regarding the chances of success, and in case of unacceptability arising out of other reasons.

17. Review and Notification Duty

17.1. The customer is bound to report manifest defects within 10 working days after deliv-

ery. Other defects must be reported immediately without delay.

17.2. A violation of the review and notification duties shall lead to the acceptance of the concerned defect as a proper delivery.

18. Liabilities

18.1. For all cases of contractual and non-contractual liabilities, ANDTEK shall be liable solely according to the following limitations:

18.1.1. in case of intention of ANDTEK, her legal representatives or vicarious agents, for the full amount, also in the absence of a characteristic, which ANDTEK guaranteed;

18.1.2. in case of gross negligence of ANDTEK, her legal representatives or vicarious agents only to the amount of the predictable damage, which should have been prevented through the duty breached;

18.1.3. in all other cases: only for the breach of an essential contractual duty which is of special importance for achieving the purpose of the contract and the party of the contract can normally rely on (cardinal obligation) to the extent of the typically predictable damage;

18.2. The liability limitations according to sec. 18.1. shall not apply in any case of liability arising out of personal injury, fraudulent intent, and in cases of liability according to the German Product Liability Act.

18.3. In all cases according to sec. 18.1.3. the liability of ANDTEK is limited to the extent of the coverage of ANDTEK's business indemnity insurance. On demand the insurance coverage can be raised on the customer's expenses.

18.4. ANDTEK reserves the right of defense of contributory fault.

18.5. In cases of liability arising out of data loss, ANDTEK's liability is limited to the typical expenses which would occur if data backups according to the existing risks would have been performed on a regular basis.

18.6. The aforementioned provision shall also apply in favor of ANDTEK's employees.

19. Set-Off and Assignment

19.1. The customer may only setoff counterclaims in case they are undisputed, recognized by declaratory judgment, or ready for adjudication. With regard to such disputed or legal unbinding counterclaims, the customer is not entitled to retention.

19.2. The customer is not entitled to assign any rights resulting from this contract or the individual contracts to a third party without prior written consent of ANDTEK. This does not affect the assignment to affiliated companies of the customer according to sec. 15 German Stock Companies Act.

20. Export

20.1. The customer accepts the limitations according to US customs regulations for

goods which have been imported from the US. These regulations limit the export and re-import of hardware, software, technical data media and direct products of technical data media including services in connection to these products.

21. Evidence Provision

21.1. Data saved in ANDTEK's electronic registers or in other electronic form, shall be valid between the parties on behalf of the proof of data transmissions, contracts and executed payments.

22. Applicable Law

22.1. This agreement including any privity of contract is exclusively to be governed by and construed in accordance to German law under exclusion of the regulations arising out of the Convention on the International Sales of Goods.

23. Place of Jurisdiction

23.1. As far as the user can be classified as a „Kaufmann“ (business man) according to the German Commercial Code, legal entity under public law or separate assets under public law, the parties agree on Munich, Bavaria, Germany as place of jurisdiction for all disputes arising out of this agreement.

24. Language Versions

24.1. The construction and interpretation of this agreement shall be determined exclusively on the basis of its German language version; only the German language version is legal effective. Any other versions especially this English version, are purely for the sake of convenience and not authoritative.

25. Severability Provision

25.1. Should any individual provision in the above provision be or become invalid, either in part or in full, or impracticable, this will not affect the validity of the other provisions. The invalid or impracticable provision will be replaced by a ruling that is as close as possible to the intended economic purpose.

Hallbergmoos, den 23. June 2009

ANDTEK GmbH