



General Terms and Conditions of AdFlow Systems GmbH

Contents

	Page
1. Area of application	2
2. Offer and conclusion of the agreement	2
3. Deliveries and services	2
4. Prices and terms of payment	3
5. Retention of title	4
6. Obligations of the customer	4
7. Copyrights and property rights	5
8. Agreement on quality without acceptance of warranties	5
9. Warranty, obligation to inspect	5
10. Liability	6
11. General conditions of contract	7



1. Area of application

- 1.1 These General Terms and Conditions govern the performance of all current or future services and deliveries of the contractual partners.
- 1.2 AdFlow Systems GmbH delivers or performs services exclusively under the following Conditions. Alternative conditions of purchase or other conditions of the customer are only applicable if they correspond to these General Terms and Conditions. Provisions which change or nullify these Conditions are only valid if AdFlow Systems GmbH confirms them in writing and by signature. The same applies if the customer's terms and conditions contain provisions which are not included in the present General Terms and Conditions. If the present General Terms and Conditions contain provisions which are not included in the customer's terms and conditions, the present General Terms and Conditions shall apply.
- 1.3 AdFlow Systems GmbH has the right to change or supplement these Conditions for future services with a period of notification of 6 weeks. If the customer does not object to these changes within a period of 2 weeks, the changed Conditions shall become valid as the contractual basis for future transactions.
- 1.4 If AdFlow Systems GmbH delivers software from third-party manufacturers on the basis of these General Terms and Conditions, the terms of licence of these third-party manufacturers take precedence over these General Terms and Conditions. The customer has to comply with the licence agreement and copyright provisions of the respective manufacturers and suppliers.
- 1.5 The respective services and deliveries are defined in independent agreements to be concluded based on these General Terms and Conditions.

2. Offer and conclusion of the agreement

- 2.1 Offers of AdFlow Systems GmbH are always subject to confirmation and non-binding. With the application of these Conditions, an agreement is only concluded if it has been confirmed by AdFlow Systems GmbH in writing and by signature via e-mail, fax or postal services. This order confirmation is the basis for the scope of services. Any possibly agreed upon changes have to be confirmed with a new order confirmation or any other written agreement.
- 2.2 AdFlow Systems GmbH retains the right to change the execution of the contractual service during the preparation or delivery period provided that these changes are carried out as standard and are acceptable to the customer. Technical information includes the tolerances customary in the trade.
- 2.3 The services specified in a contractual document signed by both parties or in an order confirmation by AdFlow Systems GmbH are authoritative for the content and the execution of the agreement.

3. Deliveries and services

- 3.1 AdFlow Systems GmbH is only responsible for the services detailed in the agreements. AdFlow Systems GmbH shall render these services themselves or will have them rendered via third parties.
- 3.2 Delivery periods required by the customer are only binding if they are confirmed in writing by AdFlow Systems GmbH. AdFlow Systems GmbH is only bound to mandatory shipping, delivery or transfer dates if the customer submits all information, documents, specifications, permits etc. to be supplied or provided by him on the agreed upon dates, if he creates the conditions necessary for the installation of the products and if he complies with all terms of contract. Otherwise, AdFlow Systems GmbH may extend the agreed upon delivery period by a reasonable period of time. The delivery period is complied with if the products are handed over to the person or organisation charged with carrying out the shipment within the delivery period.



- 3.3 Unless otherwise agreed, the deliveries shall be carried out at the customer's expenses. The risk is transferred to the customer as soon as the products leave the warehouse of AdFlow Systems GmbH, as soon as the products are handed over to the shipper, the carrier or any other person or organisation charged with carrying out the shipment. Upon the customer's request, any shipments are insured at his expenses from the time of transfer of risk onwards.
- 3.4 All agreements pertaining to delivery times are furthermore subject to the punctual supply of AdFlow Systems GmbH themselves.
- 3.5 Services which are not included in the standard offer are invoiced according to the currently valid daily rates of AdFlow Systems GmbH. For services which, upon the customer's request, are rendered by employees of AdFlow Systems GmbH at a site other than the place of business of AdFlow Systems GmbH, lump-sum travel expenses and allowances may be invoiced.
- 3.6 Expenses for special services as well as services and (additional) expenses incurred as the result of false or incomplete customer information, notifications of defects which cannot be verified or the improper use of the system are to be born by the customer.
- 3.7 The customer shall assume the coordination of interfaces for the it's own services and services of third parties.
- 3.8 Partial deliveries are admissible if their acceptance does not lead to disproportionate expenses for the customer and if the utilisation of the service is not significantly limited.
- 3.9 AdFlow Systems GmbH defaults only if the customer has set an extension of the deadline period of at least 30 days in writing. In the case of default, the customer is entitled to a compensation for default in the amount of 0.5% of the invoice value for the deliveries and services affected by the default for each full week of default. However, this compensation for default is limited to 5% of the invoice value at the most. Any further claims, in particular claims for damages, are excluded under consideration of the detailed provisions on liability in item 10.
- 3.10 If the customer does not request any individual requirements, AdFlow Systems GmbH shall render the services in accordance with standards which are generally applicable or customary within the industry.

4. Prices and terms of payment

- 4.1 All prices are indicated excluding the respective value-added tax legally applicable at the time of the service. If ongoing services are due, the value-added tax rate applicable at the time of maturity of the respective claim is authoritative.
- 4.2 The maturity of payment occurs on the agreed upon due-dates and/or with the delivery. All payments have to be made without deductions on the due-date. Invoices concerning software development and customization services are due when the service is rendered on the test system.
- 4.3 In the event of defaults of payment or deferrals, interests in the amount of 8% above the respective valid base rate become due. The assertion of any further damages is reserved.
- 4.4 AdFlow Systems GmbH has the right to increase regularly due usage fees by written notification to the customer with a period of notification of 3 months. In the case of an increase of the fees by more than 10%, the customer is entitled to terminate the contract under compliance with the periods of notice. Two (2) consecutive increases have to be at least 6 months apart.
- 4.5 The customer may only offset such counter claims against those of ours which have been legally established as final and absolute or which are not contested.
- 4.6 The customer's rights of retention are excluded.

- 4.7 If an order is not fulfilled due to circumstances for which AdFlow Systems GmbH is not responsible, the customer has to compensate AdFlow Systems GmbH for the difference between the discount granted and the discount corresponding to the actual acceptance, without prejudicing any other statutory duties. The compensation does not apply if the non-performance is the result of force majeure in the risk area of AdFlow Systems GmbH.

5. Retention of title

Services which are covered by the contract remain the property of AdFlow Systems GmbH until the agreed upon price has been paid in full. The same applies to services which are handed over on a data carrier or transferred online as well as any accompanying documents. If only rights to use have been granted, the provision above applies accordingly for data carriers to be handed over.

6. Duties of the customer

- 6.1 In rendering the contractual services, AdFlow Systems GmbH depends to a great degree on the customer's cooperation. The customer is therefore obliged to support AdFlow Systems GmbH in its rendering of contractually covenanted obligations and duties. The customer commits in particular to the following:
- 6.1.1 The customer shall make known to AdFlow Systems GmbH in writing the name of a responsible person who alone has the right to claim the respective services, indicate defects and communicate with AdFlow Systems GmbH and who has been imparted with all authorities to make decisions and powers of attorney necessary for the purposes of carrying out this agreement.
 - 6.1.2 The customer is responsible for the daily securing of the entire database. If services are to be rendered by AdFlow Systems GmbH, the customer also has to secure the entire database prior to starting to work.
 - 6.1.3 The customer shall inform AdFlow Systems GmbH immediately in the case of defects, observe the occurring symptoms as well as the system and hardware environment in detail and report them together with corresponding data and memory contents – if necessary using forms provided by the customer.
 - 6.1.4 The customer shall report in good time changes to the operating conditions as well as any other circumstances which can be deemed significant for rendering the service in writing.
 - 6.1.5 The customer shall grant AdFlow Systems GmbH or their authorised representatives access to the place of installation and he shall urge his employees to cooperate with AdFlow Systems GmbH and/or any possible assistants as far as this is necessary for rendering the service. The customer's technical support has to ensure that the rendering of the service can be begun with immediately upon the arrival of AdFlow Systems GmbH and carried out without delay until the acceptance by the customer.
 - 6.1.6 The customer shall carry out instructions given by AdFlow Systems GmbH regarding the system operation and/or propositions for debugging.
 - 6.1.7 The customer shall provide any necessary working and recreation rooms (including sanitary installations), heating, lighting, operating personnel, water as well as the necessary connections.
 - 6.1.8 The customer shall bear the communication costs and telephone links and provide existing transmission devices free of charge.
- 6.2 The obligations mentioned above are the customer's essential contractual obligations.
- 6.3 If a service rendered by AdFlow Systems GmbH cannot be rendered at all or only with delay due to reasons falling within the customer's area of responsibility, in particular because the obligations mentioned above having not been carried out at all or only with delay, because the defect reported by the customer did not actually occur during the inspection on site or because the customer missed an agreed upon date, AdFlow Systems GmbH may invoice the customer with the expense which was incurred as a result of this and which has to be proven (debugging time equals working time).



- 6.4 The customer shall be responsible for the necessary and timely cooperation of companies appointed by or affiliated with it. This affects in particular the provision of all necessary prerequisites for the service and information or data as well as the necessary support by the personnel. AdFlow Systems GmbH is not responsible in this respect, in particular if defaults or impairments of performance result from this lack of cooperation.

7. Copyrights and property rights

- 7.1 Copyrights to the provided applications remain with AdFlow Systems GmbH without restrictions even following payment in full by the customer. The customer shall regard any information on the applications and other documents as confidential information. These information shall only be used within the scope of the respective agreement and the confidentiality also has to be ensured towards third parties and the customer's own employees.
- 7.2 The copyrights for documents (texts, images, graphical representations) supplied by the customer remain with the customer. If the documents supplied by the customer infringe the copyrights of third parties and if AdFlow Systems GmbH is subject to legal proceedings against it for this reason, the customer is liable for the legal consequences.
- 7.3 AdFlow Systems GmbH is not liable for damages and consequential damages resulting from the application for and the provision of an Internet domain.

8. Agreement on quality without acceptance of warranties

- 8.1 AdFlow Systems GmbH warrants that deliveries and services have the agreed upon or usual quality at the time of transfer of risk.
- 8.2 Public statements of AdFlow Systems GmbH, in particular advertising slogans of the manufacturer, are not part of the agreed upon quality.
- 8.3 AdFlow Systems GmbH points out explicitly that it is impossible to warrant flawless functioning of data processing devices and device assemblies under all possible application conditions and to exclude defects in data processing programs according to the state of the art.
- 8.4 If the parties wish to agree on a commitment (warranty) exceeding an agreement on quality according to item 7.1 in the individual case, this has to be done explicitly in writing. AdFlow Systems GmbH and the customer agree that AdFlow Systems GmbH did not make any promises of guarantee regarding the quality in terms of article 444 BGB [German Civil Code] – whether in the form of “binding promises” or in any other manner – and that they never intended to make such promises of guarantees irrespective of any unclear terms which they might have used (such as “without limitations”, “comprehensive”, “expressly”, etc.) and that the customer knew this from the beginning. The customer therefore knows that there is no liability from guaranteed agreements in terms of quality at the point in time of the conclusion of the agreement due to a lack of promises of guarantee irrespective of the warranty provisions agreed upon here.
- 8.5 Analogous to the provisions of item 7, information in catalogues, price lists and any other information material provided to the customer are never to be understood as such guarantees for a special quality of the delivery items.
- 8.6 The liability for maliciously concealed defects remains unaffected under these provisions.

9. Warranty, obligation to inspect

- 9.1 The customer's warranty rights regarding the delivery items assume that the customer checks the delivery item immediately upon its handover and that it informs AdFlow Systems GmbH immediately but at the



latest two weeks after the transfer in writing about any obvious defects. _This notification should include a description of the defect. Hidden defects have to be reported to AdFlow Systems GmbH in writing immediately after their detection.

- 9.2 For each notification of defects, AdFlow Systems GmbH has the right to inspect and check the objected service. The customer shall grant AdFlow Systems GmbH the necessary time and opportunity to do this.
- 9.3 If the delivery and service item contains a defect falling under the warranty obligation, AdFlow Systems GmbH shall remedy the defect free of charge or deliver an item free of defects (hereinafter together referred to as the "supplementary performance").
- 9.4 AdFlow Systems GmbH has the right to choose whether a defect shall be remedied by removing the defect free of charge or by delivering an item free of defects, unless only one type of supplementary performance is acceptable to the customer.
- 9.5 If there is no supplementary performance within a reasonable period of time specified by the customer and/or if the supplementary performance fails, if it is unacceptable to the customer or if AdFlow Systems GmbH refuses the supplementary performance according to article 439 paragraph 3 *BGB* (and/or article 635 paragraph 3 *BGB*), the customer may at his discretion withdraw from the agreement, abate the price or request damages instead of the performance according to item 9 (or a refund of his expenses according to the provisions of article 284 *BGB*) under the further legal requirements of article 281 *BGB*. In the case of contracts for work and labour, the customer is entitled to remedy defects himself under the further requirements of article 637 *BGB* (hereinafter together referred to as the "secondary rights"). A withdrawal or a claim for damages instead of complete performance of contract only comes into questions if the customer is not interested in partial performance or if the breach of duty is significant in the case of the defective performance.
- 9.6 If the customer does not assert his secondary rights and if he continues to request supplementary performance according to item 9.3, he has to set AdFlow Systems GmbH a new reasonable period of time for the supplementary performance during which he may not assert the secondary rights. After the end of the term or if the supplementary performance fails (again), if it is unacceptable to the customer or if AdFlow Systems GmbH refuses in accordance with article 439 paragraph 3 *BGB* (and/or article 635 paragraph 3 *BGB*), the customer is again entitled to the secondary rights without restrictions. The customer has the right to set as many deadline periods for the supplementary performance as it wishes.
- 9.7 The customer shall inform AdFlow Systems GmbH of each term for the supplementary performance according to item 9.5 and 9.6 in writing.
- 9.8 The statute of limitations for a claim due to defects for delivery items and work performances amounts to twelve months from the point in time of their delivery and/or acceptance by the customer. Any possible rights of recourse according to articles 478 and 479 *BGB* remain unaffected.
- 9.9 No further warranty is agreed upon. AdFlow Systems GmbH does in particular not assume any warranty for the uninterrupted operational availability of hardware and/or software, unless expressly otherwise agreed in writing. Any warranty expires if the delivery item or the rendered service has been changed by the customer or by a third party.
- 9.10 In rental agreements, there is no liability on AdFlow Systems GmbH's part for initial defects. The customer's right for an abatement of rent is excluded.

10. Liability

- 10.1 AdFlow Systems GmbH is liable without restrictions for the absence of warranted characteristics or a breach of guarantees. The liability for default and impossibility is limited to predictable damages in the amount of the respective order volume. This also applies to consequential damages.



10.2 For the rest, AdFlow Systems GmbH is only liable without restrictions for intent and gross negligence, also of their legal representatives and senior executives. AdFlow Systems GmbH is only liable for the fault of any other assistants in the amount of the liability for initial incapacity according to 10.1.

10.3 AdFlow Systems is only liable for slight negligence if an obligation is breached, the compliance with which is of particular significance for the achievement of the purpose of the contract (cardinal obligation). If a cardinal obligation is breached, the limitation of liability for initial incapacity according to paragraph 10.1 of these liability provisions shall be applied accordingly.

11. General conditions of contract

11.1 Additional agreements, warranties or representations and other agreements as well as changes and amendments to the agreement require the written form and the signature of both parties to be valid. The same applies for the waiver of this written form requirement.

11.2 If one or several provisions of these Conditions and/or of the other conditions and agreements based on these Conditions should be or become invalid or if it turns out that they contain a lacuna, this shall not affect the validity of the remaining provisions. The invalid provisions or the lacuna shall be replaced by a valid provision which the contractual parties intended or which they would have intended in keeping with the whole purpose of the conditions if they had been aware of the nullity or lacuna.

11.3 The place of performance for all contractual services and the place of jurisdiction is the place of business of AdFlow Systems GmbH.

11.4 The parties agree that the laws of the Federal Republic of Germany shall apply to all contractual relationships arising from this agreement.