

# General Terms and Conditions of Ars Electronica Linz GmbH (AEC)

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## 1. PREAMBLE

- 1.1. Ars Electronica Linz GmbH (hereinafter simply called "AEC") is positioned internationally in a field that brings experimental media use, research and art together. Its intention is to promote media art as well as to develop unconventional approaches to solving research questions. This orientation implicates that the services rendered are often cases of single-case solutions that act as pioneers of novel and future-oriented developments. These General Terms and Conditions should therefore be read and interpreted according to this background.
- 1.2. The supplies and services of AEC shall be rendered in the form of
  - Consulting services and/or
  - Elaboration of concepts, feasibility studies, comprehensive and detailed analyses and/or
  - Creation of software applications, including involvement in installation and initial activation, and/or
  - Media installations, including project handling, and/or
  - Creation of imagery, motion pictures, computer animations.

## 2. GENERAL TERMS AND CONDITIONS / SCOPE OF VALIDITY

The supplies and services of AEC shall be subject exclusively to these General Terms and Conditions, excluding any purchasing conditions of the commissioning party to the contrary. This shall also hold for future commissions awarded to AEC, even if this is not explicitly stated. Conditions that deviate from these General Terms and Conditions shall only apply if they are explicitly agreed upon in writing.

## 3. REQUIREMENT OF WRITTEN FORM

Tenders made by AEC shall be considered non-binding and shall only become legally effective after a written commission confirmation by AEC following a commissioning. Verbal agreement shall also only be legally effective after being confirmed in writing.

## 4. SCOPE OF SERVICES / ADDITIONAL SERVICES

- 4.1. The scope and content of the services to be rendered by AEC in line with a commission shall solely arise from the description of services contained in the tender provided by AEC, unless deviations or additions are agreed upon in writing over the course of the subsequent commissioning.
- 4.2. It shall be assumed that the commissioning party has examined the information and documents that it provides to AEC for the purpose of specifying the services comprised in the commission to be included in AEC's tender regarding their correctness, suitability and completeness. Once these documents and information have been made available by the commissioning party, AEC shall not bear any special obligation to review these, but shall be liable for reporting potential inadequacies without delay as these emerge over the course of the utilisation of these documents and information.

- 4.3. The concepts, feasibility studies and/or comprehensive or detailed analyses that serve as the basis of the commission and that were created by AEC for the commissioning party prior to the agreement shall be considered unconditionally accepted by the commissioning party upon commissioning. If the creation of such a concept, feasibility study and/or comprehensive or detailed analysis represents part of a service included in a commission that also comprises the corresponding implementation services, the prior written approval of the commissioning party shall be required before AEC is obligated to perform such implementation services.
- 4.4. Subsequent revisions or additions desired by the commissioning party to the description of services upon which the commission is based shall be charged separately if they lead to additional costs for AEC.

## 5. CO-OPERATION OBLIGATIONS

- 5.1. The commissioning party shall provide the information, documents and/or materials (hardware etc.) that it is liable to supply to AEC at its own expense, punctually and completely during normal working hours. The commissioning party shall also bear sole responsibility for attaining all the permits from authorities and authorisations from third parties which it is liable for providing so that the services of the commission may be performed.
- 5.2. The commissioning party shall be liable for the information, documents and materials it provides being suited to the purpose of the contract. It shall indemnify and hold AEC harmless against these not complying with the legal and government regulations, not being operationally reliable and their utilisation in line with the contract not breaching the rights of third parties.
- 5.3. Regarding the information, documents and/or materials provided by the commissioning party to AEC for its contractual services – and if only for test purposes –, AEC shall bear no obligation to special custody, care or insurance of these, unless another agreement has been made for a particular case. AEC shall only be liable for damages or loss in cases of malice or gross negligence.
- 5.4. If AEC provides equipment and/or parts for performing services – and if only for test purposes – and the commissioning party utilises these in actual operations, the commissioning party shall bear the sole responsibility for securing the real data in an appropriate manner.
- 5.5. In the case of on-site installations, the following rooms shall be provided, if necessary: Workroom for AEC staff (including office technology infrastructure), lockable storage room, server room etc. The specific rooms shall be stipulated in the contract.
- 5.6. If a specific layout / building development is of importance for the fulfilment of the commission (e.g. architectural art), AEC shall be invited to construction-related meetings in due time and continually. These agreements shall serve to ensure the trouble-free development of the installation in its spatial and site-specific context. Moreover, AEC shall be provided with the up-to-date plans for the respective installation location.
- 5.7. The commissioning party shall also ensure that the installation location be cleanly swept and free of dust in due time and in line with the jointly agreed upon time schedule.

## 6. ACCEPTANCE

- 6.1. Unless only consulting services or the creation of a concept, feasibility study and/or comprehensive or detailed analysis represent the object of the commission, the services to be performed by AEC shall require formal acceptance following completion.
- 6.2. The acceptance date shall be mutually determined by both contractual parties. In the case of partial supplies, partial acceptance shall also be possible. The acceptance of a program and/or project shall be confirmed by the commissioning party in a protocol (review regarding correctness and completeness based on the description of services accepted by AEC and/or according to the concept). If the commissioning party allows the determined acceptance date to pass without making use of it, the service shall be considered accepted.

## 7. PRICES, TAXES AND DUTIES

- 7.1. All prices offered shall be considered quoted in EURO and without value-added tax. They shall only apply to the respective commission. The prices offered shall be considered ex AEC's registered office. The costs for data media and transport (including insurance), packaging and contractual and disposal contribution fees shall be separately borne by the commissioning party. In case of commissions for which explicitly fixed prices have not been agreed upon, AEC shall be entitled to charge the list prices valid on the date of supply, where the list prices shall be decisive on the date of supply for hardware and standard software, whereas the prices on the day the service is performed shall be decisive for any other services, for instance consultation, training, installation, service etc.
- 7.2. Costs for travel allowances, per diems and overnight expenses shall be invoiced to the commissioning party separately and in line with the respectively valid rates. Travel time shall be considered working time.
- 7.3. If fees, taxes or other duties are incurred or levied in connection with the provision or creation of the object of the contract, these shall be borne by the commissioning party. This shall also apply for duties that are introduced by means of a law or decree after a commission has been confirmed.
- 7.4. If the exchange rate of the EURO has changed by more than 3% vis-à-vis an agreed upon non-EURO currency, AEC shall be entitled to charge the difference to the commissioning party, where the right of cancellation shall be excluded in such a case.
- 7.5. If AEC has created design, concept and elaboration recommendations for the commissioning party, but an implementation commission does not follow, AEC shall be entitled to charge an appropriate compensation remuneration, unless it was explicitly agreed upon that these recommendations are free of charge.

## 8. SUPPLY DATES

- 8.1. A mutual time schedule shall be created upon commissioning.
- 8.2. The agreed upon fulfilment dates shall presume that the commissioning party has fulfilled its co-operation obligations to the stipulated extent, in line with Point 5. Supply delays and cost increases that arise due to incorrect, incomplete or subsequently revised details and information and/or documents provided by the commissioning party shall not be considered AEC's responsibility nor shall they lead to a delay by AEC.

- 8.3. In the case of a supply delay that results from reasons within AEC's sphere of influence, the commissioning party shall set AEC an appropriate grace period of at least four weeks.
- 8.4. In the case of commissions that comprise several units and/or steps, AEC shall be entitled to provide partial supplies and/or issue invoices for partial supplies.
- 8.5. Force majeure, industrial conflicts, natural catastrophes and transport blockades, as well as other circumstance that are outside of the sphere of influence of the commissioned party, shall release AEC from its obligation to perform services for the duration of the interruption.

## 9. PAYMENT

- 9.1. The invoices issued by AEC, including value-added tax, shall be due 20 days after the invoice date without any deduction or fee. In the case of invoices for partial supplies, the payment conditions stipulated for the overall commission shall hold analogously.
- 9.2. In the case of commissions that comprise several units (e.g. programs, trainings etc.), AEC shall be entitled to invoice the commissioning party after the supply of each individual unit or service.
- 9.3. Compliance with the agreed upon payment conditions shall represent an essential condition for the performance of the supply and/or fulfilment of the contract by AEC. Non-compliance with the agreed upon payments shall entitled AEC to stop on-going works and cancel the contract after setting a grace period. All associated costs shall be borne by the commissioning party. In the case of late payments, the legally stipulated late payment fees shall be charged.
- 9.4. The commissioning party shall not be entitled to retain a payment on the grounds of existing counterclaims or to offset a payment obligation with counterclaims, unless these have been explicitly acknowledged by AEC or been stipulated by a court.

## 10. COPYRIGHT AND UTILISATION

- 10.1 The scientific and artistic capital of AEC is based on its individual developments over long years of work for a number of projects (background technology). The commissioning party shall acknowledge AEC's special interest in protecting and keeping this background technology, as well as draft materials, documentation and knowhow, confidential, regardless of whether an explicit copyright exists in a particular case.

The following regulations shall apply to works created by AEC (in particular to design services in any form whatsoever, as well as especially but not exclusively to media installations, sculptures and/or motion pictures and computer animations, as well as to findings of an investigation, analyses, evaluations, methods, plans, sketches, models, other documentation and files); this shall apply regardless of an explicit copyright protecting these services. All rights to the results of the provision of services in line with the commission that have been achieved by AEC, shall belong to AEC. The fact that the commissioning party has granted a commission shall not imply that it acquires the permission and/or right to utilise the work. Solely on the condition that the contract is fulfilled in full shall grant the commissioning party the right to utilise the work for the purpose stipulated in the contract. This shall establish the authorisation to use the work that is limited to the purpose of the contract and is neither exclusive nor transferrable.

Utilisation outside of the scope and/or the contractual purpose (especially, but not exclusively also outside of the contractually stipulated location), as well as any transfer to third parties, whether for remuneration or free of charge, shall be considered excluded. This shall explicitly hold for the case that the results of the work were individually developed and/or further developed for the commissioning party.

10. Further-reaching utilisation authorisations shall be agreed upon separately in a written contract.
- 10.2 AEC shall be entitled to utilise the generally available data, information, ideas and concepts it collects over the course of providing the services in line with the commission (also in digital form) without any restrictions. It shall also be possible to use them for the fulfilment of a new commission.
- 10.3 If the services of AEC that have been commissioned include the provision of software, the commissioning party shall solely be granted the non-exclusive and non-transferrable authorisation to utilise the work for the purpose stipulated in the contract, unless a written contract explicitly stipulates otherwise. This utilisation authorisation shall apply to the utilisation of the software in association with the stipulated hardware at the agreed upon location of operation. Utilisation of the software outside of the scope of this utilisation authorisation by the commissioning party and, in particular, the transfer of the software to third parties, whether for remuneration or free of charge, shall be excluded. This shall explicitly hold for the case that the software was individually developed and/or further developed for the commissioning party.
- 10.4 AEC shall retain all copyrights on and rights of utilisation of the software; this shall also hold in the case that the commissioning party has been involved in such development work, be it by means of providing ideas, pre-drafts or other contributions. AEC shall therefore be free to adapt software developments, draft materials and/or documentation that were individually created for the commissioning party in line with Point 10.3, regardless of whether the commissioning party was involved in the development, for other purposes that are not associated with the contract with the commissioning party and dispose of them in a changed or unchanged form.
- 10.5 The commissioning party shall treat software, related draft materials and/or documentation as confidential and take the necessary security measures to protect these from unauthorised disclosure to third parties. The commissioning party shall also observe these principles within the scope of the free utilisation rights obligatorily granted to it by law and, in particular in the cases of creating back-up copies and de-compilation.  
If it is necessary that the interfaces be revealed to create interoperability for software provided by AEC, the commissioning party shall commission AEC to do so and compensate it for costs incurred. The commissioning party shall be entitled to create copies for archiving and data security purposes on the condition that the software not include an explicit prohibition by the licensor or a third party and that all copyright and ownership details be transferred to these copies without being revised.
- 10.6 If, contrary to what was stipulated above, the commissioning party is granted a utilisation right to the software in a specific case, AEC shall nevertheless remain entitled to use it for the purpose of a general presentation or exhibition of its portfolio of works and, above all, AEC shall reserve the right to dispose of it in a changed or unchanged form, just like a creator. The commissioning party shall acknowledge AEC's special interest in this regard in association with its basic orientation in line with Point 1.1 of the Preamble.

- 10.7 AEC shall also have the right to further dispose of and/or to further develop its basic artistic ideas, style characteristics and form languages without restrictions, even if the commissioning party is granted a utilisation right to AEC's creative services in a specific case.
- 10.8 Exercising the utilisation rights to software granted to the commissioning party by AEC shall definitely presume the complete fulfilment of the contractually agreed upon remuneration obligations by the commissioning party.
- 10.9 Copyrights, trademark rights, labelling rights and knowhow, as well as non-protected inventions, business experience and trade secrets that were disclosed within the scope of the co-operation, shall still be held exclusively by AEC and/or its licensors.
- 10.10 Neither the commissioning party nor potential third parties shall change or remove label elements, ownership details and mentions of protective rights. This shall also hold for accompanying materials. AEC shall be entitled to refer to the contractual relationship with the commissioning party or the commission itself on its website and in its advertising materials and also to add the commissioning party's logo.
- 10.11.1 All of AEC's existing ideas, knowhow, technical developments and patents (as well as their registration) which are not the result of a commission, but are utilised by AEC to fulfil a certain commission shall remain the exclusive property of AEC.
- 10.11.2 All project-relevant artistic, content-related and technical works and documents which were provided by one contractual party to the other either before conclusion of the contract or as a consequence of the same, shall remain the exclusive property of the provider and shall be treated by the other contractual party as confidential information. These documents which were provided shall solely be utilised for the corresponding commission.
- 10.11.3 AEC shall be obliged to disclose to the commissioning party solely those results which are attained in line with commissions whose explicit objective is the creation of patentable research and development results and are obviously patentable and – on the condition of payment in full of the corresponding commission and inventor remuneration – to transfer the associated rights to the commissioning party without restrictions for the purpose of registering a patent. In this case, the commissioning party shall assume all costs. If the commissioning party forgoes the registration of patentable results or does not undertake the registration in due time, the right shall remain with AEC.
- 10.12.1 It shall be at AEC's discretion to make use of the services of third parties to perform its services.
- 10.12.2 If necessary and possible in line with licensing law, copyrighted works (e.g. software, images and/or sound materials) of third parties utilised by AEC shall be made available to the commissioning party on the basis of and in line with the provisions of a licensing contract to be separately concluded by the third party and the commissioning party.
- 10.12.3 If the commissioning party itself makes use of the services or works of third parties in association with AEC's services, only the commissioning party shall be liable for the compliance with the licensing and utilisation conditions of the third party.
- 10.12.4 AEC shall release the commissioning party from any claims made by third parties against AEC based on breaches of protective rights regarding developed or provided works and programs in

their constitution stipulated in the contract, but only if the breach of rights of the third party was grossly negligent or malicious. The commissioning party shall guarantee that it is entitled to utilise and provide the accompanying materials (e.g. software, images and/or sound materials) made available to AEC so that it may fulfil its obligations. In this connection, the commissioning party shall indemnify and hold AEC harmless against any claims lodged by third parties.

- 10.12.5 If the appropriate utilisation of a commission result leads to a claim of a (alleged) breach of a protective right of a third party, the commissioning party shall immediately notify AEC in writing. In this case, AEC shall appropriately support the commissioning party in its refutation of such claims in the spirit of the aforementioned provisions. AEC shall definitely not be responsible for the consequences of a breach of combination or process patents that concern the utilisation of the commission result in connection with other goods/services that are not provided by AEC. Moreover, AEC shall by no means be liable for subsequent damages that are attributable to a breach of protective rights, court and/or other legal costs incurred by the commissioning party or payments of damages awarded to third parties by a court.

## 11. PUBLICATIONS

- 11.1 'Publications' shall be understood to mean any form of publication of knowledge or results, in particular in print or electronic media, as well as by means of presentations or lectures or any other manner.
- 11.2 It shall be observed that trade secrets that are revealed to the commissioning party or AEC over the course of their co-operation are to be kept strictly secret.
- 11.3 A publication about results attained within the scope of a commission shall only occur after clarification and/or registration of potential protective rights and under consideration of the confidentiality provisions.
- 11.4 Publication by AEC of knowledge or results from a commission shall require the written approval of the commissioning party. If the commissioning party does not provide a justified refusal within six weeks of submission of a publication suggestion, AEC shall be entitled to publish. Approval shall not be required if the commissioning party does not remunerate a complete commission in due time and in full, if the publication only refers to part of the commission that was worked on by AEC itself and if the publication does not contain any confidential information about the commissioning party from the respective commission.
- 11.5 Publications by the commissioning party of knowledge or results attained by AEC shall presume written approval by AEC. If AEC does not provide a justified refusal within six weeks of submission of a publication suggestion, the commissioning party shall be entitled to publish.
- 11.6 In the case of a publication by one of the contractual parties, the other shall be able to determine in which form it is noted in the publication. In the case of scientific publications of knowledge or results attained by AEC, the respectively concerned area of Ars Electronica Linz GmbH (e.g. the Ars Electronica Futurelab) shall definitely be mentioned.



- 11.7 Both the commissioning party and AEC shall be provided with a specimen copy, preferably in electronic form, of each scientific publication (of knowledge or results attained within the scope of a commission) by the lead author.
- 11.8 It shall be made possible that students who have the permission of the commissioning party to potentially work with AEC on commissions for study purposes can use their research work in the form of work experience reports, diploma theses or dissertations. A publication ban on these papers shall be possible within the scope of the statutory requirements for university studies and shall be undertaken, if necessary, in consultation with the commissioning party for a period of time common in the industry in order to clarify and register potential protective rights.

## 12. RESERVATION OF TITLE

- 12.1 Prior to payment in full of the purchase price, including potential interest and collection costs, the supplies of AEC shall remain the absolute property of AEC. The commissioning party shall not be entitled to assign, pledge, offer as a security or otherwise transfer the supply to a third party during this period.
- 12.2 The commissioning party shall ensure proper maintenance (service and repair) at its expense and immediately report damages to the purchased goods, a pledge on these goods or the transport of these goods to AEC by means of a registered letter so that AEC does not incur any damage to its property. AEC's ownership shall immediately be announced to every third party and AEC shall immediately be notified.
- 12.3 The commissioning party shall be obliged to insure the goods under reservation of title at its expense and in an appropriate manner and prove the insurance cover to AEC in writing upon AEC's request.
- 12.4 The commissioning party hereby conveys all claims and ancillary rights vis-à-vis third parties stemming from the further sale of the supply under reservation of title to AEC, if the commissioning party is explicitly entitled to such a further sale in a particular case.

## 13. CANCELLATION

- 13.1 If it becomes evident over the course of the works that the fulfilment of the commission is actually or legally impossible, AEC shall immediately notify the commissioning party. If no subsequent agreement can be reached on a changed, feasible fulfilment, AEC shall be entitled to cancel the contract, where AEC shall be compensated by the commissioning party for expenses it has already incurred.
- 13.2 Moreover, AEC shall be entitled to cancel the contract, if
- it doubts the creditworthiness of the commissioning party after attaining a credit check or justified concerns arise regarding the liquidity of the commissioning party,
  - insolvency proceedings are initiated regarding the commissioning party's assets or an application for the initiation of insolvency proceedings is disallowed due to insufficient assets,
  - the commissioning party does not fulfil its co-operation obligations, despite a grace period being set, and if it turns out that the tender made by AEC is based on incorrect or incomplete information provided by the commissioning party.

13.3. Irrespective of potential indemnity claims of AEC, the commissioning party shall pay for (partial) services that have already been performed in the case of a cancellation of the contract. This shall also apply if AEC's services have not been accepted by the commissioning party yet and/or if AEC has undertaken preparatory measures. AEC shall also be able to demand the reversal of the commission.

#### 14. NON-FULFILMENT OF THE COMMISSION

If execution of the commission or part of the commission does not occur, despite AEC's willingness to provide the services, due to reasons that lie within the commissioning party's sphere of influence, in particular if the commissioning party does not comply with its co-operation obligations, despite being granted a grace period, AEC's claim for appropriate indemnification shall amount to 20% of the net value of the commission, unless AEC can prove a legal right to higher indemnification.

#### 15. WARRANTY

15.1 The commissioning party shall examine all supplies provided by AEC and report defects to AEC within four weeks of acceptance, in line with Point 5. Otherwise, warranty and other rights shall not be applicable. The commissioning party shall bear the burden of proof that a potential defect it reports was already present at the time of acceptance.

15.2 In the case of a warranty claim against AEC, rectification shall definitely have priority over reducing the price or rescinding the contract, where AEC shall have the choice between rectification and exchange in the case of an existing rectification claim. In the case of justified defect complaints, the defects shall be rectified within an appropriate period, where the commissioning party shall make all measures necessary to examine and rectify the defects possible for AEC.

15.3 Concerning software to be provided by AEC, it shall be assumed that both contractual parties are aware of the fact that, commensurate with the current state of progress, minor malfunctions of the software cannot be ruled out, even despite exercising the utmost diligence. Thus, in such cases, it shall be considered agreed upon that AEC does not have to warrant such minor defects.

15.4 Moreover, ACE shall assume no warranty for errors, malfunctions or damages that are attributable to improper operation, changed operating system components, interfaces and parameters, use of inappropriate organisational means and data media, if such are mandatory, abnormal operating conditions (in particular deviations from the installation conditions) and transport damages.

In addition, AEC's warranty obligation shall not apply if software provided by AEC is subsequently changed by the commissioning party's own programmers and/or those of third parties.

15.5 Costs incurred by AEC due to non-justified defect complaints lodged by the commissioning party shall be paid by the commissioning party, where it shall be assumed that appropriate compensation has been agreed upon. Costs for support, error diagnostics and rectification of errors and malfunctions for which the commissioning party is liable, as well as other corrections, changes and additions shall be assumed by AEC against payment. This shall also be applicable to the rectification of defects if program changes, additions or other interventions have been undertaken by the commissioning party itself or by a third party.

15.6 All warranty claims shall be lodged by the commissioning party within one year of acceptance or the right to assert these in court shall be forgone.

## 16. INDEMNITY

- 16.1 AEC shall only be liable for all types of damages (damages due to breach of faith, non-performance etc.) if it can be proved that AEC acted maliciously or grossly negligently. Liability for slight negligence shall be excluded.
- 16.2 Compensation for consequential and property damages, unrealised savings, loss of interest and damages stemming from claims from third parties against AEC shall definitely be excluded, if legally permissible.
- 16.3 In any case, an indemnity obligation concerning AEC shall be limited to the amount of the respective commission volume.

## 17. LOYALTY AND RECRUITMENT BAN

The contractual parties shall be obliged to mutual loyalty. They shall forgo any recruitment or employment, via third parties, too, of the other contractual party's employees who have worked on the implementation of commissions during the term of the contract and 12 months after the contract ends. A contractual partner who breaches this ban shall be obliged to pay a lump-sum indemnity in the amount of an annual salary of the employee.

## 18. FINAL PROVISIONS

- 18.1 Unless explicitly regulated otherwise in these General Terms and Conditions (e.g. in Point 3), the requirement of written form for notifications regarding parts of the contract shall be considered fulfilled by electronic, written notifications.
- 18.2 The contract shall only be subject to Austrian Law, excluding the United Nations Convention on Contracts for the International Sale of Goods (CISG) and conflict rules. Unless otherwise regulated, the legal regulations that apply to entrepreneurs shall be applicable; this shall also hold for disputes stemming from contracts with public corporations.
- 18.3 Regarding arbitration of all disputes that arise from a contract – including those concerned with whether a contract exists or not –, it shall be agreed upon that only the respectively competent court in Linz will be responsible.