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GENERAL TERMS AND CONDITIONS FOR DELIVERY AND SERVICES BY  
FERATEL MEDIA TECHNOLOGIES AG

These general terms and conditions (AGB) are basically designed for legal transactions between companies. Should they by way of exception be used as a basis for legal transactions with consumers as defined by § 1 para 1 subpara 2 Consumer Protection Act, they apply only as far as they are not inconsistent with the provisions of the 1st main part of that Act.

#### Scope

feratel takes orders exclusively on these general terms and conditions; the validity of the customer's general terms and conditions is expressly excluded; this applies also to future supplementary orders and follow-up orders. Feratel will notify in writing the customer of any amendment of these general terms and conditions in the case of continuing obligation; unless another effective date is indicated, an amendment becomes effective on receipt of the notification. Should the general terms and conditions be amended to the customer's disadvantage, the customer may reject such an amendment within one month after receipt of the notification; otherwise the new AGB will be considered as approved. If the customer rejects the amendment, feratel may terminate the contract by giving one month's notice, referring to the rejection. Rules laid down by the contracting parties in individual agreements will have priority. Feratel publishes the update of the AGB at [www.feratel.at](http://www.feratel.at).

#### Offer of a contract

feratel submits offers only in writing. The offers are open for three months and are offers without engagement. Only acceptance of the full offer to perform is possible.

#### Conclusion of a contract

A contract is brought about on receipt of order by

- written acknowledgement of order and/or
- delivery of order

#### Price

The prices are prices ex works or ex warehouse feratel and without packaging, loading and VAT. Separate agreements will be made for delivery, unloading, loading and return of packaging, unless the return is subject to separate regulations.

Should there be a change in cost prices and costs after the conclusion of contract, feratel will have the right to adjust the prices to the costs valid on delivery, furnishing proof of the change.

In the case of repair orders the services considered to be necessary and useful will be delivered and invoiced on the basis of the incurred expenses. This applies to services and additional services that turn out to be necessary and useful while the repair works are already under way; there is no need to inform the customer separately. Should the performance of such service be uneconomical, feratel shall seek the customer's consent before continuing the repair works.

If the customer requests an offer for repair works or an expert opinion for which it is necessary to disassemble the unit and check its components, the arising cost including the cost of dismantling, if applicable, and the cost of sending personnel will be charged to the customer's account, whether such service results in an order or not.

Unless the parties agree otherwise, stable-value payment is expressly agreed. The index is calculated on the basis of the consumer price index 2000 or the index replacing that index. The index will only be adjusted upwards or downwards if the initial index gains more than three percentage points. The initial index is the index published during the month in which the contract is signed. If the index gains more than three points, the total increase shall be taken into account. The newly calculated index number will be the basis for the calculation of the subsequent changes. If feratel does not make use of its right to increase the prices, even for some time, this may not be interpreted as waiver of the value guarantee.

#### Delivery/Performance of service

The time for delivery or performance of service begins at the latest of the following dates:

- Date of acknowledgement of order
- Date of compliance with all technical, commercial and other requirements (structural, technical and legal), which is incumbent on the customer
- Date of receipt of an advance payment to feratel which is due before delivery or performance of service, or opening of a required credit

The customer shall notify feratel when the technical, commercial and other requirements incumbent on the customer are fulfilled. feratel has the right to effect and invoice partial or full delivery, unless uniform delivery is agreed. Times for performance and deadlines are only binding if expressly agreed as such. Compliance with delivery schedules is agreed subject to unforeseeable circumstances or circumstances beyond the control of the parties, such as all cases of force majeure, armed conflict, unforeseeable non-delivery attributable to suppliers, government intervention, shortage of energy or raw materials, or industrial conflict. Under the circumstances mentioned above feratel is entitled to extend the delivery period also if such circumstances affect outside suppliers.

If through no fault of feratel goods ready for shipment cannot be dispatched or if the customer does not wish the goods to be dispatched or if the customer refuses to take delivery, feratel may store the goods at the customer's expense, and delivery will be deemed accomplished. The agreed terms of payment remain unaffected.

If the contracting parties settle an amount of compensation for delay in delivery in the contract, the customer will in the case of delay in performance through feratel's fault be entitled to maximally ½ % compensation for default for each complete week of delay, but no more than 5 % of the value of the part of the delivery or service which cannot be used due to the delay in delivery of an essential part, provided that the customer can prove that he suffered a loss to that amount. Claims for damages beyond that amount are excluded in the case of slight negligence by feratel.

If an order is by nature urgent or if the customer requests prompt execution of the order, additional expenses for necessary overtime and/or expedited obtaining of materials will be charged to the customer's account.

### Passing of risk

Unless expressly otherwise agreed the use and risk pass to the customer on dispatch of the consignment ex works or ex warehouse. This applies also to goods delivered in the framework of a construction job or if the transport is carried out or organized and managed by feratel.

### Reservation of title

Until payment in full feratel retains title to all the goods delivered and installed. If the customer gets into arrears or if circumstances as defined by the Point "Termination" become known to feratel, feratel will have the right to dismantle and/or take back otherwise the goods and equipment to which it has retained title without this being interpretable as termination of contract.

### Industrial property rights and copyrights

All technical data will remain the intellectual property of feratel and are subject to the relevant legal provisions. If goods delivered by feratel are installed or provided according to the customer's instructions or plans, the customer shall indemnify feratel for infringement on copyright or any other industrial property rights of third parties.

The customer obtains the non-transferable and non-exclusive right to use programs, data banks or other copyrighted works and accompanying documentations (hereinafter referred to as "works") on the agreed site for the purposes for which this contract was concluded, in compliance with the contractual specification. If hardware was delivered as well, this right is restricted exclusively to the use with that hardware; in the case of independent software, exclusively with the type, number and site of hardware defined in the contract.

All other rights in the works are reserved to feratel. Without the written consent of feratel the customer has without prejudice to the provisions of § 40d Copyright Act no right to copy, alter or edit the software or make it accessible to the public. Unless otherwise expressly agreed, feratel remains the license holder of the software delivered. With regard to that software the customer acquires no license but only the possibility to use it or any functionality of it in accordance with the contract and for a limited period.

### Service interruption

feratel will inform the customer in time and in an appropriate manner about unavoidable service interruptions or major restrictions for maintenance, required works, network or service improvement or prevention of breakdowns. Announced interruptions as defined in this Article do not constitute service interruptions and will not be counted to the promised availability limits. feratel is not liable if performance of the obligations hereunder is impossible due to circumstances for which it cannot be held responsible; specifically, feratel does not warrant availability of lines and facilities operated by third parties.

### Availability

The availability of services to be continuously performed by feratel is specified in the product descriptions and specifications as well as agreements relating to them, if any.

feratel will start troubleshooting and eliminate faults without culpable delay within the normal fault clearing hours (indicated in the relevant product description and specifications). Fault clearance beyond this scope will only be performed for consideration on the basis of separate agreements. Unless otherwise agreed the normal fault clearing hours are from 08:00 a.m. to 05:00 p.m. (Friday 03:00 p.m.) on workdays. Saturday and December 24th and 31st as well as Good Friday are no workdays.

If fault clearing is impossible or cannot be performed in time for reasons that lie within the customer's sphere of influence, feratel cannot be made responsible for any consequences. The customer undertakes to reimburse feratel for any arising costs. Specifically, the customer is responsible for faults attributable to adjustment of programs, additions or other interventions performed by the customer or third parties. The customer is also responsible for faults caused by computer viruses within the customer's sphere of influence or if the customer or a third party fails to comply with the guidelines or safety instructions provided by feratel. The customer bears the burden of proof with regard to compliance with such instructions. The liability of feratel, if any, is subject to the Point "Damages".

### Warranty

feratel is obligated to remedy in accordance with the provisions below any defect affecting the functionality if the defect is attributable to a cause occurring before the passing of risk and based on faulty design, material or execution. The quality of the goods or service ordered is agreed as defined by the descriptions in our catalogues, offers etc. and supporting documents provided by third-party manufacturers, if any. Public statements, recommendations or advertising by the manufacturer constitute no contractual quality of the goods/service. The same applies to (oral) statements by employees or sales representatives.

The warranty period is 12 months - also for items that are affixed to a building or land. The warranty period starts on delivery to the customer or taking delivery or, if provided for, acceptance by the customer. The customer may refuse to take delivery in the case of minor defects. Insignificant deviations or minor defects that do not prevent the efficient use of the services or goods are no obstacle to acceptance. The liability for removal of defects remains unaffected. If the customer does not take delivery immediately without giving sound reasons, the start of use of the goods or service or fulfilment of the requirements for taking delivery, depending on which case occurs first, will be considered as acceptance.

After expiry of the twelve-month-period all warranty claims are forfeited, and the customer may not assert any claim according to 933b Civil Code against feratel. During the warranty period the customer has to prove that a defect existed when the item was delivered and that such defect was not caused by its use. After establishing the defect feratel will at its discretion either repair or exchange the item or grant rescission of contract or price reduction.

Notice of defect must be given in writing without delay. Defects will be remedied within a reasonable period; the customer will make it possible for feratel to take all measures necessary to examine and eliminate the defect. All incidental expenses arising in connection with defect elimination (e.g. for mounting and dismounting equipment, transport, disposal, travel and site-to-quarters time) will be charged to the customer's account. For warranty work performed at the customer's company the customer shall, if necessary, provide workforce without charge. Any parts exchanged in the framework of maintenance or repair works pass into the ownership of feratel.

Should feratel after repeated attempts and after at least six weeks' additional time be unable to establish the conditions stipulated by contract, the customer has the right to terminate in writing the contract with immediate effect? The customer is not entitled to claims for damages beyond that.

For customer's installations which are repaired or changed subsequently by the customer's personnel or third parties, feratel does not give warranty; likewise, feratel gives no warranty for errors, faults or damage resulting from improper cabling, inadequate power supply or operating errors, damage caused by computer viruses or damage in transit etc. feratel is not liable for faults and blackouts caused by force majeure. The warranty does not include replacement of parts exposed to natural wear and tear. Warranty work or deliveries do not extend the original warranty obligation for the unaffected part.

feratel is not liable and does not give warranty for adequacy and faultlessness of software supplied by feratel or the possibility to eliminate all software errors. feratel provides state-of-the-art software solutions, but the customer is aware that even on the basis of the latest developments in technology it is not possible to prepare a program that is absolutely error-free.

#### **Damages**

feratel is within the scope of the statutory provisions liable for damage if there is evidence that it was caused by feratel intentionally or by gross negligence. Liability for slight negligence is excluded. Compensation for consequential damage or financial loss, loss of profit, unrealized economies, interest loss, lost or altered data, non-pecuniary damage and damage caused by claims of third parties is excluded. feratel is not liable for claims made in respect of a breakdown (e.g. mutilation, omissions or delays).

As far as data storage - permanent but only at certain intervals - is an essential and indispensable part of the subject matter of contract (data hosting) feratel is liable for loss of data only if the agreed individual data protection processes (backup, storage intervals) are not performed as required.

In any case the liability for damage per event causing damage, unless it was caused intentionally or by gross negligence, is limited to Euro 5,000.-- vis-à-vis an individual injured party and Euro 75,000.-- vis-à-vis all injured parties together. If the total damage exceeds these amounts, the individual injured parties' claims for compensation decrease proportionally.

#### **Payment, due date, discount**

Unless the parties agree otherwise, one third of the price becomes payable on receipt of the acknowledgement of order, another third on start of performance or after expiry of half of the delivery time, and the last third when the performance or delivery is accomplished.

The payment is considered as made on the day on which feratel disposes of the invoice amount freely without loss.

In the case of delay in payment the customer undertakes to pay 1.2% p.a. default interest. For each reminder EURO 15.-- plus VAT will be charged. Should feratel consider the involvement of a debt collection agency or a lawyer necessary, the customer will bear the arising cost. Furthermore, the customer is obligated to reimburse feratel for all costs arising from the enforcement of its claims. In the case of default in payment feratel may suspend further execution of the order until receipt of payment and demand payment in advance for the rest of the period of contract. Should the customer fall into arrears, all payables to feratel become due immediately. feratel may enter incoming payments freely to any outstanding invoice, interest and costs.

Discounts may only be deducted in special cases and on the basis of a separate written agreement. In such case, failure to pay even one instalment on time leads to loss of the agreed discount not only for the relevant instalment but also for payments already made or payments that become due at a later time.

#### **Termination**

Should there be reasonable doubt about the customer's solvency or circumstances with regard to the customer's poor economic situation become known after the conclusion of contract, feratel will have the right to suspend delivery and services and grant the customer a reasonable period for making advance payments or providing adequate securities. If this period expires without results feratel has the right to terminate the contract and settle accounts and declare the unpaid balance of all services already rendered to be immediately due without any rights arising there from against feratel.

#### **Customer's right of setoff and retention**

The customer may only set his claim off against feratel's claims on him on the basis of claims established by a court or recognized by feratel. The customer has no right to withhold payments because of claims based on warranty.

#### **Data protection**

When feratel processes personal data on behalf of the customer, the latter is responsible under the Data Protection Act 2000 as amended. When using memory storage facilities of his own or provided by feratel, the customer is considered as client according to the Data Protection Act 2000 as amended. The customer undertakes to comply with the legal provisions, specifically the provisions of the Data Protection Act 2000 as amended, and to indemnify feratel against any claims presented against feratel by third parties in connection with such data or data applications. The customer undertakes to use any data, statistics or analyses etc. that allow personal conclusions about third parties, which are accessible to him in connection with the performance of a service, only within the scope of the statutory provisions or to refrain from examining and/or using them. The customer is liable vis-à-vis feratel for any disadvantage arising from such breach of duty. In addition to actual financial damage this includes warding off of any claims presented by third parties, cost of legal advice and representation in and out of court or in official proceedings, and cost of penalties and/or enforcement measures by authorities.

#### **Misuse**

The customer undertakes to refrain from misusing goods and services provided by feratel and to comply with the prevailing legal provisions (e.g. Telecommunication Act, Criminal Law, and Copyright Act). In any case the customer is responsible for contents he or third parties for which he is responsible transmit via equipment provided by feratel or processes in feratel equipment. The customer undertakes to indemnify feratel against any claims presented against feratel in and out of court for unlawful or unfair conduct by the customer or third parties for which the customer is responsible.

#### **Delivery**

The date of delivery is decisive for compliance with deadlines. If the customer fails to inform feratel or to inform feratel in time of changes as defined by the Point below and consequently does not receive legally significant documents, specifically a notice of termination or reminders sent by feratel to the address last indicated by the customer, such documents will nevertheless be considered as having been received by the customer. Under such circumstances invoices and reminders sent by feratel will also be

considered as having been received by the customer if they were sent to the paying agent last indicated by the customer.

#### **Change in customer's person**

The customer shall notify without delay but no later than within one month the appropriate feratel accounting office of any change of name or company, address (transfer of domicile), change of paying agent and any change of legal form or trade register number.

#### **Assignment of claims**

The customer does not have the right to assign his claims under this contract to a third party. feratel has the absolute right to assign to third parties at any time, for consideration or free, all rights and obligations arising from the title of this contract vis-à-vis the customer. In the case of delivery of contract feratel will inform the customer in writing. This will not entitle the customer to terminate the contract, provided the company taking over enters into all rights and obligations under the contract. feratel has authority to entrust subcontractors with the performance of its contractual obligations.

#### **Written form**

Amendments and/or supplements to this agreement must be made in writing in order to be valid; this also applies to the requirement of written form. Oral agreements have no legal consequences.

Amendments, supplements and termination of contracts or individual parts of contracts will be expressly designated as such and committed to paper, otherwise they will be inoperative. Apart from that, communication with other electronic media (e-mail) between the contracting parties is also considered as written form.

#### **Choice of law/Jurisdiction/Miscellaneous**

The contract shall be governed exclusively by the Austrian law. The United Nations Convention on Contracts for the International Sale of Goods - the UN Sales Convention - and all provisions of the Austrian law relating to it are expressly excluded. The contracting parties agree to waive avoidance on the ground of mistake or reduction by more than fifty percent. The place of performance is the seat of feratel.

Venue for the settlement of disputes arising from this contract shall be the competent court in Innsbruck.

Any expenses, fees or taxes arising from this agreement shall be borne by the customer.

Should any individual provision of the contract be void or unenforceable, the validity of the remaining provisions shall in no way be affected. In such case the contracting parties shall endeavour to replace the void or unenforceable provision by a relative provision coming as close as possible to the economic purpose of the void or unenforceable provision.