

# General Terms and Conditions of ENSAVE GmbH FN477150t

## §1 Validity

These terms and conditions apply to all completed sales transactions, contracts, work contracts, orders, subscriptions, services and related services between ENSAVE GmbH hereinafter referred to as "ENSAVE" and the respective business partner and CONTRACTUAL PART, below. Called "**CONTRACT PARTNER**". Deviations from these terms and conditions or declarations from or about the contract are only legally effective if they are written in German or English and confirmed by written declaration of ENSAVE. Terms and conditions of the contracting party are not valid, even if ENSAVE has not contradicted them. The offer of ENSAVE is aimed at Austrian entrepreneurs in the sense of the UGB.

## § 2 Contract Elements

- a) Components of the contract are the contract signed by both contracting parties, the general terms and conditions stated in the contract, the offers listed in the contract as well as additional written agreements.
- b) The contractual relationship is exclusively subject to Austrian law. For the application and interpretation of the contract provisions, the individual contract text, the general terms and conditions, the UGB, the ABGB and the relevant Austrian standards in the latest version apply in this order.
- c) The invalidity of individual parts of these terms and conditions does not affect the validity of the remaining provisions. The ineffective conditions shall be replaced by those statutory provisions that come closest to the legal and economic sense of the invalid terms.

## § 3 Offer and contract

- a) All offers are subject to change until their acceptance. Offers and quotations are non binding. The contractual relationship is only effective when ENSAVE confirms the order. Before this time, ENSAVE is not bound by offers, the prices quoted there are non-binding. Additional agreements expressly require the written form.
- b) ENSAVE may unilaterally modify the Agreement, to the extent necessary and reasonable, at any time after a written notice of 2 weeks in advance, to the extent required by law or performance otherwise would be impossible without the amendment. In the event of such a change, the customer may terminate the agreement with a notice period of 5 days in written form with effect from the end of the 2-week period

## § 4 Scope of services, service time

- a) Dates and deadlines shall be rough as agreed until they have been confirmed as binding by ENSAVE in written form. If the service is dependent on participation of the contracting party, the obligation to fulfill ENSAVE does not commence before the contracting party has fulfilled its obligation to cooperate.
- b) All costs arising from the contract shall be borne by the CONTRACTUAL PARTNER.

## § 5 Prices and Billing

- a) Payment of the purchase price must be made within the agreed period. Unless otherwise agreed in writing, invoices are to be paid immediately upon receipt without deduction. Discounts or bonuses granted are subject to the timely performance of the full payment. **Only the full payment entitles to the receipt or use of the ordered goods or related services.**
- b) The prices are ex works or ex warehouse of ENSAVE exclusive of VAT (net), packaging, loading and dismantling. If any fees, taxes or other charges are levied in connection with the delivery, these shall be borne by the CONTRACTUAL PARTNER. If the delivery has been agreed with delivery, this and any transport insurance requested by the CONTRACT PARTNER is charged separately, but does not include unloading and contracts. The packaging will only be taken back by express agreement. All prices do not include additional services requested by the CONTRACT PARTNER unless otherwise agreed in writing.
- c) The prices indicated at ENSAVE are given in EURO. If ENSAVE in turn buys from a contracting partner whose country of domicile does not use the EURO as payment method, the agreed price, which results from conversion into Euro on the basis of the European Central Bank's announced euro exchange rate at the time of the conclusion of the contract, shall apply.
- d) In the event of default of payment by the contracting party, ENSAVE is entitled to make further payments dependent on advance payments or securities provided by the contracting party, to demand damages instead of performance and to withdraw from the contract. Further interest and damage claims remain unaffected.
- e) If there are more than 4 months between the conclusion of the contract and the delivery, without this being due to a delay in delivery for which ENSAVE is responsible, ENSAVE may demand that the contracting party approve an increase in the agreed prices. Insofar as the demanded increase is more than 5% of the agreed price, ENSAVE is entitled to withdraw from the contract.
- f) Entrepreneurs owe interest on late payments of 9.2%. It is possible for ENSAVE to charge a lump sum of EUR 40, - extrajudicial dunning costs. Should the actual effort exceed this amount, ENSAVE may charge a higher amount of dunning costs.

## § 6 Retention of title

- a) All services rendered remain the property of ENSAVE until full payment of all claims arising from the business relationship between the contracting party and ENSAVE. The contracting party is not entitled to pledge and assign the reserved goods or claims assigned to ENSAVE as collateral. Pledging or confiscation of the reserved goods or the claims assigned to ENSAVE requires ENSAVE from the contracting party be notified without delay, stating the pledgee.
- b) The contractor stores the reserved goods free of charge. He has these against the usual dangers, in particular theft, breakage, fire. Water and other damage, to be insured in the usual scope. Claims for compensation, which are due to the contracting party due to damage of the reserved goods against an insurer or another person, shall be assigned to

ENSAVE in the amount of the market value of the goods. If the contractual partner does not immediately notify the conclusion of the insurance upon request by ENSAVE, ENSAVE is entitled to insure the reserved goods themselves at their own expense.

- c) The CONTRACTUAL PARTNER is entitled to further process and / or sell the goods subject to retention of title in the ordinary course of business. The further processing takes place for ENSAVE and does not lead to the loss of the reserved property. In the case of combining or mixing with other goods not owned by ENSAVE, ENSAVE is co-owner in proportion of the shares. Already now, the CONTRACTUAL PARTNER assigns all its claims arising from the resale of the reserved goods against third parties, as well as all claims relating to insurance contracts concerning the reserved goods, to the amount of the claim ENSAVE. The CONTRACT PARTNER shall keep incoming funds from assigned claims separately from their own funds and, upon the due date of the claim, pass ENSAVE on to them without delay. ENSAVE accepts this assignment and undertakes in return not to collect the assigned claims before the due date of the claim. In the event of default of payment, the CONTRACT PARTNER undertakes to notify the buyers of the reserved goods as well as its insurer ENSAVE of the first request.

### § 7 Transfer of risk

The risk of accidental destruction, damage or other deterioration of the products supplied by ENSAVE is transferred in the case of dispatch with the handover to the freight forwarder or forwarding to the contracting party. This also applies to carriage paid shipping.

### § 8 Delivery, delivery time, delivery obstacles

- a) ENSAVE sends the contracting party a written (including e-mail) order confirmation with all relevant order data.
- b) In the case of non-acceptance of ordered goods or ordered services, ENSAVE is entitled to reimburse the resulting additional expenses, eg. frustrated transport costs or preparation costs. This does not apply if ENSAVE does not perform its services in accordance with the contract.
- c) The acceptance of orders is subject to the provision of services. If the delivery or the observance of an agreed delivery time is impossible due to circumstances for which ENSAVE is not responsible, the delivery obligation expires on the scheduled delivery date. In particular, the circumstances for which ENSAVE is not responsible include: difficulties in obtaining goods or materials or third-party services, breakdowns (including from suppliers to ENSAVE), traffic disruptions, lockouts and strikes, and all cases of force majeure. In such cases, ENSAVE becomes the contractual partner without delay
- d) to arrange a replacement date for the prevented delivery. If the contract partner of ENSAVE is offered a new delivery date not later than two weeks after one of the originally agreed delivery dates, and the delivery is also properly carried out on this new date, a timely delivery by ENSAVE is available.
- e) Can ENSAVE not offer the CONTRACTUAL PARENT any new performance date in accordance with § 7 lit c, or can the new delivery date from the one described in point
- f) § 7 lit c cases (impossibility of delivery on the agreed date for reasons beyond the control of ENSAVE) are not met, ENSAVE is entitled to withdraw from the contract in whole or in part, without being liable for damages. Likewise, in these cases the buyer can withdraw from the contract.

- g) In the case of divisible services, the CONTRACTUAL PARTNER has no right of rescission regarding deliverable or deliverable parts insofar as parts of the service can be fulfilled and used by the purchaser. Under the same conditions, or if the remaining parts in due time (in the sense of point § 7 lit.
- h) the CONTRACTUAL PARTNER is not entitled to refuse the acceptance of partial deliveries.

### § 9 Resignation from the contract / termination

ENSAVE is entitled to withdraw from the contract immediately if the contractual partner does not comply with his obligation to cooperate despite a reminder and the setting of a reasonable grace period, or if he is in default of payment and fails to pay in spite of a reminder and a grace period. ENSAVE is also entitled to resign if the situation changes significantly during the execution of the contract.

### § 10 Warranty; liability and compensation

- a) Commitments, such as the usability or special characteristics of the goods, the service, any success or declarations by ENSAVE employees are non-binding and do not constitute an express assurance of particular characteristics unless made in writing (including by e-mail).
- b) Warranty claims assume that defects are reported to ENSAVE without delay, recognizable defects immediately upon acceptance, hidden defects after discovery, and stating the specific defects (generally held complaint is insufficient) and original invoice. In case of defects, ENSAVE is obliged to provide a warranty within 6 months (shortening the warranty period). A warranty claim is in any case limited to the purchase price of the delivered and defective goods or services.
- c) ENSAVE shall fulfill its warranty obligations at its option either by delivery of faultless goods or services, improvement, subsequent delivery of missing parts or rescission of the contract (that is, repayment of the fee) within a reasonable period.
- d) Any customary or minor technical deviations in quality, quantity, equipment or design shall neither constitute a warranty defect nor a non-fulfillment of the contract.
- e) ENSAVE is liable for damages according to the legal regulations. Liability for negligently inflicted
- f) Damage is excluded. The limitation of liability does not apply to damages resulting from injury to life, limb or health of persons and claims under the Austrian Product Liability Act.
- g) The CONTRACTUAL PARTNER must prove the existence of intent or gross negligence. The liability for lost profits and other consequential damages is excluded. The replacement of (defects) consequential damage, other property damage, financial loss and damage from claims of third parties against the contractor is also excluded.
- h) Neither party shall be liable for any failure or delay (other than with respect to payment obligations) arising out of government action, fire, flood, riot, earthquake, power failure, riot, explosion, embargo, legal or illegal strike, transportation delays any kind, delays or other conditions affecting production or supply in a manner which the party concerned can reasonably have no control over.
- i) The CONTRACT PARTNER is liable for the correctness and permissibility of his information or data provided and holds ENSAVE harmless and without complaint from claims of (legal) nature whatsoever that result from disregard of this obligation. This also applies to claims of third parties (for example due to copyright infringement).



## § 11 Confidentiality

Unless required by applicable law, the CONTRACTUAL PARTNER shall not disclose to any third party any content of this Agreement (except to its employees and agents who are aware of and agree with this limitation) without the prior written consent of ENSAVE. The CONTRACTUAL PARTNER shall not issue any press releases concerning the existence or conditions of this Agreement unless ENSAVE's prior written consent has been obtained. "Confidential Information" means information about the business, the products, the technologies, the strategies, the financial data, the operations or the activities that are protected and confidential by ENSAVE or its suppliers, in particular all business, financial, technical or other matters other information disclosed by ENSAVE. Confidential information does not contain any information for which the customer can prove that they are publicly known or without a breach of this agreement.

## § 12 Assignment prohibition

The CONTRACTUAL PARTNER may transfer the rights under this contract to third parties only with the express consent of ENSAVE.

## § 13 Place of performance, exclusive place of jurisdiction and choice of law

The place of jurisdiction is the district court Mödling, which is responsible for Brunn am Gebirge; this regardless of the value of the claim. Place of fulfillment is the seat ENSAVE.

## § 14 General

Changes and additions to the contract must be made in written form. This applies in particular to the waiver of the written form requirement

# Privacy policy or agreement with ENSAVE GmbH

## § 1 Processing of personal data

For the provision of services by ENSAVE, it is necessary to process personal and company-related data. The contracting party expressly gives his consent. The personal data will be treated confidentially and will not be passed on to third parties. In the implementation of contracts partial service providers are used, but they are bound by data protection agreements and contracts accordingly. A transfer of data to third parties in the sense of the address sale or the like, is expressly excluded.

## § 2 Obligations in connection with order data processing

- a) The parties will comply with the applicable provisions of the Data Protection Act 2018 ("DSG").
- b) ENSAVE will introduce and maintain appropriate technical and organizational measures against the unauthorized or unlawful processing of personal data and against the unintentional loss, accidental destruction or accidental damage to personal data.

- c) ENSAVE employs in the processing of personal data only persons who have committed themselves to the service provider to secrecy or are subject to a statutory confidentiality.
- d) ENSAVE will process the personal data solely for the purpose of providing the service and according to the instructions of the customer. The customer's instructions must be within the scope of ENSAVE's performance and may not give rise to any significant additional obligations for ENSAVE. Customer alone must ensure that the instructions comply with all applicable laws and do not cause any violation of applicable laws by ENSAVE.
- e) ENSAVE may use subcontractors who process personal data for parts of the ENSAVE permitted purposes without the prior consent of the customer. ENSAVE will in the event of such third party engagement as a subcontractor enter into a contract that imposes on the subcontractor the same obligations that affect ENSAVE.