

General Terms and Conditions
of AV-TEST GmbH
Klewitzstr. 7, 39112 Magdeburg, Germany

1. Scope of Application

- 1.1. These General Terms and Conditions (hereafter: "Terms and Conditions") govern the legal relationships between AV-TEST GmbH (hereafter called: "AV-TEST") and its Customers in view of the implementation of tests for safety products e.g. anti-virus software as well as the provision of other services from the portfolio of services of AV-TEST (hereafter: "Contractual Services").
- 1.2. The Contractual Services shall be performed exclusively on the basis of these Terms and Conditions unless there is written deviating agreement between AV-TEST and Customer in individual cases. General Terms and Conditions of Customer shall not be accepted by AV-TEST even in the event that AV-TEST does not explicitly contradict.
- 1.3. These Terms and Conditions shall apply to all present and future business relationships between AV-TEST and Customer in as far as Customer is an entrepreneur as defined by Article 14 BGB [Civil Code].
- 1.4. The provision of services shall occur on the basis of a service agreement as defined by Articles 611 et-seq. BGB. Services provided under a works contract (*Werkvertrag*) shall not be subject of these Terms and Conditions or of the individual agreements concluded hereunder.

2. Quotations, Orders, General Principles for the Provision of Services

- 2.1. Unless explicitly determined otherwise by AV-TEST, all quotations by AV-TEST concerning Contractual Services are subject to change. Verbal side agreements shall not be binding for AV-TEST.

- 2.2. Agreements concerning Contractual Services between Customer and AV-TEST shall be achieved by order by Customer (in writing or by e-mail) on the basis of quotations by AV-TEST and a subsequent order acknowledgement by AV-TEST (in writing or by e-mail).
- 2.3. Service deliverables arise from the quotations by AV-TEST and/or service descriptions as agreed with Customer on a case-by-case basis. Unless deviating or specific regulations have been agreed in the service description, AV-TEST shall owe service provisions according to standards customary in the industry and in compliance with the acknowledged state of technology.
- 2.4. AV-TEST shall be entitled to employ sub-contractors for the provision of services.
- 2.5. The parties shall inform each-other concerning all circumstances within their domain which might have implications for the provision of services by AV-TEST.

3. Dates

- 3.1. Unless deviating conditions have been agreed by the parties, the dates and deadlines contained in the quotations of AV-TEST and/or in the description of services agreed with Customer shall be indicative dates and deadlines without fixed delivery obligation.
- 3.2. Observance of dates and deadlines shall require timely receipt of all materials and documents to be provided by Customer as well as compliance with the agreed payment terms and other obligations by Customer. If these requirements are not fulfilled, delivery dates shall be extended appropriately.

3.3 In the event that AV-TEST shall notice that deadlines which have bindingly been agreed cannot be met, it shall inform Customer without delay concerning the reasons for the delay and its anticipated duration and shall take any and all measures suitable to meet the deadline.

4. Customer's Duty to Cooperate

4.1 Customer shall be obliged to support the services by AV-TEST in every phase by active and appropriate co-operation measures. In addition to the obligation to co-operate expressly laid down in the agreement AV-TEST is entitled to demand further obligations to cooperate from Customer at any time, if this is required for due provision of Contractual Services.

4.2 Customer shall render his obligations to co-operate free of charge for AV-TEST.

4.3 Customer shall provide AV-TEST with the software to be tested by AV-TEST as well as the data, documents and information required for the provision of services by AV-TEST ("Customer Materials") in a timely manner and completely.

4.4 Customer shall ensure, that on the side of Customer there shall be a sufficient number of contact persons who dispose of the necessary expertise.

4.5 In the event that AV-TEST shall provide Customer with data for the improvement of its software or a fault analysis which contains malfunctions ("Malware") after execution of the Contractual Services, AV-TEST shall mark those as such. Customer is obliged to treat data marked thus by AV-TEST as Malware, to process it only in compliance with the necessary diligence and not to execute it. This shall apply particularly also for data which have been marked as Malware by AV-TEST, which, however are not recognized by current anti-virus software.

4.6 In as far as Customer provides AV-TEST with software for a comparative test with software of another supplier, Customer shall assure that the software made available to AV-TEST is an identical version of software as the one sold by

Customer in the course of ordinary business dealings under the same label.

4.7 In as far as AV-TEST provides Customer with the test results of a comparative test prior to publication, Customer shall be obliged to examine the test results without delay and to inform AV-TEST in writing or by e-mail as quickly as possible of any possibly detected faults and mistakes, at the latest, however, at the feedback deadline mentioned in the agreement prior to the publication date.

4.8 In as far as AV-TEST is prevented to provide the Contractual Services by non-contractual provision of co-operation, AV-TEST shall not be responsible for any resulting deficits pertaining to the Contractual Services. Any contractual and legal deadlines shall be delayed accordingly. Possibly resulting additional work or other costs incurred through delayed or not provided co-operation may be invoiced by AV-TEST separately.

5. Change Requests

5.1 Each of the parties shall be entitled to request in writing changes to the Contractual Services. The change requests shall be made in writing or by e-mail and must contain sufficient information to enable the other party to evaluate the change request. Each change request shall contain at least the following information:

- a. Description of the requested change;
- b. Purpose of the requested change;
- c. special circumstances and background information which are to be considered in view of the desired change;
- d. Urgency of the desired change.

5.2 In the event that Customer submits a change request AV-TEST shall examine the request and shall submit to Customer an offer for realization containing any and all information which is essential for Customer for decision-making, particularly statements concerning the performance period and remuneration. Customer shall

examine the offer for realization without delay after submission by AV-TEST.

- 5.3 Changes in services shall be documented in writing by a corresponding adaptation of the agreement. As long as the parties have not agreed on a change request AV-TEST shall provide the services in compliance with the original agreement in the offer by AV-TEST and/or with the description of services agreed with Customer.

6. Prices, Remuneration

- 6.1 Customer shall pay for the Contractual Services provided by AV-TEST either on a time and material basis at the agreed rates or within the framework of a fixed price; full details are regulated in the corresponding individual agreement.
- 6.2 All remunerations/prices shall be subject to the then applicable VAT.
- 6.3 Unless expressly agreed otherwise in the respective individual agreement, no ancillary expenditures and/or travel expenses shall be invoiced separately.

7. Payment Terms

- 7.1 Invoices shall be due for payment within fourteen (14) calendar days from invoice date.
- 7.2 Irrespective of further contractual or legal claims, AV-TEST shall be entitled to cancel agreed payment terms as well as to demand pre-payment or collateral for the provision of further services which are subject of the agreement in the event that
- a. Customer is in default with an outstanding payment by more than thirty (30) calendar days;
 - b. insolvency proceedings have been opened regarding the assets of Customer or if the opening of such proceedings has been denied due to lack of assets; This shall also apply to any and all comparable insolvency proceedings in the country in which Customer has his place of business;

c. or in the event that justified doubts concerning the liquidity of Customer exists

- 7.3 If Customer is in default with two consecutive payments and if he does not pay within a newly fixed time limit, then this shall constitute an important reason as defined by Article 314 BGB which entitles AV-TEST to termination without notice.
- 7.4 If Customer defaults payment, AV-TEST shall be entitled to stop or to deny provision of the Contractual Services until all due payments have been made. In this case AV-TEST shall notify Customer of the discontinuation of further Contractual Services with fourteen (14) days' notice. The rights of AV-TEST regulated herein shall apply irrespective of further contractually agreed or legal rights and entitlements of AV-TEST, including enforcement of damage caused by delay.

8. Deficiencies in the Quality of the Services

- 8.1 Customer shall inform AV-TEST immediately in written or electronic form if he notices that a Contractual Service does not comply with the agreement. This shall be done in such way, that the provision of services contrary to the agreement notified to AV-TEST shall be specified in as much detail as possible.
- 8.2 In as far as AV-TEST is responsible for the service contrary to the agreement and Customer has complied with his obligation to information according to Paragraph 8.1, AV-TEST shall be entitled at first to render the Contractual Service in question without additional cost to Customer within an appropriate period and in compliance with the agreement, in as far as performance of the service is possible and expedient.
- 8.3 In as far as subsequent performance of the Contractual Service is impossible or is not successful in essential parts for reasons AV-TEST is to be held responsible for within the reasonable period of grace fixed by Customer, Customer shall be entitled to terminate the respective individual agreement without notice for an important reason. In this case AV-TEST shall be

entitled to remuneration for the services rendered on the basis of the individual agreement up to the effectiveness of the termination.

- 8.4 Further entitlements due to deficiencies in the quality of the Contractual Services shall be excluded. The right to enforce damage claims within the framework of Paragraph 9 remains unaffected.

9. Liability

- 9.1 Subject to the regulation in Paragraph 9.2 AV-TEST is liable for damages due to any legal basis for amounts corresponding to the following provisions:

- a. Liability of AV-TEST for damages which are caused by AV-TEST intentionally or by gross negligence shall be unlimited by their amounts;
- b. AV-TEST shall bear limited liability as to the amount in case of foreseeable, typical damages occurring due to violation of essential duties under contractual obligations (cardinal obligations) by slight negligence. The term "cardinal obligation" signifies such duties in an abstract manner, the fulfilment of which shall permit orderly execution of the agreement in the first place and the compliance with which the contractual partner must be able to trust at any time;
- c. Any further liability for damage claims shall be excluded, in particular liability for the violation of non-cardinal obligations by slight negligence or liability independent of negligence.

- 9.2 The above liability limitation shall not apply in cases of mandatory statutory liability as well as on assumption of a guarantee or of culpably caused physical injury.

- 9.3 Customer shall be obliged to implement appropriate measures for the prevention and minimization of damages. In this context Customer shall be responsible particularly for regular backup of his data. In case of loss of data for which AV-TEST bears responsibility, AV-TEST shall be

liable only for such time and effort which would be required for the restoration of data which had been saved by Customer in an orderly manner. In this context Customer furthermore is obliged to examine the test results of a comparative test and to notify possible detected faults and deficiencies prior to publication of the test results according to Paragraph 4.7.

10. Utilization of Customer Materials

- 10.1 Customer shall grant AV-TEST free of charge a non-exclusive right, unlimited in time and area to utilize Customer Materials made available to AV-TEST for purposes of the performance of the Contractual Services. In this context Customer shall particularly grant AV-TEST the right to test Customer's software provided for AV-TEST on an unlimited number of computers, virtual data processors or other devices.

- 10.2 AV-TEST shall additionally be entitled to file Customer Materials even after termination of the respective individual agreement to be used for later checks - irrespective of which kind.

11. Intellectual Property, Rights to Performance Results

- 11.1 AV-TEST shall retain title to all materials which are protected or can be protected by intellectual resp. industrial property rights or by positions similar to property rights irrespective of which kind (e.g. copy rights, patents, trademark rights, utility and design rights) and irrespective of whether registered or not and to which it is entitled at the time of conclusion of the respective individual agreement or which are prepared by AV-TEST (or by third parties on behalf of AV-TEST) after conclusion of the individual agreement particularly through the provision of Contractual Services ("Performance Results"). The same shall apply mutatis mutandis for editing, amendments and enhancements.

- 11.2 AV-TEST shall be entitled to utilize Performance Results or knowledge gleaned within the framework of the provision of Contractual Services (including information from log files/meta data from

tests performed) for its own purposes as well as for further projects and services towards third parties, including publication in newspapers and journals. This shall not apply in the event that performance of an internal or confidential test has been agreed with Customer in the respective individual agreement.

- 11.3 Upon complete payment of the agreed remuneration AV-TEST grants Customer a non-exclusive, non-transferrable right, unlimited in time and area to utilize the Performance Results established within the framework of the provision of the Contractual Services (particularly the results and reports of tests carried out by AV-TEST) for its own purposes.

12. Utilization of Logos

- 12.1 In as far as the usage of logos of AV-TEST ("AV-TEST Logo") has been expressly agreed in the respective individual agreement, AV-TEST shall grant Customer upon full payment of the agreed remuneration a non-exclusive, non-transferrable right, limited by time, to use the AV-TEST Logo in connection with the Performance Results and in compliance with the respective policies handed over to Customer by AV-TEST. Unless deviating agreements have been concluded, this usage right of Customer shall expire at the latest one (1) year after termination of the respective individual agreement resp. test agreement between Customer and AV-TEST.

- 12.2 Customer shall grant AV-TEST the right free of charge to publish and use name and company logo of Customer, product logos of Customer products tested by AV-TEST and a description of the Contractual Services in press releases and on the website of AV-TEST and in other marketing materials - without limitation in time and area.

13. Indemnification by Customer

Customer shall hold AV-TEST harmless of all demands, damage claims and other costs incurred by AV-TEST in connection with an alleged or established violation of property rights of third parties (particularly

in connection with copy rights, industrial property rights and property right positions, design patents, trade-marks, distinguishing marks, personal rights and other rights) caused by utilization of Customer Materials by AV-TEST or caused by the provision of the Contractual Services.

14. Confidentiality

- 14.1 Confidential Information shall be defined as any and all information and documents, including the contractual documents, which are either marked as confidential or the confidentiality of which becomes obvious from the circumstances and/or the nature of such documents. Confidential Information shall in particular be defined as technical, commercial and other information, e.g. information relating to technologies, products, services, prices, Customers, employees, strategies.

- 14.2 Deemed not confidential information is information, which

- a. were known to the receiving party prior to receiving it in connection with the individual agreement from the other party,
- b. the receiving party has independently developed without recourse to confidential information of the other party.
- c. which the receiving party has acquired from a third party which is not bound by limitations of utilisation and circulation,
- d. are or become part of the public domain without fault or assistance of the receiving party.

- 14.3 The parties shall treat all Confidential Information which one party discloses to the other party or receives from the other party under an individual agreement confidential and use them exclusively for the purpose of rendering the Contractual Services in compliance with the individual agreement. They shall protect Confidential Information from unauthorised access and shall treat it with the same diligence which is used for its own, likewise confidential

- information, at least, however with the diligence of a prudent business person.
- 14.4 Disclosing of Confidential Information shall occur only to employees of the own party and only if the respective employees are obliged to secrecy on grounds of a contractual regulation which is in accordance with this Paragraph 14. Paragraph 14.3 shall remain unaffected.
- 14.5 Confidential Information must not be disclosed to third parties by the receiving party without prior written agreement of the other party, unless
- a. this is required by statutory legal requirement or by court order or by order of an authority and the receiving party has informed the other party without delay in writing concerning its respective obligation and has allowed the other party the possibility to take action against the disclosure.
 - b. the confidential information is made available to the consultants of the receiving party in context with the execution of the individual contract and the consultant has first given the receiving party his commitment to secrecy in writing or if he is already bound by law to a professional obligation to maintain confidentiality.
- 14.6 Unless deviating agreement has been reached in the respective individual agreement the Performance Results handed over by AV-TEST to Customer shall be deemed Confidential Information of AV-TEST until released by AV-TEST and must not be published and/or made accessible to third parties in any other way.
- 14.7 Upon termination of the agreement both parties shall return the Confidential Information received from the other party or they shall destroy it in an appropriate way. In as far as the parties are obliged due to mandatory commercial or fiscal provisions to file Confidential Information of the other party, they shall be entitled to make copies of this information to the extent necessary in each case.
- 14.8 Subject to further confidentiality obligations on grounds of mandatory legal requirements this obligation to confidentiality shall continue to be in force for three (3) years after termination of the respective individual agreement.
- 15. Data Privacy**
- 15.1 Both parties shall commit to compliance with mandatory provisions concerning data privacy. They shall particularly oblige their employees to compliance with data secrecy according to Article 5 BDSG [German Federal Data Protection Act].
- 15.2 In as far as AV-TEST collects, processes or utilises personally identifiable information from Customer by way of order-related data processing subject to instructions, the parties shall conclude a separate agreement concerning order-related data processing according to Article 11 BDSG.
- 16. Term of Agreement, Termination**
- 16.1 Details concerning terms and termination of individual agreements shall be defined - in as far as this is customary or necessary due to the type of the agreed services - in the individual agreements.
- 16.2 The right of each party to extraordinary termination of the agreement without notice for an important reason shall remain unaffected.
- 16.3 An important reason for termination without notice exists for both parties particularly whenever
- a. insolvency proceedings are applied for concerning the assets of the other party, in case of opening of insolvency proceedings or of its rejection for lack of assets;
 - b. a substantial violation against the confidentiality provisions has occurred.
- 16.4 In the event that the important reason is based on a violation of the agreement by the other party, the termination for an important reason must be threatened in writing. The party in breach of the

agreement shall be given a written warning and shall be given the opportunity to eliminate the deficits which are the cause for the important reason within thirty (30) calendar days after receipt of the warning. There shall be no need for a warning whenever

- a. the party in breach of the agreement seriously and finally denies the performance owed by it, or
 - b. AV-TEST shall not perform the service at a fixed date defined bindingly in an individual agreement and Customer has linked continuation of its interest to receive services to the timeliness of the performance in the individual agreement, or
 - c. special circumstances exist which justify immediate termination when weighting the mutual interests of the parties.
- 16.5 In the event of termination for an important reason AV-TEST shall be entitled to remuneration for the services and expenditures provided up to the effectiveness of the termination.

16.6 Termination shall require the written form.

17. Final Clauses

- 17.1 Rights and duties under individual agreements may not be assigned in whole or in part to third parties without prior written consent of the other party.
- 17.2 The parties shall have rights to set-off only in the event that their counter-claims have been established as final and absolute, are undisputed or acknowledged in writing by the respective other party.
- 17.3 For these Terms and Conditions as well as for the individual agreements concluded between AV-TEST and Customer the law of the Federal Republic of Germany shall apply under exclusion of the reference provisions of the Private International Law and the UN Convention on Contracts for the international Sale of Goods (CISG).

17.4 Court of jurisdiction for all disputes arising from or in context with the agreements between Customer and AV-TEST shall be Magdeburg, in as far as Customer is a merchant as defined in the German Commercial Code, a legal entity under public law or a special fund under public law. In this case AV-TEST shall, however, also be entitled to take legal action before the court having local jurisdiction over Customer.

17.5 Modifications and amendments of these Terms and Conditions shall require legal written form to be effective. This shall also apply to any waiver of the aforementioned requirement of written form. Unless determined otherwise e-mail shall not be compliant with the requirement of written form. Oral side agreements have not been made.

17.6 Should one or several provisions of these Terms and Conditions be or become ineffective then this shall not affect effectiveness of the Terms and Conditions in total.