

ANNEXE 4: TERMS AND CONDITIONS

REALSIM

Version: November 2018



1. Scope

1.1 These terms and conditions apply to all contracts that are concluded between **REALSIM** and a company (hereinafter referred to as the "contracting party") and are valid in the version at the time of conclusion of the contract. The terms and conditions belonging to the contracting party are not valid.

2. Delivery

2.1 The delivery of ordered goods occurs when the goods are made available and collected from the **REALSIM** office by the contracting party or upon delivery.

2.2 The delivery period may be extended due to circumstances that are unforeseen or beyond the parties' control (force majeure, transport delay, strikes, statutory measures, etc.). The delivery period may also be extended if the contracting party does not meet its obligations that are required for carrying out this task in a timely manner.

2.3 The risk of potential loss and deterioration of the goods transfers to the contracting party on delivery, however, we will have already transferred this to the contracting party on sales shipment with the notification that the shipment is ready for dispatch and delivery.

2.4 If a parcel is visibly damaged on delivery, the contracting party must ensure that this is recorded in writing by the courier. The contracting party must provide immediate notification of transport damage in writing.

3. Prices

3.1 Prices are given in euros and are subject to the statutory value added tax.

3.2 Packaging, transport and shipping costs, as well as customs duty and insurance, are the responsibility of the contracting party.

4. Payment delays, operating costs

4.1 If the contracting party falls behind with payments, it must pay an annual interest on arrears of 9.2 percentage points above the base interest rate.

4.2 If the contracting party falls behind with a (partial) payment, **REALSIM** shall be entitled, after having set a suitable grace period, to withdraw from the contract and also claim non-fulfilment damages in the event of delayed payments.

4.3 In the event of delayed payments, **REALSIM** is entitled to claim a flat fee of €40.00 as compensation for operating costs. The contracting party is fully liable for damages for the outstanding delayed payments that exceed this amount, particularly costs for operations or collection measures.

5. Reservation of proprietary rights

5.1 The goods shall remain the property of **REALSIM** until payment of the purchase price and all associated costs and charges is complete.

6. Warranty

6.1 The warranty period lasts for one year from delivery.

6.2 The contracting party must always provide evidence that any fault was already existing at the time of delivery. Therefore, the assumption of defectiveness pursuant to Article 924 of the Austrian General Civil Code (ABGB) does not apply.

6.3 The contracting party must immediately notify **REALSIM** of any defect in the goods in writing. If a notification is not raised in time, the item shall be considered approved. Warranty claims and compensation claims for defects themselves and for errors regarding the item's flawlessness can subsequently no longer be made by the contracting party.

6.4 The contracting party shall lose its warranty claims if it interferes with or repairs the goods itself, or allows an unauthorised third party to do so.

6.5 The right to recourse against **REALSIM** pursuant to Article 933b ABGB is excluded.

6.6 All of the manufacturer's warranty conditions apply. Please note that unauthorised interference with the goods may terminate any warranty claim. **REALSIM** itself provides no warranty.

7. Rescission of lesion beyond moiety

7.1 The right to appeal a contract because of rescission of lesion beyond moiety pursuant to Article 934 ABGB (laesio enormis) is excluded.

8. Liability

8.1 Insofar as **REALSIM** is responsible for damage, pursuant to the statutory provisions, this liability is limited to wilful intent and gross negligence. The occurrence of gross negligence must be proven by the contracting party.

8.2 **REALSIM** is not liable for consequential indirect damage and loss of profit.

8.3 **REALSIM** is not liable for damage caused by improper handling or storage, excessive strain, not following the operating and installation instructions, incorrect installation, commissioning, maintenance and repair by the contracting party or

unauthorised third parties or standard wear and tear, insofar as these actions cause the damage. Similarly, the exclusion from liability also applies to failure to undertake necessary maintenance, unless **REALSIM** has assumed the maintenance obligation in accordance with the contract.

8.4 REALSIM reserves the right to announce optional recommendations regarding the use of products. The manufacturer's information and instructions for use regarding the respective products must be observed. **REALSIM** is not liable for damage caused by failure to comply with the manufacturer's information and instructions for use, or for incorrect configuration of such products.

8.5 The amount of liability is capped at the liability limit of **REALSIM's** liability insurance.

8.6 Potential claims of recourse by the contracting party are excluded in accordance with the provisions of the Austrian Product Liability Act.

8.7 Claims for damages must be lodged in court within 12 months, failing which these will expire.

9. Right to compensation and retention

9.1 The contracting party is not entitled to a right to compensation and retention.

10. Place of performance, place of jurisdiction, choice of law, written form

10.1 The place of performance is **REALSIM's** headquarters.

10.2 The place of jurisdiction for disputes arising from, or in connection with, the contract between the contracting party and us or concerning these terms and conditions is exclusively the competent court for the **REALSIM** headquarters.

10.3 Austrian law is solely applicable, to the exclusion of conflict rules and conflicts of law and the provisions of the United Nations Convention on Contracts for the International Sale of Goods.

10.4 Amendments and additions to these terms and conditions require the written form, which also applies to additional agreements and subsequent amendments to the contract, as well as to the omission of the written form requirement.

11. Severability clause

11.1 If a provision in these terms and conditions is, or becomes, invalid, this does not affect the validity of the other provisions. The invalid provision shall be replaced by a valid provision that comes as close as possible to the economic and legal purpose of the provision being replaced.