

Avian Services Terms & Conditions

Avian Terms and Conditions apply to all services provided by Avian to the Customer, unless otherwise explicitly agreed.

1 **Avian's delivery obligations**

- 1.1 Avian shall deliver services agreed with the customer under the terms stated.
- 1.2 Delivery is deemed in accordance with Danish law's general rules when Avian performs delivery the relevant services to the customer.
- 1.3 Avian has a right of remedy of any errors

2 **Customer Obligations**

- 2.1 The Customer shall assist Avian to the extent necessary and shall comply with all reasonable requests from Avian
- 2.2 The Customer is responsible and shall at its own expense acquire and maintain IT systems, including equipment, software and network connections required for the Customer's use of the Services, unless otherwise expressly stated in separate agreement.
- 2.3 Unless otherwise agreed, the customer must make changes to the Customer's IT systems and its administrative procedures necessary for the Customer to use the Services delivered.

3 **Data and data protection**

- 3.1 The customer retains all rights to the data provided by the customer to Avian.
- 3.2 To the extent that data provided by the customer includes personally identifiable information, Avian processes such information as instructed by the customer and in accordance with the Personal Data Act.

4 **Avian's warranties**

- 4.1 Avian warrants that the services covered will be delivered in accordance with good IT practice and that they do not violate third party rights.

5 **Intellectual property rights**

- 5.1 The customer acquires a non-exclusive and unlimited right of use for the work products of the services according to their purpose for use in the customer's business and, if necessary, against its customers and partners.
- 5.2 The unlimited right of use includes the right to use, including copying, modifying and further developing the workstations of the services.

- 5.3 The unlimited right of use includes the right to use, including copy, modify and further develop the solution, as well as individual deliveries received from Avian internally within the customer's group, cf. the definition of Group in the Danish Companies Act § 2.
- 5.4 Avian also retains all rights including the property and copyright of the services rendered and any other products provided by Avian during the agreement.
- 5.5 Avian and the customer are both entitled to apply the general ideas and concepts, including general commercial know-how, which have been developed or obtained during the collaboration.

6 **Third Party Products**

- 6.1 If the services include standard software from Avian or third parties, the customer's use rights are subject to the license terms applicable to the standard software.
- 6.2 Avian is not responsible for third party software or other third party products, but shall assist the customer in addressing errors and / or limiting the consequences thereof.

7 **Honors and payment obligations**

- 7.1 Avian determines the fee on the basis of agreement after
- a) Fixed Price,
 - b) Time and Materials, or
 - c) Agreed Budget.
- 7.2 Fixed Price: Avian performs the services as agreed at the agreed price.
- 7.3 Time and Materials Included: The hourly rates are determined, inter alia, from the experience and expertise of the Avian representatives involved, as well as the extent and the urgency. Avian reserves the right to invoice for Time and Materials at the end of the month.
- 7.4 Agreed Budget: As Time and Materials, only where Avian planning assumes that the total cost can not exceed the agreed amount, which is guaranteed. However, the scope and volume of services rendered is not guaranteed.
- 7.5 At the customer's request, Avian can estimate the size of the fee for a work product based on agreed criteria. Estimated estimates will be based on Avian's best assessment of the scope and economics of the assignment based on the available knowledge of the assignment, as well as Avian's experience from similar tasks. Avian's estimates are for guidance only and should not be considered binding on Avian unless Fixed Price, cf. 7.2, has been agreed.
- 7.6 The customer pays for other costs and expenses incurred in connection with the delivery of the services, including transportation, lodging, meals, etc.
- 7.7 Normally, Avian bills at the beginning of the assignment when fixed price is agreed, otherwise monthly in arrears.
- 7.8 Avian's terms of payment are net 8 days. After due date, Avian is entitled to calculate interest rates of 2% per entered month.
- 7.9 All prices are in Danish kroner excluding VAT and taxes, unless clearly stated.

8 **Damages**

- 8.1 Each party is liable to the other party for direct loss under Danish law's general damages rules.
- 8.2 Avian's total liability in connection with the agreement, regardless of the basis for this, is limited to the amount of compensation actually paid by the customer in the preceding six (6) months up to the month in which a loss occurs, however, no more than DKK 500,000.
- 8.3 When calculating Avian's total liability, any amount and / or value of any compensation that Avian has previously paid and / or granted to the Customer to cover or as compensation for its loss shall be deducted.
- 8.4 Avian is not responsible for operating loss, loss of profits and revenue, loss of lost data, reconstruction or lack of access, lost savings, claims raised by third parties against the customer, and indirect loss of any kind.
- 8.5 Avian is not responsible for force majeure-like conditions such as power disconnection, breakdown of publicly available networks, floods and similar conditions that prevent or restrict delivery of services.
- 8.6 Limitations on liability are only applicable if the loss can not be attributed to gross negligence or intentional circumstances.

9 **Transfer and use of subcontractors**

- 9.1 None of the parties may, without the prior written consent of the other party, transfer all or part of their rights and obligations to third parties.
- 9.2 However, both parties are entitled at any time without the written consent of the other party to assign their rights and obligations as part of a sale of the company or internal restructuring, unless the other party has legitimate objections.
- 9.3 The customer is aware that Avian may use subcontractors in connection with the delivery of the services. Avian is liable for such subcontractors to the same extent as Avian is liable for its own circumstances.

10 **References**

- 10.1 Avian shall be entitled to use the customer in a loyal way as a reference for marketing purposes.

11 **Confidentiality**

- 11.1 The parties shall observe confidentiality regarding the information, data and documents exchanged between the parties.
- 11.2 The party receiving confidential information shall observe the same confidentiality and avoid disclosure, publication or distribution of the disclosing party's confidential information which the receiving party would observe for its own confidential information which it does not wish to disclose, published or distributed.

12 **Termination**

- 12.1 The parties may terminate the agreement with 6 months' notice, unless otherwise explicitly agreed.
- 12.2 If a party is materially in breach of the agreement, the other party may terminate the agreement if the non-defaulting party has made an order and the defaulted relationship is not remedied within the period specified in the notice, which may not be shorter than 30 working days. However, any termination may never include services already delivered.
- 12.3 Regardless of a party's withdrawal from or termination of agreement, item no. 5, 8, 11 and 13 of these Terms and Conditions continue to apply.

13 **Disputes**

- 13.1 The agreement and any resulting dispute shall be governed by Danish law.
- 13.2 Litigation must take place at the Copenhagen City Council as a venue.