

Standard Terms and Conditions of Avira AG, Switzerland

I. Scope of the Standard Terms and Conditions and definitions

1. Scope of these Standard Terms and Conditions

The terms and conditions set forth below shall apply to any and all agreements by Avira AG (hereinafter referred to as “Avira”) concerning the delivery of goods, in particular, the provision of computer programs and associated updates and the rendering of services. They shall also apply to any and all future business relations, even if they are not expressly agreed again. In addition to these Standard Terms and Conditions, the **EULA** (End User Licence Agreement) of Avira GmbH, Lindauer Str. 21, 88069 Tett nang, Germany shall also apply for use of computer programs furnished.

Standard Terms and Conditions of the customer shall apply only if Avira has expressly consented thereto.

These Standard Terms and Conditions shall apply to both entrepreneurs and consumers.

2. Definitions

The following definitions shall apply for the scope of these Standard Terms and Conditions:

(a) Avira Freeware

Avira means any and all Avira products that are provided to the customer free of charge.

(b) Avira Shareware

Avira Shareware means any and all Avira products for which Avira’s free service (either the Update Service or the term of the Licence) is limited to a certain period for test purposes.

(c) Computer

A Computer is any device that is able to process data with the assistance of a programmable calculation specification.

(d) Computer Program

The Computer Program is the Avira product for which it has granted the customer’s rights of use.

(e) EULA

In addition to these Standard Terms and Conditions, the End User Licence Agreement of Avira GmbH (EULA) defines the customer’s rights of use for the respective Computer Program and/or Avira’s Update Service under the rel-

evant agreement and is published under and is published on the website

http://www.avira.com/documents/general/pdf/en/avira_eula_en.pdf

(f) Licence

The Licence is the customer’s right to use the Computer Program subject to these Terms and Conditions and in accordance with the EULA applicable as at the date of conclusion of the relevant agreement.

For those Avira products for which no Avira Update Service is provided, the Licence shall stipulate the nature, scope and term of the right to use for the Computer Program.

For those Avira products for which an Avira Update Service is provided, the Licence shall also constitute the customer’s right to receive ongoing Updates during the Update Term for the provided Computer Program. In this event, the Licence also stipulates for which product, for what period and for how many users the customer may use the Update Service.

(g) Software Key

The Software Key is an encrypted code that identifies the provided Computer Program and is necessary for installation and access to Updates. The Software Key is an integral component of the Computer Program.

By sending the respective Software Key, Avira grants the customer the Licence. The Update Term and the term of the Licence commence as soon as the customer has received the Software Key.

(h) Malware

Malware is any Computer Program and any other dataset that causes damaging or undesirable functions in the Computer or in the system of a user.

(i) Multiple Use

Multiple Use is simultaneous storage, simultaneous retention and any other simultaneous use of the of the Computer Program on several Computers and any use of such Computer Programs of Avira for which special Licences for Multiple Use are provided according to respective product information.

(j) One-Time-Code (OTC)

A One-Time-Code is a sequence of numbers, letters and /

or other symbols that must be entered into the Computer for some Computer Programs during their initial installation. In such cases, the respective Licence shall be granted by Avira with the aid of the OTC. Upon entering a valid OTC, the customer shall receive the Software Key and the Update Term or term of the Licence shall commence.

(k) Entrepreneur / Consumer

An Entrepreneur means any natural person, legal entity or partnership having legal capacity that is not engaged in personal or familial usage in ordering or receiving the Computer Program while performing its commercial or independent professional or other work.

Within the meaning of this Agreement, a Consumer means any natural person who is provided with the Computer Program of Avira for personal use or for use involving his/her family.

(l) Updates and Upgrades

Updates and Upgrades mean Updates of the Computer Program. Classification of the respective Updates as an Update or Upgrade shall at Avira's sole discretion.

(m) Update Term

The Update Term means the period during which the customer may access the Update Service.

(n) Update Service

The Update Service is the ongoing updating of a Computer Program of Avira through Updates and/or Upgrades. Some Computer Programs require the Update Service for functional use. Avira may at its sole discretion render services under its Update Service as an Update or Upgrade. Installation of the Computer Program and its Updates and Upgrades as well as regular downloading of the full and current Updates and Upgrades shall be the customer's responsibility.

II. Offer and conclusion of the Agreement

1. Offer

The depiction of Avira's products on the Internet and in prospectuses, catalogues and brochures shall serve to inform the customer. They shall not constitute any binding offer by Avira, but rather an opportunity for the customer

to make a binding contractual offer in the form of an order.

2. Conclusion of an agreement

A legally binding agreement between Avira and the customer shall be formed if the customer makes a legally binding order and Avira accepts such order by way of order confirmation or shipping of the goods.

2.2

Any and all orders shall be accepted by Avira only subject to the requirements of these Standard Terms and Conditions and the EULA of Avira GmbH.

3. Ancillary agreements

Any deviations from and modifications to these Standard Terms and Conditions may be validly effected for Avira only by those persons recorded in Avira's commercial register as having representative authority (hereinafter the "Management"). Oral agreements and declarations by other persons who have not been granted special authorisation for such purposes by the Management shall be valid only if these have been confirmed in writing by the Management.

III. Subject matter of the agreement

1. The subject matter of any agreement created subject to these Standard Terms and Conditions between the customer and Avira shall be the customer's right to grant of the contractually agreed Licence by Avira.

Upon payment of the agreed purchase price, the customer shall acquire the right to grant of the Licence agreed with Avira.

2. For Computer Programs for which an Avira Update Service is available, the Licence shall include:

a) a non-exclusive, non-transferable (subject to an express agreement to the contrary; see IV below) Licence free of charge for the Computer Program, including the Updates and Upgrades provided to the customer during the Update Term pursuant to the agreement; and

b) a right to access the limited term Update Service for

a fee during the Update Term.

3. For Computer Programs for which no Avira Update Service is provided, the Licence shall include a non-exclusive, non-transferable (subject to an express agreement to the contrary; see IV below) Licence for a fee for the Computer Program subject to the agreement.

4. Avira shall grant the customer the Licence by sending the Software Key subject to the agreement.

5. Any and all other rights in the Computer Program, Updates and Upgrades, in particular, title (to the extent permitted by law) and any and all other rights of publication, reproduction, processing, translation and other exploitation rights, shall be retained by Avira. Installation of the Computer Program and the associated Updates, Upgrades or releases shall not form part of the subject matter of the relevant agreement. In no event shall the customer be entitled to demand the Computer Program's source code in the absence of any express agreement to the contrary in the EULA.

6. Unless indicated otherwise for individual Avira Computer Programs, the customer's Licence shall be indefinite for any and all items subject to the relevant agreement. However, Avira's Update Service shall in any event be subject to a limited term.

This shall not affect Avira's right to rescind the agreement if the customer breaches a contractual duty and Avira can therefore no longer be reasonably expected to comply with the agreement. Where an Update Service is concerned, Avira may terminate the Agreement without notice in such cases.

After an agreement has been rescinded or terminated, the customer's Licence for the Computer Program shall terminate. The customer shall receive no further Updates from Avira. The customer must fully delete the Computer Program, in particular, the original data carriers, any backup copies and the Computer Program data files stored on its Computer system. Moreover, it must return the product information and user handbook if demanded by Avira. Should the customer have been furnished the product information and user handbook in electronic form, Avira may demand that the customer delete such data from any and all data carriers in its possession. Avira may demand written confirmation by the customer that the data has been deleted.

7. The product lifecycle defines in a binding manner for the contracting parties the operating systems with which the Avira Computer Programs are compatible and up to what time. Under certain circumstances, Avira's Computer Programs are not compatible with operating systems that are not specified in the product lifecycle or whose support period has expired. The product lifecycle thus constitutes an integral component of the relevant agreement and is published on the website

http://www.avira.com/de/support/product_lifecycle.html

8. No use of the Computer Programs in special risk areas
The Computer Programs must not be used in special risk areas that require error-free, permanent operation of relevant systems (high risk activities and high availability activities such as the operation of nuclear facilities, weapons systems, aviation navigation or communications systems, life support systems and equipment, and in mechanical and production processes involving pharmaceutical products or foodstuffs).

9. State of the art technology

The Computer Program specified in detail in the user handbook and provided to the customer, including the associated Updates, shall be in line with the respective state of the art technology. The customer is advised that given the current state of the art technology it is not possible to manufacture Computer Programs such that they operate in any event error-free with any and all applications (application programs and types of use) and in all combinations (in particular, with Computer Programs with third party providers). For these technical reasons, no warranty for recognition and deletion of any conceivable Malware may be made to the customer.

10. Usage provisions for use of the Computer Program

10.1 In using the Computer Program, the customer shall always comply with these General Terms and Conditions as well as the terms of use under the EULA of Avira GmbH applicable at the time of conclusion of the agreement. In particular, the Computer Program must not be reproduced, passed on or decompiled (i.e. recompilation into the source code), unless expressly permitted by the applicable EULA.

10.2 A Computer Program for which no special Licences for Multiple Use are available according to the associated

product information may be used by the customer on only one Computer. For this purpose, it may use any Computer available to it that meets the system requirements and for which the Licence was granted. Should the customer change Computer, it must delete the Computer Program from the Computer used to such time.

For those Computer Programs whose associated user handbooks provide for special Licences for Multiple Use, Multiple Use shall be permissible only if and to the extent that the customer was granted the relevant type or number of Licences by Avira.

10.3 Avira reserves any and all claims resulting from unauthorised use by the customer, in particular, copyright claims and compensatory damages claims. Express reference is hereby made to possible criminal liability for the aforementioned acts.

The provisions of this Section III. 10 of the Standard Terms and Conditions concerning reproduction and disclosure, including any contractual penalty (see IV. below), shall apply mutatis mutandis for the program handbooks and other documents pertaining to the Computer Program furnished. Reference is made to the supplementary terms and conditions of use under the EULA.

IV. Special provisions for resellers

1. If Computer Programs are provided to the customer expressly for purposes of resale, the customer may pass the Licence on to a third party. In the event of a resale, the serial numbers issued by Avira (e.g. Licence numbers or One-Time-Codes) shall be stated in the invoice.

2. The reseller must not reproduce the Computer Program in whole or in part, including for purposes of data backup. Culpable breach of the first and/or second provision shall entitle Avira to demand a contractual penalty of CHF 75,000 from the reseller for each case of breach. Additional claims on the part of Avira resulting from breach of this provision shall remain unaffected.

3. The reseller must not grant its customers any rights in the Avira Computer Programs other than those permitted pursuant to these Standard Terms and Conditions and the EULA of Avira GmbH.

V. Delivery

1. Only these Standard Terms and Conditions of Avira and the EULA of Avira GmbH shall govern the substance of the delivery obligation. Avira may render partial deliveries where a partial delivery is reasonable.

2. Deviations by the goods and services provided from the offer documentation shall be permitted provided they are reasonable for the customer and the material performance required under the relevant agreement by the Computer Program ordered is met in full. The right to make technical changes remains reserved.

3. Should the ordered goods be replaced by new goods in Avira's product range, and such new goods render the qualities required under the relevant agreement just as well or better, Avira may deliver such new goods instead of the ordered goods. In this event, Avira may adjust the price by the same percentage by which the price for the new goods exceeds the original price of the ordered goods. In the event of a price increase of more than 10 percent, the customer may terminate the contractual relationship resulting from the order within a period of two weeks following receipt of the invoice effective from the time at which the price increase is to apply.

4. Should goods be shipped at the customer's request, the risk for damage and destruction shall pass to the customer upon release for shipment. In the event of downloading of the Computer Program, risk shall pass to the customer as soon as it has received the necessary Software Key.

5. Should performance be delayed beyond the date promised by Avira, rights thereunder may be asserted only following expiry of a reasonable grace period of no less than three weeks set by the customer, unless the customer proves that its interest has lapsed entirely due to the delay. Should Avira default in delivery or should delivery become impossible for Avira, Avira shall only be liable subject to Section IX. below.

If timely delivery is prevented by circumstances that are not just temporary and that do not fall within Avira's scope of influence (in particular, in the event of strike, lock-out, unavailability of materials, force majeure, transport hindrances or plant closures), Avira may rescind the agreement without giving rise to any obligation to render compensatory damages.

VI. Prices and payment terms

1. Unless agreed otherwise, Avira's prices and Licence fees are net free place of shipment. All shipping costs, in particular, packaging, transport costs and transport insurance as well as the applicable statutory value added tax shall be paid by the customer.

2. Payments shall be due immediately without any deductions. Bills of exchange and cheques shall be accepted only subject to special agreement and only subject to the condition that these do not give rise to any costs and fees for Avira.

3. Should the customer default in payment, Avira may demand statutory default interest without notice.

During the default in payment by the customer, Avira may withhold its deliveries of Updates. Reference is hereby made to the consequences of a failure to install Updates, in particular, impairment of the protective function of the virus protection programs (in this respect, see also Section VII. 1. below of these Standard Terms and Conditions).

4. The customer may set off claims of Avira against its own counterclaims only if the customer's counterclaims are acknowledged by Avira in writing or confirmed in a final and binding judgment.

5. In addition to the default interest, a flat fee of CHF 15,- shall be charged for each notice, with the exception of the first notice.

VII. Customer's duties of co-operation and disclosure, duty of inspection and complaint

1. Updates/Upgrades: Due and proper use of Avira's virus protection programs shall require receipt of a Software Key from Avira or one of its authorised dealers and installation of all Updates, Upgrades and releases for the respective Computer Program. If the customer has not installed the current Updates, Upgrades or releases of Avira, the Computer Program's protection against Computer viruses and other Malware may be drastically reduced.

This also applies if an Update Service was agreed or the agreed Update Term has expired and the customer no lon-

ger receives any Updates, Upgrades and releases for the Computer Program.

2. The customer shall inform itself as to the key functions of the Computer Program. It shall bear the risk as to whether it meets its individual requirements and needs. The setup of a functional hardware and software environment for the Computer Program subject to the relevant agreement shall be the sole responsibility of the customer. The same shall apply to regular data backup within the customer's EDP system

3. The customer shall comply with Avira's advice concerning installation of the Computer Program, updating thereof by way of Updates and Upgrades and its operation; it shall always inform itself via the websites available on the Internet (www.avira.com) as to current advice by Avira and shall take this into account in operating the Computer Program.

4. The customer shall install the Computer Program at its own responsibility and cost. This shall also apply if certain Updates, Upgrades and releases require a new installation of the Computer Program during the agreed Update Term.

5. The customer shall inspect the provided Computer Program for patent defects without undue delay following receipt. Patent defects shall be notified to Avira immediately and in writing. The defects, particularly the symptoms, shall be specified in detail.

6. Defects that are not patent upon receipt must be notified to Avira immediately following discovery thereof by the user.

7. In the event of a breach of the duty of inspection and complaint, the Computer Program shall be deemed approved with regard to the relevant defect.

8. The customer shall notify Avira without undue delay of any changes to its e-mail address in order for Avira to be able to send the customer security-relevant information for use of the Computer Program.

VIII. Defect management

1. Claims based on defects in the Computer Program, Updates, Upgrades or user handbook shall vest in the customer as against the supplier of the Computer Program only, i.e. if the Computer Program is purchased via a dealer, as against the dealer only.

The customer shall notify Avira without undue delay if a third party asserts claims against the customer based on infringement of intellectual property rights by the Computer Program. Should there be any written documents in this respect, the customer shall furnish these to Avira without undue delay.

2. Should Avira have furnished the customer with the Computer Program or Updates/Upgrades permanently for a fee, Avira shall warrant that the functionality of the Computer Program or the Updates/Upgrades substantively conforms with the user handbook.

In this event, the customer shall have the following rights:

Defects in the provided Computer Program and Updates/Upgrades (material and legal defects), including the handbooks, shall be rectified by Avira up to three months following receipt by the customer if the customer has notified Avira of the defect in accordance with the relevant agreement.

Material and legal defects shall be rectified by way of elimination of the defect free of charge (repair) or provision of a defect-free Computer Program or Updates/Upgrades (substitute delivery). The expenses necessary to this end shall be borne by Avira, in particular, the transport, transportation, work and material costs. In no event shall the customer be entitled to demand the source code for the Computer Program in conjunction with defects.

If the defect cannot be rectified within a reasonable period or if repair or substitute delivery can be deemed to have failed for other reasons, then the customer may, at its choice, reduce the purchase price or – in the event of material defects – rescind the Agreement. Any and all compensatory damages claims of the customer that arise shall be governed exclusively by Section IX.

3. The following shall apply for Computer Programs that are furnished to the customer temporarily and that may be used by it for an indefinite or limited period:

Defects in the Computer Program furnished shall be

rectified by Avira within a reasonable period after notification of the defect. The defect rectification shall be effected, at Avira's choice, by way of repair or substitute delivery free of charge.

Extraordinary termination by the customer for a failure to grant use in accordance with the agreement shall be permissible only if Avira has been given sufficient opportunity to rectify the defect and such attempt has failed.

4. It shall be assumed that the repair or substitute delivery has failed only if Avira has been given sufficient opportunity to effect a repair or substitute delivery without achieving the desired result or if the repair or substitute delivery was unjustifiably refused by Avira.

If rectification of a material or legal defect in the form of repair or subsequent delivery is possible for Avira only at unreasonable expense, Avira may refuse to rectify the defect and refer the customer to its right to rescind or terminate the Agreement.

5. No warranty shall be provided for Avira Freeware or other Computer Programs and services granted by Avira free of charge, except for the operability of the Computer Program. Any liability on the part of Avira shall be subject to Section IX. The same shall apply for Avira Shareware, as long as there is no agreement with the customer for unconditional provision of a Software Key for a fee.

IX. Liability and compensatory damages

Notwithstanding the legal nature of the relevant claim, the following shall apply to the customer's compensatory damages claims:

1. Avira shall be liable to the customer for any wilful or grossly negligent breach of duty caused directly by its governing bodies or executives. Moreover, to the extent permitted by law, any liability on the part of Avira, in particular, for indirect, direct or consequential damage, such as lost profits, third party claims, unrealised savings etc., shall be excluded. Liability for damage resulting from injury to life, limb or health shall be reserved.

Any liability on the part of Avira pursuant to the Swiss Product Liability Act (Produktehaftpflichtgesetz) shall remain unaffected.

2. Should the customer breach its duties and limitations of use based on these Standard Terms and Conditions, including but not limited to Section III. 8 (no use of the Computer Program in special areas of risk) and Section III. 10 (usage provisions for use of the Computer Program) and/or Avira GmbH's respective current EULA, any liability on the part of Avira for damage incurred as a result of such breach shall be excluded.

X. Retention of title, transfer by way of security

Should the Computer Program be provided to the customer permanently, the following shall apply:

1. Avira shall retain title in delivered goods until full payment. The provisions of these Standard Terms and Conditions pursuant to which the customer acquires no title shall remain unaffected thereby; in this event, transfer of the Licence to the customer pursuant to Section III. shall be subject to full payment of the purchase price. Upon conclusion of this Agreement, the customer shall grant its consent to Avira being able to have the retention of title recorded in the relevant register at the registered office of the customer at its expense.

2. Should the customer sell goods purchased from Avira before it has itself paid the price to Avira, the customer and Avira agree that the receivables from the resale shall be assigned to Avira as they arise in order to secure its right to the purchase price. Should the goods be furnished together with other items, the assignment of the purchase price-related receivables shall be limited to the value of Avira's goods. Avira may disclose the assignment or demand that the customer notify the debtor of such assignment. The customer shall formally assign the receivables – if still necessary – at any time at Avira's request.

3. Should the customer default in payment, Avira may immediately repossess the goods subject to retention of title notwithstanding any retention of title recorded in the relevant register.

4. Assertion of the retention of title by Avira shall not constitute rescission of the Agreement unless Avira expressly advises the customer thereof.

5. The customer's right to continue to use the Computer Program shall lapse upon assertion of the retention of title by Avira. Any and all backup copies made by the customer for its own use must be furnished to Avira or deleted by the customer.

XI. Miscellaneous

1. Place of performance for performance by both parties and sole forum shall be the respective registered office of Avira if the customer is an Entrepreneur.

2. The legal relations between Avira and the customer shall be governed exclusively by the substantive laws of Switzerland. The United Nations Convention on Contracts for the International Sale of Goods (CISG) shall be expressly excluded.

3. Any necessary official permits for transport, purchase and use of the Computer Program in the destination country shall be obtained by the customer at its own responsibility.

Avira AG

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