

General Terms and Conditions of AVANTO VR Solutions GmbH

Status 31.03.2017

1. Objects of the Terms and Conditions

(1) The General Terms and Conditions of AVANTO VR Solutions GmbH, Otto-Lilienthal-Straße 16a, 28199 Bremen (hereinafter "AVANTO") regulate the use of the AVANTO products Feelestate and Pano-Live based on the contract concluded with the customer in addition to all Appendices. Provisions to the contrary from the Customer will also not become a component of the contract if AVANTO has not expressly objected to these conditions.

(2) AVANTO only renders its services for companies. Companies are either legal or natural persons or legally responsible partnerships who negotiate as part of their trade or business operations when concluding a legal transaction.

2. Object of the Contract

(1) With the AVANTO platform, the Customer will first be supplied with the required infrastructure for the services commissioned in the Master Agreement, for example for the storage, processing or presentation of panoramic photos or usage of learning software.

(2) An additional object of this contract is the web based use of software for the purpose of managing and operating panoramic photos. The software runs exclusively server based. The programming and the AVANTO software remain the sole property of AVANTO. The Customer may use the software in exchange for payment and solely on websites operated by AVANTO in accordance with the services commissioned in the Master Agreement.

3. Services from AVANTO

(1) AVANTO provides digital data and/or storage capacity on her servers based on an agreement based capacity. The capacities can be expanded in coordination with AVANTO (non-binding according to availability). The AVANTO software is installed on these servers. In this context, the Customer receives the right to use the AVANTO software. AVANTO makes it possible for the Customer to access the service described in §2 Paragraph 2 through the World-wide Web. AVANTO is responsible for the proper operation of the service – not the proper operation of the Worldwide Web.

(2) In order to enable the Customer to administer his or her accounts, he or she receives access to a so-called AVANTO software front end on which the accounts and campaign data are aggregated and recorded in a manner typical for both the market and the sector. Furthermore, the Customer is given a username and password by AVANTO for logging into the website.

(3) AVANTO is entitled to suspend operation of its platform for the purposes of maintenance and updating work or to resolve any technical disruptions. As far as technically possible, AVANTO will carry out such work outside of the normal usage times, preferably at night or in the early hours of the morning (Central European Time).

(4) The tracking components have an annual average accessibility of 99.8%. This does not, however, include times in which the accessibility of AVANTO was interrupted due to technical

or other problems which were beyond AVANTO's control (examples include force majeure, the fault of third parties, server-side manipulations from third parties in the form of hacking attacks, outages of the API interfaces to the markets, maintenance work about which the Customer has been notified in a timely manner etc.). Likewise, excepted are interruptions which arise during the first 4 weeks after commencement of the contract and therefore form part of initial set-up.

4. Obligations of the Customer

Should malfunctioning occur as a result of using the server in accordance with § 3 Paragraph 1 of this contract, the Customer has to inform AVANTO accordingly by email (info@avanto-vr.com) or by fax.

(2) The Customer is required to treat the access details according to § 3 Paragraph 2 of this contract with the utmost care, is not to pass them on, and is to prevent improper use of the access details by third parties. Parties who use the access with the knowledge and permission of AVANTO are not regarded as unauthorized third parties. In case of unauthorized use of access data, the Customer is required to immediately inform AVANTO accordingly and to bar access.

(3) The Customer assures AVANTO that he or she will communicate all necessary information to AVANTO in text form for the performance of its services and will not save or place any campaigns or content in the internet whose availability, publication or use infringes on the applicable right or rights of third parties (especially against name and brand rights, data protection laws or other legal requirements etc.).

(4) The Customer is required to release AVANTO from the claims of third parties, irrespective of the type of claims, which result from the illegality of content which the Customer has stored on the campaigns covered in this contract. This obligation to release also includes the obligation to completely release AVANTO from reasonable legal defense costs (e.g. court and lawyer costs).

(5) The Customer agrees to use all services according to the provisions of this contract without exception. The Customer is prohibited from manipulating the software, especially mechanisms or other scripts connected to the software which could impair the functionality of in-telliAd's services. The Customer is not permitted to take any measures which would lead to unreasonable or excessive load of AVANTO's systems. Use of these services together with the software of third parties is not permitted. The requirement for measures of this kind is always the prior written permission of AVANTO.

(6) Data is to be set according to the format which is defined on the AVANTO platform. The Customer is therefore obliged to ensure appropriate data security provisions. AVANTO has the right to not process information and data set by the Customer to the extent that this data would or could cause errors in the data processing or if it has not been set in the correct format. The Customer is responsible for monitoring procedures of this kind and to derive the necessary measures from them.

(7) The Customer shall notify AVANTO immediately if:

- * if the Customer has applied to open insolvency proceedings or must do so in the next 14 days,

- * if third parties have applied to open insolvency proceedings,

- * if the Customer has stopped making payments due to financial difficulties (either fully or in part) or must do so,

- * if measures have been taken against the customer to satisfy the claims of third party creditors at the same time the Customer experiences financial difficulties, or

- * if the Customer has agreed to measures taken against him or her to satisfy the claims of third party creditors at the same time he or she experiences financial difficulties.

(8) To the extent that the Customer breaches his or her obligations according to this contract, AVANTO is entitled, with prior warning, to bar access to the Customer and to withhold services stipulated in this contract. AVANTO is entitled to bar access immediately in the case of severe dereliction of duty such as payments in arrears, manipulation of services, placement of illegal content etc.

5. Compensation

(1) The Customer is committed to paying the compensation agreed to in this contract.
(2) AVANTO will invoice the Customer the contractually arranged compensation each month. The amount which arises from the actual sales volume will be payable 7 days after the invoice has been issued. Legal provisions will apply in the event of delinquent payment.

6. Usage Rights

(1) AVANTO grants the Customer a simple, non-transferable usage right for the purposes outlined in § 2 Paragraph 2 which is limited to the duration of this contract. This entitles the Customer to use the services for internet sites operated by AVANTO for his or her own purpose. Changes of any kind within the scope of simple usage are not permitted.
(2) The Customer is entitled to transfer the usage rights granted to him or her to a third party (e.g. an advertising customer), either fully or in part, either free of charge or in exchange for payment, in keeping with the usage rights granted to him or her in § 4 in the context of § 6 Paragraph 1 or may create appropriate accounts for this third party at AVANTO. The Customer always remains the contractual partner and liable party in such cases should AVANTO have any claims for payment. No contractual arrangement with any third party occurs at any time.
(3) The Customer remains the owner of all rights, especially all copyrights, to the information and data recorded from the Customer for performing the services. The Customer grants AVANTO the right to use all information and data, including the right to reproduce information and data and to transfer it to third parties, to the extent required for performing the services.

7. Guarantee

(1) AVANTO guarantees usability of the platform only as described in § 3. The customer is aware that software which is completely free of errors cannot be created. The software being free from defects will therefore only be guaranteed within the normal scope of the market and the sector.
(2) AVANTO does not guarantee the software will achieve a particular degree of performance success, especially regarding the number of conversions, extent of the traffic, range or targets.
(3) AVANTO has no influence on falsifications which may arise through advertising blockers, cookies which have been deleted in the meantime or the errors/misuse of third parties. Error-free function of software in connection with networks which have not been released by the provider in writing cannot be guaranteed.
(4) The software made available by AVANTO supports the Customer automatically only in the agreed scope and supports the Customer's marketing measures using software.

8. Liability

(1) AVANTO is liable in cases of intent or gross negligence for damages incurred by AVANTO as well as its legal representatives or proxies in the context of performing the services according to this contract as well as for damages resulting from injury to life, the body or to health for which

AVANTO, its legal representatives or proxies are responsible.

(2) Furthermore, AVANTO is not liable for slight negligence, except in cases where a major contractual obligation is breached. The notion of essential contractual obligations refers to such obligations without whose fulfilment the proper execution of the contract cannot be possible and upon whose compliance the user ordinarily depends or may depend. In these cases, the liability is limited to the replacement of foreseeable, typically occurring damages.

(3) To the extent that AVANTO's liability according to the above stipulations is limited or excluded, this also applies for the proxies of AVANTO.

(4) AVANTO is not liable in any way for damages as a result of service outages or service delays due to unforeseeable events (force majeure) beyond the control of AVANTO, its legal representatives or its proxies. Force majeure events are understood to include, in particular, war, unrest, natural disasters, fire, sabotage attacks through third parties (e.g. through computer viruses), electrical power outages, official decrees, legal internal industrial dispute measures and the outage or limiting of service for communication networks and gateways of other providers.

(5) Liability under the Product Liability Act shall remain unaffected.

9. Duration of the Contract

(1) The duration and ability to terminate the contract is derived from the Master Agreement.

(2) Every termination requires the written form.

(3) Both Parties are entitled to terminate the Master Agreement for an important reason at any time without adhering to a notice period. An important reason applies in particular when
* the Customer is longer than 10 working days in arrears after having received a payment reminder or warning notice;

* the Customer breaches major provisions of these Terms and Conditions

(§4) or other legal provisions and has not remedied the situation within a reasonable period despite reminders. No reminder is required if success is not expected or if the breach is so severe that upholding the contract is not feasible for the Provider.

(4) In the case of an ordinary termination, AVANTO is obliged to provide the Customer with all contractual and Customer data (also the Customer's affected accounts) together with all access details up until the end of the contractual period.

(5) After termination and, if applicable, upon conclusion of the notice period, AVANTO shall bar the cancelled services from the Customer and delete Customer data saved during the course of performing the respective services. Once the contract has ended the Customer will lose all usage rights of the affected service and discontinue his or her usage. The Customer is responsible for securing his or her data in time and does not have any claim to be issued with any of his or her recorded data once the contract has ended.

10. Competition and Advertising

(1) Both Parties agree to treat the technical and commercial details of the cooperation confidentially.

(2) Both Parties may report in a general manner that a contractual relationship exists between the Parties in their customer information material, brochures, presentations etc. or, in the case of agencies, that such a relationship exists with its end customers, unless one or both Parties object. The Parties shall make company logos available for reference purposes if re-quested.

11. Data Protection

(1) Compliance with data protection provisions is of particular significance to AVANTO. The following provisions apply in addition to the data protection provisions.

(2) Some products and services record and analyze the behavior of the Customer's users across various media channels. This data is only recorded and used by AVANTO in an anonymized form.

(3) AVANTO shall not pass on any personal data from the Customer, regardless of its form, to third parties nor shall AVANTO exploit such data for its own ends. Furthermore, relevant customer data shall only be stored on the server to ensure seamless technical operation and disposed of according to market-typical standards – as far as possible in encrypted form. The Federal Data Protection Act shall be used as a reference with regard to the obligations of both Parties. AVANTO is entitled to use data in an anonymous form which arises from use of the services by the user such as recorded tracking / tag information and statistics.

(4) In addition to the login and account administration, the recording, processing and use of personal data by the Customer by means of the services is prohibited. To the extent that personal data is recorded, processed or used by the customer in the scope of the services, a contract data processing agreement through AVANTO according to § 11 Federal Data Protection Act is in place and the Customer shall observe all legal obligations necessary for it or commission AVANTO accordingly (at cost). Ensuring the legal permissibility of the use of tracking pixels, tracking codes and the placement of cookies together with a legally compliant use of AVANTO software in discrete individual cases (especially with regards to customer data, the customers' country of origin and the country in which the Provider's services are valid or are to be used) remains the sole responsibility of the Customer.

(5) Should claims be made against AVANTO by the Customer due to breaches of legal data protection provisions or the personal rights of third parties or if other damages are incurred by AVANTO, the Customer shall indemnify AVANTO and release it from all conceivable claims including reasonable costs for a legal defense, to the extent that the Customer is responsible for the damages/breach.

12. Information Regarding Further Offers from AVANTO

(1) AVANTO will use the necessary email address for the implementation of the contract to inform the Customer from time to time about current developments and new products and services at AVANTO.

(2) The Customer can cancel the use of the email address by notifying AVANTO by email at info@avanto-vr.com. The Customer is advised of this option to cancel in each advertising email from AVANTO.

13. Final Provisions

(1) German law shall apply exclusively for this contract with the exception of UN Commercial Laws. The exclusive place of jurisdiction is Bremen.

(2) Only undisputed or legally binding counterclaims can be used to make an offset or validate a right of retention against claims from AVANTO.

(3) AVANTO shall notify the Customer if intends to change its General Terms and Conditions. If the Customer does not lodge an objection either in time or in the correct form within two (2) weeks of receiving the notification, the amended terms and conditions shall come into effect. The objection is only lodged in time and in the correct form if it is in text form and is received by

AVANTO within two weeks of the Customer receiving the notification. AVANTO shall inform the Customer about the possibility of lodging an objection, when the object is to be submitted and in which form and the legal consequences of failing to lodge an objection in the correct form and within the specified timeframe.

(4) Should individual provisions of this contract be legally invalid or lose their validity through a circumstance which subsequently occurs, the validity of all other provisions in the contract shall remain unaffected. An invalid provision shall be replaced by a provision which, in legal and commercial terms, reflects as far as possible to the one which had previously been intended by the Parties. The same applies for any gaps in this contract.