

Terms and Conditions for Products and System Integration

TÜV TRUST IT TÜV AUSTRIA GMBH



1. Applicability

TÜV TRUST IT TÜV AUSTRIA GMBH concludes contracts with Purchasers only in application of these Terms and Conditions. Once agreed upon, the Terms and Conditions shall also apply - until revoked by TÜV TRUST IT TÜV AUSTRIA GMBH - to all future contract conclusions. The applicability of Terms and Conditions of Purchasing and other Terms and Conditions of the Purchaser is hereby excluded for the entire business relationship. Insofar as the contracts are concluded with consumers as defined by the Consumer Protection Act (KSchG), indispensable statutory provisions shall take precedence over these Terms and Conditions.

2. Conclusion of Contracts

2.1. Offers and quotations of TÜV TRUST IT TÜV AUSTRIA GMBH are subject to change and non-binding. The descriptions, information and prices contained in catalogues, brochures, price lists and other documents of TÜV TRUST IT TÜV AUSTRIA GMBH are only legally binding insofar as they expressly become part of the contract. All prices shown are gross prices, i.e. including the statutory Austrian value added tax. However, unless otherwise expressly agreed, all prices shall be exclusive of the costs of processing and shipping to be paid by the Purchaser, which shall be invoiced separately.

2.2. A contract shall only be concluded upon explicit written confirmation of the order by TÜV TRUST IT TÜV AUSTRIA GMBH or upon commencement of the execution of the order by TÜV TRUST IT TÜV AUSTRIA GMBH. Amendments and supplements to the contract must be made in writing. This also applies to the agreement on the waiver of the written form itself. Verbal information, collateral agreements and promises by organs or employees of TÜV TRUST IT TÜV AUSTRIA GMBH are only binding at any stage of the contract execution if they are confirmed in writing.

2.3. If judicial insolvency proceedings are initiated against the assets of the Purchaser or if a petition in bankruptcy is dismissed for lack of assets to cover costs, TÜV TRUST IT TÜV AUSTRIA GMBH shall be entitled to withdraw from the contract with immediate effect. If negative information about the financial situation of the Purchaser becomes known after conclusion of the contract, TÜV TRUST IT TÜV AUSTRIA GMBH is entitled, at its own discretion, to make the performance of the service dependent on the immediate payment or bank security of the total remuneration or to withdraw from the contract by asserting claims for damages. In case of a justified withdrawal from the contract by TÜV TRUST IT TÜV AUSTRIA GMBH, the assertion of claims by the Purchaser is excluded in any case.

2.4. If the fulfilment of the contract should fail due to reasons in the sphere of the Purchaser, TÜV TRUST IT TÜV AUSTRIA GMBH shall be entitled to a cancellation fee of 15 % of the order value. TÜV TRUST IT TÜV AUSTRIA GMBH expressly reserves the right to assert further claims in this case.

3. Geographical applicability

3.1. With the delivery and payment of software programs, the Purchaser does not acquire ownership of the program, but only a non-transferable and non-exclusive right of use. The programs, including accessories, shall remain the property of the manufacturer. The use of a program as well as other software products may only take place on one computer system (one installation).
Reproduction of the programs or other software products, in whole or in part, on the same or other media, as well as any other use deviating from the use agreed upon in the order, is expressly prohibited to the Purchaser. Accordingly, only reproductions made by the Purchaser for its own data backup purposes shall be permitted. These reproductions may not be passed on to third parties and may only be used

by the Purchaser if it can be proven that the original is no longer usable due to damage or destruction.
The Purchaser undertakes neither to pass on the programs or other software products to third parties nor to make them accessible in any other form. Third parties in this sense also include branch offices of the Purchaser or subsidiaries. Unless agreed in the order, the reproduction of the program or other software products for the purpose of multiple use within a company of the Purchaser on several computer systems is also excluded.

The same provisions shall apply mutatis mutandis to the program manuals and other documents with regard to reproduction and transfer.

3.2. If the Purchaser has acquired the program or the program carrier for resale, it shall likewise not be permitted to reproduce the products in whole or in part, in which case reproduction for the purpose of data backup shall also be excluded.

The reseller may only hand over the programs to third parties after they have committed themselves in writing to comply with these Terms and Conditions of TÜV TRUST IT TÜV AUSTRIA GMBH both vis-à-vis the reseller and TÜV TRUST IT TÜV AUSTRIA GMBH.

3.3. The Purchaser is liable to TÜV TRUST IT TÜV AUSTRIA GMBH for all violations of the contractual use of the software products and accessories as well as the above provisions and shall indemnify and hold TÜV TRUST IT TÜV AUSTRIA GMBH harmless in particular with regard to any claims of the manufacturer or other entitled parties, which are asserted due to a use of the contractual products contrary to the contract.

4. Delivery

4.1. The order confirmation issued by TÜV TRUST IT TÜV AUSTRIA GMBH and these Terms and Conditions as well as the corresponding Terms and Conditions and license terms of the respective software manufacturer shall be exclusively decisive for the content of the delivery obligation. In the event of contradictions, the contractual provisions and these Terms and Conditions shall take precedence in any case. The specification of delivery periods and/or delivery dates by TÜV TRUST IT TÜV AUSTRIA GMBH is always non-binding. TÜV TRUST IT TÜV AUSTRIA GMBH is entitled to partial deliveries.

4.2. Deviations of the delivered goods and services from the quotation documents are permitted, provided that they fulfill or include the services of the order.

4.3. Product specifications, prices as well as conditions of sale may be changed without announcement. Products or individual formats may be withdrawn from the sales program at any time without notice.

4.4. Delivery shall be deemed to be fulfilled as soon as the goods have left the shipping point, whereby transport shall be at the risk and expense of the Purchaser without exception. The risk shall thus pass to the Purchaser upon dispatch, irrespective of the terms of payment agreed for the delivery. The place of performance shall be Vienna.

4.5. In cases of force majeure, TÜV TRUST IT TÜV AUSTRIA GMBH shall be entitled to extend any delivery period appropriately without being in default. The delivery obligation of TÜV TRUST IT TÜV AUSTRIA GMBH is furthermore suspended as long as the Purchaser is in default with payments, also from other obligations.

4.6. The assertion of claims against TÜV TRUST IT TÜV AUSTRIA GMBH due to a delay in delivery or non-fulfilment of the contract is only permissible in the case of intent or gross negligence. A delay demonstrably caused by intent or gross negligence shall entitle the Purchaser to withdraw from the order in question only after setting and expiry of a reasonable grace period of at least two weeks.

4.7. In the event of default of acceptance by the Purchaser or if the performance of the service is delayed by TÜV TRUST IT TÜV AUSTRIA GMBH for other reasons for which the Purchaser is responsible, TÜV TRUST IT TÜV AUSTRIA GMBH shall be entitled to store the goods at the Purchaser's expense and to withdraw from the relevant

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delivery or the underlying contract after a reasonable period of time, in which case the Purchaser shall be obliged to compensate for all damages.

5. Terms of Payment

- 5.1. Invoices issued by TÜV TRUST IT TÜV AUSTRIA GMBH are due for payment immediately upon receipt without any deductions. In the absence of any agreement to the contrary, the price list current at the time of conclusion of the contract shall apply.
- 5.2. Complaints about invoices have to be made in writing and substantiated within a period of two weeks after receipt of the invoice of TÜV TRUST IT TÜV AUSTRIA GMBH, otherwise the invoice shall be considered as accepted.
- 5.3. In case of default of payment, also with only one due claim, all outstanding claims - also those from other orders and irrespective of a deviating payment agreement - shall become due immediately and TÜV TRUST IT TÜV AUSTRIA GMBH may optionally demand immediate payment of the outstanding claims and wait with the performance of the order until payment or withdraw from the contract without notice and claim damages for non-performance. Default of payment shall entitle TÜV TRUST IT TÜV AUSTRIA GMBH to charge interest on late payments of 9.2 percentage points p.a. above the base interest rate of the Austrian National Bank from the 10th day after invoicing. Furthermore, in this case the Purchaser is obliged to reimburse TÜV TRUST IT TÜV AUSTRIA GMBH for all costs incurred for the purpose of legal action.
- 5.4. TÜV TRUST IT TÜV AUSTRIA GMBH is entitled to send invoices to the Purchaser also in electronic form. The Purchaser expressly agrees to the sending of invoices in electronic form by TÜV TRUST IT TÜV AUSTRIA GMBH.
- 5.5. In case of orders comprising several units, TÜV TRUST IT TÜV AUSTRIA GMBH shall be entitled to invoice each individual unit or service after delivery.
- 5.6. The Purchaser is neither entitled to withhold payments due to incomplete delivery, warranty or guarantee claims or complaints, nor to set them off against own claims, as far as these have not been legally established or expressly recognized by TÜV TRUST IT TÜV AUSTRIA GMBH. With regard to orders from consumers within the meaning of § 1 of the Austrian Consumer Protection Act (KschG), offsetting by the customer is only permissible in the event that TÜV TRUST IT TÜV AUSTRIA GMBH should become insolvent, the claim is legally related to the customer's liability, the relevant claim of the customer has been established by a court of law or has been acknowledged by TÜV TRUST IT TÜV AUSTRIA GMBH (§ 6 para. 1 no. 8 KschG).

6. Retention of Title

- 6.1. Until full payment of the purchase price and all other claims, delivered goods remain the property of TÜV TRUST IT TÜV AUSTRIA GMBH. The Purchaser shall comply with the marking obligations and other formal requirements for the retention of title. In case of seizure or other access to the goods by third parties, the Purchaser is obliged to immediately point out the third-party ownership and to immediately notify TÜV TRUST IT TÜV AUSTRIA GMBH thereof.
- 6.2. At the request of TÜV TRUST IT TÜV AUSTRIA GMBH the Purchaser is obliged to insure the goods against damage, destruction or loss at his own expense for the duration of the retention of title.
- 6.3. The resale of goods subject to retention of title requires without exception the prior written consent of TÜV TRUST IT TÜV AUSTRIA GMBH. If the Purchaser sells the goods owned by TÜV TRUST IT TÜV AUSTRIA GMBH, the Purchaser shall transfer the claims arising from the resale to TÜV TRUST IT TÜV AUSTRIA GMBH. If the goods are sold together with other items, the assignment of the purchase price claim is limited to the value of the goods owned by TÜV TRUST IT TÜV AUSTRIA GMBH. The Purchaser is revocably authorized to collect the claims assigned to TÜV TRUST IT TÜV

AUSTRIA GMBH for its account in its own name. TÜV TRUST IT TÜV AUSTRIA GMBH is entitled to disclose the assignment or to request the ordering party to notify the debtor.

7. Warranty

- 7.1. If the Purchaser is not a consumer as defined by the Austrian Consumer Protection Act (KSchG), he must inspect the goods delivered by TÜV TRUST IT TÜV AUSTRIA GMBH immediately upon receipt and notify TÜV TRUST IT TÜV AUSTRIA GMBH in writing of any damage, defects or complaints, otherwise excluding any liability, within eight days. If the notification is not made in time, the Purchaser's warranty claim expires. If, without the consent of TÜV TRUST IT TÜV AUSTRIA GMBH, the defective products are repaired or other work is carried out on them, any warranty claim shall be excluded. Hidden defects must be notified in writing within 8 days of discovery. Possible notices of defects do not entitle to partial or complete retention of invoice amounts.
- 7.2. TÜV TRUST IT TÜV AUSTRIA GMBH warrants, in accordance with the statutory provisions, that the products supplied are fit for the purpose for which they are normally used or for the purpose agreed upon in the contract. In contrast, TÜV TRUST IT TÜV AUSTRIA GMBH shall not be liable in any case for a specific usability or property of the delivered products. In particular, the Purchaser is solely responsible for ensuring that the end products used meet the required technical specifications for the contractual products. Furthermore, the warranty shall be excluded if the Purchaser or third parties interfere with the software products, which shall include any manipulation beyond the scope of proper use.
- 7.3. The warranty period shall be 3 months, in the case of consumer transactions within the meaning of § 1 KSchG it shall be 2 years from the date of delivery. The warranty period shall not be extended or interrupted by improvements or attempts of improvement.
- 7.4. Every software program, which demonstrably shows a defect of the carrier material, will be repaired or replaced free of charge by TÜV TRUST IT TÜV AUSTRIA GMBH, if this is claimed in writing to TÜV TRUST IT TÜV AUSTRIA GMBH within the period set in point 7.1.
- 7.5. Warranty claims of the Purchaser shall be limited to replacement or improvement at the discretion of TÜV TRUST IT TÜV AUSTRIA GMBH. If these Terms and Conditions are used in commercial transactions, TÜV TRUST IT TÜV AUSTRIA GMBH is entitled to limit the warranty to the assignment of its own warranty claims against manufacturers, suppliers or third parties, unless the defect has its cause in the area of responsibility of TÜV TRUST IT TÜV AUSTRIA GMBH.
- 7.6. Insofar as TÜV TRUST IT TÜV AUSTRIA GMBH provides the Purchaser with standard software of third parties, their terms and conditions/end customer license agreements, in particular the warranty and guarantee statements contained therein, shall be part of the present agreement. TÜV TRUST IT TÜV AUSTRIA GMBH excludes any warranty and liability beyond the contents of the declaration of this third party.
- 7.7. If further agreements become part of these Terms and Conditions according to clause 7.6, the Purchaser also accepts English contract texts as authentic and expressly waives translation into the German language.

8. Liability

- 8.1. If the Purchaser asserts claims for damages against TÜV TRUST IT TÜV AUSTRIA GMBH, he is obliged to prove causation, illegality, fault and the degree of fault. The assignment of claims for damages to third parties etc. is not permitted.
- 8.2. The liability of TÜV TRUST IT TÜV AUSTRIA GMBH is excluded in case of damage to property or financial losses caused by slight negligence. The liability of TÜV TRUST

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- IT TÜV AUSTRIA GMBH in cases of simple gross negligence is in any case limited to the amount of its own earnings (trade margin) or the order value minus its own expenses. This exclusion does not apply to property damage or financial loss caused by TÜV TRUST IT TÜV AUSTRIA GMBH intentionally or by gross negligence.
- 8.3. The exclusion and limitation of liability shall not apply to personal injury.
- 8.4. The liability of TÜV TRUST IT TÜV AUSTRIA GMBH is - with the exception of personal injury - in all cases furthermore limited to the damage typical for the contract and foreseeable for TÜV TRUST IT TÜV AUSTRIA GMBH at the time of conclusion of the contract or commission of the breach of duty.
- 8.5. The exclusions and limitations of liability in clauses 8.1. to 8.4. also apply to the liability of TÜV TRUST IT TÜV AUSTRIA GMBH for its bodies and employees as well as the personal liability of the bodies and employees of TÜV TRUST IT TÜV AUSTRIA GMBH and other vicarious agents.
- 8.6. Claims for damages of the Purchaser can only be asserted in court within six months after knowledge of damage and damaging party, at the latest within three years after the event giving rise to the claim.
- 8.7. The above exclusions and limitations of liability shall not apply to claims under the Product Liability Act, insofar as liability is mandatory thereunder.
- 8.8. Liability for consequential damages, in particular for missed profits, lack of savings, loss of earnings, other financial losses, interest damages, etc. is expressly excluded. Any legal liability that may nevertheless exist shall in any case be subject to all the limitations set out in the section "Liability".
- 9. Non-disclosure/confidentiality/data protection**
- 9.1. TÜV TRUST IT TÜV AUSTRIA GMBH undertakes to treat all business and trade secrets brought to its knowledge by the Purchaser in connection with this contract and its execution as such and not to make them accessible to third parties, unless they are generally known, or TÜV TRUST IT TÜV AUSTRIA GMBH was already aware of them before without obligation to maintain secrecy, or TÜV TRUST IT TÜV AUSTRIA GMBH was informed or provided with them by a third party without obligation to maintain secrecy or they have been demonstrably developed independently by TÜV TRUST IT TÜV AUSTRIA GMBH, or they are to be disclosed due to a legally binding official or judicial decision.
- 9.2. TÜV TRUST IT TÜV AUSTRIA GMBH has obligated its employees to maintain secrecy about all facts that have come to their knowledge through the order.
- 9.3. The Purchaser allows TÜV TRUST IT TÜV AUSTRIA GMBH to make copies for the files of TÜV TRUST IT TÜV AUSTRIA GMBH of written documents which are handed over to TÜV TRUST IT TÜV AUSTRIA GMBH and which are necessary for the fulfilment of the contract.
- 9.4. TÜV TRUST IT TÜV AUSTRIA GMBH is entitled to store data of the Purchaser and from business transactions with the Purchaser in an electronic data processing system for its own purposes. The Purchaser expressly gives its consent to this.
- 9.5. TÜV TRUST IT TÜV AUSTRIA GMBH shall observe the provisions of the Data Protection Act (DSG), the General Data Protection Regulation (DSGVO) and the Telecommunications Act (TKG) when handling personal data and shall take the technical and organizational measures required for data protection in the area of responsibility of TÜV TRUST IT TÜV AUSTRIA GMBH.
- 9.6. TÜV TRUST IT TÜV AUSTRIA GMBH undertakes in particular to ensure that its employees comply with the provisions of § 6 DSG.
- 9.7. The privacy policy according to Ar. 13 and 14 DSGVO is available on the website (www.tuv.at/datenschutzerklaerung).
- 9.8. Information or data of the Purchaser will be disclosed to third parties only in the case of a legal, official or judicially ordered disclosure.
- 10. Miscellaneous**
- 10.1. Credit notes will only be issued for goods registered by TÜV TRUST IT TÜV AUSTRIA GMBH by means of return numbers. Returns without return numbers will not be accepted and will be returned at the expense of the sender.
- 10.2. Invalid provisions of this agreement shall not affect the validity of the remaining provisions. In the event of the ineffectiveness of a clause of this agreement, the contracting parties agree to replace it with a valid clause that comes as close as possible to the meaning and purpose of the ineffective clause. The Terms and Conditions shall apply to consumers within the meaning of the KSchG only to the extent that they are not opposed by mandatory provisions of the KSchG.
- 10.3. This agreement and the entire legal relationship between the contracting parties shall be governed by Austrian law, excluding its conflict of law provisions. The validity of the UN Convention on Contracts for the International Sale of Goods is excluded by mutual agreement.
- 10.4. For all disputes arising from the contract the jurisdiction of the competent court in Vienna is exclusively agreed, whereas TÜV TRUST IT TÜV AUSTRIA GMBH is entitled to bring actions also before other courts for which a legal place of jurisdiction of the contracting party exists. For consumer transactions within the meaning of § 1 of the Austrian Consumer Protection Act (KSchG), the jurisdiction provision of § 14 KSchG shall apply.