

General Terms and Conditions of T&N GmbH

1 Scope and Validity

1.1

These «General Terms and Conditions», hereinafter referred to as «GTC», govern the rights and obligations between «T&N Telekom & Netzwerk GmbH», hereinafter referred to as «T&N», and its customers. They apply to all business relationships between T&N and its customers, particularly for the delivery of products and the provision of services, unless otherwise agreed in writing.

1.2

The customer's terms and conditions apply only if and to the extent that they have been expressly and in writing accepted by T&N and do not conflict with T&N's GTC.

1.3

All side agreements, modifications, supplements, and legally significant declarations require written form to be valid. The same applies to any waiver of this formal requirement. No verbal side agreements exist.

1.4

Should any individual provisions be ineffective or invalid, the validity and enforceability of the remaining provisions shall remain unaffected. In such a case, the invalid provision shall be reinterpreted or supplemented in such a way that the intended regulatory purpose is achieved as closely as possible. This also applies to any contractual gaps.

1.5

The current version of the GTC is available on T&N's homepage.

1.6

«Products» are systems, system components, machines, devices, components, and accessories offered and distributed by T&N, in particular IT hardware, as well as parts thereof, additional equipment, and software.

2 Services

2.1

Orders can be placed by phone, electronically (e.g., via email), or in writing (e.g., by letter, fax).

2.2

The scope and execution of the delivery are primarily determined by the respective order confirmation. For immediate delivery/collection, no order confirmation is issued. The availability and deliverability of the products from the manufacturer remain reserved.

2.3

Delivery dates indicated by T&N are only to be considered as guidelines unless explicitly confirmed in writing. Delivery dates are given to the best of knowledge but without guarantee, especially in cases of delivery delays due to supply issues from the manufacturer. If a delivery extends beyond a confirmed delivery date by T&N, the customer may set T&N in default after the expiration of a grace period of at least three weeks set in writing. If the extended period expires without result, the customer may withdraw from the order. In this case, T&N is only liable for damages that the customer incurs directly and immediately if and to the extent that the delay or impossibility of delivery is demonstrably due to gross negligence on the part of T&N.

2.4

In the event of delivery disruptions due to circumstances beyond T&N's control, such as strikes, lockouts, material shortages, manufacturer or transport blockages, T&N reserves the right to cancel the order.

2.5

Changes or cancellations of orders requested by the customer require a written agreement with T&N. Costs already incurred may be charged to the customer.

2.6

For collective and scheduled deliveries, the agreements according to the offer shall apply. T&N is entitled to make partial deliveries.

2.7

T&N may send information, news, and invitations in the form of mailings to customers and interested parties via email, letters, and fax..

3 Acceptance and Inspection

3.1

The customer is obliged to inspect the products and services delivered by T&N immediately upon delivery or collection for completeness and accuracy and to report any damage, defects, or complaints to T&N in writing immediately upon discovery, but no later than 5 business days after delivery or collection.

3.2

If the customer fails to report in time, any warranty and other claims are forfeited, unless the damage or defect was not detectable upon the initial inspection.

4 Transfer of Benefit and Risk

4.1

Risk transfers to the customer upon delivery of the products.

4.2

If the customer does not collect the products on time, the products will be stored for 5 working days at the customer's expense and risk, and then shipped to the customer.

5 Return of Products

5.1

A return of products by the customer requires prior approval from T&N and is at the customer's expense and risk. The return must be in the original packaging, including a detailed description of the defect and the purchase receipt. C-products (consumables) and opened software are excluded from return.

5.2

T&N reserves the right to return products with missing, damaged, or written-on original packaging, or products that are no longer in perfect condition, at the customer's expense and risk. In cases of returns without a defect description, T&N may charge the customer for a fault diagnosis (minimum of one hour).

5.3

In any case, T&N's and the manufacturer's defined procedures apply. Before returning products, the customer must request a «return number» from T&N.

6 Prices

6.1

All prices for T&N's products and services are in Euro (EUR) and exclusive of VAT, as well as other applicable taxes, duties, and fees, which are borne by the customer.

6.2

Additional costs, such as packaging and shipping/delivery (freight/transport), are not included in the prices and are also borne by the customer. Accessories are not included unless otherwise agreed in writing.

6.3

T&N will provide a quote for products and services, including additional costs. Prices are valid for the specified time period. If T&N receives confirmation from manufacturers or suppliers to pass on price reductions to customers, the prices at the time of delivery will apply. This also applies in the event of price increases by manufacturers or suppliers.

6.4

T&N reserves the right to change price lists at any time without prior notice.

6.5

The specified fees are based on the current collective wage agreements of the Austrian electrical industry and the current prices for equipment and spare parts. If these bases change, rental rates and service and maintenance fees will be adjusted accordingly.

7 Payment Terms

7.1

Unless otherwise agreed in writing, all fees are due upon invoicing by T&N. The invoice amount must be credited to T&N's account no later than 14 calendar days after the invoice date. The customer bears all bank charges and other costs related to the payment.

In the event of payment default, the customer must pay default interest of 10% per annum and all other costs incurred in this context.

7.2

In case of payment default, T&N is entitled, without further notice, to suspend all further deliveries to the customer, either partially or completely, until its claims are settled or secured. All consequences arising from such suspension are solely the customer's responsibility.

7.3

If the customer fails to pay within an additional deadline set by T&N, T&N may refuse any further deliveries to the customer and claim damages. In addition, T&N may take legal action as per general legal regulations.

7.4

All claims of T&N, including those for which installment payments have been agreed, become immediately due if a) the customer repeatedly fails to meet payment terms or b) the customer fails to immediately provide the necessary security upon T&N's request to resolve justified doubts about liquidity or payment ability, such as in the case of debt enforcement or other indications of payment difficulties. The customer must inform T&N if liquidity problems are foreseeable.

7.5

Checks are only accepted by T&N for payment purposes and under prior special written agreement, and only if the customer bears all costs and fees.

8 Invoicing and Payment

8.1

The customer is not entitled to offset any counterclaims against claims from T&N.

8.2

Any right of retention or lien by the customer on items belonging to T&N is fully waived.

8.3

Objections to the invoice must be raised in writing by the customer within 10 business days of the invoice date. Otherwise, the claim will be considered acknowledged.

9 Retention of Title

9.1

The products delivered by T&N remain the property of T&N until T&N has received the purchase price in full and in accordance with the contract.

9.2

As long as the purchase price is not fully paid, the customer is obligated to maintain the delivered products, handle them with care, and insure them against all usual risks.

10 T&N-Services / Support

10.1

T&N reserves the right to connect the system to the service center for performing any necessary work and to carry out the tasks remotely. The customer must maintain the remote access / system connection at their own expense.

10.2

Support services are not included in the product price and will be invoiced separately to the customer according to the current hourly rates listed in the respective price list or as per special agreement.

11 Warranty and Guarantee

11.1

The responsibility for selecting, configuring, using, and applying the products and for the results achieved lies with the customer or the purchaser of the products, i.e., the end customer. The customer acknowledges that T&N does not conduct incoming inspections of products delivered by manufacturers or suppliers.

11.2

For third-party products, T&N warrants and provides guarantees only to the extent that the third party (e.g., manufacturer, licensor) is liable to T&N. The customer waives any further warranty claims against T&N and the third party. T&N's obligation is limited to assigning any warranty or liability claims it has against the third party to the customer.

11.3

The customer acknowledges that warranty claims are generally limited, under the applicable provisions of the manufacturer/supplier, to rectification, delivery of non-defective replacement products, or credit, at the manufacturer's discretion. The replacement of parts, rectification, or delivery of non-defective replacement products does not trigger new warranty obligations. The customer is not entitled to rescind the purchase or declare the contract null and void due to defects.

11.4

Furthermore, the customer acknowledges that a defect is only deemed to exist if it is reported to T&N immediately upon discovery, in writing, with a detailed description, and if it involves a relevant and reproducible error.

11.5

Warranty is excluded for defects arising from the following causes: (a) insufficient maintenance (unless T&N is contractually obligated to provide maintenance); (b) failure to observe operational or installation instructions; (c) improper use of the products; (d) use of unauthorized parts and accessories; (e) normal wear and tear; (f) transport; (g) improper handling or treatment; (h) unauthorized interference (e.g., modifications or repair attempts) by the customer or third parties; (i) external influences, especially force majeure (e.g., power failures, environmental damage, disruptions from service providers/carriers), and other causes not attributable to T&N or the manufacturer/supplier.

11.6

In any case, the customer must follow the procedures defined by T&N and the respective manufacturer/supplier when handling any warranty and guarantee claims.

11.7

A guarantee is a voluntary contractual service provided by the manufacturers/suppliers. Any guarantee services not covered by the manufacturer/supplier, as well as additional costs incurred due to customer-caused issues in the handling of warranty or guarantee claims, will be charged to the customer. If there is no or inadequate error description, T&N will perform a fault diagnosis at the customer's expense.

12 Liability

12.1

T&N is only liable for direct damage and only if the customer can prove that such damage was caused by gross negligence or intent on the part of T&N, its agents, or third parties contracted by T&N. Liability is limited to the price of the respective delivery/service. The burden of proof for gross negligence and intent lies with the customer.

12.2

Any further liability of T&N, its agents, and the third parties contracted by T&N for any type of damages is excluded. In particular, the customer has no claims for compensation for damages that did not occur to the product itself, such as production downtime, loss of use or data, loss of orders, lost profits, or other indirect or consequential damages.

12.3

T&N commits to assign any recognized liability claims against manufacturers/suppliers to the customer.

12.4

The customer is responsible for the lawful and proper use of the products.

13 Patents and Other Intellectual Property Rights

13.1

If a third party asserts or claims infringement of a patent, copyright, or other industrial property right against the customer or its end customer due to the delivered products or their operation, the customer must notify T&N immediately in writing. T&N will forward this notice to the supplier/manufacturer without delay and request resolution of the situation. The customer waives any warranty or liability claims against T&N in this regard.

14 Export Restrictions

14.1

The transfer of the contract items, documents, and other materials, especially any re-export, may be subject to the approval requirements under the export regulations of the USA, the European Union, and possibly other countries. In such a case, the customer is obliged to obtain the necessary approvals from the relevant authorities before transferring them. This obligation must be contractually transferred to any subsequent acquirer.

14.2

If, after the conclusion of the contract, it becomes apparent that the delivery of the contractual components is subject to export restrictions by the United States of America, the European Union, or other legal provisions, T&N is entitled to withdraw from the contract. If the customer did not inform T&N of such circumstances at the time of the contract conclusion, the customer must fully compensate T&N for any resulting expenses and damages.

15 Software-Programs

15.1

The usage and warranty conditions for software products, programs, manuals, and other documents supplied by T&N are governed by the special provisions of the respective software manufacturer, particularly those contained in the software license agreement between the software manufacturer and the user/end customer.

15.2

The customer agrees to transfer the obligations from the usage and warranty conditions of the software manufacturer to the subsequent acquirer when reselling or otherwise passing on the software products.

16 Manufacturer-Reporting, Data Protection

16.1

The customer acknowledges that T&N processes customer-related data, such as sales prices, quantities, and customer names and addresses, within the scope of periodic so-called manufacturer reporting, and may transmit such data to manufacturers/suppliers, possibly abroad.

16.2

Furthermore, the customer agrees that T&N processes customer-related data to check the customer's creditworthiness and forwards it to T&N's contracted credit insurance company.

17 Transfer

17.1

The customer may only transfer rights and/or obligations from individual contracts (deliveries, services) with T&N's prior written consent.

18 General Provisions and Jurisdiction

18.1

T&N is entitled to transfer the contractual relationship with the customer or individual rights and obligations from the contractual relationship to third parties without the customer's separate consent. T&N is entitled to have all, or part of its services provided by subcontractors.

18.2

The customer is obligated to cooperate with T&N in fulfilling the contractual obligations. This includes, in particular: (1) providing safe access to business premises and facilities, (2) ensuring the readiness of premises for installation, (3) obtaining necessary permits and authorizations for product installation, (4) appointing a contact person, (5) providing the required information.

18.3

Austrian law shall apply exclusively to individual contracts and the GTC, to the exclusion of the conflict of laws rules of private international law and the UN Convention on Contracts for the International Sale of Goods.

18.4

The exclusive place of jurisdiction for all disputes arising directly or indirectly from the contractual relationship, including its existence and termination, is the competent court in Vienna at T&N's business location. T&N reserves the right to take legal action against the customer at other competent courts in Austria.

Vienna, 22nd July 2016