

# **General Terms and Conditions (GTCs) for Goods and Services in IT (Version 1.0.4)**

## **1. General Provisions, Amendments to the GTCs**

1. A-Trust Gesellschaft für Sicherheitssysteme im elektronischen Datenverkehr GmbH ("A-Trust") provides goods and services ("Services") in the field of information and communication technologies. These GTCs shall be applicable in the version valid at the time of contract conclusion for all ICT services provided by A-Trust to the respective customer and shall form an integral part of the contract. Any divergent or supplementary contractual provisions shall not be accepted.
2. A-Trust shall be entitled to amend these GTCs unilaterally at any time. Whenever the GTCs are amended, they shall be made available to the customer by electronic means. Unless the customer objects to them in writing, the amended GTCs shall become effective after a period of four weeks from customer's receipt of these amended GTCs. In the event that the customer files an objection, A-Trust shall be entitled to terminate for good cause any contracts previously concluded with the customer and subject to the previous GTCs at the last day of a given month. If A-Trust does not terminate a contract, the previous GTCs shall continue to apply for said contract.

## **2. Contract conclusion, scope**

1. The Services that A-Trust provides shall be specified in the offer presented to the customer. Oral side agreements shall not constitute part of the contract.
2. If the agreed scope of Services needs to be changed for the customer, A-Trust shall present an offer in response to the customer's request. Services outside the agreed scope shall be charged at cost.
3. A-Trust Services can be divided up and charged individually. A-Trust Services are not embedded in customer projects and are not project-based.
4. Any services provided by third parties (e.g. third-party software) shall be identified as such in the offer. The customer authorises A-Trust to commission such third-party services on the customer's behalf and for the customer's account, resulting in a contractual relationship between the third party and the customer. Any claims arising out of this relationship must then be resolved directly and exclusively between these parties. However, A-Trust reserves the right to commission third-party services on its own behalf but for the customer's account. In that case, the customer's claims relating to third-party services shall be limited to claims against the third party that A-Trust assigns to the customer.
5. Generally, A-Trust provides its Services during its business hours:  
Monday through Friday from 10:00 am to 4:00 pm.
6. A-Trust shall have the right to use sub-contractors for the purpose of contract fulfilment.

## **3. Service provision by A-Trust**

1. The content and the delivery period for the services owed shall be specified in each offer presented to the customer. If no specifics are agreed, the customer shall not be entitled - within the scope of the provision of services - to any specific date of completion, specific support or maintenance services or specific response times. A-Trust shall determine the place of service provision at its own discretion.
2. Retention of title. All delivered goods shall remain the property of A-Trust until all of A-Trust's accounts receivable from the customer (regardless of the legal grounds, including all future or contingent receivables) have been fully and finally satisfied.
3. Goods deliveries shall be considered completed once the carrier has handed over the goods to the customer. The risk shall pass to the customer at the same time. Even if A-Trust assumes the transport costs in individual cases, this shall not affect the transfer of risk. Provisional acceptance by the customer shall be excluded. If the type or number of goods delivered does not correspond with the specifications on the delivery note, acceptance of delivery must be refused. Any damage incurred during the transport must be reported by the customer to the respective carrier at the time of handover. A-Trust shall not recognise any claims made at a later point in time. If the buyer refuses to accept delivery goods, A-Trust shall be entitled to withdraw from the contract and seek damages for non-fulfilment.
4. The delivery dates and delivery periods provided are not firm and only approximate. An indication of specific delivery periods and delivery dates shall be provided subject to correct and timely delivery by suppliers and manufacturers. Partial deliveries and advance deliveries are admissible. Delays in deliveries and service provision caused by force majeure and other unforeseeable events that seriously impede delivery or make delivery impossible shall entitle A-Trust to postpone delivery and/or service provision for the duration of such an impediment or withdraw from the contract, unless it has already been fulfilled in part or in whole. The client shall neither have the right to withdraw from the contract nor be entitled to damages if the indicated delivery dates are not met.

#### **4. Customer's obligation to cooperate**

1. The customer shall support all measures required for the provision of services by A-Trust in a timely manner. The customer shall be informed of any need for cooperation and/or support in a timely manner. If the customer's IT infrastructure is unsuitable for the provision of services, it shall be the customer's responsibility to implement the necessary adaptations.
2. The customer shall maintain the IT infrastructure needed for the provision and for using A-Trust Services at its own expense and risk. The customer shall take technical measures as may be appropriate to secure its system and ensure backups on a regular basis. Subsection 4.2. shall also apply for test environments.
3. The customer shall handle the operating equipment used for the provision of A-Trust Services with due care and keep confidential any login data provided by A-Trust. The customer shall be liable for any and all losses or damage caused by the careless handling of the operating equipment used and/or the login data.

4. The customer shall be obliged to test the software programmes made available in the course of service provision for their functionality and any malicious programme parts and notify A-Trust of any test results.
5. The customer shall ensure that any third-party software used in the course of service provision is licensed.
6. The customer shall bear any losses and/or additional costs incurred on account of the non-fulfilment or inadequate fulfilment of an obligation to cooperate. Should the customer fail to meet its obligation to cooperate despite being given a grace period, A-Trust shall be entitled to withdraw from the contract with immediate effect. In this case, the contractually agreed remuneration shall be payable at the time of withdrawal from the contract.
7. If a specific customer site has been agreed as the place of fulfilment, the customer shall be obliged to provide the development and test environment and the development tools.
8. The customer shall make available any interfaces required for the provision of services, to maintain these and prevent them from being compromised by providing the necessary protection.
9. The customer shall handle the hardware provided by A-Trust with due care and protect the hardware against any access by unauthorised persons.
10. The customer's obligations to cooperate shall also be applicable if A-Trust provides warranty remedies.

## **5. Development services and software**

1. If individual development services are ordered, the customer shall make available comprehensive specifications. The specifications shall be firm as soon as they are presented to A-Trust.
2. A-Trust shall have no obligation to issue any warning with regard to the accuracy and completeness of these specifications. Should factual and legal contract fulfilment in compliance with the specifications be impossible, A-Trust shall notify the customer of this. If the customer fails to amend the specifications accordingly, A-Trust shall be entitled to refuse performance and request remuneration for any effort or costs incurred until such time.
3. Development services shall be accepted immediately after they go live. The test routines used during the acceptance test shall be agreed with A-Trust.

## **6. Support and maintenance services**

1. Where agreed on an individual basis, A-Trust shall provide support and maintenance services for the software during its business hours. Updates shall be made available in the course of software maintenance. In particular, software maintenance shall include general error remediation and adjustments offered in the course of the contract as part of the maintenance service ("Updates"). New programme versions that include functional upgrades, or upgrades that are for sale separately in the form of a module shall be excluded from this ("Upgrades"). Software support services shall include help and error analysis during software use.
2. Where agreed on an individual basis, A-Trust shall provide hardware maintenance during its business hours as required for the purpose of repairs and servicing.

3. As a matter of principle, electronic means shall be used for communication relating to all support and maintenance matters. A-Trust shall provide all support and maintenance services at its own discretion by remote access to the affected systems or directly on site at the customer's premises or by making updates available. Response times and/or service levels can be specified in the respective quote.
4. Software errors shall be any instance when software fails to perform the specified functions in a reproducible manner, seriously limiting use as a result. In particular, errors shall be deemed to have occurred when the functional limitation results from inappropriate operation, detrimental influence by third-party software, use in breach of the contract or the customer's inadequate IT infrastructure.
5. Maintenance and support services shall not include error remediation or additional work for software or hardware maintenance resulting from use in breach of the contract, use in a working environment other than the one agreed, improper use or by any other reason for which A-Trust cannot be held responsible. In such cases, A-Trust shall provide its Services only after receiving a special request to do so and payment or separate remuneration.
6. The customer shall identify a qualified contact who shall be the only person authorised to trigger the agreed maintenance and support services. This contact must have the appropriate training and/or experience.

## **7. Software as a service (SaaS):**

1. A-Trust shall provide ASP services once they have been agreed on an individual basis. In so doing, A-Trust shall provide the customer online access to the software services provided by A-Trust or third parties. In the case of ASP services, the customer shall not receive a copy of the software but rent the software for the duration of the contract:
2. Access to ASP services is ensured either by having the customer use the strong authentication method (citizen card [*Bürgerkarte*] or the a.sign premium card with the associated signature PIN or A-Trust mobile signature) or by a text login (username and password). Authentication data must be kept safe and must not be disclosed to third parties. In the case of text logins, A-Trust shall merely be obliged to verify the username and password so that every person who logs into an ASP service provided by A-Trust using the customer's username and password is deemed authorised by the customer vis-à-vis A-Trust. The customer shall be liable for any losses resulting from a breach of the provisions under section 7.
3. The customer shall provide a connection to ASP services itself and, when using this connection, shall refrain from any misuse and shall not threaten or impair A-Trust or third parties in any manner. During use, public policy, morality, security must be observed, and applicable legal requirements must be satisfied. Use shall be determined by the technical conditions of the respective ASP service. A-Trust shall not be responsible for the outcome of such data applications.
4. Once the contract for the ASP service comes to an end, customer access shall be blocked, and all customer data shall be erased. The customer shall be responsible for ensuring timely backups of their data.

## **8. User rights, copyrights and licencing**

1. All rights to the software that is the subject of the offer and any other services (including documentation, manuals) shall belong to A-Trust. The customer shall acquire the authorisations specified in the offer and these GTCs.
2. When buying software, the customer shall acquire the non-exclusive, non-transferrable right to use the software within the agreed scope and for an unlimited time period in return for payment of the purchase price.
3. When renting software, the customer shall acquire the non-exclusive, non-transferrable right to use the software within the agreed scope and for a limited period of time in return for payment of a recurring user fee. The time limit for such use shall be defined in the individual contract.
4. The offer may specify conditions for and limitations on software use. In particular, such conditions and limitations shall apply to the requirements of the customer's IT infrastructure, the highest permissible user number and/or a limitation on use for specific purposes. When using software in networks, a separate license must be acquired and/or rented for every simultaneous user. For local software use, a separate license must be acquired and/or rented for every workstation.
5. If A-Trust provides the customer with third-party software, the license conditions of the respective third party offering the software shall take precedence. No liability shall be assumed for public domain software or shareware. The customer shall license and use such software in accordance with the respective manufacturer's user terms and conditions.
6. Software shall be made available in a machine-readable form. Source codes shall not be made available. The customer shall refrain from processing or de-compiling the software and from any other improper use.

## **9. Processing order data**

1. Where A-Trust is the order data processor for companies (processing of the controller's personal data [also referred to as "data" for short] by A-Trust within the scope of one of the services to be provided to by the latter to the former), the following provisions shall be applicable.
2. The object and purpose of the processing, the categories of data subjects and types of data shall be specified in the respective offer.
3. In principle, A-Trust shall store and otherwise process the data within Austria, unless otherwise provided in the respective offer. In any case, the intentional processing of data in a third country by A-Trust shall be excluded.
4. A-Trust shall be obliged to process personal data only in accordance with the controller's documented instructions.
5. If the law provides that A-Trust must process data in a manner other than the one provided by this system, A-Trust shall inform the controller of these legal requirements no later than 14 days prior to commencing such processing and indicate the resulting changes at the same time. The controller shall have the right to object in writing to the start of the processing until the date indicated in the notification - however, at least for a period of 7 days from receipt of this notification. An exemption from this duty to notify shall only be possible if

the relevant legal provision prohibits such a notification on important grounds of public interest.

6. A-Trust warrants that only persons who have committed themselves to confidentiality or are subject to an appropriate non-disclosure obligation under the law shall be entrusted with processing the controller's data. In particular, the non-disclosure obligation shall be applicable for these persons also after the end of their activities and their exit from A-Trust.
7. In consideration of the state of the art, the costs of implementation and the nature, scope, context and purposes of processing as well as the risk of varying likelihood and severity for the rights and freedoms of natural persons, A-Trust undertakes to take appropriate technical and organisational measures to ensure a level of security appropriate to the risk.
8. A-Trust shall provide for the technical and organisational conditions that allow the controller to fulfil its duties with respect to information, data access, authorisation, erasure, limitation and transfer and any other obligations towards data subjects resulting from the personal data processing within the stipulated time periods.
9. A-Trust undertakes to assist the controller in ensuring compliance with the obligations set forth in Articles 32 through 36 of the GDPR while taking into account the nature of the processing and the information available to the processor (security of the processing; notification of the supervisory authority and the data subjects; data protection impact assessment and consultation of the data protection authority).
10. A-Trust shall notify the controller without undue delay after becoming aware of a personal data breach.
11. In addition, A-Trust shall support the controller in ensuring that the controller meets this obligation to notify to the supervisory authority and the data subjects of protection in timely manner. For this purpose, A-Trust shall provide the controller with all the necessary information.
12. After the end of the provision of the processing services, A-Trust shall, at the choice of the controller, erase or return all the personal data unless a statutory obligation requires storage of the personal data; the controller shall notify A-Trust of their choice within a period of four weeks from the end of the contract. If such notification is not made in a timely manner, A-Trust shall erase the data without undue delay, provided no statutory obligation requires storage of the personal data.
13. A-Trust shall be obliged to return the data to the controller after having provided the processing services; it shall be obliged to satisfy this obligation within a period of no longer than one week after having provided the processing services or being instructed to do so by the controller.
14. When A-Trust finds that a provision of this annex or an instruction from the controller breaches the EU's or Austria's data protection law, it shall be obliged to inform the controller thereof without undue delay.
15. A-Trust shall assure the controller that persons under its authority shall process the data to be processed on behalf of the controller only for the purpose of fulfilling the service contract or of complying with controller's instruction or of adhering to a legal requirement.
16. After prior written agreement with the controller, A-Trust shall be obliged to make available all information necessary to demonstrate compliance with the

obligations set forth in this annex and allow for and contribute to audits conducted by the controller or another auditor mandated by the controller.

## **10. Delivery/acceptance**

1. Software shall be delivered on a data medium or made available as a download for the customer on the agreed date. The software shall be installed by the customer unless the offer provides otherwise. There shall be no acceptance test for standard software. If the offer includes the installation of the contractual software, the customer shall perform the acceptance procedure also in the case of standard software.
2. The customer shall be responsible for commissioning hardware unless the offer provides otherwise. If the offer includes the commissioning of the contractual hardware, the customer shall perform the acceptance procedure.
3. For the purpose of acceptance, the customer shall, after installation or commissioning, subject the software or, as the case may be, the hardware to a suitable functional test within a period of five working days and notify A-Trust of any defects it identifies. A-Trust shall remedy any defects that impair operation and set a new date for acceptance. If the customer fails to notify in writing the defects occurring during the test that are liable to impair operation within a period of one week after the end of the test phase, acceptance shall be deemed to have been successfully concluded. The same shall apply if software or hardware is used in real-time operation prior to acceptance and no error message is prompted within a period of one week from commissioning.

## **11. Impaired performance and warranty**

1. In providing its Services, A-Trust does not owe any particular success and shall not be liable for defects occurring due to the customer providing incomplete or erroneous information.
2. The customer shall be directly responsible for the selection of goods and/or services and shall bear the risk of suitability for the customer's needs. A-Trust shall not accept any warranty that the goods and/or services have the features expected by the customer.
3. A-Trust shall warrant that software or, as the case may be, hardware meets the specifications set forth in the respective offer at the time of handing over/making available such software and/or hardware. The burden of proof for the existence of defects shall be on the customer. An assumption of deficiency pursuant to section 924 Civil Code (ABGB) shall be excluded.
4. In the case of Services that are the subject of the quote requiring the acceptance procedure, A-Trust shall remedy any errors identified within a reasonable time period. In the event of acceptance of defects that have been identified, warranty claims shall be excluded. Such defects and/or errors shall be handled within the scope of a maintenance and support agreement (provided such an agreement has been signed).
5. All other services shall be checked by the customer in accordance with section 377 ff Commercial Code (UGB). Any defects identified shall be reported to A-Trust in writing within a period of five calendar days after the Service was handed over/made available. Hidden defects shall be reported in writing with-

in a period of five calendar days after they have been identified. The choice of warranty remedy shall be at A-Trust's discretion. Warranty claims may be filed in court for a period of no longer than 6 months from handover of the relevant service. Any defects reported by out-of-court notification after expiration of the period for filing claims in court may not be used as defence against payment claims.

6. There shall be no warranty for defects and errors that are not attributable to A-Trust's responsibility. In particular, the exclusion of warranty shall include defects attributable to improper operation, unauthorised intervention by third parties, the customer's unsuitable IT infrastructure, interfaces or to damage during transport.
7. If manufacturers provide warranty for the hardware or software delivered by A-Trust, A-Trust shall support the customer in asserting warranty claims or file claims under the respective warranty on behalf of the customer. Solely the warranty provisions of the respective product shall be applicable for the customer's claims.
8. To the extent that and as long as obligations resulting from force majeure events, including war, terrorism, natural disasters, fire, strike, blockage, embargo, territorial incursions, power outage, transport outage, outage of telecommunication networks and/or data lines, are not met in a timely manner or not properly met, this shall not constitute a breach of contract.

## **12. Limitation of liability**

1. A-Trust shall pay damages only for damage or loss caused intentionally or by gross negligence. This limitation shall not be applicable in the event of personal injury, death or in cases where the Product Liability Act (ProdHaftG) becomes applicable. Furthermore, A-Trust's liability shall be limited to the total amount of the one-off consideration (for purchase) or the agreed annual rent (for rental) or an annual remuneration (for maintenance and support). Any proof that A-Trust intentionally caused damage or loss must be provided by the customer.
2. Any liability on the part of A-Trust for lost profit, savings that were expected but failed to materialise, direct damage or loss and consequential damage or loss as well as for damage to recorded data is excluded. The customer shall take all measures as may be reasonable, specifically data backups and the ongoing verification of results, in order to identify damage or loss as early as possible and minimise the impact.
3. Claims for damages must be brought to court within a year from become aware of the damage or loss, otherwise they shall become statute-barred.

## **13. Payment**

1. Fees shall be specified in the offer and be payable within a period of 14 days from invoice date. Unless indicated otherwise in the offer, the services provided by A-Trust shall be charged as actually provided and according to the costs incurred thereby. Fees shall be indicated in euros and exclusive of tax, charges and public dues. The payment of any charges, dues and taxes in connection with the service contract shall be the customer's responsibility.





2. Transport costs and packaging shall be charged separately.
3. The payment for recurring obligations shall be adjusted once a year in accordance with any increase in the 2015 consumer price index. One-off fees shall be invoiced in accordance with the individual service provided, whereas running costs shall be invoiced in advance on a monthly or annual basis.
4. In the event of payment arrears, statutory interest on arrears shall be due in the amount of 9.2% above the base interest rate of the European Central Bank. In this case, A-Trust shall be entitled to charge the customer a flat fee of EUR 40 as compensation for any collection costs; however, in so doing, A-Trust reserves the right to claim losses or damages beyond this. The customer's qualified payment arrears shall entitle A-Trust to withdraw from all agreements concluded with the customer, to discontinue and/or hold back its services and to invoice all services already provided.
5. The customer may offset only uncontested claims or court-awarded claims against claims of A-Trust.
6. The travel times of A-Trust employees shall count as working time and shall be charged in accordance with the time and effort expended. The agreed hourly rate shall be applicable.

## **14. Contract duration and notice periods**

1. The contract duration is specified in each offer. Either party may terminate an individual contract concluded for a definite period by registered letter subject to a three-month notice period from the end of a calendar year. There shall be no right to ordinary termination in the case of one-time obligations. In the case of an individual contract concluded for an indefinite period, the individual contract is automatically extended by a year unless it is terminated by either party by registered letter subject to a three-month termination period prior to expiration of the contract duration.
2. Each contracting party shall be entitled to terminate the contract early and without notice by registered letter if there is good cause. In particular, good cause shall be deemed to exist when the respective other party continues to be in breach of material obligations arising out of the individual agreement despite receiving a written reminder to remedy the breach, being given a reasonable grace period to do so and being threatened with termination.
3. In the event of termination for good cause as a result of circumstances that are under the Customer's control and in the event of unjustified termination by the customer, A-Trust shall be entitled to receive the remuneration that would have been payable until the next possible date for ordinary termination or (in the event of a one-time obligation) the agreed total amount.

## **15. Privacy, non-disclosure**

1. The customer and A-Trust reciprocally undertake not to disclose to third parties any and all the business secrets received from the respective other party in connection with the offer and the service provision unless these are public knowledge, or they are obliged to disclose them to comply with a legally effective decision taken by an authority or judge. This obligation shall remain in

effect for an indefinite time period even after the end of the contractual relationship.

2. In handling personal data, the parties shall observe all statutory provisions and meet all the obligations incumbent on them. In particular, the parties undertake to adhere to the provisions of sec. 15 Data Protection Act (DSG).
3. A-Trust shall take measures as are necessary to warrant data security and - depending on the data to be processed, the scope and purpose of use and in consideration of the current state of the art and of economic reasonableness - ensure that the data is protected against accidental or unlawful destruction and against loss, that the data is used properly and that the data cannot be accessed by unauthorised parties. However, A-Trust shall not be responsible if third parties succeed in gaining access to the data and information by unlawful means despite the precautions taken.

## **16. Other rights and obligations**

1. During the term of the contract and for a period of one year after the end of the contract, the customer shall refrain from soliciting or recruiting A-Trust employees. In the event of breach, the customer undertakes to pay liquidated damages in the amount of the respective employee's last gross annual salary.
2. A-Trust shall have the right to assign its contractual rights and obligations vis-à-vis the customer to third parties without the customer's consent.

## **17. Final provisions**

1. In the case of inconsistencies between the offer and these GTCs, the individual contract shall take precedence. Any amendments and supplements to these GTCs or an individual contract must be made in writing; this shall also be applicable for any waiver of the written-form requirement. For the purpose of these GTCs, written notices shall be any letters sent by email or as registered letters.
2. Should one or several provisions in this contract be or become ineffective or unenforceable in part or in whole, the validity of the remaining provisions shall not be affected. The ineffective or unenforceable provision shall be replaced by an analogous valid provision that comes as close as possible to the economic purpose of the ineffective or unenforceable clause.
3. These GTCs, and the service contracts established on the basis of these GTCs, shall be subject exclusively to the substantive law of the Republic of Austria to the exclusion of the conflict-of-law rules and the UN Convention on Contracts for the International Sale of Goods.
4. The exclusive venue for all disputes arising out of this contract shall be the court with local and subject-matter jurisdiction in Vienna's first district (1010).