

General Terms & Conditions



§ 1 General Information & Scope

(1) The goods and services from Thomas-Krenn.AG are provided exclusively based on these General Terms & Conditions (hereinafter: "GTCs"). These GTCs are a component of every contract that Thomas-Krenn.AG enters into with its contractual partners (hereinafter: "customer") regarding the goods and services that it offers.

(2) Along with the supply of products (hardware, software, etc.), the customer can also order specific services (such as various support and IT services) from Thomas-Krenn.AG and separately arrange for the provision of these services with Thomas-Krenn.AG. If such services are agreed upon, the relevant applicable terms & conditions will apply in addition to these GTCs. Depending on the type of services arranged for, the following terms apply:

(a) Terms of service / service levels

(b) Thomas-Krenn.AG's domain registration conditions for the registration of top or second level domains

(c) Thomas-Krenn AG's conditions on software services for the creation of software and software solutions, particularly for websites / portals, Web2.0 communities, online shops, web applications, intranets / online CRM, online games / animations, online and e-mail marketing, and databases.

(3) The GTCs – including those referred to in paragraph (2) and paragraph (3) – also apply to all future deliveries, services or offers made to the customer, even if they are not separately agreed upon again.

(4) The GTCs of the customer or any third parties do not apply, even if Thomas-Krenn.AG does not explicitly deny their validity in individual cases. Even if Thomas-Krenn.AG references a document containing or referencing the GTC of a customer or third party, this does not constitute an agreement with such terms and conditions.

§ 2 Offers and Conclusion of Contract

(1) Offers, goods and services provided by Thomas-Krenn.AG, in addition to these GTCs, solely address entrepreneurs (§ 14 BGB), legal entities subject to public law and special funds subject to public law.

(2) The mere presentation of goods and services by Thomas-Krenn.AG do not represent a binding offer on the part of Thomas-Krenn.AG, nor does the possibility of submitting an order on its website

(3) If the customer places an order on the Thomas-Krenn.AG website, the customer's order represents a binding offer towards Thomas-Krenn.AG for the conclusion of a contract. The customer then receives a confirmation of the receipt of the order via e-mail (hereinafter: order confirmation), which is sent to the e-mail address specified by the customer. This order confirmation does not represent an acceptance of the customer's offer, but is instead only intended to inform the customer that the order and its respective content have been received by Thomas-Krenn.AG. Insofar as the order does not contain contrary requests, Thomas-Krenn.AG is entitled to accept the customer's contract offer within 3 business days of its receipt by Thomas-Krenn.AG. The customer is bound to the order during these three business days. The contract comes into effect by way of a separate order

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confirmation or the shipment of goods on the part of Thomas-Krenn.AG. The customer is informed regarding the shipment of goods

(4) Insofar as Thomas-Krenn.AG – contrary to § 2 (3) above – submits a written offer to the customer, the contract is only considered concluded once Thomas-Krenn.AG has received the offer signed by the customer. Electronic transmission of the signed document is also valid.

(5) Thomas-Krenn.AG reserves its ownership as well as all intellectual property rights regarding any offers and cost estimates it submits as well as any drawings, calculations, brochures, catalogues, models, tools and other documents and aids it provides to the customer. The customer may not make these items accessible to third parties either in whole or in part, particularly in regards to their content, nor publicize, use or reproduce them, either themselves or via third parties, without Thomas-Krenn.AG's explicit consent. The customer is to return these items if requested to by Thomas-Krenn.AG and to destroy any copies that may have been made if they are no longer needed by the customer for business or if negotiations do not lead to the conclusion of a contract.

(6) Details provided by Thomas-Krenn.AG regarding the goods or services concerned (e.g. weights, dimensions, usage values, load capacity, tolerances and technical data), as well as our representations of same (e.g. drawings and illustrations), are only approximately authoritative insofar as the usability for the contractually intended purpose does not require precise conformity. Such details do not represent guaranteed characteristic features, but instead serve as descriptions or characterizations of the respective good or service. Typical deviations and deviations that arise due to statutory regulations or that represent technical improvements are admissible insofar as they do not impair usability regarding the contractually intended purpose. The same holds true for the replacement of components via equivalent parts.

(7) Thomas-Krenn.AG strives to ensure that the products depicted on its website are accurate and faithful to the original. Thomas-Krenn.AG cannot guarantee, however, that the customer's computer depicts the products in the intended manner.

§ 3 Pricing and Payment

(1) The prices apply to the services and goods listed in the contract. Any additional or special services will be charged separately. If no price was set for additional or special services, the price will be established using the current prices for these services found on the Thomas.Krenn.AG homepage at the respective time of closing the contract. This also applies for any additional costs incurred by Thomas-Krenn.AG, such as travel costs.

(2) All prices are quoted in Euro (EUR). Statutory value added taxes are not included in the prices. These are separately listed on the invoice at their required amounts on the date of issue.

(3) Regarding the delivery of goods, prices are ex works (i.e. do not include packaging and any resulting shipping costs). For deliveries outside of Germany, the customer is responsible for any export and/or import costs, customs charges, taxes, fees and any other applicable charges.

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§ 4 Maturity and Payment

(1) Unless otherwise agreed, compensation is due with the provision of goods and services, work performed, or, if an acceptance procedure has been arranged, upon completion of acceptance with the exception of long-term payment arrangements.

(2) For long-term payment arrangements, billing will be performed on a monthly basis. Use-independent fees are due in advance, at the beginning of each month. Use-based fees billed via Thomas-Krenn.AG are due at the end of each month.

(3) Invoicing is done via e-mail unless otherwise agreed upon. The customer must ensure proper receipt of invoices. The customer expressly agrees that invoices will not be received via mail. However, the customer may request that invoices be sent via mail at any time. Thomas-Krenn.AG is entitled to charge 1.45 EUR per invoice for this service.

(4) Invoice amounts are due for immediate payment unless otherwise agreed upon in writing. The date of payment is the date where payment is received by Thomas-Krenn.AG. In the case of default, statutory regulations apply.

(5) If direct debit payment has been agreed upon, the customer is responsible for filling out and submitting a SEPA Direct Debit Mandate to Thomas-Krenn.AG for this purpose. Thomas-Krenn.AG can provide the customer with the appropriate form. The customer must ensure that sufficient funds are present for the required account. Thomas-Krenn.AG must inform the customer on the amount and direct debit date at least three business days in advance of the transaction date in writing. In the event of a chargeback attributable to the customer, despite timely notice of the direct debit from Thomas-Krenn.AG, the customer is obliged to reimburse Thomas-Krenn.AG for any resulting bank fees – particularly in cases of an unauthorized opposition or lack of funds.

(6) Insofar as Thomas-Krenn.AG is obligated to make an advanced delivery, it is entitled to provide outstanding deliveries or services only against advance payment or deposit if it becomes apparent after conclusion of the contract that the claim of Thomas-Krenn.AG is compromised by the customer's inability to pay.

§ 5 Delivery and Delivery Times; Provision of Services

(1) It is understood that the deadlines and dates stipulated by Thomas-Krenn.AG are approximate unless a specific period or deadline has been explicitly agreed upon. Insofar as a shipment has been agreed upon, the delivery period and deadlines relate to the time at which the goods are handed over to the forwarding agent, shipping company or other third party commissioned with their transport.

(2) The event of a delay of delivery is specified according to the statutory provisions. In any case, a reminder from the customer is necessary

(3) Thomas-Krenn.AG cannot be held liable for delivery failures or delays insofar as these are due to unforeseeable acts of nature or other events that were unforeseeable and outside of Thomas-Krenn.AG's control at the time of concluding the contract (e.g. all kinds of unforeseen interruptions to operations that are outside of Thomas-Krenn.AG's control, such as difficulties in obtaining materials or energy, transportation delays, strikes, legally valid lock-outs, shortage of workers, difficulties regarding the procurement of any regulatory required permits, governmental actions or the late / incorrect deliveries from our suppliers) or if the delivery requires an

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effort that, when accounting for the content of the contract and the principle of good faith, is grossly disproportionate to the interests of the customer. If a delay stemming from such events or situations lasts to such an extent that one of the parties can no longer be reasonably expected to adhere to the contract, this party may withdraw from the contract by expressing this desire in writing to the other party.

(4) Thomas-Krenn.AG is only entitled to make partial deliveries or provide partial services if:

(a) The partial delivery or service are useful for the customer in the context of the contractually intended purpose

(b) The delivery / performance of the remaining contractual goods / services is assured

(c) The customer does not incur additional expenses of any significance as a result (or Thomas-Krenn.AG has indicated that it is prepared to pay for the amounts incurred)

In the case of a partial delivery or partial provision of service, the customer remains entitled to exercise their rights regarding the contract in cases of non-performance.

(5) In the event that Thomas-Krenn.AG falls behind on in providing goods or services, or if it is unable to provide the goods or services for whatever reason, the liability of Thomas-Krenn.AG is limited in terms of compensation to the stipulations in § 8.

(6) Services do not have to be provided directly by Thomas-Krenn.AG, rather they can be provided by any authorized service partner or agent of Thomas-Krenn.AG insofar as this is not otherwise specified in the contract.

§ 6 Place of Performance, Shipping, Packaging, Risk Transfer, Acceptance

(1) The place of performance for all obligations arising from the contractual relationship is Freyung, Germany, in the absence of any agreement or indication to the contrary. Should Thomas-Krenn.AG also be responsible for installing the goods purchased from Thomas-Krenn.AG, the place of performance is the site where the installation services are to be rendered.

(2) With shipments, the shipment type and packaging are subject to the professional discretion of Thomas-Krenn.AG. Shipments from Thomas-Krenn.AG will only be insured against theft, breakage, transportation, fire and water damage or other insurable risks at the explicit request of the customer and at their own expense.

(3) With shipments made to locations other than the place of performance, the risk of accidental loss or accidental damage passes with the transfer of the goods (which occurs with the start of the loading process) to the forwarding agent, shipping company or otherwise specified third party commissioned with transporting the goods to the customer. Furthermore, the risk passes to the customer at the moment it in which it fails to receive delivery of the tendered goods.

(4) Any storage costs incurred after the transfer of risk are payable by the customer. In the event that Thomas-Krenn.AG provides storage, the storage costs amount to 1.5% of the invoice amount, in respect to the items stored, per full week of expired storage. The assertion and proof of higher or lower storage costs is reserved.

(5) Insofar as a delivery or service involves contractual services (Werkleistungen) or if an acceptance procedure has otherwise been explicitly agreed to, the goods / services are deemed accepted if:

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- (a) The goods or services have been delivered or completed and / or, insofar as Thomas-Krenn.AG is responsible for installation, it has been completed
- (b) There are no defects making the use of the purchased goods / services impossible or that significantly compromise their use
- (c) Thomas-Krenn.AG has requested deemed acceptance in accordance with § 6 (5) and
- (d) If
- (i) At least six business days have passed since completion of the delivery, service provision or installation and the customer has started using the delivered goods (i.e. the goods are in operation) or
- (ii) At least twelve business days have passed and the customer has neglected to notify Thomas-Krenn.AG of any defects.

§ 7 Warranty

(1) The warranty period is valid for one year from the date of delivery or, if acceptance is required or agreed upon, from the date of acceptance. Special statutory regulations, particularly those regarding third party material claims for restitution (§ 438 (1) no. 1 BGB), fraudulent intent on the part of the seller (§ 438 (3) BGB) and for claims of recourse against the supplier for deliveries to consumers (§ 479 BGB).

(2) Insofar as the customer is a businessman (§ 1 HGB) and no acceptance is required or agreed upon, the goods supplied are to be immediately and thoroughly inspected by the customer or a third party appointed by them upon delivery. The goods are deemed approved if the customer does not report any obvious defects or other damages, which are recognizable upon immediate inspection, within seven business days after delivery in written form. The same applies to any other defects that are not reported in written form within seven business days of being discovered. The timely dispatch of the report is sufficient. The goods are considered unaccepted, however, if Thomas-Krenn.AG has fraudulently concealed a defect.

(3) If there are defects with the delivered or manufactured goods, the customer is granted the statutory warranty rights, as subject to paragraph (1). Insofar as the customer has the right to subsequent delivery or services, Thomas-Krenn.AG will assume all expenses for delivery of a new component (subsequent delivery) or for the removal of the defective component (repair). The customer's statutory rights remain unaffected if the subsequent delivery / service is also defective.

(4) If the defect represents an infringement on the intellectual property rights or copyrights of a third party, Thomas-Krenn.AG will, at their discretion, exchange or repair the delivered item at their own cost, so that the rights of the third party are no longer violated and so that the delivered item maintains the contractual quality previously agreed upon or provide the customer with the right of use via a license agreement. If Thomas-Krenn.AG does not manage to do this within an appropriate amount of time, the customer is entitled to withdraw from the contract or request a reduced purchase price. Each party agrees to notify the other party in writing immediately if any claims of infringement concerning intellectual property or copyright laws are made by a third party.

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(5) For goods or components containing defects from another manufacturer that Thomas-Krenn.AG cannot resolve due to licensing or practical reasons, Thomas-Krenn.AG will, at its discretion, make their warranty claims against the manufacturers and suppliers on account of the customer or assign them accordingly. Warranty claims against Thomas-Krenn.AG only exist for defects of this kind, in accordance with the other conditions and stipulations of § 7, if the enforcement of the above mentioned claims against the manufacturers and suppliers was unsuccessful (after exhausting all possible channels of appeal and/or unsuccessful enforcement) or has become practically impossible – for instance due to insolvency. Thomas-Krenn.AG is obligated to compensate any procedural costs that the customer has incurred that cannot be collected from the third party at the legally permitted amount. During the duration of the legal dispute, the limitation of the relevant customer warranty claims against Thomas-Krenn.AG is suspended.

(6) The initially delivered item requiring repair or replacement is to be returned to Thomas-Krenn.AG at the request and at the expense of Thomas-Krenn.AG insofar as the item in question can be shipped.

(7) The customer can only request compensation for damages due to defects in accordance with § 8.

§ 8 Liability for Damages

(1) Thomas-Krenn.AG's liability for damages arises exclusively in accordance with this § 8.

(2) The liability of Thomas-Krenn.AG is not limited for:

(a) Damages resulting from an injury to one's life, body or health and relating to an intentional or negligent breach of obligation by Thomas Krenn.AG, one of its legal representatives or an agent of Thomas-Krenn.AG

(b) Damages relating to an intentional or grossly negligent breach of obligation by Thomas-Krenn.AG, one of its legal representatives or an agent of Thomas-Krenn.AG (including the fraudulent concealment of a defect)

(c) Claims resulting from a quality guarantee or other guarantee provided by Thomas-Krenn.AG to the extent that a restriction is not clear from the content of the warranty statement.

(3) The liability of Thomas-Krenn.AG for damages resulting from an ordinary negligent breach of essential contractual duties (i.e. contractual obligations, whose fulfillment is necessary for the proper execution of the contract and on upon which the customer regularly relies and may rely upon) is limited to the typical foreseeable damages insofar as paragraph (2) is not involved.

In the event of a loss of data stemming from simple negligence on the part of Thomas-Krenn.AG, the company is exclusively liable for the damages that would have occurred even if the customer performed a standard backup of the data in accordance with § 10 (4), particularly for any costs incurred in restoring the data.

(4) Furthermore, Thomas-Krenn.AG cannot be held liable for damages, regardless of the legal reason, due to impossibility, delay, defective or incorrect delivery, breach of contract, breach of obligations in contract negotiations and unlawful acts.

(5) Claims according to the Product Liability Act remain unaffected by the provisions in this § 8.

(6) The above liability exclusions and limitations apply to the same extent in favor of the institutions, legal representatives, employees and other agents of Thomas-Krenn.AG.

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§ 9 Reservation of Proprietary Rights

(1) Movable property delivered by Thomas-Krenn.AG remains the property of Thomas-Krenn.AG until all claims have been settled (including all current account balance claims) that Thomas-Krenn.AG has from its business relationship with the customer – now or in the future.

(2) Insofar as the value of the goods subject to Thomas-Krenn.AG's reservation of proprietary rights (hereinafter: "retained goods") permanently exceeds that of Thomas-Krenn.AG's claims against the customer by more than 10%, Thomas-Krenn.AG is to release the retained goods at the customer's request within the

appropriate scope. The selection of which retained goods are released is subject to the professional judgment of Thomas-Krenn.AG.

(3) The customer is entitled to process and sell the retained goods in the ordinary course of business as long as the customer is not in default on the corresponding retained goods. Seizures or transfer of collateral are not permitted. As a precautionary measure, the customer completely relinquishes claims arising from the further sale or any other reason (insurance, unlawful activity) in respect to the retained goods (including all balances on claims on the current account) to Thomas-Krenn.AG. Thomas-Krenn.AG authorizes the customer to revocably collect the claims assigned to Thomas-Krenn.AG for their account in their own name. This authorization can only be revoked if the customer fails to meet their payment obligations. If the authorization is revoked, the customer is obligated to declare the claims assigned to Thomas-Krenn.AG and its debtors, to provide all of the necessary information for asserting these claims and to inform (third-party) debtors of the assignment.

(4) Processing or alteration of the retained goods by the customer shall be completed by Thomas Krenn.AG as the manufacturer pursuant to § 950 BGB (insofar as claims do not arise with the customer). If the retained goods are processed with other items not belonging to Thomas-Krenn.AG, Thomas-Krenn.AG thereby acquires co-ownership of the new item in proportion to the value of the retained goods (invoice value, incl. VAT) to the other processed goods at the time of processing. The same provisions apply to this new item as with retained goods. The customer shall retain the sole ownership or co-ownership thus arising on behalf of Thomas-Krenn.AG free of charge.

(5) If a third party attempts to access the retained goods (particularly in the cases of seizure), the customer will advise the third party of Thomas-Krenn.AG's (co-)ownership and inform Thomas-Krenn.AG of the situation.

§ 10 Duties and Obligations of the Customer

(1) The selection of products and their suitability for certain purposes is the customer's responsibility, insofar as Thomas-Krenn.AG did not provide the customer with advice on the item.

(2) It is the customer's responsibility to first report any defects that may be due to a defective product to Thomas-Krenn.AG before taking measures to further identify and/or diagnose errors/defects in the product. This allows Thomas-Krenn.AG the opportunity to acknowledge the defect – at the latest within 24 hours of notification. If the customer does not comply with this obligation to report a defect, the customer cannot claim reimbursement of costs or expenses incurred determining and/or diagnosing a defect in a product. If, however, Thomas-Krenn.AG does not respond within 24 hours after receiving proper notification from the customer to acknowledge the defect of the product, the customer is free to take appropriate measures to determine or diagnose the

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errors/defects or commission third parties to do so. In such a case, the exclusion of costs and expenses set out in the above sentence 3 does not apply.

Any legal obligation of the customer to investigate or submit a complaint (pursuant to § 377 HGB) are unaffected by the above obligation to report defects.

(3) The customer is obliged to support Thomas-Krenn.AG, as far as possible and within reason, in its efforts to rectify defects or provide services – particularly in regard to providing needed information, preparing error reports when necessary, granting access to products as well as providing any other information that may be needed for warranty-related services (see § 7) and / or any other services (see § 1 (2) (a)) provided by Thomas-Krenn.AG.

(4) The customer agrees to remove any components not installed by Thomas-Krenn.AG insofar as this is necessary for any warranty services (see § 7) and / or other services (§ 1 (2) (a)) provided by Thomas-Krenn.AG.

(5) Data backup is not included in the scope of services provided by Thomas-Krenn.AG. Instead it is the responsibility of the customer in the absence of any agreement to the contrary. The customer has full responsibility for the securing of data. Thomas-Krenn.AG recommends that back-up copies be created for any essential files and programs etc. and that all data be additionally saved on an external data storage device.

§ 11 Final Provisions

(1) The customer is only entitled to offset claims from Thomas-Krenn.AG as long as the counterclaims are uncontested or legally binding. The enforcement of a right of retention is available to the customer only for counterclaims resulting from the same contractual relationship with Thomas-Krenn.AG. For defects with the delivery, the customer's opposing rights remain unaffected.

(2) The contractual parties agree that all arrangements concerning the contractual parties be in writing. These agreements can be made via fax, but are not considered valid when made via e-mail.

(3) These GTCs as well as all legal and contractual relationships between Thomas-Krenn.AG and the customer are governed exclusively by the laws of the Federal Republic of Germany under exclusion of international private law. The United Nations Convention on Contracts for the International Sale of Goods of 11 April 1980 (CISG) does not apply.

(4) If the contract or these GTCs contain regulatory gaps, the conditions that would have been agreed upon, had both parties been aware the gaps, apply. These are to be in line with the original business objectives of the contract. The same applies to any gaps in the GTCs and/or § 1 (2) and (3) of the aforementioned conditions.

(5) Jurisdiction for any disputes arising out of or in connection with the contract between Thomas-Krenn.AG and the customer is, at the discretion of Thomas-Krenn.AG, either Freyung (Lower Bavaria) or the location of the customer in cases of claims made against the customer. For complaints against Thomas-Krenn.AG, Freyung has exclusive jurisdiction. Mandatory statutory provisions on exclusive jurisdiction remain unaffected by this provision.

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(6) The parties are aware that the products may be subject to export and import restrictions. In particular, there may be licensing obligations or restrictions that apply to the use of servers and hardware products or associated technologies abroad. The customer shall comply with the applicable export and import control regulations of the Federal Republic of Germany, the European Union and the United States of America as well as all other relevant regulations. The seller's fulfillment of the contract is subject to the reservation that there are no obstacles to fulfillment stemming from national or international regulations of export and import law or any other statutory regulations.

(As of: 08.2019)

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