



ACP terms of delivery

General terms of delivery for the ACP group.

Valid for all affiliated companies of the ACP Holding Österreich GmbH, 1150 Vienna. A current excerpt of the ACP companies can be found at www.acp.at or www.acp.de.

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These GTC are valid for all affiliated companies of the ACP Holding Österreich GmbH, hereinafter referred to as “ACP”.

1. Preamble

The General Terms and Conditions of ACP are valid for the sale and delivery of hardware and software to the customers (buyers) of ACP.

ACP accepts orders, sells and delivers exclusively on the basis of these GTC. Customers' GTC are hereby discounted and are deemed invalid.

Modifications of or amendments to these general contract regulations are only effective, if the modification or amendment is offered by the customer in written form and is accepted by ACP in written form.

All orders and agreements are only binding, if they are signed by ACP in written form and by appropriate executives and are only binding to the extent stated in the order. Offers are generally subject to change.

It is explicitly pointed out, that regarding contracts outside of the business premises of ACP, consumers have the right of withdrawal according to § 3 Consumer Protection Act (KSchG).

2. Subject of contract

In the context of these terms, hardware is data processing equipment (computers and computer equipment) as well as the terms of use.

In the context of these terms, software are computer programmes distributed on standard basis or developed individually for the client, or adapted computer programmes according to §40 a Copyright Act, for use in, for operation or for controlling of electro technical and/or electronic devices and systems including the appropriate documents according to section 4.

The customer has the untransferable and non-exclusive right to use the sold software in compliance with the contractual specifications at the appointed installation site. Concerning delivered hardware, this right is restricted to the exclusive use of this hardware, concerning autonomous software this right is restricted to the type, number and installation site of hardware defined in the contract. All other rights for the software are reserved for the licensor. Without the written approval of the licensor, the client is in particular not entitled to copy the software, to modify it, to make it accessible to third parties or to use it with any other hardware than stated in the contract, irrespective of § 40 d Copyright Act. If the use under the provisions of law includes the use at more than one work place, this requires an explicit agreement. The use of software with hardware other than stated in the contract may only occur with a separate, written agreement which will be charged for.

3. Duties of client

The client must protect the entire rights of the licensor (e.g. industrial property law, copyright including copyright notations) for the software and for requirements of the licensor regarding breach of secrecy of company- and business secrets, also by employees and servants respectively third parties; this also applies, if the software is modified or connected with other programmes. This obligation also remains valid after the termination of contract.

It is incumbent on the client to obtain information about the content of the particular manufacturer's (licensor's) respective terms of the software licenses. The client must conform to these terms of license at all events by either carrying these out him- or herself or by instructing someone to carry out the actions determined by the respective software manufacturer as declaration of consent. By explicit request of the client, ACP provides the respective terms of license in advance.

4. Specification of software

The licensor provides the specifications of standard software. The licensor is entitled to modify the software specifications for new versions.

5. Delivery

5.1 The delivery of hardware, programme media, documents and technical specifications is at buyer's risk and expense. Installations, instructions and trainings are not contained in the scope of services. If the client makes use of these services, the services will be charged separately. Insurances will only be effected on the client's explicit demand. Claims due to damages in transit must be made by the client immediately, or at the latest 8 days after the delivery of goods to the client, to the transport company as well as to ACP in written form, as they expire otherwise.

Measures of storage and storage costs, that become necessary due to client's reasons, e.g. delay in delivery due to incorrect, incomplete or later changed statements and information, are not to be represented by ACP and cannot lead to default of ACP. The additional costs resulting from this, are for client's account. ACP is at liberty to choose the type of shipment of the goods and the means of transport for client's account. In all events, goods travel at client's risk.

5.2 ACP aims at keeping the appointed dates of delivery as exactly as possible. The delivery period starts at the latest at following times:

- a) date of acceptance of order
- b) date of compliance of all technical, commercial or other requirements incumbent on the client
- c) date on which ACP receives an advance payment or security required before delivery

5.3 Official authorisations or licenses necessary for the use of constructions by third parties must be obtained by the client. If these authorisations are not obtained in time, the delivery period is extended respectively and cannot lead to default of ACP.

Justifiable and appropriate changes of service and delivery obligation of ACP, especially necessary adaptations to an appropriate delivery period are deemed approved of by the client in advance. ACP is entitled to carry out and charge partial deliveries or deliveries in advance. If delivery on call is agreed upon, the goods are deemed as accepted at the latest 1 year after order.

Provided unforeseeable circumstances or circumstances independent of the intention of the parties, e.g. all cases of force majeure, that impede the keeping of the agreed delivery period, this period in all events is extended by the duration of these circumstances or ACP is entitled to withdraw from the delivery commitment; this also includes armed conflicts, official interferences and prohibitions, transport and customs delays, damages in transit, energy and resource insufficiencies, working conflicts as well as drop out of an essential, hard to replace supplier. These circumstances mentioned above also justify the extension of the delivery period, if they occur with suppliers.

6. Prices, taxes and fees

6.1 Prices stated in the offer or order form are valid. These prices do not include the legal Value Added Tax (VAT). They are only valid for the current order. Costs for programme media (e.g. magnetic tape, magnetic plates, floppy disks, streamer tapes, magnetic tape cassettes, etc.) as well as for possible contract fees will be charged separately.

6.2 Considerable changes of circumstances, especially of wages, freights, insurance costs, customs duties and other duties, entitle ACP to charge the respective prices valid on the day of delivery. This does not apply to consumer business.

6.3 The costs for fare and daily allowance are for client's account separately according to the respectively valid rates. Transit time is deemed working time.

6.4 Cancellations by the client are only possible with a written approval of ACP. If ACP is in agreement with a cancellation, ACP is entitled to charge a cancellation charge of 30% of the not yet charged order value, in addition to already performed services and accruals.

7. Payment

7.1 The client must pay the goods according to the invoice (including VAT), matching payment with delivery, without any discount and exempt from charges (cash payment). Agreed dates of payment in written form are excepted from this regulation. For invoices for partial deliveries, the terms of payment

for the entire order apply analogous. Operational partial deliveries can be invoiced by ACP separately and irrespective of the entire order.

7.2 Regarding orders that contain several units (e.g. programmes, computer installations), ACP is entitled to invoice every single unit or service after delivery.

7.3 In case of delayed payment, ACP is entitled to charge default interest of 5% above the respective bank rate p.a. In the event of non-payment of two instalment payments, ACP is entitled to deem the payment target to have been missed and to demand immediate payment of due bills.

7.4 The settlement by means of bills receivable for ACP and the retention of payments due to alleged receivables of the agent that are however not accepted by ACP are excluded.

7.5 Client's rights to detain services according to § 1052 ABGB (Civil Code) for obtaining or securing the return service, as well as generally client's legal rights of retention are excluded.

This regulation does not apply to consumer business.

8. Reservation of proprietary rights

8.1 The delivered goods remain absolute property of ACP until the complete payment has been made (including interest and possible litigation costs). The client must make sure that a proper maintenance (attendance and repair) is carried out at own expense. Pledges or security conveyances before complete payment are not effective.

8.2 If the client does not fulfill the obligations as stated in the contract, ACP is at anytime entitled to reclaim property at the client's expense and the client is obliged to hand out the goods.

8.3 In the event of goods having been sold to third parties by the client before making the complete payment, the purchase price paid at the moment of sale by this party must be conveyed to ACP. The client is obliged to keep the thereby earned profit separately and to pay it immediately to ACP.

In the event of goods having been pawned or confiscated, the client is obliged to notify ACP within three days and to provide ACP with the entire information necessary for the assertion of proprietary rights.

In the event of third parties accessing respectively asserting claims for goods that are still property of ACP, the client is obliged to point the fact out that these goods are still property of ACP.

The assertion of proprietary rights by ACP does not represent a withdrawal from contract by the contractor.

9. Copyright / protection of industrial property

9.1 The respective licensor is entitled to all copyrights of software products agreed upon in the contract. After the complete payment of the agreed amount, the client obtains the right to use the software exclusively for own purposes, only for hardware specified in the contract and to the extent of the purchased number of licenses for the simultaneous use on several work places. By this contract, only the authorisation for the use of works is obtained. A distribution by the client is prohibited according to the Copy Right Act. By appropriate internal instructions, the client must ensure that violations of license rights by subsidiaries or employees are avoided. Any violation of the copyright of the licensor will result in claims for indemnification – in such a case full amends must be made. The client must prove that the violation took place without any own fault.

9.2 Copies for the archive and for data protection purposes are permitted on the condition, that the software does not contain a specific prohibition of the licensor or third parties and that the entire copyright and proprietary statements are transferred to these copies unchanged.

10. Right of withdrawal

In case the delivery period is exceeded by ACP, the client is entitled to withdraw from the contract by submitting a registered letter and by setting a deadline of at least ____ days, if ACP is guilty of gross negligence and the client is not guilty of any negligence.

11. Warranty

11.1 If not stated otherwise in the offer, ACP warrants for hardware and software products for 6 months. Defects must be reprovred (in case of otherwise non-liability) at the latest within 8 days of delivery (date of delivery note) in written form, including pictures of the defect and attachment of the proof of delivery. Programme and data protection processes (backup and restore) must be carried out at client's expense. If not agreed upon otherwise in written form, ACP does not warrant for the service carried out to be economically or technically useful regarding the purposes of the client. Excluded from warranty are defects that have been caused due to incorrect installation, use or modifications by the client or third parties, attempts of repair not approved of by ACP, improper service conditions as well as atmospheric or electrostatic discharge or natural wear.

11.2 If defects are not reprovred or not reprovred in time, the goods are deemed accepted. The assertion of warranty or damages payments as well as the compensation claims for errors due to defects are in these cases excluded.

11.3 Furthermore, ACP does not assume any liability for errors, malfunctions or damages that have been caused by improper use, modified components of the operating system, interfaces and parameters, use of improper organisation means and data media, as far as these are required, abnormal operating conditions (especially variations in installation and storage conditions, inadequate maintenance, disregard of operating regulations, use of improper operational equipment as well as chemical and electronic influences) as well as transit damages.

11.4 For any damages caused by programmes that are later modified by client's software engineers respectively by third parties, any warranty by ACP is omitted.

11.5 ACP warrants that hardware products are free of any construction, manufacturing or material defects at the time of delivery. The removal of defects is carried out workdays (Monday to Friday) as quickly as possible at the nearest service point of ACP. ACP is entitled to provide a replacement or replacement parts of own choice, or to repair the device (or parts of it). The warranty period is not extended due to replacement or repair. ACP is also entitled to have defects removed by third parties. The client is obliged to return replaced parts to ACP packed properly and at own risk and cost. If the part/product that has to be returned does not arrive at ACP within 10 work days starting from the carrying out of repair/replacement, the client will be charged for the replacement part by ACP at valid list price on the usual terms.

11.6 For software not produced by ACP, the warranty obligation is restricted to the transfer of licensor's claims by ACP. ACP only assumes liability for an operation free of defects of delivered software in specific combinations and use, if this was stated explicitly in written form. ACP warrants that the data media are free of construction-, production- and material- as well as instruction faults at time of delivery. The removal of defects is exclusively carried out by the replacement of the data medium. During the warranty period, the client receives free of charge complementary versions (error correction of software producer) of the software including the appropriate documents on demand. This does not include newer versions of software, that contain a functional improvement of the licensed software. The installation of complementary versions is carried out by the client and is not covered by warranty. Software-support at location is not covered by warranty.

11.7 The warranty period runs for six weeks after the completion of work. Deliveries of hardware and software that are carried out as a service, are subject to the objective warranty conditions. If services are not carried out by ACP without defect, the client is entitled to retain payment of service until the moment in which the service is carried out without defect. A right of warranty can in no case be deduced from the duration of a service.

11.8 The legal regulations of the ABGB (Civil Code) in connection with the regulations of the KSchG (Consumer Protection Act) apply to consumers.

12. Liability

12.1 Liability for claims exceeding the warranty (consequential harm caused by a defect), as well as compensations for damages, according to whatever section, only applies in the event of gross negligence or intention; this must be proven by the client. ACP is in no event liable for possible loss of profits. ACP is in no event liable for damages, that could have been avoided by the client by taking reasonable measures – especially by programme or data protection and sufficient product training. The Product Liability Act (PHG) applies with the constraint, that ACP does not assume liability to pay damages according to the PHG in the relationship with the client. The client is obligated to transfer this nonliability to his customers – otherwise there will be liability to recourse. Liability for slight negligence is excluded.

12.2 The legal compensation regulation of the ABGB in connection with the regulations of the KSchG apply to consumers without any restriction.

13. Legislation, jurisdiction, final clauses

13.1 Unless stated otherwise by these regulations, the legal requirements of Austrian law for registered traders apply; also if the order is carried out abroad. The application of the UN Convention on Contracts for the International Sale of Goods is excluded. This regulation does not apply to consumer business.

13.2 For any disputes, the objective responsible court at business location of ACP is deemed appointed. For any claims resulting from this contract against a consumer living, usually residing or working inland, the objective appropriate court where the consumer lives, usually resides or works is responsible.

13.3 If single regulations in these GTC are null and void, contestable or in any other way ineffective, this does not affect the effectiveness of the other regulations in these GTC. The ineffective regulation is to be replaced by a regulation, that closest resembles the original regulation in economic content and purpose. This also applies to the filling of gaps by an alternative interpretation of the contract in the way mentioned above. The contractual partners mutually commit themselves to service provision bona fide.



General terms of delivery for the ACP group

ACP terms of delivery

Confirmation of the terms of delivery of all affiliated companies of the ACP Holding Österreich GmbH, Pfeiffergasse 2, A -1150 Vienna.

With your signature you confirm to have read and acknowledged the General Terms and Conditions of delivery of the ACP.

A current excerpt of all companies of the ACP group can be found on the internet:
www.acp.at or www.acp.de

acknowledged:

binding signature / company stamp

date/place:

Further valid GTC of ACP:
GTC of services and training
GTC of delivery