

General Terms and Conditions

Area of validity: Entrepreneurs (B2B) for products under the brand "akkut"

1. Scope of application

1.1 These General Terms and Conditions (in short: "GTAC") of MLINE Vertriebs- und Produktions GmbH (in short: "MLINE") apply to all deliveries and services of MLINE for all products under the brand akkut to companies ("client" or "trader"), irrespective of whether separate reference is made to them or not.

1.2 These GTAC apply to all products of the brand "akkut" as well as to distribution products of other manufacturers.

1.3 Client's terms and conditions that deviate from or supplement our GTAC and the purchasing conditions presented in the appendix shall not be valid. Amendments and supplements to our GTAC always require the express written confirmation of MLINE.

1.4 These GTAC apply to all hardware and software products and services under the brand "akkut".

2. Conclusion of contract (hardware and software products), prices

2.1 All offers made by MLINE are always subject to change. Information in brochures, catalogues, websites, online shops and other written documents are non-binding for MLINE.

2.2 Placing an order with MLINE via e-mail, telephone or in person is deemed to be a binding offer, which can be accepted by MLINE at its own discretion. By clicking on the button "Submit order" you confirm the correctness of your details and make a binding offer to purchase the products in the shopping cart.

2.3 After sending the order, you will receive a confirmation of receipt by e-mail. This merely confirms receipt of your order, but does not constitute acceptance of your purchase offer.

2.4 The contract shall only be concluded upon our express declaration of acceptance. The execution of the order shall in any case be deemed as acceptance.

2.5 The contract for software products is concluded by clicking on the order button "Submit order" and runs for an indefinite period. The contract may be terminated by either party subject to a notice period of 6 months, but no earlier than the end of the minimum term agreed in the contract. Notice of termination must be given via registered letter to MLINE Vertriebs- u. Produktions GmbH, Laxenburger Straße 238, A-1230 Vienna, via e-mail to office@mline.com or online in the customer area of the website.

2.6 The purchase contract is concluded with MLINE Vertriebs- u. Produktions GmbH.

2.7 Unless otherwise expressly agreed in writing, the prices shall apply in accordance with MLINE's price list valid on the date of dispatch plus statutory VAT and plus shipping costs.

2.8 In the case of subscriptions, the price change is valid from the time of the adjustment and is prescribed with the next invoicing.

2.9 All fees and taxes (in particular value added tax) shall be calculated on the basis of the respective valid legal situation. If the tax authorities subsequently prescribe taxes or duties in addition, these shall be borne by the client.

3. Scope of work and service provision for software products

3.1 Individually created software or programme adaptations require programme acceptance by the client for the respective programme package at the latest four weeks after delivery.

3.2 This shall be confirmed by the client in a protocol. After four weeks without accepting the programme, the software supplied shall be considered accepted on the end date of the said period.

3.3 If the client uses the software in live operation, the software shall be deemed accepted in any case.

3.4 MLINE is entitled to have its tasks performed in whole or in part by third parties. No direct contractual relationship whatsoever shall arise between the third party and the client.

3.5 MLINE provides services for the client in information technology and the operation of hardware and software components in compliance with the enclosed Service Level Agreements (SLAs), which form an integral part thereof. The respective SLAs define the exact scope of MLINE's services. Unless otherwise agreed, MLINE shall provide the services during MLINE's usual business hours or according to the SLA.

3.6 MLINE will ensure the performance and availability of the services in accordance with the relevant SLA.

3.7 Services by MLINE which are utilised by the client beyond the agreed scope of services shall be remunerated by the client according to actual personnel and material expenditure at the rates valid at MLINE at this time. This includes in particular services outside MLINE's usual business hours, the analysis and elimination of faults and errors that have arisen due to improper handling or operation by the client or other circumstances for which MLINE is not responsible. Likewise, training services are generally not included in the services and require a separate agreement.

3.8 Insofar as MLINE arranges services of third parties at the request of the client, these contracts shall be concluded exclusively between the client and the third party under the respective terms and conditions of the third party. MLINE is only responsible for the services and products provided by itself.

4. Delivery

4.1 MLINE expressly reserves the right to supply only those clients who have their registered office in Austria or Germany.

4.2 The delivery times and dates stated by MLINE are non-binding and are subject to timely delivery to MLINE by MLINE's suppliers.

4.3 The legal successors of the client are also bound by the obligations arising from contracts concluded within the scope of these GTAC. MLINE is authorised to commission other companies with the fulfilment of obligations arising from this contractual relationship.

4.4 Delivery will be made "carriage forward" to the agreed delivery address. The selection of the shipping method shall be made by MLINE.

4.5 The costs of shipping shall be borne by the client. This surcharge is calculated on the basis of the current transport costs. It corresponds to MLINE's transport price list valid on the day of dispatch plus the statutory VAT. These can be found in the shopping cart when completing the order in the online shop and on the order confirmation when ordering by e-mail or telephone.

4.6 MLINE shall not be liable for the delivery, in particular for delay in delivery, transport damage and loss.

4.7 Alternatively, pickup at the location of MLINE Vertriebs- u. Produktions GmbH, 1230 Vienna, Laxenburgerstraße 238 during the opening hours shown on <https://akkut.at/> is possible after prior notification. In this case, packaging and transport surcharge shall be waived.

4.8 If a software subscription is concluded and the access data required for the use of the software is delivered by e-mail, the client shall not incur any additional shipping costs.

4.9 Unforeseen circumstances and obstacles, in particular force majeure, government measures, non-granting of official permits, industrial disputes, sabotage, shortage of raw materials, delayed delivery of materials through no fault of MLINE, etc., shall not constitute grounds for any claims whatsoever on the part of the client against MLINE, irrespective of whether these occur at MLINE or at a manufacturer or supplier. If such circumstances or obstacles occur, MLINE is entitled to withdraw from the contract after a delay in delivery of at least six weeks.

4.10 Technical and design deviations from information in brochures, catalogues and written documents, as well as all other product changes within the scope of further development, are reserved, without this giving rise to any claim against MLINE.

4.11 Unless otherwise expressly agreed in writing, the mere delivery of the physical goods is owed, but no service, installation, software support or the provision of other support. In the case of an active subscription to our software products, the software-related support and the provision of support are possible against payment.

5. Retention of title, assignment of claims

5.1 MLINE reserves the right of ownership to all delivered hardware and software products until full payment of all claims arising from this contract, including future claims together with ancillary claims (e.g. transport costs, default interests, reminder and collection charges).

5.2 In the event that goods which have not been paid for in full are passed on in the ordinary course of business, the client hereby assigns its claims against the third party arising from such passing on and undertakes to note this assignment of claims accordingly on the invoices to the third party or in his books.

5.3 In the event of default in payment and after expiry of the grace period set in the 2nd reminder, MLINE is entitled to enter the client's business premises, to take possession of the product groups (articles) corresponding to the outstanding claims and to hold them in safekeeping until full payment of all claims arising from the contract. The taking possession and safekeeping of the products shall not be considered as a withdrawal from the contract by MLINE. The other rights of MLINE arising from the agreed retention of title shall remain unaffected. In the case of software products, access as well as the use of the respective service shall be prevented.

5.4 Insofar as software products are provided to the client by MLINE or the client is enabled to use software products within the scope of the services, the client shall be entitled to the non-exclusive, non-transferable right, limited to the term of the agreement, to use the software products in unmodified form.

6. Right of withdrawal and return

6.1 MLINE is entitled to withdraw from the purchase contract if, after the order has been placed, in the opinion of MLINE, the financial situation or creditworthiness of the client changes in a lasting negative manner and, after being requested to do so by MLINE for the first time, the client refuses to provide collaterals or to make advance payments.

6.2 MLINE is entitled, at its own discretion, to withdraw from all contracts with the client if the ownership of the client's company changes significantly.

6.3 MLINE is furthermore entitled to terminate the contract prematurely for good cause if essential parameters of the service provision have changed and MLINE for this reason can no longer be expected to continue the services from an economic point of view.

6.4 If MLINE suffers damage as a result of the improper handling of the hardware and software products obtained from MLINE or of the advertising material provided by MLINE, as a result of false or incorrect information or as a result of any other conduct on part of the client that is detrimental to MLINE, MLINE is entitled to terminate further delivery to this client as well as to withdraw from any other contractual obligation. The assertion of compensation for damages remains expressly reserved.

6.5 Upon termination of the contract, the client shall immediately return to MLINE all documents and documentation provided to him by MLINE.

6.6 A general right of return for traders is excluded and, where applicable, requires a separate, express agreement in writing. Should an express granting of a right of return be granted, MLINE in this case exclusively commits to take back such products that are

- returned to MLINE within a period of 3 months from the date of delivery to the trader,
- were no special offers, sale or discontinued products at the time of the order or were no longer listed in MLINE's price list,
- returned in their original packaging, unpolluted and undamaged,
- Packaging of returned goods whose condition does not permit immediate resale of the returned goods shall be repackaged by MLINE. The costs for this shall be borne by the trader.
- the original or a copy of the delivery note or invoice for the returned products is enclosed with the return shipment,
- the written note "RETURN" is included on the return consignment,
- the trader orders further goods from MLINE in the month of the return shipment in at least the same value as the order sum of the returned goods,
- the order value of the returned goods in the month does not exceed the order total of the previous month,
- the costs of the return shipment are borne by the trader

6.7 In the event of a justified return, MLINE shall issue a credit note to the client corresponding to the prices for the returned goods at the time of the return shipment ("daily updated price"). The daily updated prices are available to the client on the MLINE website (<https://akkut.at/>). Payment of the credit amount to the client is excluded.

7. Warranty, default in performance, damages

7.1 MLINE provides the statutory warranty with regard to its own hardware and software products. §924 ABGB "Presumption of defectiveness" ("Vermutung der Mangelhaftigkeit") is excluded by mutual agreement. For any hardware or software products of third parties provided by MLINE to the client, the respective warranty conditions of the manufacturer of these products shall have priority over the provisions of this clause.

7.2 Any liability or warranty beyond that of MLINE's supplier is excluded. MLINE is entitled, at its own discretion, to transfer claims of the client arising from warranty, damages or whatever legal grounds, directly to the respective supplier.

7.3 A default to be dealt with shall be deemed to exist if the software product which is the subject matter of the contract exhibits behaviour which deviates from the corresponding performance specification in the respective latest valid version and this behaviour can be reproduced by the client.

7.4 Restrictions on warranty and damages stated on the products themselves, on the packaging or enclosed with the respective product take precedence over other provisions in these regulations.

7.5 Excluded from the warranty are, in particular, such defects or damage that are due to unsuitable or improper handling, faulty commissioning, intervention by the customer

or third parties, faulty installation, natural wear and tear and external influences (e.g. cold, heat, interference from electronic devices and cable connections or antennas) an operating error, wear and tear caused by operation (e.g.: batteries of any type and design), operation with incorrect power voltage, fire, lightning, explosion, moisture, normal abrasion, errors, malfunctions or damage that are due to improper operation, changed operating system components, interfaces, third-party software and parameters, faulty programme or software data or improper connection with other hardware components, use of unsuitable organisational means and data carriers, insofar as such are prescribed, abnormal operating conditions (in particular deviations from the installation and storage conditions) and transport damage.

7.6 MLINE does not guarantee that the delivered goods will meet all the requirements of the client, that they will work together with other components in the selection made by the client and that the programmes will run uninterruptedly and without errors, or that all software errors can be rectified.

7.7 The warranty is also void if the serial number or seal attached to the product has been removed.

7.8 Warranties can only be claimed upon presentation of an appropriate sales receipt and, if issued for the product concerned, by means of a warranty card or, in the case of software products, an active subscription.

7.9 Defective hardware and software products are to be reported to MLINE in writing or by e-mail immediately after the occurrence of the defect. MLINE is entitled and obliged to remedy subsequently discovered inaccuracies and defects in its performance. The rectification of defects shall be effected, at MLINE's discretion, exclusively by repair, replacement or by correction of programming defects in the case of software products. For parts that have a limited service life depending on use, treatment and care, MLINE only provides a limited warranty.

7.10 If the inspection of the hardware or software product after notification of the warranty shows that there is no defect, the costs of this inspection shall be borne by the client.

7.11 In the event of any other exclusion of all claims, for whatever reason, the trader is obliged to impose the obligations assumed in these GTAC on its customers.

7.12 Liability for consequential damages and lost profits, including such damages that occur due to a malfunction in the sphere of the client or a third party, as well as compensation for property damage within the meaning of §2 of the Product Liability Act ("Produkthaftungsgesetz") is excluded.

7.13 The liability of MLINE for application errors of the client or its assistants and employees, as well as in the case of unauthorised modification of the software, the configuration or the connection with components, which were not expressly recommended by MLINE or the manufacturer, is excluded.

7.14 If the work is carried out with the involvement of a third party, e.g. a data processing company, an accountant or a lawyer, and the client is notified thereof, any warranty and liability claims against the third party arising under the law and the terms and conditions of the third party shall be deemed assigned to the client.

8. Terms of payment

8.1 Unless otherwise agreed with the client, all claims are due for immediate payment without deduction. The client may choose from the following payment methods: credit card (Visa, Mastercard), instant bank transfer via Klarna, PayPal and invoice. In the case of payment by credit card, PayPal or instant transfer via Klarna, the payment will be processed via the payment service provider "Unzer" of Unzer GmbH, Vangerowstraße 18, 69115 Heidelberg, Germany, to whom we will pass on your data provided during the ordering process exclusively for the purpose of processing the payment.

Credit card: When placing the order, you provide your credit card details. After your legitimization as a legitimate cardholder, the payment transaction will be carried out automatically and your card will be charged. If you purchase a paid software subscription, these credit card details may also be stored with your consent and used for recurring payments.

Instant bank transfer via Klarna: After placing your order, you will be redirected to the website of the online provider Sofort GmbH. In order to be able to pay the invoice amount via Sofort, you must have a bank account activated for online banking, identify yourself accordingly and confirm the payment instruction to us. The payment transaction will be carried out immediately afterwards by Klarna and your account will be debited. You will receive further instructions during the ordering process.

PayPal: During the ordering process you will be redirected to the website of the online provider PayPal. In order to pay the invoice amount via PayPal, you must be registered there or register first, legitimise yourself with your access data and confirm the payment instruction to us. After placing the order in the shop, we request PayPal to initiate the payment transaction. The payment transaction will be carried out automatically by PayPal immediately afterwards. You will receive further instructions during the ordering process.

Invoice: In addition, the client has the option to request payment on open account in writing. A prerequisite for the granting of a payment term is a positive credit assessment of the client by MLINE. The amount of the payment term granted is to be agreed individually and is in any case dependent on the result of the credit screening. Payments shall be made to the account stated on the invoice and shall only be deemed to have been made upon receipt on this account.

8.2 In the event of a delay in payment of invoices with an agreed payment date, MLINE is entitled to claim interest on arrears in the amount of 14% p.a. as well as all collection, reminder and discount expenses arising from the delay, in particular costs of intervention by collection agencies or lawyers.

8.3 In the event of default in payment, MLINE reserves the right to carry out or charge future deliveries and subscriptions only by advance payment.

8.4 In the event of default in payment on the part of the client, MLINE is entitled, at its own discretion, to suspend all deliveries and services until full payment of all claims or, after two written reminders, to dissolve the contractual relationships in this respect with immediate effect.

8.5 This shall not affect the right to assert further claims arising from default in payment.

8.6 The offsetting of claims of the client against those of MLINE is excluded in any case.

8.7 The client is not entitled to withhold payments due to incomplete total delivery, warranty or guarantee claims or complaints.

9. Protection of the intellectual property, copyright, use

9.1 The client is obliged to ensure that the works created and uploaded in the course of the use of the software by MLINE, its employees and cooperation partners (images, texts, videos, links, etc.) are only used for contract purposes and do not infringe any copyright. MLINE is not liable for uploaded and copyright infringing works of the client.

9.2 The use of professional statements of MLINE for advertising purposes by the client is not permitted. An infringement entitles MLINE to terminate without notice all still active subscriptions for the software products offered. In particular the disclosure of professional statements of any kind by MLINE to third parties, whether in return for payment or free of charge, requires the written consent of MLINE. This shall not constitute a liability of MLINE towards the client.

9.3 Unless otherwise agreed, the copyrights for the works created by MLINE shall remain with MLINE.

9.4 Unless otherwise agreed in writing, MLINE grants the client a non-exclusive right of use for the software or programme adaptations used.

9.5 MLINE is entitled to continue to use the software itself and to license and distribute it to third parties on a non-exclusive basis. In view of the fact that the services created are intellectual property of MLINE, the right to use the same, even after payment of the subscription fees, shall apply exclusively for the client's own purposes and only to the extent and in the locations or areas specified in the agreement. Any transfer which nevertheless takes place, also in the course of a dissolution of the company or bankruptcy, but also the short-term transfer for reproduction purposes shall result in claims for damages. In such a case, full satisfaction shall be paid.

10. Data protection and confidentiality

10.1 The client is informed that, in accordance with the Data Protection Act (Datenschutzgesetz DSG) 2018, the European General Data Protection Regulation GDPR (Datenschutz-Grundverordnung DSGVO) and the Data Protection Amendment Act 2018, MLINE stores and processes data or has such data processed by third parties for the fulfilment of this contract and in particular for the purposes of planning, marketing, cost accounting and internal company statistics.

10.2 The client gives his express consent to the processing and transmission of his data as mentioned in these GTAC as well as specifically in MLINE's privacy policy. It can be accessed at any time at <https://akkut.at/en/privacy-policy/>. The client is informed that he may revoke his consent at any time with effect for the future. In the event of such a revocation, the client shall bear all disadvantages resulting therefrom, in particular a delay in delivery or the complete impossibility of providing the service, and shall reimburse MLINE for the expenses incurred to date.

10.3 In accordance with the provisions of the Data Protection Act (DSG 2018, DSGVO or Data Protection Amendment Act 2018), MLINE guarantees the obligation to maintain data secrecy. Material provided (data carriers, data of any kind, control figures, analyses, programmes, etc.) as well as all results from the performance of the work will be returned or deleted at the request of the client in compliance with any statutory retention and documentation obligations.

10.4 Insofar as MLINE makes use of third parties to provide the contractual service, MLINE is entitled to disclose the ascertained and processed data of the client if and as far as this is necessary. This disclosure on the part of MLINE shall be made in compliance with an order processing contract in accordance with Art. 28 DSGVO, which obliges MLINE to comply with the applicable provisions of data protection law.

10.5 MLINE uses technical and organisational safety precautions to protect the stored personal data or media. However, MLINE is not responsible if the data is nevertheless accessed or further used by unauthorised persons, in particular through intervention by third parties. The assertion of damages by the client or third parties against MLINE from such a connection is excluded by mutual agreement.

10.6 Confidential information may only be passed on to third parties by the client with MLINE's prior express written consent. This includes in particular product prices, the respective scope of delivery as well as client-specific conditions and all other information that has become known to the client in the course of the business relationship with MLINE and is not considered to be generally known. The obligation arising from this provision shall continue to exist for an unlimited period even after the end of a business relationship with MLINE.

11. Special term for websites

11.1 MLINE accepts no responsibility for the content of websites to which direct or indirect reference is made. The provider of these pages alone shall be liable for illegal, incorrect or incomplete content and in particular for damages arising from the use or non-use of the information provided.

11.2 MLINE expressly reserves the right to change, supplement, delete temporarily or permanently cease the publication of parts or the entire offer without prior notice.

11.3 Reproduction or use of graphics, sound documents, video sequences and texts in electronic or printed media without the express consent of MLINE is not permitted.

12. Trademark rights

12.1 akkut is a registered trademark of MLINE Vertriebs- und Produktions GmbH.

12.2 The client shall be entitled to use a designation with or without the use of the word and figurative trademark "akkut" identifying him as an authorised contractual partner of MLINE in business dealings during a valid business relationship. For the sake of clarification, it is once again stated that this authorisation of the client exclusively refers to products under the akkut brand. Any further use of brands, designations or attributes of MLINE by the client is not permitted.

12.3 The client's own advertising measures (e.g. duplication or use of graphics, sound documents, video sequences and texts in other electronic or printed media), which have hardware and software products under the akkut brand as their object, require the express consent of MLINE prior to their implementation. As a matter of principle, every advertising measure must comply with the CI/CD guidelines by MLINE.

12.4 The trademark rights of the trademarks mentioned textually at MLINE (e.g. Apple, Samsung, etc.) remain the property of the respective trademark owner.

12.5 The client undertakes not to derive any rights from the use of the trademark, in particular to refrain from new registrations and registrations of similar trademarks.

13. Jurisdiction, Applicable Law

13.1 Unless otherwise agreed, only Austrian law shall apply to the order, its execution and the claims arising therefrom.

13.2 All disputes or claims arising out of or in connection with this contractual relationship, or relating to this contractual relationship, its formation, violation, dissolution or invalidity, shall be brought exclusively to the competent court Vienna, Liesing, in accordance with Austrian procedural law.

13.3 The application of the United Nations Convention on Contracts for the International Sale of Goods is excluded.

14. Final provisions

14.1 The place of fulfilment for all deliveries and services of MLINE shall be Austria, 1230 Vienna, Laxenburger Straße 238.

14.2 MLINE is authorised to commission other companies with the fulfilment of obligations arising from this contractual relationship.

14.3 If parts of these GTAC are invalid or partially invalid, the valid parts shall remain unaffected. The respective invalid provision shall be deemed to be replaced by a valid provision which comes as close as possible to the economic purpose of the invalid provision.

14.4 MLINE is entitled to amend or supplement these GTAC at any time. The amendment shall come into force upon notification of the client and shall apply to all contracts concluded from that time onwards.

14.5 Statutory changes to the data protection provisions shall come into force upon notification and may be sent separately.

As of 2023-02-02