

# Thomas-Krenn.AG's General Terms and Conditions

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## § 1 Scope

(1) All orders for goods and services as well as all deliveries, activities, provisions and offers from Thomas-Krenn.AG in the areas of hardware and software in accordance with Sec. 2 (1) as well as associated services (hereinafter collectively referred to as "**deliveries and services**") are made exclusively on the basis of these General Terms and Conditions (hereinafter referred to as "**GTCs**"). These GTCs are an integral part of every contract that Thomas-Krenn.AG concludes with its contractual partners (hereinafter referred to as "**Customer**" and Thomas-Krenn.AG and the Customer jointly referred to as "**Contractual Parties**") for deliveries and services, in particular via the online shop ("**online shop**") on the website of Thomas-Krenn.AG at [www.thomas-krenn.com](http://www.thomas-krenn.com) (hereinafter referred to as "**website**").

(2) For certain deliveries and services, specific terms and conditions may apply in addition to these GTCs, which take precedence if provisions in the contractual documents contradict each other in whole or in part. In particular, this applies to:

- The specific terms and conditions of Thomas-Krenn.AG for cloud services ("**Cloud T&Cs**") for the provision of virtual IT infrastructure components by way of Infrastructure as a Service/IaaS, including flexible usage and billing models
- Specific terms and conditions for the use of software (SaaS) and cloud storage

(3) Terms and conditions of the customer or third parties do not apply, even if Thomas-Krenn.AG does not separately object to their validity in individual cases. Even if Thomas-Krenn.AG references a document containing or referencing the terms and conditions of the customer or a third party, this does not constitute an agreement with those terms and conditions.

(4) In the event that the Contractual Parties have concluded a framework agreement, the provisions contained therein shall take precedence over special terms and conditions and these GTCs.

(5) Verbal commitments made by Thomas-Krenn.AG prior to the conclusion of the contract are not legally binding and there are no verbal agreements between the Contractual Parties. Any such commitments are superseded by this contract, unless expressly agreed otherwise between the Contractual Parties.

(6) These GTCs and all specific terms and conditions, offers, deliveries and services of Thomas-Krenn.AG are addressed exclusively to entrepreneurs (Sec. 14 BGB), legal entities under public law and special funds under public law. They do not apply to the business relationship of Thomas-Krenn.AG with customers who are consumers within the meaning of Sec. 13 BGB.

## § 2 Subject matter of the contract

(1) The Customer acquires from Thomas-Krenn.AG the hardware (especially IT systems such as rack servers, tower systems, workstations, industrial PCs, storage systems or thin clients as well as accessories such as external drives, UPS, switches, cables, fans and other IT system components and accessories; hereinafter collectively referred to as "**hardware**") and software (especially operating systems, virtualization software, backup applications) specified in the offer or in the order via the online shop in accordance with Sec. 4. The software is pre-installed in executable form (object code) on the respective hardware if the pre-installation of the software (e.g. a specific operating system) has become part of the contract during the ordering process by activating the corresponding checkbox. Source codes are not supplied.

(2) For the hardware and operating system, the Customer will receive the documentation provided by the manufacturer (operating instructions/user manual) in electronic form (e.g. via a link in the customer area or via QR code on the server chassis).

(3) When providing software, the license terms of the respective software manufacturer apply, in particular with regard to the scope of the rights of use of the respective software.

(4) The software license agreement with the license terms of the respective software manufacturer (e.g. Microsoft customer agreement) is generally concluded directly between the customer and the respective software manufacturer. Thomas-Krenn.AG provides various support services for this purpose, such as making the license terms accessible via link or otherwise referring to them as part of the ordering process in the online shop, sending them by e-mail with the order (e.g. for Proxmox and VMware) or making them available for retrieval in the online shop under "Downloads". For individual applications (e.g. Microsoft OEM, Software Assurance and System Builder licenses), the customer receives the license sticker from the software manufacturer by mail or it is affixed to the hardware ordered in the online shop. Thomas-Krenn.AG may change the type and scope of these support services at any time.

(5) If necessary, Thomas-Krenn.AG is authorized to transmit the MAC address, the serial number of the mainboard or another identifier of the respective hardware to the software manufacturer on behalf of the Customer. In the event of a subsequent license purchase, the Customer shall provide Thomas-Krenn.AG with the corresponding information.

(6) On the basis of a separate agreement, Thomas-Krenn.AG may, in addition to the services according to paragraph 1, provide further related services (such as installation of the hardware, training, consulting services) as well as provide the Customer with supplementary service packages for advance hardware replacement (such as Essential, Exclusive or Enterprise Package) or special options for the replacement of defective storage media (Keep Your Drive Service). Based on a separate agreement, Thomas-Krenn.AG can also provide the Customer with services for individual branding with a logo or other design elements as well as white label deliveries.

### **§ 3 Login/registration in the online shop, ordering, technical steps up to the conclusion of the contract, correction of input errors, storage of the contract text**

(1) The Customer must register and/or log in to place orders via the online shop. It is not possible to place an order as a guest. A registered customer can log in to their customer account before or during an order with their e-mail address and the password entered during registration. Registration alone does not constitute any obligation to purchase the goods and services offered by Thomas-Krenn.AG. As part of the registration process, information about the Customer and the contact person as well as an e-mail address are required. This information must be truthful, current, complete and accurate. In a further step, the Customer can also freely choose their password. They are obliged to keep the password secret and not to disclose it to third parties, i.e. persons outside their company or persons in their company who are not authorized to represent them. After verifying the e-mail address provided, the registration process is complete.

(2) Further information regarding the processing of customer personal data can be found in the Privacy Policy on the website.

(3) In particular regarding the cases specified in Sec. 4 (5) – orders not placed via the website – Thomas-Krenn.AG may, in deviation from the above paragraphs 1 and 2, perform account registration for the Customer and send them the access data by e-mail.

(4) As part of the ordering process via the online shop, the Customer can configure the desired goods and/or services in several steps (e.g. selection of the specific basic hardware configuration, operating system/software, service & support, accessories as well as configuration of the IaaS environment for cloud services) and place them in the shopping cart by clicking on the respective "Next" button. There, the Customer can change the desired quantity and configuration of the selected goods and/or services or remove them from the shopping cart. The Customer also has the option of having Thomas-Krenn.AG create an offer for the goods and/or services placed in the shopping cart, which will be sent to the Customer by e-mail as a PDF. If the Customer does not make use of this option and continues the ordering process in the online shop, they can also select the billing and delivery address, the shipping options and the payment method in the subsequent steps. At the end of the order process, an overview page ("Last check") opens, on which the Customer can check their details and correct input errors (e.g. regarding payment method, dates or the desired quantity) by using the "tabs" in the navigation to return to the previous steps of the order process and change their details there. If a customer wishes to cancel the order process completely, they can also simply close the browser window. Otherwise, after clicking on the confirmation button "Place order", their declaration becomes binding within the meaning of Sec. 4 (3) of these GTCs.

(5) The contractual provisions with details of the goods and/or services ordered, including these GTCs, will be sent to the Customer by email upon acceptance of the contractual offer or upon notification thereof. Thomas-Krenn.AG does not store the contractual provisions.

(6) A customer can delete their registration at any time. This requires a personal, written request to the responsible sales consultant. If the customer's personal details change, the customer is responsible for updating them. All changes of this kind can be made in the online shop after logging in under "My account".

(7) Since the online shop and these General Terms and Conditions are directed exclusively at entrepreneurs (§ 14 BGB), legal entities under public law and special funds under public law, Thomas-Krenn.AG may require customers to provide sufficient proof of their entrepreneurial status, e.g. by providing their VAT ID number when registering as a new customer or by providing other suitable evidence, such as an extract from the commercial register or a trade license. The data required for the proof must be provided completely and truthfully.

#### **§ 4 Offer, order in the online shop and conclusion of the contract**

(1) All offers of Thomas-Krenn.AG as well as the information contained on its websites are subject to change and non-binding unless they are expressly marked as binding or contain a specific acceptance period.

(2) The presentation and advertising of goods and services in the online shop or elsewhere on the website does not constitute a binding offer to conclude a contract, but rather an invitation to place an order (*invitatio ad offerendum*).

(3) An order placed by the Customer via the online shop by clicking on the "Place order" button in the last step of the ordering process constitutes a binding offer to Thomas-Krenn.AG to conclude a contract, in particular to purchase or book the goods and/or services displayed in the order overview. Immediately after placing an order in the online shop, the Customer is shown a confirmation of receipt of the order or receives a confirmation of receipt of the order at the e-mail address provided by the Customer. Such an order confirmation does not constitute acceptance of the Customer's contractual offer, but is intended solely to inform the Customer that the order has been received by Thomas-Krenn.AG. Unless otherwise stated in the order, Thomas-Krenn.AG is entitled to review the Customer's contractual offer and to either accept or reject it (informing the Customer of the cancellation of the order), usually within 5 working days of receipt by Thomas-Krenn.AG.

The Customer is bound to their contractual offer during this review. The contract is concluded with a separate order confirmation or the dispatch of the goods by Thomas-Krenn.AG. The Customer will be informed of the shipment by e-mail.

(4) The language provided for the conclusion of the contract in the online shop is either German or English, depending on the language selection made by the Customer in the online shop. Translations into the respective other language or individual text blocks in the other language serve only to inform the Customer. In the event of contradictions between the text of the language selection made by the Customer and the translation, the text of the selected language shall take precedence.

(5) If and insofar as an order is not placed via the online shop and Thomas-Krenn.AG submits a concrete offer to the customer in text form (e.g. as a PDF; including the option of having an offer automatically created as a PDF in the online shop), the sending of the offer signed by the Customer by hand or by means of a simple electronic signature (e.g. Skribble, DocuSign) constitutes a binding offer to Thomas-Krenn.AG to conclude a contract, whereby transmission by telecommunication, in particular by e-mail, is sufficient. Thomas-Krenn.AG is entitled to review the Customer's contract offer and either accept or reject it within 5 working days of receipt (informing the Customer in the event of cancellation). The Customer is bound to their contractual offer during this review. The contract comes into effect by way of a separate order confirmation or the shipment of goods on the part of Thomas-Krenn.AG. The Customer will be informed of the shipment by e-mail.

(6) Thomas-Krenn.AG reserves the right of ownership or copyright to all offers and cost estimates submitted by it as well as drawings, illustrations, calculations, brochures, catalogs, models, tools and other documents and aids made available to the Customer. The Customer may not make these items accessible to third parties, disclose them, use them or reproduce them – whether themselves or through third parties – without the express consent of Thomas-Krenn.AG. At the request of Thomas-Krenn.AG, the Customer must return these items in full to Thomas-Krenn.AG and destroy any copies made if they are no longer required by the Customer in the ordinary course of business or if negotiations do not lead to the conclusion of a contract. This does not apply to the storage of electronically provided data for the purpose of standard data backups.

(7) Information provided by Thomas-Krenn.AG on the subject matter of the delivery or service (e.g. weights, dimensions, utility values, load capacity, tolerances and technical data) as well as representations of the same (e.g. drawings and illustrations, in particular on the websites of Thomas-Krenn.AG) are only approximate, unless the usability for the contractually intended purpose requires exact conformity. They are not guaranteed characteristics, but descriptions or identifications of the delivery or service. Customary deviations and deviations that occur due to legal regulations or represent technical improvements, as well as the replacement of components with equivalent parts, are permissible insofar as they do not impair the usability for the contractually intended purpose. Thomas-Krenn.AG also has no influence on how texts and images are displayed in the respective browser on the Customer's end device.

## **§ 5 Leasing**

If the Customer chooses the "Leasing" option instead of purchasing goods during the ordering process in the online shop, Thomas-Krenn.AG will forward the Customer's contract offer to the respective lessor to check whether the lessor wishes to purchase the goods from Thomas-Krenn.AG in order to transfer them to the Customer within the framework of a leasing contract. Thomas-Krenn.AG will provide all necessary and reasonable cooperation efforts for this purpose and, as a rule, inform the Customer within one month of receipt of the contract offer whether the lessor is prepared to conclude a leasing contract, unless the Customer and lessor are already in direct negotiations with each other. The Customer is not entitled to conclude a leasing contract.

The leasing contract is concluded directly between the lessor and the Customer on the basis of the respective terms and conditions of the lessor. Therefore, no contract is concluded between Thomas-Krenn.AG and the Customer for the respective goods. If the lessor refuses to conclude a leasing contract, Thomas-Krenn.AG will cancel the contract offer to the Customer.

## **§ 6 Prices, payment, due date, price adjustments, invoicing**

(1) The prices apply to the scope of delivery and services listed in the contract. Additional or special services shall be invoiced separately. If no price has been agreed for additional or special services, these services will be charged according to the current prices in the online shop of Thomas-Krenn.AG at the time of the conclusion of the contract relevant to the services in question. Thomas-Krenn.AG is entitled to change the prices in the online shop at any time.

(2) All prices are in euros (EUR) plus the applicable statutory value added tax.

(3) For the delivery of goods, the prices are ex works, excluding packaging and any shipping costs incurred. The shipping costs are shown separately in the online shop or in an offer. In the case of deliveries outside Germany, the Customer shall bear any customs duties, taxes, fees and any other applicable charges.

(4) Unless otherwise agreed, compensation – with the exception of continuing obligations (see para. 5 below) – is due for payment upon provision of the deliveries and services or upon acceptance in the case of work services or if acceptance has been agreed.

(5) In the case of continuing obligations, invoicing shall be monthly, in the case of pro rata use on a pro rata basis. Usage-independent fees are due in advance at the beginning of the respective calendar month while usage-dependent fees are billed by Thomas-Krenn.AG at the end of the respective calendar month.

(6) In the case of continuing obligations, Thomas-Krenn.AG is entitled to adjust the prices to be paid on the basis of this contract at its reasonable discretion, taking into account the principles of this paragraph with regard to the development of the costs that are decisive for the calculation of the prices. Accordingly, an increase in prices may be considered in particular if, for example, the costs for the procurement and use of hardware and software (e.g. increased license costs by the software manufacturer), personnel costs or the costs of cloud and data center operation (space costs for server locations, energy costs) increase or other changes in the economic or legal framework conditions lead to a changed cost situation. Increases in one type of cost (e.g. personnel costs) may only be used for a price increase to the extent that they are not offset by any reduction in other types of costs (e.g. costs for hardware and software). Thomas-Krenn.AG will inform the Customer of price adjustments in text form at least six weeks before the changes come into effect. If the Customer objects to a price increase within four weeks of receipt of the notification, at least in text form, Thomas-Krenn.AG has the option of continuing the contract under unchanged conditions or terminating the contract with a notice period of three months. If the price adjustment only affects individual services and there is a partial right of termination for these, the above right of termination only applies to these affected services in the event of an objection by the Customer.

(7) 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.

(8) Invoice amounts are due for payment immediately unless otherwise agreed in writing. The date of receipt by Thomas-Krenn.AG shall be decisive for the date of payment. If the Customer does not make payment when due, the outstanding amounts shall be subject to interest from the due date at 9 percentage points above the respective base interest rate of the European Central Bank p.a.; the assertion of higher interest and further damages in case of default remain unaffected.

(9) If payment by direct debit has been agreed upon, the Customer shall be obligated to issue a SEPA basic direct debit mandate to Thomas-Krenn.AG for this purpose. Thomas-Krenn.AG shall provide the Customer with a corresponding form. The Customer shall ensure sufficient coverage of the account, provided that Thomas-Krenn.AG announces the amount and the execution date of the basic direct debit to the Customer in text form at least three bank business days before the transaction date. In the event of a return debit note for which the Customer is responsible, in particular in the event of an unjustified objection or in the event of a lack of account coverage despite timely announcement of the debit note by Thomas-Krenn.AG, the Customer is obliged to reimburse Thomas-Krenn.AG for any bank charges incurred.

(10) Offsetting against counterclaims of the Customer or the retention of payments due to such claims shall only be permissible to the extent that the counterclaims are undisputed or have been legally established or arise from the same order under which the relevant delivery was made and/or service was rendered.

(11) 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.

## **§ 7 Delivery and delivery time**

(1) Deadlines and dates for deliveries and services promised by Thomas-Krenn.AG are approximate unless a fixed deadline or date has been expressly promised or agreed. If shipment has been agreed, delivery periods and delivery dates refer to the time of handover to the forwarding agent, carrier or other third party commissioned with transportation, unless expressly stated otherwise by Thomas-Krenn.AG.

(2) Thomas-Krenn.AG may – without prejudice to its rights arising from default by the Customer – demand an extension of delivery and performance deadlines or a postponement of delivery and performance dates by the period in which the Customer fails to meet its contractual obligations to Thomas-Krenn.AG.

(3) In the case of the "prepayment" payment method, delivery deadlines only apply from the date of receipt of payment. Fixed dates can only be agreed for the "prepayment" payment method if the delivery date is after the date of receipt of payment. Delays in payment and any resulting delays in delivery, even after the fixed date, shall be borne by the Customer. There is no right of withdrawal in the event of delayed delivery due to delayed payment.

(4) Thomas-Krenn.AG is not liable for impossibility of delivery or for delays in delivery if these are caused by force majeure or other events that were not foreseeable at the time the contract was concluded (e.g. operational disruptions of any kind, difficulties in procuring materials or energy, transport delays, strikes, lawful lockouts, shortages of labor, energy or raw materials, difficulties in obtaining necessary official permits, pandemics or epidemics, official measures or the failure of suppliers to deliver, to deliver correctly or on time despite a congruent hedging transaction concluded by Thomas-Krenn.AG) for which Thomas-Krenn.AG is not responsible. If such events make delivery or performance significantly more difficult or impossible for Thomas-Krenn.AG and the hindrance is not only of a temporary nature, Thomas-Krenn.AG is entitled to withdraw from the contract.

In the event of hindrances of a temporary nature, the delivery or performance deadlines are extended or the delivery or performance dates are postponed by the period of the hindrance plus a reasonable start-up period. If the Customer cannot reasonably be expected to accept the delivery or service as a result of the delay, the Customer may withdraw from the contract by giving immediate written notice to Thomas-Krenn.AG.

(5) Thomas-Krenn.AG is entitled to make partial deliveries only if:

- a) The partial delivery is useful for the Customer in the context of the contractually intended purpose
- b) The delivery the remaining contractual goods 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)

(6) In the event that Thomas-Krenn.AG falls behind on its deliveries or services, or if it is unable to provide the deliveries or services for whatever reason, the liability of Thomas-Krenn.AG is limited in terms of compensation to the stipulations in Sec. 12.

(7) Thomas-Krenn.AG is also entitled to have all services performed by third parties, in particular by commissioned service partners of Thomas-Krenn.AG.

## **§ 8 Place of performance, shipping, packaging, risk transfer, acceptance**

(1) The place of performance for all obligations arising from the contractual relationship is Freyung, unless otherwise agreed. If Thomas-Krenn.AG is also responsible for installation, the place of performance is the place where the installation is to take place.

(2) The shipping method and packaging are subject to the dutiful discretion of Thomas-Krenn.AG.

(3) If shipment of the goods to a place other than the place of performance has been agreed and Thomas-Krenn.AG has not assumed responsibility for transportation or installation, the risk of accidental loss or accidental deterioration passes to the Customer at the latest when the delivery item is handed over (whereby the start of the loading process is decisive) to the forwarding agent, carrier or other third party appointed to carry out the shipment. If dispatch or handover is delayed due to circumstances for which the Customer is responsible, the risk shall pass to the Customer from the day on which the delivery item is ready for dispatch and Thomas-Krenn.AG has notified the Customer of this. Furthermore, the risk is transferred to the Customer at the point in time at which the Customer defaults by not accepting the offered item.

(4) Storage costs after the transfer of risk are borne by the Customer. In the case of storage by Thomas-Krenn.AG, the storage costs amount to 1.5% of the invoice amount of the delivery items to be stored for each week that has elapsed. The right to claim and prove further or lower storage costs is reserved.

(5) 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.

(6) Insofar as a delivery or service involves work or services or otherwise has to be accepted, the delivery item or service is deemed to have been accepted when:

- a) The delivery and, if Thomas-Krenn.AG is also responsible for the installation, the installation 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 acceptance from the Customer in accordance with this Sec. 8 (6)
- d) At least 6 working days have passed since the delivery and/or installation and the Customer has started to use the purchased item (e.g. commissioning of the delivered hardware)

- e) At least 12 working days have elapsed since delivery and/or installation and the Customer has failed to accept the goods within this period

## **§ 9 Duties and obligations of the Customer**

(1) The Customer is responsible for the selection of goods and services and their suitability for the specific intended purposes, unless Thomas-Krenn.AG has expressly advised the Customer in this regard.

(2) The Customer is responsible for ensuring that the hardware can be properly delivered on the agreed delivery date.

(3) The Customer is responsible for supporting Thomas-Krenn.AG in its efforts to rectify defects or provide services as far as possible and reasonable, in particular by providing necessary information, creating error logs when necessary, granting access to service items and providing other necessary information.

(4) The Customer must remove all components not installed by Thomas-Krenn.AG if this is necessary for the provision of services or warranty (Sec. 10) by Thomas-Krenn.AG.

(5) Unless expressly agreed between the Contractual Parties (e.g. in the context of Veeam backup solutions), Thomas-Krenn.AG does not provide any data backup services. The creation of backup copies is the responsibility of the Customer. The Customer is responsible for backing up all data and programs at regular intervals. Thomas-Krenn.AG recommends that necessary backup copies of files and programs are backed up on external drives.

(6) Before returning any goods, the Customer shall submit the data protection declaration provided by Thomas-Krenn.AG and confirm that no personal data is stored on the hardware or hard drives. If the Customer fails to provide this confirmation, Thomas-Krenn.AG is entitled to refuse to accept the goods.

(7) When downloading digital products (e.g. e-books, white papers, etc.) via the Thomas-Krenn.AG website, the Customer must provide truthful information, in particular regarding their email addresses.

## **§ 10 Warranty, material defects**

(1) The warranty period is one year from delivery or, if acceptance is required, from acceptance. This period does not apply to Customer claims for damages arising from injury to life, limb or health or from intentional or grossly negligent breaches of duty by Thomas-Krenn.AG or its agents, which expire in accordance with the statutory provisions.

(2) The delivered items must be carefully inspected immediately after delivery to the Customer or a third party designated by the Customer. They are deemed to have been approved by the Customer with regard to obvious defects or other defects that would have been recognizable during an immediate, careful inspection if the Customer does not notify Thomas-Krenn.AG in text form of obvious defects within seven working days of delivery of the delivery item and of other defects within seven working days of discovery of the defect. At the request of Thomas-Krenn.AG, a defective delivery item must be returned to Thomas-Krenn.AG carriage paid. If the complaint is justified, Thomas-Krenn.AG will reimburse the costs of the cheapest shipping route; this does not apply if the costs increase because the delivery item is located at a place other than the place of intended use.



(3) The Customer's obligation to return the goods in accordance with paragraph 2 above shall not apply if the Contractual Parties have separately agreed special services for hardware replacement as part of service packages or special options for replacing defective storage media by way of the "Keep Your Drive Service" model, which shall then take precedence.

(4) In the event of material defects in the delivered items, Thomas-Krenn.AG is initially obliged and entitled to rectify the defect or make a replacement delivery at its discretion within a reasonable period of time. In the event of failure, i.e. impossibility, unreasonableness, refusal or unreasonable delay of the repair or replacement delivery, the Customer may withdraw from the contract or reduce the purchase price appropriately.

(5) If a defect is due to the fault of Thomas-Krenn.AG, the Customer may demand compensation for damages under the conditions set out in Sec. 12.

(6) In the event of defects in IT systems or components from other manufacturers that Thomas-Krenn.AG is unable to rectify for licensing or actual causes, Thomas-Krenn.AG shall, at its discretion, assert its warranty claims against the manufacturers and suppliers for the account of the Customer or assign them to the Customer. Warranty claims against Thomas-Krenn.AG for such defects only exist under the other conditions and in accordance with these General Terms and Conditions if the legal enforcement of the aforementioned claims against the manufacturer and supplier was unsuccessful or is futile, e.g. due to insolvency. For the duration of the legal dispute, the limitation period for the Customer's relevant warranty claims against Thomas-Krenn.AG is suspended.

(7) The warranty does not apply if the Customer modifies the delivery item or has it modified by a third party without the consent of Thomas-Krenn.AG and this makes it impossible or unreasonably difficult to remedy the defect. In any case, the Customer must bear the additional costs of remedying the defect resulting from the modification.

(8) Any delivery of used items agreed with the Customer in individual cases shall be made to the exclusion of any warranty for material defects.

## **§ 11 Property rights**

(1) Thomas-Krenn.AG guarantees in accordance with this Sec. 11 that the delivery item is free from industrial property rights or copyrights of third parties. Each Contractual Party shall notify the other immediately in writing if claims are asserted against it due to the infringement of such rights.

(2) In the event that the delivery item infringes an industrial property right or copyright of a third party, Thomas-Krenn.AG shall, at its discretion and at its own expense, modify or replace the delivery item in such a way that the rights of third parties are no longer infringed, but the delivery item continues to fulfill the contractually agreed functions, or procure the right of use for the Customer by concluding a license agreement with the third party. If Thomas-Krenn.AG does not succeed in doing so within a reasonable period of time, the Customer is entitled to withdraw from the contract or to reduce the purchase price appropriately. Any claims for damages by the Customer are subject to the limitations of Sec. 12.

(3) In the event of infringements of rights by products of other manufacturers supplied by Thomas-Krenn.AG, Thomas-Krenn.AG will, at its discretion, assert its claims against the manufacturers and upstream suppliers for the account of the Customer or assign them to the Customer. In these cases, claims against Thomas-Krenn.AG only exist in accordance with this Sec. 11 if the judicial enforcement of the aforementioned claims against the manufacturers and upstream suppliers was unsuccessful or is futile, e.g. due to insolvency.

## **§ 12 Liability for damages**

(1) The liability of Thomas-Krenn.AG for damages, irrespective of the legal grounds, in particular due to impossibility, delay, defective or incorrect delivery, breach of contract, breach of duties during contract negotiations and unlawful acts, is limited in accordance with this Sec. 12, insofar as fault is involved in each case.

(2) The limitations of this Sec. 12 do not apply to the liability of Thomas-Krenn.AG for damages caused intentionally or through gross negligence by Thomas-Krenn.AG or one of its agents or legal representatives, for guaranteed characteristics, for injury to life, limb or health or under the Product Liability Act.

(3) Thomas-Krenn.AG is not liable in the event of simple negligence on the part of its executive bodies, legal representatives, employees or other agents, unless it is a breach of material contractual obligations. Essential contractual obligations are the obligation to deliver the delivery item on time, its freedom from legal defects and such material defects that impair its functionality or usability more than insignificantly, as well as obligations to provide advice, protection and care that are intended to enable the Customer to use the delivery item in accordance with the contract or to protect the life and limb of the Customer's personnel or to protect the Customer's property from significant damage.

(4) Insofar as Thomas-Krenn.AG is liable for damages in accordance with Sec. 12 (3), this liability is limited to damages typical for the contract which Thomas-Krenn.AG foresaw as a possible consequence of a breach of contract at the time the contract was concluded or which it should have foreseen if it had exercised due care. Liability for indirect damages and consequential damages is excluded.

(5) In the event of liability for simple negligence, Thomas-Krenn.AG's obligation to pay compensation for property damage and any resulting further financial losses is limited to an amount of EUR 50,000.00 per claim, even if this involves a breach of material contractual obligations.

(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.

(7) Insofar as Thomas-Krenn.AG provides technical information or acts in an advisory capacity and this information or advice is not part of the contractually agreed scope of services owed by it, this is done free of charge and to the exclusion of any liability.

## **§ 13 Retention of title**

(1) The retention of title agreed below serves to secure all existing current and future claims of Thomas-Krenn.AG against the Customer arising from the supply relationship (including current account balance claims).

(2) The goods delivered by Thomas-Krenn.AG to the Customer remain the property of Thomas-Krenn.AG until all secured claims have been paid in full. The goods and the goods covered by the retention of title that take their place in accordance with the following provisions are hereinafter referred to as "goods subject to retention of title".

(3) The Customer shall store the goods subject to retention of title free of charge for Thomas-Krenn.AG.

(4) The Customer is entitled to process and sell the goods subject to retention of title in the ordinary course of business up to an eventual enforcement event (para. 9). Pledges and collateral transfers are not permitted.

(5) If the goods subject to retention of title are processed by the Customer, it is agreed that the processing is carried out in the name and for the account of Thomas-Krenn.AG as the manufacturer and that Thomas-Krenn.AG directly acquires ownership or – if the processing is carried out using materials from several owners or the value of the processed item is higher than the value of the goods subject to retention of title – co-ownership (fractional ownership) of the newly created item in the ratio of the value of the goods subject to retention of title to the value

of the newly created item. In the event that no such acquisition of ownership should occur at Thomas-Krenn.AG, the Customer hereby transfers their future ownership or – in the above-mentioned ratio – co-ownership of the newly created item to Thomas-Krenn.AG as security. If the goods subject to retention of title are combined or inseparably mixed with other items to form a single item and if one of the items is to be regarded as the main item so that Thomas-Krenn.AG or the Customer acquires sole ownership, the party to whom the main item belongs shall transfer to the other party pro rata co-ownership of the single item in the proportion stated in sentence 1.

(6) If the goods subject to retention of title are resold, the Customer hereby assigns to Thomas-Krenn.AG by way of security the resulting claim against the purchaser – in the case of co-ownership by Thomas-Krenn.AG of the goods subject to retention of title in proportion to the co-ownership share. The same applies to other claims that take the place of the goods subject to retention of title or otherwise arise with regard to the goods subject to retention of title, such as insurance claims or claims in tort in the event of loss or destruction. Thomas-Krenn.AG revocably authorizes the Customer to collect the claims assigned to Thomas-Krenn.AG in its own name. Thomas-Krenn.AG may only revoke this direct debit authorization in the event of liquidation (para. 9). If the collection authorization is revoked, the Customer is obliged to inform Thomas-Krenn.AG of the assigned claims and their debtors, to provide all information necessary for collection, to hand over the relevant documents and to inform the debtors (third parties) of the assignment.

(7) If third parties seize the goods subject to retention of title, in particular by way of attachment, the Customer shall inform them immediately of Thomas-Krenn.AG's ownership and inform Thomas-Krenn.AG of this immediately in order to enable Thomas-Krenn.AG to enforce its ownership rights. If the third party is not in a position to reimburse Thomas-Krenn.AG for the judicial or extrajudicial costs incurred in this context, the Customer is liable to Thomas-Krenn.AG.

(8) Thomas-Krenn.AG will release the goods subject to retention of title and the items or claims taking their place if their value exceeds the amount of the secured claims by more than 10%. Thomas-Krenn.AG is entitled to select the items to be released.

(9) If Thomas-Krenn.AG withdraws from the contract in the event of breach of contract by the Customer – in particular default of payment (enforcement event) – it is entitled to demand the return of the goods subject to retention of title.

## **§ 14 Data protection**

(1) Thomas-Krenn.AG collects, processes and uses the Customer's personal data in accordance with the statutory data protection regulations. Additional information on this can be found in the Privacy Policy on the Thomas-Krenn.AG website.

(2) The Customer is subject to the obligations to cooperate contained in Sec. 9 (6) for the protection of data privacy when returning goods.

## **§ 15 Export and import control**

(1) The Contractual Parties are aware that products and services of Thomas-Krenn.AG may be subject to export and import restrictions. In particular, there may be licensing requirements or the use of hardware, software and related technologies and services may be subject to restrictions abroad.

(2) 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.

(3) The fulfillment of the contract by Thomas-Krenn.AG is subject to the proviso that there are no obstacles to fulfillment due to national and international regulations of export and import (control) law or any other statutory provisions.

## **§ 16 Final provisions**

(1) All amendments and additions to the agreements made, including these GTCs, must be made in writing, as must the waiver of the written form requirement, unless another form (e.g. text form) is expressly provided for in the contractual agreements. Compliance with the written form requirement can also be ensured by using a simple electronic signature (e.g. Skribble, DocuSign) or by telecommunication, in particular e-mail.

(2) The exclusive place of jurisdiction for all disputes arising from or in connection with this contractual relationship is Freyung. Thomas-Krenn.AG is also entitled to file suit against the Customer at his general place of jurisdiction.

(3) The substantive law of the Federal Republic of Germany shall apply to the exclusion of the United Nations Convention on Contracts for the International Sale of Goods from April 11, 1980 (CISG).

(4) Should any provision of the contract or these GTCs be invalid or contain a regulatory gap that needs to be filled, this shall not affect the validity of the remaining provisions. In place of the invalid provision and in order to fill a gap, those legally effective provisions shall be deemed agreed which the contracting parties would have agreed according to the economic objectives of the contract and the purpose of these GTCs if they had known about the loophole. The same applies to any gaps in the specific terms and conditions mentioned in Sec. 1 (2).