

GENERAL TERMS AND CONDITIONS (GTC)

ESS GmbH & Co. KG
(EDV-Software-Service GmbH & Co. KG)

Version: 1.3

Date: March 2026

1. Scope of Application

These General Terms and Conditions apply to all deliveries and services provided by ESS GmbH & Co. KG in connection with software products, software licenses, subscriptions, maintenance services and other services.

Any deviating or supplementary terms of the customer shall only apply if ESS GmbH & Co. KG has expressly agreed to them in writing.

These terms apply exclusively to entrepreneurs within the meaning of Section 1 of the Austrian Commercial Code (UGB).

2. Conclusion of Contract

Offers made by ESS GmbH & Co. KG are non-binding and subject to change unless explicitly designated as binding.

A contract is concluded by:

- written order confirmation by ESS GmbH & Co. KG
- or
- provision of the software or license.

3. Delivery and Provision of the Software

The software is generally provided electronically, in particular by:

- download
- provision of an installation package
- provision of license data or license keys
- activation of a user account in the licensing system

There is no entitlement to the delivery of the source code.

If hardware, data carriers or other goods are delivered, shipment shall be at the customer's risk.

Unless expressly agreed otherwise in writing, ESS GmbH & Co. KG does not owe installation, consulting, training or other support services.

The software provided is standard software. Individual customizations or extensions shall only be carried out based on separate agreements and do not constitute a contract for work with a specific success owed.

4. Delivery Dates

Delivery dates or deadlines shall only be binding if they have been expressly confirmed as binding in writing by ESS GmbH & Co. KG.

5. Prices and Payment Terms

Unless otherwise stated, all prices are exclusive of the applicable statutory value-added tax.

Invoices are due for payment within 14 days from the invoice date without deduction, unless otherwise agreed.

For subscriptions or maintenance agreements, fees may be charged annually in advance.

6. Default in Payment

In the event of default in payment, ESS GmbH & Co. KG is entitled to charge default interest at the statutory rate.

ESS GmbH & Co. KG is also entitled to withhold further services until all outstanding claims have been settled or to temporarily suspend access to the software or licensing systems.

There is no entitlement to immediate restoration of access. Access will only be restored after full settlement of all outstanding claims.

7. Retention of Title

Delivered goods shall remain the property of ESS GmbH & Co. KG until full payment of all claims arising from the business relationship has been received.

8. Customer Obligations

The customer is obliged to provide all information and documents required for the performance of services in due time.

The customer must ensure that its technical systems meet the requirements for using the software.

9. Warranty

The software is developed with the greatest possible care.

However, complete absence of errors cannot be guaranteed.

Warranty is governed by statutory provisions unless otherwise specified in the End User License Agreement (EULA).

The customer is obliged to inspect the software immediately after provision and to notify any recognizable defects without undue delay. If the software is used, it shall be deemed to have been provided in accordance with the contract unless significant defects are reported without undue delay.

10. Liability

The liability of ESS GmbH & Co. KG is governed by the provisions of the EULA.

To the extent permitted by law, liability is limited to the fees paid by the customer for the respective service.

This limitation of liability does not apply to damages resulting from injury to life, body or health, or to damages caused by intent or gross negligence.

11. Contract Term

The term and notice periods of maintenance or subscription agreements are governed by the respective contractual conditions, in particular the software maintenance terms or subscription terms.

12. Confidentiality

The contracting parties undertake to treat all confidential information received in the course of the business relationship as confidential.

13. Set-off and Right of Retention

The customer is only entitled to set off claims if such claims have been legally established, are undisputed, or have been acknowledged by ESS GmbH & Co. KG.

14. Amendments to these Terms

ESS GmbH & Co. KG is entitled to amend these General Terms and Conditions for valid reasons, in particular due to changes in legal requirements, technical developments or extensions of the scope of services.

The current version is available on the website of ESS GmbH & Co. KG.

15. Force Majeure

Neither party shall be liable for failure or delay in the performance of its contractual obligations if such failure or delay is due to events of force majeure.

Force majeure includes in particular natural disasters, war, terrorist acts, pandemics, strikes, governmental measures, failures of energy or telecommunications networks, and other events beyond the control of the affected party.

The affected party shall inform the other party without undue delay and resume performance as soon as the impediment ceases to exist.

16. Governing Law and Jurisdiction

Austrian law shall apply, excluding its conflict-of-law provisions.

The place of jurisdiction shall be the registered seat of ESS GmbH & Co. KG, to the extent permitted by law.

17. Language Version

These General Terms and Conditions may also be provided in English. In case of discrepancies, the German version shall prevail.