

# General Terms / CRYPTAS Terms & Conditions

for Purchase Contracts and  
Contracts for Work and Services

Last updated: 06/2022

Issue date: 01/07/2022

**PUBLIC**

**CRYPTAS it-Security GmbH**

Franzosengraben 8 . 1030 Vienna . Austria

T +43 (1) 355 53 0 . E [office@cryptas.com](mailto:office@cryptas.com)

[cryptas.com](https://cryptas.com) . [prime-sign.com](https://prime-sign.com) . [cryptashop.com](https://cryptashop.com)

Vienna | Graz | Düsseldorf | Stockholm

## 1. Scope of application

For all services of CRYPTAS it-Security GmbH (hereinafter referred to as "CRYPTAS"), the following General Terms and Conditions shall apply exclusively. General terms and conditions and purchasing conditions of the customer are not part of the contract. These General Terms and Conditions or the latest valid version can either be requested from the Vienna office or accessed via the website <https://www.cryptas.com/en/page/terms>.

## 2. Offers and conclusion of contract

- 2.1. Unless otherwise specified, CRYPTAS shall be bound by offers for 30 days from their date. All orders and agreements require our express confirmation (in writing or by email) to be legally effective. In the case of immediate delivery, the express confirmation can also be replaced by the respective invoice. Verbal agreements must be confirmed in writing or by email to become legally effective.
- 2.2. CRYPTAS is entitled to withdraw from the contract if facts occur or become known that show that the customer is not creditworthy or the payment of the purchase price is at risk. If the customer exceeds their credit limit by their order, CRYPTAS will be released from the delivery obligations.

## 3. Performance and testing

- 3.1. The subject of an order may be:
  - Consulting (analysis, development of concepts)
  - Supply of hardware, standard software, or system components
  - Creation of individual programs and program adaptations
  - Participation in commissioning (system integration)
  - Operational support (troubleshooting and maintenance)
  - Individual services
- 3.2. When ordering library (standard) programs, the customer confirms with the order the knowledge of the scope of services of the ordered programs.

- 3.3.** The development of individual concepts and programs shall be based on the binding information, documents, and tools provided in full by the customer. This includes also practice-oriented test data as well as test possibilities to a sufficient extent, which the customer provides in time, during the normal working hours of CRYPTAS, and at their expense. If the customer is already working on the system provided for testing in real operation, the responsibility for securing the real data lies with the customer.
- 3.4.** The basis for the creation of individual programs is the written performance specification, which CRYPTAS prepares against billing of cost on the basis of the documents and information provided to it or which the customer provides. This service description is to be checked by the customer for correctness and completeness and to be provided with their note of approval. Later occurring change requests can lead to separate date and price agreements.
- 3.5.** Individually created software or program adaptations require a program acceptance for the respective program package no later than four weeks after delivery. This shall be confirmed by the customer in a protocol (check for correctness and completeness on the basis of the accepted performance specification by means of the test data provided under point 3.3). Acceptance can also be agreed upon for other services of CRYPTAS. If the customer allows four weeks to elapse without acceptance or transmission of a list of deficits, the delivered product or service shall be deemed accepted as of the end date of the said period. If the product/supplied service is used in operation, the product/supplied service shall be deemed accepted in any case. Any deficits that occur, i.e. deviations from the service description agreed upon in writing, must be reported to CRYPTAS by the customer with sufficient documentation, which shall endeavor to remedy the deficits in a timely manner. If there are significant deficits reported in writing, i.e. that operation cannot be started or continued, a new acceptance is required after the deficits have been rectified. The customer is not entitled to refuse acceptance due to insignificant deficits.

- 3.6.** If in the course of the work it turns out that the execution of the order according to the performance specification is actually or legally impossible, CRYPTAS is obliged to notify the customer immediately. If the customer does not change the performance specification to that effect or create the prerequisite that execution becomes possible, CRYPTAS may refuse the execution. If the impossibility of execution is the result of a failure of the customer or a subsequent change of the service description by the customer, CRYPTAS is entitled to withdraw from the order. The costs and expenses incurred for the activities of CRYPTAS up to that point, as well as any dismantling costs, are to be reimbursed by the customer.
- 3.7.** Any shipment of program carriers, documentation, and performance specification shall be at the expense and risk of the customer. Additional training and explanations requested by the customer will be invoiced separately. Insurances are only carried out at the request of the customer.
- 3.8.** The customer shall inspect delivered goods for completeness and compliance with the delivery bill immediately upon receipt. If no complaint is made upon receipt of the goods, the goods shall be deemed to have been properly and completely delivered, unless there is a defect that was not apparent upon inspection. Services must be inspected immediately upon delivery or immediately thereafter and a complaint must also be made in writing to CRYPTAS.
- 3.9.** The risk shall pass to the customer upon delivery of the contractual product to the carrier, its agent, or other persons designated by CRYPTAS. If the shipment is delayed or becomes impossible through no fault of CRYPTAS, the risk shall pass to the customer upon notification of readiness for shipment. These provisions shall also apply in the case of returns after rectification of deficits or paid service to the customer.
- 3.10.** An assumption of the transport costs by CRYPTAS agreed in an individual case has no influence on the transfer of risk.



#### **4. Delivery date**

- 4.1.** Delivery dates are agreed upon according to the expected capacity of CRYPTAS and are non-binding and subject to any required timely self-delivery.
- 4.2.** CRYPTAS is entitled to partial deliveries and partial services and their invoicing; each partial delivery and partial service is considered an independent service.
- 4.3.** The targeted performance dates can only be met if the customer provides all necessary work and documents in full on the agreed dates and fulfills their obligation to cooperate to the required extent. As far as the customer does not fulfill their obligation to cooperate in due time, this leads to postponements of dates, which do not cause a delay to CRYPTAS. The same applies to change requests of the customer. Any resulting additional costs shall be borne by the customer.
- 4.4.** Agreements on the change of delivery dates must be made in writing.
- 4.5.** In the event of a default of acceptance by the customer, CRYPTAS is entitled to store the delivery items at the risk and expense of the customer. CRYPTAS may also use a forwarding agent or a warehouse keeper for this purpose.
- 4.6.** During the period of default in acceptance, the customer shall pay CRYPTAS a flat rate of 1% of the purchase price per month as compensation for the corresponding storage costs without further proof. CRYPTAS is entitled to demand higher storage costs against proof. If the customer refuses to accept the delivery items after the expiry of a grace period granted to them or declares that they do not wish to accept the goods, CRYPTAS may withdraw from the contract and claim damages for non-performance. CRYPTAS is entitled to claim either a flat rate of 25% of the agreed purchase price or compensation for the actual damage incurred by the customer.

## 5. Export and import licenses

- 5.1. Products and technical know-how delivered by CRYPTAS are intended for use and to remain in the country of delivery agreed with by the customer. Compliance with any import regulations, in particular with any export and import prohibitions in certain countries, is the sole responsibility of the customer.
- 5.2. Any onward delivery of contractual products by customers to third parties, with or without the knowledge of CRYPTAS, shall simultaneously require compliance with the export license conditions. The contracting party shall be liable to CRYPTAS for the proper observance of these conditions. Embargo provisions according to international agreements or imposed by international organizations (e.g. UN), shall be strictly observed.

## 6. Retention of title

- 6.1. Delivered goods remain the property of CRYPTAS until complete and final fulfillment of all claims. Goods subject to retention of title may be resold in the ordinary course of business by customers who are entrepreneurs, whereby the customer assigns to CRYPTAS claims to which the customer will be entitled from the resale.

The goods subject to retention of title may not be assigned to third parties for pledging or assignment as security in any form. If the sale takes place against cash, the customer is authorized and instructed to accept the cash purchase price in the name and for the account of CRYPTAS. The customer must keep this separately and transfer it to CRYPTAS immediately, but at the latest by the end of the granted term of payment, by payment of the claims.

- 6.2. In the event of attempted access by third parties to the goods subject to retention of title, CRYPTAS' ownership must be pointed out and CRYPTAS must be informed immediately. The property of CRYPTAS must be clearly marked.
- 6.3. In case of combination, processing, or mixing of the reserved goods with goods not belonging to CRYPTAS, CRYPTAS acquires co-ownership.

- 6.4.** In case of default of payment or in case of financial collapse of the customer, CRYPTAS is entitled to enter the business premises of the customer and to take the goods subject to retention of title in order to assert the retention of title to the goods subject to retention of title.
- 6.5.** The assertion of the retention of title or the seizure of the delivery item by CRYPTAS shall not be deemed a withdrawal from the contract, provided that the customer is a merchant.
- 6.6.** Claims from the transfer of the reserved goods in the respective invoice value of the reserved goods are already assigned to CRYPTAS in advance at the time of the order – the customer remains entitled to collect payments even after the assignment. Despite this, CRYPTAS shall be entitled to collect payments in the ordinary course of business, but shall only exercise this right in the event of default in payment or in the event of an application for bankruptcy or composition proceedings by the customer. Upon request of CRYPTAS, the customer shall name the assigned claims, provide the necessary information, hand over documents, and notify the debtors of the assignment. CRYPTAS is entitled to disclose this assignment at any time to secure the payment claims.
- 6.7.** The selection of the securities to be released is incumbent upon CRYPTAS. For the valuation of the securities, the netlist price of CRYPTAS of the goods subject to retention of title, applicable at the time of the request for release, shall be decisive; in the case of assigned claims, the net invoice amount less a security discount of 30% shall be used as a basis. In case of receivables for which the customer's buyer is already in default of payment or facts are known which give reason to believe that a default is to be feared, the deduction shall be 50%. In the case of securities existing only in the form of co-ownership due to combination, mixing, or processing, the netlist price of the goods delivered by CRYPTAS shall be taken as the basis, less a deduction of 30%.
- 6.8.** Goods delivered for test and demonstration purposes remain the property of CRYPTAS. They may only be used by the customer beyond the test and demonstration purpose on the basis of a separate agreement with CRYPTAS.

- 6.9.** CRYPTAS shall be entitled to invoice goods that have been made available for test and demonstration purposes, etc., and which, despite written request, are not returned or not returned in full and/or not returned in full original packaging, at the latest valid list sales price of CRYPTAS.

## **7. Prices, taxes, and fees**

- 7.1.** All prices are in Euro without sales tax. They apply only to the present order. The prices quoted are from the CRYPTAS registered office or place of business.
- 7.2.** As long as an offer relates to daily rates, a daily rate corresponds to 8 person-hours. The hours worked shall be evidenced by suitable service confirmations, regardless of where the service is provided.
- 7.3.** Consulting services are provided on regular workdays (Monday till Friday) from 8:00 a.m. to 5:00 p.m. (except December 24<sup>th</sup> and December 31<sup>st</sup>). Services provided between 6:00 a.m. and 8:00 a.m. and between 5:00 p.m. and 10:00 p.m. shall be charged with a 50% surcharge, services between 10:00 p.m. and 6:00 a.m. and on Sundays and public holidays (as well as December 24<sup>th</sup> and December 31<sup>st</sup>) with a 100%.
- 7.4.** If consulting services are not called within 12 months of the order date and in case these days are not yet invoiced, CRYPTAS is entitled to adjust the price for the services that have not yet been called or invoiced.
- 7.5.** If an order is not based on a valid offer, the list prices valid for these products on the day of delivery shall apply to the order. The effort for services shall be charged at the rates applicable on the day the service is rendered.
- 7.6.** Deviations from a time expenditure on which the contract price is based, for which CRYPTAS is not responsible, will be charged according to the actual effort.
- 7.7.** The costs for travel, daily and overnight allowances will be charged to the customer separately according to the applicable rates. Travel time will be charged at 50% of the applicable hourly rate.



- 7.8.** All prices for services are calculated based on the "Tariflohnindex" (index of agreed wages and salaries, basis: 2016 = 100) for information and consulting published by Statistics Austria (<https://www.statistik.at>) with a starting value of 111.2 as of September 2021. Information on any adjustments to the ongoing charges shall be provided annually by the end of October at the latest and shall take effect on January 1<sup>st</sup> of the following year according to the increase in the abovementioned index.
- 7.9.** Price adjustments for products, services, and license fees of third parties shall be made in accordance with the adjustments of such third parties.
- 7.10.** CRYPTAS has the right to charge a minimum quantity surcharge of Euro 25,- for an order value below Euro 250,-.
- 7.11.** If the customer is based outside of Austria and is a merchant, the customer is obliged to comply with the import turnover tax regulation of the European Union. This includes in particular the disclosure of the VAT identification number to CRYPTAS without a separate request. Upon request, the customer is obliged to provide CRYPTAS with the necessary information regarding their capacity as an entrepreneur and regarding the use and transport of the delivered goods as well as the statistical reporting obligation.
- 7.12.** The customer shall be obliged to compensate CRYPTAS for any expenses, in particular a handling fee, incurred by CRYPTAS as a result of defective or incorrect information in this context.
- 7.13.** Any liability of CRYPTAS arising from the consequences of the information provided by the customer on the import VAT or the relevant data is excluded unless there is intent or gross negligence on the part of CRYPTAS.

## 8. Payment

- 8.1.** The invoices issued by CRYPTAS including VAT are payable promptly after invoicing without any deduction and are payable free of charge as long as there is no other agreement in place. For partial invoices the payment terms specified for the overall order shall apply analogously. If the payment term is exceeded, CRYPTAS is entitled to default interest in the amount of 12% p.a. without further reminder. The right to claim further damages remains unaffected. CRYPTAS reserves the right to supply customers only against advance payment or cash on delivery or cash payment.
- 8.2.** Hardware and software licenses, as well as support and maintenance for products and/or software, shall be invoiced upon delivery; services shall be charged based on hourly or daily rates according to work reports accepted by the customer at the end of a month; fixed-price services shall be charged according to the following payment plan: 30% upon order, 40% upon declaration of readiness for acceptance, 30% after acceptance.
- 8.3.** CRYPTAS is entitled, despite contrary provisions of the customer, to offset payments first against their older debts. If costs and interest have already arisen due to default, CRYPTAS is entitled to credit the payment first to the costs, then to the interest, and finally to the main services.
- 8.4.** In case of orders comprising several units (e.g. programs and/or training, realizations in partial steps), CRYPTAS is entitled to invoice after delivery of each individual unit or service.
- 8.5.** The customer is not entitled to withhold payments due to incomplete total delivery, warranty, or guarantee claims.
- 8.6.** Insofar as the above terms of payment are deviated from without justifiable reason, CRYPTAS may at any time optionally demand delivery concurrently against cash payment, advance payment, or provision of security and, after a reasonable grace period, withdraw from this and other contracts and claim damages for non-performance.

All outstanding claims, including those for which CRYPTAS has accepted bills of exchange or for which payment by installments has been agreed, shall become due immediately. The same shall apply if CRYPTAS becomes aware of circumstances which, according to due commercial discretion, are suitable to significantly reduce the creditworthiness of the customer, in particular cessation of payments, the opening of insolvency proceedings, or upon the occurrence of other important reasons.

## 9. Copyright and use

- 9.1. CRYPTAS assumes no liability that the contractual products do not infringe any industrial property rights or copyrights of third parties. The customer shall immediately notify CRYPTAS of any claims made against them for this reason.
- 9.2. If the customer is provided with software whose license holder is a third party (e.g. standard software from Microsoft), the granting of the right of use shall be governed by the license terms of the license holder (manufacturer).
- 9.3. Unless expressly agreed otherwise, the customer acquires a non-exclusive, non-transferable right of use, unlimited in time, space and content, to the works created by CRYPTAS within the scope of the performance of the contract. No additional rights of use and exploitation of the software are acquired by the customer's participation in the production of the software.
- 9.4. The customer is permitted to make copies for archiving and data backup purposes on the condition that this does not violate any express prohibition of the licensor or third parties and that all copyright and proprietary notices are transferred unchanged to these copies.
- 9.5. Should the disclosure of the interfaces be necessary for the establishment of interoperability of software, this is to be ordered by the customer against reimbursement of costs at CRYPTAS. If CRYPTAS does not comply with this requirement and decompilation takes place in accordance with copyright law, the results are to be used exclusively for the establishment of interoperability.

## **10. Right of withdrawal**

- 10.1.** Force majeure, labor disputes, natural disasters, and transport blockages, as well as other circumstances beyond the control of CRYPTAS, release CRYPTAS from the obligation to deliver or allow them to reschedule the agreed delivery time. Such events shall extend the delivery date accordingly, even if they occur during a delay that has already occurred. In this case, any grace period set by the customer shall also be extended by the duration of the unforeseen event.
- 10.2.** CRYPTAS reserves the right to withdraw from the contract if the delay in delivery caused by one of the above events lasts longer than six weeks.
- 10.3.** Cancellations by the customer are only possible with the written consent of CRYPTAS. If CRYPTAS agrees to a cancellation, CRYPTAS has the right to charge a cancellation fee in the amount of 30% of the unbilled order value of the total project, in addition to the services rendered and costs incurred.

## **11. Warranty, maintenance, modifications**

- 11.1.** CRYPTAS warrants that the contractual products are described in the product information communicated by CRYPTAS in a generally accurate manner and that they are basically fit for use in this context. The technical data and descriptions in the product information alone do not constitute a warranty of certain properties. An assurance of properties in the legal sense is only given if the respective information has been confirmed in writing by CRYPTAS. CRYPTAS does not guarantee that the program functions meet the requirements of the customer or that they work together error-free in any combination with other products.

- 11.2.** Excluded from the warranty are in particular deficits or damage due to operational wear and tear and normal wear and tear, improper use, operating and installation errors, third-party intervention such as the opening of devices or negligent behavior of the customer, operation with the wrong type of current or voltage as well as connection to unsuitable power sources, fire, lightning, explosion or mains overvoltage, moisture of any kind, incorrect or faulty program, software and/or processing data as well as any consumable parts, unless the customer proves that these circumstances are not the cause of the claimed defect. The warranty shall also not apply if the serial number, type designation, seal, or similar markings are removed or made illegible. Insignificant deviations in color, dimensions, and/or quality and performance characteristics of the goods shall not trigger any warranty claims.
- 11.3.** In the event of a warranty claim, CRYPTAS shall, at their option, either remedy the defect or replace the goods. Replaced parts become the property of CRYPTAS. If CRYPTAS does not remedy deficits within a reasonable grace period set in writing, the customer is entitled to demand either the rescission of the contract or a reasonable reduction of the purchase price.
- 11.4.** A prerequisite for the remedy of the defect is that
- the customer sufficiently describes the defect and
  - this is determinable for CRYPTAS;
  - the customer provides CRYPTAS with all the documents necessary for the improvement;
  - the customer or a third party attributable to them has not interfered with the delivery item;
  - the delivery item is operated under the intended operating conditions in accordance with the documentation.
- 11.5.** If the examination of a notice of defect shows that a warranty case does not exist, CRYPTAS is entitled to have all expenses reimbursed by the customer. The costs of inspection and repair will be charged according to actual expenditure or the price list of CRYPTAS.



- 11.6.** In the case of warranty, improvement shall in any case have priority over price reduction or rescission. In case of a justified notice of deficits, the deficits will be remedied within a reasonable period of time, whereby the customer shall enable CRYPTAS to take all measures necessary for the examination and remedy of deficits. The presumption of defectiveness according to §924 ABGB is excluded.
- 11.7.** Corrections and additions that prove necessary until the handover of the agreed service due to organizational and technical deficiencies for which CRYPTAS is responsible will be carried out by CRYPTAS free of charge.
- 11.8.** Costs for assistance, misdiagnosis as well as the elimination of errors and malfunctions for which the customer is responsible as well as other corrections, changes, and additions will be carried out by CRYPTAS against payment. This also applies to the elimination of deficits, if changes, additions, or other interventions have been made by the customer or by a third party.
- 11.9.** If the subject of the order is the modification or supplementation of already existing programs, the warranty refers to the modification or supplementation. The warranty for the original program shall not be revived thereby.
- 11.10.** Warranty claims are subject to a limitation period of six (6) months from handover and are not transferable. Irrespective of this, CRYPTAS passes on any further guarantee and warranty promises of the manufacturers to the customer in full, but without assuming liability for them. Any warranty beyond this is excluded.
- 11.11.** When making a claim under the warranty/guarantee, as well as in the case of repair orders subject to a charge and returns of any kind, the customer must observe the handling guidelines of CRYPTAS as amended from time to time or the corresponding procedures in the CRYPTAS price list as amended from time to time and any special regulations of the manufacturer. Return shipments may only be made after the issuance of a corresponding RMA form, which must also be attached to the return shipment in a manner that is visible from the outside. The RMA form can be requested from CRYPTAS at any time.

## 12. Liability

- 12.1.** CRYPTAS is liable to the customer for damages demonstrably caused by CRYPTAS only in case of gross negligence. This applies mutatis mutandis to damages caused by third parties engaged by CRYPTAS. In case of personal injury caused by CRYPTAS, CRYPTAS is liable without limitation.
- 12.2.** Liability for indirect damages - such as loss of profit, costs associated with business interruption, loss of data, or claims by third parties - is expressly excluded.
- 12.3.** Claims for damages shall become statute-barred in accordance with the statutory provisions, but no later than the expiry of one year from knowledge of the damage and the damaging party.
- 12.4.** If CRYPTAS performs the work with the assistance of third parties and in this connection warranty and/or liability claims arise against these third parties, CRYPTAS assigns these claims to the customer. In this case, the customer will give priority to these third parties.

## 13. Loyalty

The customer pledges to be loyal and shall refrain from any enticement and employment, including through third parties, of CRYPTAS employees who have worked on the realization of the orders for the duration of the contract and 12 months after the termination of the contract. The customer violating this provision shall be obliged to pay liquidated damages in the amount of one year's salary of the employee concerned.

## 14. Secrecy

The customer is obliged to keep secret for an unlimited period all information that becomes accessible to them in connection with deliveries of CRYPTAS and which, due to other circumstances, is clearly recognizable as a business or trade secret of CRYPTAS, and - unless this is necessary to achieve the purpose of the contract - neither to record it nor to pass it on to third parties or to exploit it in any way.

## 15. Miscellaneous

Should individual provisions of this contract be or become invalid, this shall not affect the remaining content of this contract. The contracting parties shall cooperate in partnership to find a provision that comes as close as possible to the invalid provisions.

## 16. Final provisions

Unless otherwise agreed, the statutory provisions applicable between fully qualified merchants shall apply exclusively in accordance with Austrian law, even if the order is executed abroad. For any disputes, the local jurisdiction of the competent court for the place of business of CRYPTAS is exclusively agreed upon. For sales to consumers within the meaning of the Consumer Protection Act, the above provisions shall apply only to the extent that the Consumer Protection Act does not provide for mandatory different provisions.

## 17. Mediation

In the event of disputes arising from this contract that cannot be settled by mutual agreement, the contracting parties mutually agree to involve registered mediators specializing in business mediation for the out-of-court settlement of the conflict. If no agreement can be reached on the selection of the business mediators or on the content, legal action will be initiated one month at the earliest after the failure of the negotiations. In the event of a mediation that has not been concluded or has been terminated, Austrian law shall apply in any legal proceedings that may be instituted. All necessary expenses incurred due to a previous mediation, in particular also those for legal advice, can be claimed as "pre-litigation costs" in court or arbitration proceedings as agreed.