

1. General

These General Terms and Conditions apply to all services, offers, price lists, order confirmations, contracts and deliveries of ITBinder GmbH (hereinafter "ITBinder") as contractor and/or service provider.

No terms and conditions that conflict with these General Terms and Conditions shall apply. The Customer may not rely on its own terms and conditions under any circumstances, even if such terms are contained in order confirmations or other documents. Side agreements, amendments or supplements are only valid if made in writing.

These General Terms and Conditions form the basis for the current and future business relationship. For follow-up transactions, these terms automatically become part of the contract without ITBinder having to refer to them again for each new order. The version valid at the time of the order, or the version last communicated to the Customer in text form, shall apply.

It is further clarified that employees of ITBinder who are not members of management or do not act as authorized signatories are not authorized to make agreements that contradict these GTC, and therefore cannot amend these GTC. Individually negotiated changes and side agreements that contradict these GTC shall only prevail if they have been expressly agreed in writing with a managing director or authorized signatory of ITBinder.

2. Offers and Conclusion of Contract

ITBinder provides telematics and fleet management solutions, consisting of:

- Delivery, rental and installation of hardware (tracking devices, sensors, accessories).
- Provision of software solutions (MTrack platform, mobile apps, interfaces).
- Services (installation, support, maintenance, hosting).

The type and scope of services result from the respective order confirmation or contract.

A contract between the parties is only concluded upon ITBinder sending a binding order confirmation. All offers by ITBinder are subject to change and non-binding.

3. Prices, Remuneration, Due Date

Prices are stated in euros and exclude statutory VAT as well as any other statutory or officially prescribed duties, charges and fees.

The value stability (indexation) of the offered and/or agreed prices is expressly agreed. The measure for calculating value stability is the Consumer Price Index (CPI) published monthly by Statistik Austria or a successor index. The index figures valid at the time of contract conclusion form the base. The first price adjustment will take place no earlier than one month after conclusion of the contract.

As the costs of raw materials, energy and secondary costs are subject to substantial price increases and daily fluctuations, ITBinder reserves the right to adjust prices to market conditions and/or to extend the agreed delivery date without penalty if, between contract conclusion and completion of the order, price increases of raw materials, wages, procurement costs, energy costs, collectively agreed remuneration or general duties, taxes and tariffs, and/or delivery delays occur that are outside ITBinder's sphere of influence.

In continuing obligations, ITBinder is entitled, in accordance with the two preceding paragraphs, to adjust the agreed price or remuneration accordingly from the 3rd month of the contract.

ITBinder is entitled to demand advance payments or security deposits.

The due date of the contractually agreed remuneration is based on the order confirmation. In case of doubt or in the absence of a separate agreement, monthly fees are due in advance by the 5th business day of the respective month, and one-time fees (such as for the purchase of hardware or installation work) are due within 7 business days after delivery or performance.

In the event of late payment, ITBinder is entitled to default interest of 9.2% p.a. above the respective base interest rate. In addition, for each reminder a flat reminder fee of EUR 25 net will be charged and must also be paid by the Customer within 5 business days of receipt of the reminder.

Invoices of ITBinder are deemed approved by the Customer unless the Customer objects in writing within an exclusion period of 14 days from receipt of the invoice. Failure to raise a timely objection is deemed full acceptance of the invoicing.

ITBinder has the right at any time - even in an ongoing contractual relationship - to request appropriate security for payment from the Customer prior to delivery. If the Customer refuses, ITBinder is entitled to withdraw from the contract and, in this case, to claim damages.

The Customer may not set off claims against ITBinder's claims. A prohibition of set-off applies in favor of ITBinder. ITBinder may set off against the Customer's claims.

It is agreed that remuneration and costs shall be collected by direct debit. The Customer undertakes to sign a SEPA direct debit mandate confirmation and expressly authorizes the collection of monthly fees and costs directly from the bank account communicated.

4. Contract Term, Termination

The minimum contract term underlying the contractual relationship is agreed with the Customer and - depending on the agreement - is typically 36 months. After expiry of the agreed minimum term, a further fixed term may be agreed. If there is no express fixed-term extension, the contractual relationship converts into an open-ended contract and may be terminated by the Customer in writing subject to a notice period of 3 months to the end of any calendar quarter (ordinary termination). If no specific fixed term is agreed from the outset, such an open-ended contract may likewise be terminated by the Customer in writing subject to a notice period of 3 months to the end of any calendar quarter (ordinary termination).

By concluding a fixed-term contract, the Customer waives the right of ordinary termination for the duration of the fixed term. The right to terminate for good cause remains unaffected.

ITBinder may terminate the contract outside the minimum contract term at any time by giving 30 days' notice to the last day of a month, without stating reasons (ordinary termination).

The following reasons constitute extraordinary termination grounds in favor of ITBinder and entitle ITBinder exclusively to immediate termination without notice:

- The Customer fails to fulfill one or more obligations under these terms.
- The Customer is insolvent.
- The Customer fails to meet its payment obligations to ITBinder and is in default according to the agreed due dates.
- Insolvency or bankruptcy proceedings are opened over the Customer's assets, or the opening of such proceedings is rejected for lack of assets.

If the Customer terminates a contract before expiry of the agreed minimum term without good cause, the Customer is liable to ITBinder for all costs and damages arising from such premature termination and is obliged to pay all remuneration agreed until the end of the fixed term.

If ITBinder is prevented from performing due to force majeure or other events that were unforeseeable at the time the contract was concluded and for which ITBinder is not responsible, the agreed remuneration shall nevertheless continue to be payable by the Customer. This applies to circumstances such as production or operational disruptions, supply chain delays, strikes or official measures. If such an event substantially impedes or makes performance impossible for an indefinite period, ITBinder is entitled to withdraw from the contract without any claims for damages arising against ITBinder.

If vehicles are temporarily decommissioned during the contract term, this is possible for a maximum of 3 full months. The minimum decommissioning period is one month. Upon recommissioning, the Customer must pay an activation fee of EUR 30.

The sale or deregistration of a vehicle must be notified by the Customer in writing by email to office@mtrack.eu. If deregistration is made after the 15th calendar day of a month, the monthly hosting costs for the following month are still payable by the Customer.

After expiry or termination of the contract, the Customer will be granted the opportunity for 30 days to export and transfer the necessary data. After expiry of these 30 days, all data will be deleted by ITBinder and ITBinder is no longer obliged to provide data at a later date.

5. Delivery, Dates

Delivery and performance times stated by ITBinder are not fixed dates but approximate guideline/standard lead times and therefore cannot be guaranteed by ITBinder. Claims due to delays are therefore not accepted, unless the delay was caused by ITBinder intentionally or with conscious recklessness. ITBinder also does not accept costs for any consequential damages due to delays or late-payment penalties, unless the delay was caused by ITBinder intentionally or with conscious recklessness. In any event, liability is limited in accordance with Section 11 of these GTC.

In particular, a delay by ITBinder does not entitle the Customer to extraordinary termination.

Delivered goods remain the property of ITBinder until they have been paid in full. A retention of title in favor of ITBinder therefore applies.

6. Hardware

ITBinder sells, rents and installs hardware products in the Customer's vehicles and, in the case of rental contracts, removes them again after the contract ends. Such installation/removal may exclusively be carried out by employees or authorized vicarious agents of ITBinder. An acceptance report will be prepared for the installation/removal, and upon completion the Customer must inspect all affected parts, the hardware, connected components and in particular the vehicle, and record the result of the inspection in the acceptance report. An acceptance report signed without reservations - or not signed at all - results in a presumption of proof that ITBinder performed the installation/removal services without defects.

If ITBinder demonstrably caused damage during installation/removal and ITBinder is actually liable for the damage under Section 11 of these GTC, the Customer must commission only ITBinder to remedy it. In particular, ITBinder is not liable for costs incurred because the Customer engaged a third party to remedy the defect.

ITBinder systems are inspected and tested before installation or dispatch; the respective SIM cards are also registered. For systems and hardware of ITBinder which, due to a written agreement deviating from these GTC, were not installed by ITBinder or its vicarious agents, ITBinder charges a setup/activation fee of EUR 30 net.

During the entire contract term, ITBinder systems are equipped with SIM cards enabling communication via mobile networks. These SIM cards remain the property of ITBinder and are provided to the Customer for use. The use of mobile cards other than those provided by ITBinder is contractually excluded. The Customer is not permitted to remove the SIM cards or use them otherwise. If the Customer becomes aware of loss or misuse of the SIM card, the Customer must notify ITBinder without delay.

The Customer undertakes to actively cooperate in installation, support and troubleshooting.

Customary postage/shipping costs for shipping goods to the Customer shall be borne by the Customer.

Repairs and troubleshooting of hardware as well as installation and removal work may only be carried out by ITBinder or its vicarious agents. Services performed by third parties or by the Customer may not be charged on/passed on to ITBinder.

Repairs and troubleshooting of hardware as well as installation/removal work must be carried out at a minimum temperature of 5 degrees Celsius and under dry weather conditions. If, on the agreed day, temperatures are lower or there is rain or snowfall, the Customer must ensure that the work can be performed in a hall/premises with temperatures above 5 degrees Celsius and under dry conditions and must provide such premises. If the Customer fails to do so, ITBinder is entitled to charge the costs for the wasted journey per employee/vicarious agent of ITBinder at EUR 89 net per hour. If ITBinder's employees/vicarious agents cannot be deployed elsewhere on that day, a daily flat rate of EUR 500 net per employee/vicarious agent is payable by the Customer (even if no travel actually took place).

The above prices/costs are value-stable and may be adjusted unilaterally by ITBinder if costs change between the time of the offer and the day of performance. Value stability of the above prices/costs is expressly agreed. The Consumer Price Index (CPI) published monthly by Statistik Austria or a successor index is used as the measure. The index figures valid at the time of contract conclusion form the base. The first adjustment will take place no earlier than one month after contract conclusion.

The installation/removal/repair appointment is agreed by mutual consent. If the Customer subsequently wishes to cancel or reschedule the appointment less than 72 hours before the agreed appointment, and the employees/vicarious agents cannot be deployed elsewhere that day, a cancellation fee of EUR 500 net per employee/vicarious agent will be charged to the Customer. ITBinder may, in return, cancel/reschedule the appointment free of charge at any time.

7. Special Provisions for the Rental of Hardware

ITBinder rents hardware to the Customer for the duration of the contractually agreed term. The Customer must ensure that the hardware is handled properly and carefully throughout the rental period and protected against damage.

The handover of the hardware is deemed completed when the hardware has been delivered and installed in the relevant vehicle. The Customer must enable ITBinder to deliver and install the hardware within 14 days of contract conclusion. If, deviating from these GTC, it is expressly agreed in writing that the hardware is only delivered by ITBinder and installed by a third party or the Customer, the handover is deemed completed upon dispatch to the Customer. The Customer bears the risk of loss during transport.

After termination of the contract, the installed products will be removed again. The Customer undertakes to enable ITBinder to remove the hardware within 30 days after termination of the contractual relationship.

Apart from normal wear and tear, ITBinder's products must be returned in the same condition as when first provided. If, exceptionally, products are not removed based on a declaration by ITBinder, the Customer must appropriately package the products to be returned for transport, send them to ITBinder within 7 days after contract termination and is responsible for damage to the products occurring during return transport. This is a delivery obligation (Bringschuld).

In the event of loss or damage to the products, the Customer must pay damages to ITBinder. The value of the products is the sales value at the time of contract conclusion.

Without ITBinder's written consent, the Customer may neither sell, sublet, encumber, remove, modify nor repair the products. The Customer may also not sell a vehicle with ITBinder products installed or otherwise make it available to third parties in any form.

During the entire contract term, the Customer must check the hardware for functionality and proper condition. Any disruptions and defects must be reported to ITBinder within 14 days from the point in time at which such disruptions and defects would have had to be noticed by a prudent businessperson.

All rights of possession and ownership of the products remain with ITBinder. A retention of title in favor of ITBinder therefore applies. The Customer is not permitted to cover or remove pictures, inscriptions or logos on the products indicating ownership or other marketing images/inscriptions/logos of ITBinder.

If third parties claim rights to ITBinder's products, the Customer must immediately inform ITBinder in writing and inform the third party about ITBinder's ownership rights.

ITBinder reserves the right, in the event of the Customer's payment default or other breaches of contract by the Customer, to dismantle and remove the products owned by ITBinder from the Customer's possession. The Customer is obliged to enable removal immediately and is liable for the costs incurred.

7.1. Special Provisions for the Sale of Hardware

In the sale of hardware, ITBinder's performance is deemed fulfilled when the hardware has been delivered and installed in the relevant vehicle. The Customer must enable ITBinder to deliver and install the hardware within 14 days of contract conclusion. If, deviating from these GTC, it is expressly agreed in writing that the hardware is only delivered by ITBinder and installed by a third party or the Customer, ITBinder's performance is deemed fulfilled upon dispatch to the Customer. The Customer bears the risk of loss during transport.

Until full payment of the agreed remuneration, ownership rights to the products remain with ITBinder. A retention of title in favor of ITBinder therefore applies.

The Customer is not permitted to cover or remove pictures, inscriptions or logos on the products that indicate ownership or other marketing images/inscriptions/logos of ITBinder. If a third party claims rights to ITBinder's products, the Customer must immediately inform ITBinder in writing and inform the third party about ITBinder's ownership rights. ITBinder reserves the right, in the event of the Customer's payment default or other breaches of contract by the Customer, to dismantle and remove the products owned by ITBinder from the Customer's possession. The Customer is obliged to enable removal and is liable for the costs incurred.

7.2. Mietkauf

In the case of hire-purchase, the provisions on hardware rental above apply during the rental phase.

8. Software

The Customer receives a non-exclusive, non-transferable right to use ITBinder's software solutions, limited to the contract term. Passing on, reproducing, editing or otherwise circumventing technical protective measures is prohibited.

Passwords communicated to the Customer at the start of the contract must be changed by the Customer's administrative contact for security reasons after first access.

ITBinder is entitled to implement updates and changes to the software, provided that the contractually owed functionality is not materially impaired as a result. The software provided to the Customer is continuously maintained and further developed by ITBinder for the duration of the contract and, in fixed-term relationships, for a period of at least 3 years. The provision of updates (e.g. bug fixes) and upgrades (functional improvements) for the software made available by ITBinder is covered by the agreed remuneration.

However, the obligation to further develop does not expressly extend to newly developed, separately marketed products. The provision of such new developments to the Customer requires a separate contractual arrangement and is subject to separate remuneration.

To the extent that programs, products and devices of third parties are used, the Customer accepts their license conditions, which can be made available to the Customer upon request.

All rights to software, trademarks, logos, concepts and other know-how remain with ITBinder.

Neither the Customer nor ITBinder may disclose confidential information to third parties during or after the contract term unless expressly permitted by ITBinder or required by law.

An exception to disclosure exists only for the following items, provided they can be proven by the receiving party:

- a. Information that is already publicly known, provided that disclosure cannot cause disadvantages for ITBinder and/or the Customer and cannot lead to premature termination of the contractual relationship.
- b. Information that was already known to the receiving party before it was received.
- c. Information that was developed without access to confidential information.

The Customer and its employees and vicarious agents have a duty of care to protect personal login and user information from access by unauthorized third parties. They must handle access data diligently to prevent it from becoming known to unauthorized persons. If the Customer detects unauthorized access to the software provided by ITBinder, the Customer must inform ITBinder immediately. ITBinder will then block access and issue new access data; the associated effort is to be borne by the Customer.

ITBinder reserves the right to suspend contractual services by blocking the Customer's use of the software if the Customer fails to meet its payment obligations. Such a block is permissible if payment is more than 30 days overdue or if a direct debit initiated by the Customer is reversed/charged back. Notwithstanding the block, ITBinder's claim to remuneration remains in full.

The Customer undertakes to actively cooperate in installation, support and troubleshooting and to provide free remote maintenance access via TeamViewer.

9. Liability

ITBinder is only liable for damages, defects, claims and breaches of contractual and non-contractual obligations caused intentionally or with conscious recklessness. The Customer bears the burden of proof for this qualified degree of fault. Liability is in any case limited to a maximum amount of EUR 10,000 and to pure property damage. Liability for personal injury remains unaffected.

Liability of ITBinder for non-material damage and financial loss, as well as consequential damage and defect-related damage, is entirely excluded. ITBinder assumes no liability for data loss or data destruction. If data is disclosed to third parties unlawfully, ITBinder is only liable to the Customer in cases of intent or conscious recklessness.

Furthermore, ITBinder assumes no liability for damage to vehicles or objects caused by the hardware provided by ITBinder. ITBinder is also not liable for damage suffered by the Customer due to malfunctions of hardware and software, in particular incorrect display/indication of fuel consumption, employees' working hours, kilometers driven, wage-relevant information, technical notes, etc. The data and information displayed in ITBinder's software must always be checked by the Customer for accuracy and up-to-dateness. ITBinder provides no warranty for the accuracy of, or errors in, maps. ITBinder provides no warranty for the availability and quality of the RRZ data center in Graz Raaba under ISO 20,000-9 certification. The functionality of ITBinder's services is partly dependent on external communication and positioning networks. Therefore, the availability, quality and coverage of mobile networks and the signal supply by satellite navigation systems are not part of ITBinder's performance obligations. Any liability for disruptions, transmission delays or inaccuracies in position data is excluded. A hacker attack on ITBinder's or the Customer's system does not give rise to any obligation to pay damages or any liability on the part of ITBinder.

All claims against ITBinder, regardless of the legal basis, become time-barred within 6 months from the point in time at which the damage or claim would have had to be noticed by a prudent businessperson exercising its duty of inquiry. In any event, claims become time-barred no later than one year after occurrence of the damage, regardless of knowledge.

10. Warranty

A warranty period of one year is agreed. For the sale and provision of hardware products installed by ITBinder, this period begins on the day of installation. For the sale and provision of hardware products not installed by ITBinder, the period begins upon receipt of the hardware by the Customer. The Customer bears the burden of proof for the day of receipt. If the Customer cannot prove the day of receipt clearly and beyond any doubt, a shipment is deemed delivered 3 days after being handed over for dispatch. The warranty for software products begins on the day the Customer is activated for the respective service/product. Warranty for the sale and provision of used items is excluded.

Hardware products installed by ITBinder must be carefully inspected by the Customer in accordance with Section 6 and the result recorded in the acceptance report. If the Customer does not record substantiated complaints in writing in the acceptance report, a presumption of proof arises in favor of ITBinder that the hardware was handed over properly and free of defects. Hardware products not installed by ITBinder must be carefully inspected immediately after receipt by the Customer, and any defects must be substantiated and complained of to ITBinder in writing within 3 days of receipt. If the Customer fails to make such a timely complaint, the presumption likewise applies that the hardware was delivered properly and free of defects.

In the event of a material defect in purchased software, ITBinder initially has the right to choose the type of subsequent performance (remedy of the defect or delivery of a replacement). If subsequent performance fails, is unreasonable for the Customer, is refused by ITBinder, or is delayed unreasonably, the Customer is entitled to withdraw from the contract.

Software products and services must be inspected by the Customer for all functions and the absence of defects within 7 days of activation. Any defects must be complained of to ITBinder in writing within 7 days. If no such complaint is made, the software is deemed delivered free of defects.

ITBinder may make subsequent performance dependent on payment of the due purchase price. Warranty claims are in any case excluded if the Customer modifies the product independently without ITBinder's consent.

11. Data Protection Provisions

The Customer ensures that all personal data of third parties processed in the course of contract performance, in particular truck drivers, is lawfully disclosed to ITBinder.

ITBinder processes personal data in accordance with the data protection provisions of the GDPR and the national Data Protection Act. Processing takes place to the extent and for as long as this is necessary:

- for performance of the contract concluded with the Customer and for pre-contractual measures taken at the Customer's request;
- to safeguard legitimate interests of ITBinder or third parties;
- to comply with legal requirements, e.g. retention of business records for business or tax purposes;
- on the basis of consent given by the Customer.

Consent can be revoked at any time. The lawfulness of data processing carried out up to that point is not affected by the revocation.

As a rule, personal data is stored only to the extent and for as long as required to achieve these purposes or as legally required.

Personal data is disclosed by ITBinder to processors located in the EU, in particular IT data centers. Otherwise, data is only disclosed where ITBinder is legally obliged to do so (e.g. tax office, courts, security authorities) or where this is necessary to safeguard ITBinder's legal interests (e.g. lawyers, tax advisors).

As a data subject under the GDPR, the Customer has the right of access, rectification, erasure ("right to be forgotten"), restriction of processing, data portability and objection, as well as the right not to be subject to a solely automated decision producing legal effects. ITBinder is available for the assertion of these rights. If the Customer believes that the processing of personal data disclosed to ITBinder violates the GDPR, the Customer has the right to lodge a complaint with the Data Protection Authority.

12. Disputes, Applicable Law, Jurisdiction, Severability

All disputes between the parties are governed by Austrian law to the exclusion of the rules of private international law. For all disputes between the parties arising out of legal transactions based on these GTC or for which these GTC were agreed, as well as disputes about the validity of these GTC, jurisdiction is agreed for the competent court in A-8010 Graz.

If individual provisions of these General Terms and Conditions are or become wholly or partly invalid or unenforceable, the validity of the remaining provisions shall not be affected. In place of the invalid or unenforceable provision, the legally permissible provision that comes closest to the economic purpose of the invalid or unenforceable provision shall be deemed agreed. The same applies to any contractual gaps.