

This translation is non-binding and provided solely for convenience. Only the original Terms and Conditions for the Services and Deliverables of accu:rate GmbH (German: „Allgemeine Geschäftsbedingungen für Leistungen und Lieferungen der accu:rate GmbH“) should be considered as legally binding. Please get in touch with us if you cannot understand the original and wish for an exact translation.

General Terms and Conditions for the Services and Deliverables of accu:rate GmbH - hereinafter referred to as accu:rate

§1. Scope of the Terms and Conditions

These terms and conditions apply to all services and all contractual agreements between accu:rate and its customer (hereinafter referred to as the customer), unless otherwise agreed to in individual, isolated cases.

§2. Type and Scope of Services

2.1 The nature, type and extent of accu:rate's services are derived wholly and exclusively from the contract agreed to by and with the customer.

2.2 Concerning projects: accu:rate offers various services in the field of passenger flow simulation and analysis. This includes advice, training and the preparation of expert reports.

2.3 Concerning the product: accu:rate offers both the software crowd:it and computational processing (Cloud computing) for rent (hereinafter referred to as the product). The customer reserves the right to use the product for the entire length of the rental period. There are various crowd:it packages: Preview, Project, Professional, Premium.

2.4 Deadlines are non-binding. If accu:rate breaks the terms of a written deadline, the provisions of the German Civil Code (BGB) apply.

2.5 accu:rate reserves the right to extend deadlines if it is forced to wait for information and/or cooperation from the customer.

§3. Contract termination and contract duration

3.1 Any contract pertaining to services provided by accu:rate is valid for the contractually agreed period.

3.2 The rental period for an annual contract of the product is automatically extended by a further twelve months if the annual contract is not canceled in writing within three months of the end of the rental period.

3.3 Satisfaction guarantee: If the customer finds within the first month of use of the product that it does not meet his/her requirements, he/she can withdraw from the contract.

3.4 In the case of withdrawal (of the type specified in 3.3), the sum already paid by the customer to accu:rate will be partially or completely refunded.

§4. Prices and terms of payment

4.1 The prices of services offered by accu:rate are based on the current price list. All prices are net value and in Euros.

4.2 Claims to payment (advanced or otherwise) made by accu:rate are due immediately and in net value. Any other payment arrangements must be made in writing.

4.3 Unless otherwise agreed, invoices will be sent by Email.

4.4 If the customer is in default of a payment, accu:rate reserves the right to refuse to fulfill the contract until the outstanding payment(s) have been settled. In addition, default interest in the amount of 9% p.a. will be charged above the applicable national prime rate.

4.5 The customer can only set-off undisputed or legally established claims. The customer can assert a refusal of performance or right of retention only on the basis of such claims.

§5. Copyright and intellectual property

All information and data provided to the customer are protected by German copyright law and may be protected by other intellectual or industrial property rights. Re-use of information and/or data beyond the limits of the copyright requires the prior, written consent of the respective copyright holder. Unauthorized use of provided information and/or data is not permitted.

§ 6. Technical requirements and cooperation with the customer

6.1 The customer must provide the hardware, operating systems, basic software and Internet access necessary to activate and update the product. Detailed technical specifications are provided on a case-by-case basis.

6.2 The customer must, in good time, provide accu:rate with any and all information necessary for the completion of accu:rate's services.

6.3 crowd:it may only be used after completing a training course. This training course is provided by accu:rate. The customer ensures that any of his/her colleagues who will use crowd:it at any time now or in the future will receive the necessary training.

6.4 It is the customer's responsibility to take all necessary precautions to protect his/her data. This includes, but is not limited to, regular data backups, diagnostics and inspections. Before installing crowd:it on any IT system, the customer should create a complete backup of his data. accu:rate is not liable for the loss of any of its customer's data.

§ 7. Use of data / privacy

7.1 accu:rate commits to treating all information, documents and data provided by the customer as confidential.

7.2 Personal data provided by the customer will be processed and used by accu:rate exclusively for this customer and according to his/her instructions.

7.3 accu:rate commits to a high level of data security in its daily activities. Upon request, information pertaining to this security can be provided before an offer is accepted.

7.4 If special technical and/or organizational measures should be taken by accu:rate in processing and using the customer's sensitive data, the customer must, in collaboration with accu:rate, state such measures before the contract's end. Customers are liable for any additional costs resulting from such measures.

7.5 The provisions of the German Telecommunications Data Protection Act and other applicable data protection laws and regulations remain unaffected by 7.1, 7.2, 7.3 and 7.4.

7.6 accu:rate allows the customer to perform simulation calculations in the Cloud (as stated in 2.3). The customer must ensure that any plans, data or information that serves as simulation input is permitted to enter accu:rate servers and used in the computation of the aforementioned simulation.

7.7 accu:rate uses only service providers in the EU for its Cloud computing services.

§8. Defects and malfunctions

8.1 The customer must immediately notify accu:rate in detail and in writing about any product defects and malfunctions.

8.2 accu:rate will immediately analyse any and all reported defects and malfunctions, and seek to fix them.

8.3 The customer has no claim to refunds or reductions in price due to defects and/or malfunctions if he/she used or manipulated the product improperly.

8.4 Unless accu:rate has fraudulently concealed a defect and/or malfunction, the customer has no claim to compensation for any defects and/or malfunctions that are present during the contractual period.

8.5 Claims on any and all material and legal defects of accu:rate's services has a one year period of limitation. Subsection 2 of Section 548 of the German Civil Code (BGB) remains unaffected.

8.6 accu:rate does not guarantee the permanent availability of the accu:rate Cloud computing service. The customer has no claim to refunds or reductions in price should the Cloud computing service fail.

§ 9. Liability

9.1 The following liabilities (9.2, 9.3, 9.4, 9.5, 9.6, 9.7, 9.8, 9.9) do not affect § 8.

9.2 accu:rate is liable according to the legal regulations and provisions of the German Product Liability Act in cases of intent to malice and claims of injury to life, body or health.

9.3 In the case of gross negligence, accu:rate's liability is limited to the typical damages that were foreseeable within the contractual period.

9.4 In the case of ordinary negligence, accu:rate is liable only if the damage was caused by a breach of contractual obligations. Again, accu:rate's liability is limited to the typical damages that were foreseeable within the contractual period.

9.5 For any agreed warranty, accu:rate is liable only for those claims that result from the explicit wording of that warranty.

9.6 In the case of contributory negligence, the customer's decisions and actions will be taken into pecuniary account in any claims of negligence against accu:rate.

9.7 Unless otherwise agreed to by accu:rate and the customer, accu:rate is liable for no more than the sum of €2,000,000 for typical, foreseeable damage, and for no more than the sum of €250,000 for financial losses. If the customer estimates that typical, foreseeable damages could amount to a sum exceeding these stated liability limits, the customer will explicitly advise accu:rate. In the case the customer informs accu:rate of such an estimation, all contracting parties must agree on a higher liability sum, against the assumption of the costs of excess insurance by the customer.

9.8 accu:rate is not liable for the failure(s) of any communication appliance, device and/or equipment that is not provided by accu:rate, unless such a failure is caused by accu:rate intentionally or due to gross negligence.

9.9 The models and algorithms used by accu:rate are derived from accepted research literature. Nevertheless, accu:rate cannot assure that reality will not deviate from any and/or all simulation results. accu:rate is not liable for the decisions made on the basis of the simulation results.

§10. Use of third parties

The contractual relationship between accu:rate and the customer does not permit the customer to transfer any services provided by accu:rate to third parties without the consent of accu:rate.

§11. Final provisions

11.1 Should individual provisions in this document be or become null and void, this does not affect any other provisions in this document, nor the efficacy of the document as a whole. The contracting parties will jointly agree on a new, effective provision to replace the null and void provision. To the fullest extent possible, this new provision will be similar in regulatory content to the null and void provision.

11.2 In order to be effectual, ancillary agreements, supplementary provisions, changes and additions to any contracts between accu:rate and the customer, including the description of services provided by accu:rate, must be made in writing. Any waiver of these inclusions must also be made in writing.

11.3 Terms and conditions provided by the customer are ineffectual, unless such inclusions are, in writing, expressly agreed to and confirmed by accu:rate.

11.4 Unless otherwise required by mandatory statutory provisions, accu:rate is entitled to store or destroy any and all documents, data and information received from the customer after the contract's end.

11.5 Any reallocation of rights, responsibilities or obligations by the customer requires the prior written consent of accu:rate. Section 354a of the German Commercial Code (HGB) remains unaffected.

11.6 So long as the customer is a merchant or a legal entity under public law, the juridical and meeting location of any and all disputes arising from these terms and conditions is Munich.

11.7 All legal issues arising from these terms and conditions and its execution are subject exclusively to German law, excluding the United Nations Convention on the International Sale of Goods.