

General terms and conditions

Nessus GmbH

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Austria

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Effective: 01.10.2022



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1 Scope and area of application

- 1.1 The General Terms and Conditions of Business and Delivery of Nessus GmbH ("**Nessus**") shall apply to all products, services and deliveries ("**Services**") provided by Nessus to the principal ("**Customer**"). They shall also apply to all future transactions, even if no express reference is made thereto. Nessus shall only conclude contracts or accept orders in this respect subject to these General Terms and Conditions of Business and Delivery.
- 1.2 Nessus provides the services only to companies and not to consumers within the meaning of section 1 of the Austrian Consumer Protection Act ("**KSchG**"). Use of the services by consumers is not permitted.
- 1.3 Services are provided on the basis of individual offers and are subject to (i) the specific terms and conditions of the offer accepted upon acceptance of the respective offer, (ii) these General Terms and Conditions and, if applicable, (iii) the provisions on charges and (iv) the Service Descriptions. Prices and service descriptions for radio relay internet connections are available at <https://www.nessus.at/richtfunk/>. Prices and service descriptions for fibre-optic Internet connections can be found at <https://www.nessus.at/fiber/>. The prices stated in the respective terms and conditions may differ in individual cases due to technical availability on site and can therefore only be communicated after a review by Nessus.

2 Commencement, term and termination of the contract

- 2.1 A contractual relationship between Nessus and the Customer shall come into force when Nessus has issued a written order confirmation following an order and successful connection check, or has commenced with the actual provision of Services (e.g. disclosure of user login and password, sending of a data sheet or placing of necessary orders with third parties, etc.).
- 2.2 For the calculation of periods concerning the minimum contract term and the period of a possible waiver of termination, the start of the contract shall be the first day of the month following the start of the provision of the service in all cases in which no express contractual stipulation of the same has been made.
- 2.3 Unless otherwise agreed, the minimum contract period for all Nessus products is 12 months. The contract is automatically renewed for a further 12 months if it is not terminated 3 months before the end of the contract in writing by letter and signed by an authorised signatory. Small and micro enterprises within the meaning of section 4 no 66 TKG 2021 and non-profit organisations which have not expressly waived the application of section 135 para 5 TKG 2021 may terminate the contract by giving one month's written notice. A change of the minimum



- contract period can be agreed with Nessus in writing, but the Customer must prove this in case of termination.
- 2.4 Small and micro enterprises within the meaning of section 4 no 66 TKG 2021 and non-profit organisations which have not expressly waived the application of section 135 para 6 TKG 2021 shall be informed by Nessus by e-mail of the end of the contractual commitment and of the options for terminating the contract. This information shall be provided in a timely manner prior to the point in time at which the termination must be declared at the latest in order to be able to terminate the contract at the end of the minimum contract period.
 - 2.5 The Customer warrants that the information provided by him in the context of the contract offer or the conclusion of the contract about his person and other circumstances relevant to the contract are complete and correct. The Customer undertakes to inform Nessus immediately of any changes to the data. Upon request by Nessus, the Customer shall confirm the data. In the event of a breach, Nessus shall be entitled to immediately block the contractual Services.
 - 2.6 At the end of the contract, all Nessus equipment provided to the Customer during the contract period, including but not limited to rack keys, must be returned immediately. Otherwise, Nessus will charge the full purchase price and replacement costs.
 - 2.7 In the case of orders, a separate contract is concluded for each product or Service, which means that in the event of cancellation or withdrawal, each item must be cancelled or withdrawn from individually.
 - 2.8 The Customer may transfer the contract with Nessus and the associated rights and obligations under this contract to a third party, provided Nessus agrees. The previous Customer and the new Customer shall be jointly and severally liable for any claims for remuneration and damages that have arisen up to the transfer.
 - 2.9 The use of the contractual Services by third parties, as well as the transfer of these Services to third parties against payment, requires the express written consent of Nessus. If a resale has been agreed, resellers shall be obliged to transfer these terms and conditions to their contractual partners and shall indemnify and hold Nessus harmless in this respect. At the request of Nessus, the reseller shall immediately provide evidence of the transfer of the contractual obligations.
 - 2.10 In the event of a transfer of business pursuant to section 38 of the Austrian Commercial Code ("**UGB**"), the companies involved (seller, acquirer) undertake to notify Nessus thereof in writing without delay. Nessus shall have the right to object in such a case. If the companies involved fail to notify Nessus, they shall be jointly and severally liable for all claims for payment and damages arising from the contract with Nessus.
 - 2.11 The Customer is expressly advised that upon termination of the contractual relationship, for whatever reason, Nessus shall no longer be obliged to continue the agreed service.

3 Rights and obligations of the Customer

- 3.1 The Customer expressly undertakes to comply with the relevant legal provisions, in particular those of the TKG 2021, the DSGVO and the Austrian Data Protection Act ("**DSG**"). In particular, any use of the Services which endangers public order and safety or morality, or which violates laws, as well as any gross harassment or frightening of other users is prohibited. Noticed violations of the law are to be reported to Nessus.
- 3.2 The Customer undertakes to indemnify Nessus against any damage incurred by Nessus as a result of the messages and data placed on the market by the Customer, in particular private prosecutions for defamation (section 111 of the Austrian Criminal Code ("**StGB**") or insult (section 115 StGB), in proceedings under the Austrian Media Act or the Austrian Copyright Act.
- 3.3 The Customer is obliged to comply with Austrian and international legal provisions when using the Services and to impose this obligation also on his contractual partners who support him in the provision of Services and to take all technically and organizationally possible measures to prevent the unlawful use of the Services offered. Express reference is made to the provisions of the Austrian Pornography Act, the Austrian Prohibition Act and the relevant provisions of the StGB, according to which the transmission, distribution and exhibition of certain content is subject to legal restrictions. The Customer undertakes to observe these legal provisions and to assume sole responsibility vis-à-vis everyone for compliance with these legal provisions.
- 3.4 Content must not contain or refer to any information that may damage the reputation of Nessus.
- 3.5 Nessus may place names, companies and internet addresses as well as the type of Services offered by Customers on a reference list and make this available to other Customers and



- interested parties upon request. The Customer has the right to revoke the publication (by written request) at any time.
- 3.6 The Customer shall be responsible for all activities regardless of fault and shall indemnify and hold Nessus harmless for all damages incurred. The complete indemnity and hold harmless shall in particular also include any penalties to be paid, of whatever nature, and the costs of an appropriate legal defence.
 - 3.7 Nessus and the employees of Nessus are obliged to comply with the DSG and are subject to the special confidentiality obligation and data protection provisions under Section (*Abschnitt*) 14 TKG 2021 with regard to those services that are subject to the TKG 2021.
 - 3.8 Nessus takes all reasonable, tested and customary measures in accordance with the state of the art to protect the data stored by Nessus. However, Nessus is not responsible if someone nevertheless succeeds in unlawfully obtaining and further using this data.
 - 3.9 The Customer agrees that Nessus will verify the identity of the Customer and store certain data prior to the provision of the respective Service. Nessus shall store as master data of the Customers and End Users at least title, first name, last name, company, UID, address, city, postcode and contact information (e.g. email address) and payment methods and shall keep records of payments received and amounts invoiced prior to provision. The Customer shall provide Nessus with an email address to be used for the transmission of invoices and hereby consents to the electronic sending of invoices.
 - 3.10 The Customer agrees that Nessus may take photographs of equipment (e.g. antenna masts, server cabinets) at nodes or directly at the end customer's premises as well as of buildings and certain rooms in the building. These photographs are required for documentation purposes and enable the field staff to react quickly and efficiently on the spot in the event of incidents.

4 Termination rights and blocking of Services

- 4.1 Both parties have the right to extraordinary termination at any time.
- 4.2 Nessus is entitled to terminate the contract extraordinarily if:
 - 4.2.1 the Customer is in default with due payments, in whole or in part, despite a reminder and the setting of a grace period of 14 days.
 - 4.2.2 concerns have arisen with regard to the Customer's ability to pay and the Customer, despite being requested to do so by Nessus, neither makes advance payment nor provides suitable security prior to delivery or continuation of the performance.
 - 4.2.3 the contractually agreed services can no longer be provided by Nessus or can no longer be provided by economically justifiable means for reasons for which Nessus is not responsible. Nessus will inform the Customer appropriately if this reason for termination is asserted.
 - 4.2.4 the Customer repeatedly or intentionally violates legal regulations, official requirements, provisions of the contract or these GTC.
 - 4.2.5 the Customer provides incorrect information at the time of conclusion of the contract or has concealed circumstances the knowledge of which would have prevented Nessus from concluding the contract.
 - 4.2.6 the execution of the delivery or the start or continuation of the service is impossible for reasons for which the Customer is responsible or is further delayed despite the setting of a reasonable grace period.
 - 4.2.7 the Customer repeatedly violates the "netiquette" and the generally accepted standards of network use or tolerates abuse by third parties. This also includes unsolicited advertising and spamming, the use of the respective service to transmit threats, obscenities, harassment or to harm other participants.
 - 4.2.8 Nessus runs the risk of no longer being able to provide services or only being able to provide them in part due to technical blockages resulting from misconduct on the part of the Customer or from the use of the Customer's facilities by third parties (e.g. blacklisting).
 - 4.2.9 the Customer has a disproportionate data transfer in relation to the data volume agreed with him or otherwise endangers the security and stability of the network. If this occurs for the first time, Nessus will immediately request the customer to act in accordance with the contract and inform the customer of the existence of this extraordinary reason for termination. In case of recurrence, Nessus reserves the right to proceed in accordance with clause 4.3. However, in the event of imminent danger, Nessus will proceed immediately in accordance with clause 4.4.
 - 4.2.10 the Customer violates the Nessus Data Centre House Rules despite warnings.



- 4.3 Nessus may, at its own discretion, proceed not only with termination of the contract but also with interruption or restriction of services instead. The right to extraordinary termination by Nessus remains unaffected in any case.
- 4.4 In the event of suspected violations, Nessus is also entitled to block not only the entire Service, but also only part of it. Nessus shall inform the Customer of the measures taken and the reason for them. Suspension of Service through the fault of Nessus shall not release the Customer from his obligation to pay the monthly and annual fees.
- 4.5 In the event of premature termination of the contract for any reason whatsoever for which Nessus is not responsible and which is within the Customer's sphere of influence, Nessus shall be entitled to prompt liquidated damages from the date of termination of the contract and irrespective of the Customer's fault, in the amount of the contract fee due from the date of withdrawal from the contract until the expiry of the originally agreed term of the contract. In the event of advance payment, Nessus shall therefore be entitled to retain any service fees already received.

5 Payment of fees and terms of payment

- 5.1 Compliance with the agreed payment dates is an essential condition for the performance of the services by Nessus. The fee is due within 14 days of receipt of the invoice and must be paid in advance depending on the chosen method of payment.
- 5.2 Objections to the invoice must be raised by the Customer in writing and substantiated within 4 weeks of the invoice date. Otherwise, the claim shall be deemed accepted. Objections do not prevent the invoice amount from becoming due.
- 5.3 If the agreed fee is not received in the account specified in the invoice by the agreed payment deadline, Nessus may block access to Services and/or physical access to the data centre without prior notice after expiry of a grace period of 14 days set until receipt of payment. The blocking of an access does not affect the payment obligation for uncanceled service periods.
- 5.4 In the event of default in payment, Nessus shall be entitled to charge all resulting expenses and costs as well as interest on arrears at the rate of 9 percentage points above the base interest rate. In addition, the Customer shall be obliged to reimburse Nessus for the costs incurred in the collection of outstanding debts.
- 5.5 In the case of due claims, Nessus is entitled to exercise its right of retention at any time. This applies in particular to the hardware housed in the customer rack.
- 5.6 If, at the request of the Customer or due to special circumstances which make this necessary, work is performed outside normal working hours, the additional costs shall be invoiced separately.
- 5.7 Nessus is entitled to increase prices at any time after giving 6 weeks' written notice. The changed price shall apply if the Customer does not object to the changed price in writing within this period. The contractual relationship shall then be continued at the changed conditions/prices. If the Customer objects in time, both parties have the right to terminate the contract with one month's notice to the end of the month with effect from the beginning of the above-mentioned period. In the event of a change in charges, the Customer's right of termination shall be excluded if there is a price reduction.
- 5.8 Nessus shall be entitled to adjust the agreed prices in accordance with the
 - a) of the Phelix Index or
 - b) of the EEX Austrian Power Future or
 - c) of the EEX German Power Futureonce a year if the average daily value of the electricity prices has increased by 5% in the last three months in relation to the time of the last adjustment or the start of the contract. The index that has increased more in relation to the time of the last adjustment or the start of the contract shall be used for the calculation. If one of these indices is no longer published, the index that corresponds to it the most shall be used. If the costs increase by more than 30%, the customer is granted an extraordinary right of termination with a six-week notice period for the affected product.
- 5.9 Unless otherwise agreed, Nessus shall have the right to increase the monthly service fee once a year by the greater of the stated values at the earliest twelve months after the Effective Date:
 - 5.9.1 by 3 per cent or



- 5.9.2 by the percentage increase based on the Austrian Consumer Price Index (CPI) or the index replacing it, or
- 5.9.3 by the percentage increase in the collective agreement for employees in companies in the field of services in automatic data processing and information technology.
- 5.10 The non-exercise of the right to value adjustment does not constitute a waiver of future adjustments. Adjustments to the charges pursuant to clause 5.8 or 5.9 shall not entitle the Customer to terminate the contract without notice.
- 5.11 Any legal transaction fees pursuant to the Austrian Fee Act (*Gebührengesetz*) shall be owed by the Customer and paid by Nessus. This shall also apply if, in the course of an inspection by the authority, it is subsequently determined that parts of the contract are subject to fees or if the amount of fees already calculated is changed by the authority.
- 5.12 The Customer accepts the volume limits agreed in the respective service descriptions or in the offer. If the limit is exceeded, a subsequent charge will be made according to the volume price agreed in the offers per volume unit above the set limit.
- 5.13 If there is a technical defect in an electricity consumption meter, the daily values of this meter measured since the last electricity reading are extrapolated to the end of the month in analogy to the consumption values of the previous month and the shortfall is added.
- 5.14 All prices stated in offers or price lists are exclusive of the statutory value added tax.

6 Liability, warranty and further obligations of the Customer

- 6.1 Nessus operates the services offered with the greatest possible care, reliability and availability. However, outside the general duty of care, Nessus does not guarantee that these services can be accessed without interruption, that the desired connections can always be established or that equipment used in the Nessus premises and processed data are preserved under all circumstances. Liability for consequential damages, lost profits and indirect damages is excluded.
- 6.2 In particular, Nessus shall not be liable for any loss, damage or consequential damage to data or due to data protection violations and hardware of the Customer caused by unauthorised access by third parties.
- 6.3 The Customer is aware of the functional characteristics of the essential IT components and the associated risks. Furthermore, he is responsible for assessing the necessary security and insurance requirements and will carry out a corresponding risk analysis.
- 6.4 Nessus is not liable for the content, completeness, accuracy, etc. of transmitted or requested data and for data that can be accessed via Nessus. Nessus reserves the right to block individual publicly accessible offers if legal provisions, such as the TKG 2021, require it.
- 6.5 Nessus shall only be liable for intentional or grossly negligent conduct of its employees. Liability for damages in the case of merely slight negligence, on the other hand, is excluded. This exclusion of liability does not apply to personal injury or claims under the Austrian Product Liability Act ("PHG"). The burden of proof for the existence of fault on the part of Nessus shall lie with the Customer.
- 6.6 Furthermore, Nessus accepts no liability for damage caused by a required but not granted telecommunications license or other official approvals or by required but not granted approvals under private law or the consent of third parties.
- 6.7 In the event of liability, the Customer may only offset undisputed or legally established claims. The Customer shall only be entitled to assert a right of retention on the basis of undisputed or legally established counterclaims arising from this contract. A quantified claim for damages shall be capped at a maximum of EUR 20,000.
- 6.8 In the case of other Services on hardware and software provided by the Customer, such as installations, functional enhancements, etc., Nessus shall provide the agreed services to the extent possible under the technical conditions. Nessus does not guarantee that all functional requirements of the Customer can be met with the components provided and - unless explicitly agreed - does not owe any updates or upgrades.
- 6.9 Delivered goods remain the unrestricted property of Nessus until full payment has been made.
- 6.10 The goods are deemed to have been handed over as soon as they have been installed in the customer's rack or sent to the Customer.



- 6.11 Unless otherwise agreed, the warranty period shall be 6 months for new goods. During the warranty period, the Customer must prove the existence of a defect at the time of handover of the goods and that it was not caused by use. The warranty is excluded for used goods.
- 6.12 The Customer is obliged to inspect the goods immediately after receipt and to give written notice of any defects discovered without delay, but no later than within 5 working days, stating the nature and extent of the defect. Hidden defects shall be notified in writing without delay, but no later than five working days after their discovery. Nessus shall remedy defects or have defects remedied within a reasonable period of time, whereby the Customer shall enable all measures necessary for the examination and remedy of defects. For warranty work at the Customer's premises, the Customer shall provide any necessary labour free of charge. The parts replaced in the course of maintenance or repair shall become the property of Nessus. Nessus shall, at its discretion, remedy the defect by eliminating the defect, by installing a WorkAround, by providing a new program version or by showing the Customer ways to avoid the effects of the defect.
- 6.13 The Customer shall be liable for damage to and loss of equipment and facilities that Nessus sets up on the User's premises in the course of providing its services, irrespective of the cause, thus also in the event of force majeure, unless the damage was caused by Nessus or its agents.
- 6.14 If the Customer withdraws from the contract for legitimate reasons for which Nessus is not responsible, compensation to be paid to Nessus shall be deemed to be agreed in the amount of the expenses demonstrably incurred by Nessus, but at least 20% of the net order value.
- 6.15 Nessus shall not be liable to the Customer for the actions of other Customers or third parties and shall not accept any responsibility for damage caused to the Customer by other Customers or third parties in the course of the performance of the Services.
- 6.16 In the case of firewalls, DDoS protection or other security solutions set up and/or checked by Nessus, Nessus shall in principle proceed with the greatest possible care within the framework of the respective state of the art. However, the Customer is advised that absolute security cannot be guaranteed. Here too, Nessus shall only be liable for the intentional conduct of its employees. Liability for damages in the event of merely slight negligence shall be excluded.
- 6.17 Furthermore, Nessus shall not be liable for data retrieved by the Customer from the Internet or for e-mails (including viruses contained therein) of third parties or for services of third party service providers, even if the Customer obtains access to these via a link from the homepage of Nessus or via information provided by Nessus. The Customer acknowledges that the use of the Internet is associated with uncertainties (e.g. viruses, Trojan horses, attacks by hackers, intrusions into WLAN systems, etc.). Nessus shall not be liable for any damage resulting from the above.
- 6.18 The username agreed with the Customer, in combination with the password issued by Nessus or the Customer himself, enables access to the agreed range of services. The username and password are unique and uniquely identify the Customer to Nessus. The Customer is therefore obliged to keep his password secret. The Customer shall be liable for any damage incurred by the Customer, Nessus or third parties as a result of inadequate secrecy or security of the password by the Customer.

7 Use and availability of Services

- 7.1 The Customer undertakes not to use the contractual services in such a way that this leads to the impairment of third parties or is a threat to the security or operation of Nessus or others. Accordingly, spamming (aggressive direct mailing via e-mail), DDoS attacks or any use of the service to transmit threats, obscenities, harassment or to harm other Internet users are prohibited.
- 7.2 The use of network services contrary to these provisions, regardless of whether this consists of use of the system operated by Nessus or other systems on the Internet contrary to the intended purpose, entitles Nessus to immediately block access and to charge for the costs of locating, determining the extent of and remedying the damage.
- 7.3 Nessus reserves the right to immediately and without warning physically and/or logically disconnect Customers from the Internet if there is reasonable suspicion that their access is causing activities that are either security or operationally threatening to Nessus or other systems. The costs of detecting and tracking the activities, disconnecting and any repairs will be charged to the Customer at the hourly rates normally charged by Nessus at the time.
- 7.4 When using Nessus services, the Customer undertakes to comply with the Internet Netiquette, those standards of conduct to which Internet users worldwide voluntarily submit (in particular,



the prohibition of harassing or frightening other users, the prohibition of mass e-mails, especially of commercial or pornographic content - "spamming"). A repeated violation entitles Nessus to restrict the affected offer or to terminate the contract, whereby the effort required to process the complaints will be charged.

- 7.5 Furthermore, the Customer undertakes to use suitable and sufficiently secure technical equipment and settings. If difficulties arise for Nessus or third parties due to insecure technical equipment of the Customer (e.g. open mail relays), the Customer shall be obliged to indemnify and hold Nessus harmless. Furthermore, Nessus shall be entitled to immediately block the Customer or to take other appropriate measures (e.g. blocking of individual ports). Nessus shall endeavour to use the least restrictive means available. Nessus shall inform the Customer immediately about the measure taken and the reason for it.
- 7.6 In order to maintain and ensure the security and availability of the services, Nessus carries out maintenance work, modifications or extensions to the infrastructure as required. Nessus endeavours to carry out this work outside normal business hours if possible and to keep the resulting service interruptions as short as possible and to inform Customers in advance of any outages. If the urgency of the work to be carried out does not allow this, Nessus reserves the right to carry out work without prior information and notification of the Customer. Nessus will inform and notify the customer as soon as possible.
- 7.7 The Customer is obliged to inform Nessus of any malfunction or interruption of the services provided by Nessus in order to enable Nessus to rectify the problem. Nessus shall receive the fault report, shall begin to remedy faults within office hours and shall remedy the fault within the scope of its technical and operational possibilities without culpable delay. The time required to remedy the fault shall be determined on the basis of the criticality of the fault. The Customer shall support Nessus in the localisation of the fault and error location within the scope of its possibilities at its own expense and shall grant Nessus or third parties commissioned by it the necessary access at any time to enable the fault to be rectified.
- 7.8 If Nessus or a third party commissioned by it is called to rectify a fault and it is established that there is no fault in the provision of the contractually agreed services, but that the Customer commissioned the fault clearance without there being a justified reason for the fault clearance due to a culpable error attributable to him or that the fault is the Customer's own fault, Nessus shall be entitled to demand appropriate compensation from the Customer for the expenditure incurred.
- 7.9 If, as a result of force majeure or official orders, deliveries or services cannot be provided or can only be provided in part, the obligation to perform shall be suspended or postponed for the duration of the event. Nessus shall not be liable in such cases, unless Nessus is guilty of gross negligence. Force majeure events include, without limitation, events such as fire, flood, earthquake, storm, lightning, epidemics, war, strikes or other unrest, sabotage, failure to obtain official or private permits or authorisations, provided that this is not due to neglect of duty or omission on the part of the contracting party requesting the same; changes in the legal and regulatory situation or at the political level, damage caused by animals (rodents, etc.), as well as all those events which are not caused by Nessus., as well as all those events which are outside the direct business sphere of influence of the contracting party concerned. Nessus shall endeavour to keep the effects of such events as low as technically and economically possible.
- 7.10 Quality of Service and safety measures
 - 7.10.1 Nessus will ensure that the agreed quality of Service is provided. The scope of the Services offered and the main features of each Service provided, including any minimum levels of quality of Service and limitations, can be found in the offer or the Service description.
 - 7.10.2 Nessus measures its network regularly to avoid overloads.
 - 7.10.3 In order to protect the integrity and security of the network and the Services provided and to be able to react to security threats or gaps, Nessus uses traffic management and security measures. In order to be able to detect and defend against DDoS attacks, metadata of the packets is measured in an automated form (e.g. source IP/port, destination IP/port, bytes). The transferred user data is not analysed. The measures taken by Nessus do not affect the quality of Internet access, privacy or the protection of personal data.
- 7.11 Nessus reserves the right to temporarily disable services of Customers who are victims of third-party attacks if the attack negatively affects the services of other Customers (e.g. DDoS attacks). Nessus will inform the Customer in an appropriate form about the temporary suspension of services. Any costs incurred as a result of the attack, e.g. labour incurred by Nessus technicians or third party costs incurred solely as a result thereof, will be passed on to the Customer at the



current list price. Nessus shall not be liable for any costs or loss of earnings incurred by the recipient of the service as a result of the necessary block.

- 7.12 Nessus is entitled to deactivate or revoke services and access to services temporarily or permanently if this is necessary due to a legally effective and in Austria enforceable decision of a court or arbitral tribunal as well as on instruction of a competent authority. Nessus shall not be liable for any costs or loss of earnings incurred by the Customer as a result of the necessary deactivation.
- 7.13 IP connectivity to other network operators takes place in accordance with the technical framework conditions. The use of other networks is subject to the usage restrictions of the respective operators (acceptable use policy). The constant availability of these transmission paths and the Nessus services dependent on them can therefore not be guaranteed.

8 Customer service

- 8.1 For any enquiries relating to the products, services and supplies, invoices or other technical matters, customers may contact Nessus either by telephone during business hours or online at the following contact details:
Telephone number: +43 1 3360006
Business hours for all enquiries: Monday to Thursday from 08:30 to 18:00 and Friday from 08:30 to 17:00.
E-mail: Customer service enquiries can also be sent by e-mail to support@nessus.at
On-call request: Outside business hours, it is possible to request an on-call technician via the Nessus website. The associated costs are indicated under the request form:
<https://www.nessus.at/24-7support/>

9 Changes to the General Terms and Conditions

- 9.1 Changes to the GTC, any special conditions or the service descriptions can be made unilaterally by Nessus and are also effective for existing contractual relationships. The current version is available on the Nessus website (or will be sent to the customer upon request). The changes shall become effective if the Customer does not object in writing within 4 weeks after receipt of the notice of change. In the event of an objection by the Customer, Nessus shall be entitled to terminate the contract with the Customer as of the last day of the current month. If Nessus does not terminate the contract with the Customer, the old GTC shall continue to apply to the Customer.
- 9.2 If Customers benefit exclusively from the changes, these changes can be applied by Nessus on the day the changes are announced. This also applies to changes in charges due to an agreed index adjustment.

10 Special provisions for server housing Customers

- 10.1 Server housing refers to the service of housing hardware components (servers and other IT equipment) in the data centre, where air conditioning, power supply and connection to the Internet are also provided. Server housing Customers are Customers of Nessus who make use of such services. The following special provisions also apply to them. In addition to any contractual conditions and these General Terms and Conditions, the "Nessus Data Centre House Rules" shall apply, which shall be handed out for inspection to and signed by every person authorised to access the data centre. Nessus is entitled to take appropriate action in the event of violations of these house rules, in particular if there is a risk to the data centre or other customers due to disregard of the security regulations. This includes, for example, that the Customer rack may be opened by qualified Nessus employees in order to remove easily combustible materials (e.g. cardboard boxes). The work involved will be charged to the Customer at current hourly rates.
- 10.2 The Customer must ensure that all vehicles in the contractually guaranteed inventory (e.g. Customer rack) are removed by the end of the contract. Otherwise Nessus will continue to charge the monthly fee. After removal, the rack will be inspected by Nessus, any damage will be assessed and invoiced to the Customer.
- 10.3 Persons authorised to access the data centre have the right to take trustworthy persons into the data centre; in this case, the Customer is fully liable. Nessus is entitled to check and document



the identity of the persons. Irrespective of this, the house rules shall apply to access to the data centre.

- 10.4 The Customer is responsible for keeping the list of authorised persons up to date. Authorised persons of the Customer have the possibility to request an up-to-date list of authorised persons and to apply for changes.
- 10.5 Nessus has the right to block accesses that have not been used for more than 12 months after giving reasonable notice.
- 10.6 With the termination of the necessary physical access to the data centre (e.g. termination of all server housing products), all access authorisations assigned to the customer are deactivated.

11 Special provisions for communications services as defined in the TKG 2021

- 11.1 **Identity Verification** - The Customer agrees that Nessus will verify the identity of the Customer and store certain master data prior to the provision of the Service in accordance with the mandatory provisions of the TKG 2021 (section 132 para 2 no 13 and section 166 para 2). The Customer must provide (i) the full company name, (ii) the legal form, (iii) the address (iv) the name and position of the legal representative and a copy of the relevant documents proving this (e.g. extract from the register). Legal representatives and natural persons must provide proof of identity and Nessus will verify the information provided using recognised and established methods of identity verification.
- 11.2 **Switching - Internet Access Services** - Nessus will, in the event of a change of provider, facilitate continuity of Internet access service where technically feasible and will guide the change of provider as the receiving provider or cooperate in good faith with the new provider.
- 11.3 **Changes to the GTC including price changes** - Changes to these GTC, any special conditions or the service descriptions and fee provisions (price lists) of the Services can be made unilaterally by Nessus and are also effective for existing contractual relationships. The current version of the applicable service descriptions and price lists are available on the Nessus website (or will be sent to the Customer upon request).
- 11.4 If Customers **benefit exclusively from the** changes, these changes can be applied by Nessus on the day the changes are announced. This also applies to exclusively favourable price reductions or fee changes due to an agreed index adjustment.
- 11.5 If Customers are **not exclusively favoured** by the changes, a PDF will be sent to the Customer by email at least three months before the new provisions come into effect, in which (i) the content of the changes, (ii) the effective date and (iii) the Customer's right to terminate the contractual relationship with Nessus affected by the changes free of charge until the changes come into effect. The changes shall take effect on the date specified in the notification, but at the earliest after a period of three months from the notification of the change. In the event of a justified termination by the Customer, the respective affected contract shall end upon receipt of the notice of termination by Nessus, whereby the previous contract provisions and fees shall apply until then. If the Customer does not terminate the contract, the contract changes shall become effective at the announced time. Changes in fees pursuant to clause 5.8 or 5.9 shall not entitle the Customer to extraordinary termination.
- 11.6 **Billing** - Invoices shall comply with the legal requirements pursuant to section 138 TKG 2021 and shall be sent in PDF format to the e-mail address provided by the Customer and shall be made available to the Customer for up to seven years. The Customer is entitled to request receipt of an invoice or itemised bill in paper form free of charge.
- 11.7 **Invoice disputes** - Objections to the claims made in the invoice are possible by the Customer within 3 months of the invoice date and must be addressed by e-mail to billing@nessus.at, otherwise the claim is deemed to be accepted. Objections do not prevent the invoice amount from becoming due. Should Nessus, after thorough examination, object to the objections of the Customer, the Customer shall have the right to apply for dispute resolution at the Austrian Regulatory Authority for Broadcasting and Telecommunications ("**RTR**"). The Customer may only submit this dispute resolution request in due time within one (1) year from the date on which the Customer raised the objections in writing to Nessus. The Customer may also seek legal protection before the ordinary courts.
- 11.8 **Alternative dispute resolution, conciliation** - Without prejudice to the jurisdiction of the ordinary courts, the Customer shall be entitled to submit disputes and complaints that cannot be satisfactorily resolved with Nessus to the conciliation body of the RTR (www.rtr.at) within the statutory period (currently one (1) year in accordance with the applicable procedural provisions).



The procedure before the regulatory authority is carried out in accordance with the RTR conciliation guidelines available on the aforementioned website and the Austrian Alternative Dispute Resolution Act ("**AStG**"), Federal Law Gazette I No 105/2015, as amended.

- 11.9 **Compensation and Refund Policy** - In the event that Nessus fails to provide the Service to the Customer contrary to its contractual obligations, Nessus undertakes, in the event of reasons for which Nessus is responsible, to credit the Customer in the amount of EUR 13.00 (excl. VAT) per week of non-provision. The credit shall be granted from the third week of non-provision. The period of one week begins with the notification of the fault by the Customer. The compensation provision shall not apply if the non-provision is due to delays caused by third parties who are not vicarious agents of Nessus.
- 11.10 **Services for users with disabilities** - Nessus does not currently provide services specifically for users with disabilities, but as far as possible provides measures to enable people with disabilities to access services on an equal basis. For example, all documentation is provided in writing or discussed in individual consultations if required.

12 Other provisions

- 12.1 The Customer shall immediately notify us in writing of any changes of address. Documents shall be deemed to have been received by the Customer if they have been sent to the Customer's last known address. Electronic declarations shall be deemed to have been received if they have been sent to the e-mail address last notified by the Customer.
- 12.2 The Customer agrees to be allowed to use the antenna mast erected by Nessus at the Customer's location also for other purposes free of charge.
- 12.3 Nessus is authorised to assign its obligations in whole or in part, thus also with regard to individual services, or the entire contract to a third party with debt-discharging effect. The right to use vicarious agents remains unaffected.

13 Severability clause

- 13.1 Should one or more provisions of this contract be or become legally invalid in whole or in part, this shall not affect the validity of the remaining provisions. The invalid provisions shall be replaced retroactively by a provision with the same content as far as possible which comes closest to the purpose of the intended provision.

14 Place of jurisdiction

- 14.1 Unless otherwise agreed, the statutory provisions applicable between entrepreneurs shall be governed exclusively by Austrian law, even if the order is executed abroad. For any disputes, the court locally and factually competent for the Contractor's place of business shall be exclusively agreed.