

General Terms and Conditions of Ordering Code Matrix

Version: March 2021





Applicability of these terms and conditions

Subject to deviating agreements in individual cases, these terms and conditions of ordering form an integral part of the contract. By ordering, you agree to our terms and conditions.

For the avoidance of doubt, the Code Matrix is a service which is only made available to commercial customers. Consumers may not order this service.

Subject matter of the order

TÜV Informationstechnik GmbH (TÜViT) offers the ordering party (Customer) the service of providing a graphical visualization of the code quality of a software product (TÜViT Code Matrix). For this purpose, the Customer uses a software tool supplied by TÜViT (TÜViT Code Sensor).

After completion of the order (Conclusion of Contract), the Customer will initially receive an email from TÜViT with a download link for the TÜViT Code Sensor. This link must be treated as confidential by the Customer.

The Customer can download the Code Sensor and utilization instructions via the link and can use the Code Sensor in accordance with the instructions for analyzing a selected source code.

The TÜViT Code Sensor is a portable application for analyzing software source code and is compatible with Windows 10 (64-bit). The source code to be analyzed must be available in the C/C++ programming language and must not exceed the scope of 15 million lines. Source code files that contain characters from non-Latin scripts in file, path or function/method names may not be processed correctly by the Code Sensor. In this case, the results may be imprecise and unsuitable for further analysis.

After completion of the scanning process, the Customer shall transmit the result file to TÜViT via the transmission channel described in the instructions, together with the name and the version number of the product/source code examined.

After receiving the results file and the additional information, TÜViT will check these for completeness and suitability for the creation of a Code Matrix and the associated results report. If the result of this check is positive, the Code Matrix and report will be generated and sent to the Customer at the email address provided when the order was placed.

If TÜViT determines that the information provided is not suitable for the creation of a Code Matrix or the report, e.g. because the data are incomplete, inconsistent, not comprehensive enough, or contain technical errors, TÜViT will inform the Customer accordingly. In such cases, a Code Matrix and report will not be generated. The obligation to pay for the service remains unaffected.

Rights and obligations of the Customer

The Customer undertakes to use the Code Sensor exclusively for the analysis of a selected software product for the creation of a Code Matrix by TÜViT. For this purpose, the Customer receives a time-limited, non-exclusive and non-transferable license to use the Code Sensor.

The license, and with it the right to use the Code Sensor, will end no later than 30 days after the order is placed. After the expiry of this period, the Customer undertakes to delete the Code Sensor immediately from its systems. If the Customer fails to comply with its deletion obligation, TÜViT shall be entitled to demand payment by the Customer of an appropriate no-fault contractual penalty, where TÜViT shall be entitled to determine the amount at its reasonable discretion within the meaning of Section 315 of the German Civil Code, and the appropriateness of the contractual penalty shall be subject to review by the competent court in the event of a dispute. The assertion of claims for further damages shall remain unaffected.

Under no circumstances shall the Customer be permitted to duplicate, analyze or evaluate the Code Sensor in any way, including but not limited to decompiling, disassembling or any other form of reverse engineering. The Customer hereby acknowledges and agrees that all rights, including but not limited to all intellectual property rights associated with the Code Sensor, shall remain solely the property of TÜViT.

In particular, TÜViT grants the Customer no rights or licenses of any kind to use patents applied for, patents granted or otherwise copyrighted claims.

Confidentiality

The Customer shall have the right to disclose or publish the TÜViT Code Matrix received in the context of the order in the same format and with the same content as provided by TÜViT. However, the Customer shall not be permitted to disclose the TÜViT Code Matrix in any form other than that provided.

In particular, the Customer hereby undertakes not to disclose or publish the Code Matrix without the disclaimer attached by TÜViT.

The forwarding, disclosure or publication of other documents provided in the context of the order shall not be permitted without the express prior written permission of TÜViT. Permission may be refused for good cause.

Terms and conditions of payment

The amount invoiced is due in full upon receipt of the invoice. The amount stated in the invoice must only be paid after receipt of the invoice, but then within 14 days and quoting the invoice number.

The product offered is a highly innovative new development. TÜViT therefore cannot guarantee that the Code Sensor and the process will function as expected and under all technical conditions. In the event of problems with the Code Sensor or the process that originate within the sphere of influence of TÜViT, TÜViT shall therefore be entitled to withdraw from the contract.

In this case, any amount invoiced that has already been paid shall be refunded; no further claims shall be possible!

Warranty

TÜViT provides its services diligently and to the best of its knowledge on the basis of the information and documents provided. The correctness of the content of the documents provided shall only be reviewed with regard to obvious incorrectness and incompleteness, unless the performance specification on which the order is based expressly stipulates otherwise.

The services of TÜViT are provided in accordance with the generally recognized rules of technology and in compliance with statutory and official regulations. A warranty is only provided for the correctness of forecasts made by TÜViT in connection with its services where these forecasts constitute one of the main obligations of the service. The warranty obligations shall be fulfilled at the discretion of TÜViT through the remediation of defects free of charge or through new projects. If such efforts repeatedly fail, the Customer shall be entitled to withdraw from the contract or to demand corresponding reduction of the remuneration. Other warranty claims, including any for damages, shall be excluded.

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Liability

1. TÜViT's liability is based on the statutory provisions for compensation for damage if the Customer asserts claims for damages based on intent or gross negligence, to include intent or gross negligence of TÜViT's representatives or vicarious agents, or if TÜViT culpably violates a material contractual obligation. Material contractual obligations are obligations which enable the proper performance of the agreement in the first place and on the performance of which the contract partner usually relies and is expected to rely.
2. Insofar as TÜViT cannot be accused of intentional violation of a contractual obligation, the liability for damages in the above cases is limited to foreseeable damage typically incurred in connection with agreements of this nature. Accordingly, TÜViT is in these cases liable for property and material damages up to a maximum of EUR 500,000.00 per damage event. If the Principal is a Consumer the liability limitations set forth in this section neither apply in case of intentional violations of a contractual obligation or nor in case of gross negligence.
3. The above provisions do not affect liability for culpable injury of life, body, or health.
4. Unless otherwise stipulated in these provisions, liability for damages exceeding Nos. 1.-3. is excluded without regard to the legal nature of the asserted claim.
5. Insofar as TÜViT's liability for damage pursuant to the above regulations is excluded or limited, this also applies in regards to personal liability for damages of TÜViT's employees, workers, staff members, representatives and vicarious agents.

6. The limitations pursuant to Nos. 1 and 2 also apply if the Customer claims wasted expenses instead of damage in lieu of performance.
7. The Customer is aware that the Code Sensor is an innovative code analysis tool that accesses the IT infrastructure of the Customer. Possible interactions with and effects on the IT infrastructure and IT systems of the Customer cannot be predicted. TÜVIT therefore accepts no liability whatever for any direct or indirect losses incurred by the Customer through the use of the Code Sensor to the extent permitted by law.

Final provisions

In addition, the General Terms and Conditions of TÜV NORD GROUP are an integral part of the contract. You can view or download their content from the website <https://www.tuev-nord.de/en/general-terms/>. We will also be happy to send you our General Terms and Conditions upon request.

You will find the Privacy Policy of TÜV Informationstechnik GmbH on our website at <https://www.tuvit.de/en/meta/privacy-policy/>.