

Standard terms and conditions of the Monopolverwaltung GmbH (MVG) as ID issuer pursuant Art 3 (1) of the Commission Implementing Regulation (EU) 2018/574 of 15 December 2017 on technical standards for the establishment and operation of a traceability system for tobacco products

1. Legal framework

The legal framework for the function of the MVG as ID issuer and the use of unique identifiers by producers and importers of tobacco products is formed by:

1. The Directive 2014/40/EU of the European Parliament and of the Council of 3 April 2014 on the approximation of the laws, regulations and administrative provisions of the Member States concerning the manufacture, presentation and sale of tobacco and related products and repealing Directive 2001/37/EC;
2. The Commission Delegated Regulation of 15 December 2017 on key elements of data storage contracts to be concluded as part of a traceability system for tobacco products;
3. The Commission Implementing Regulation (EU) 2018/574 of 15 December 2017 on technical standards for the establishment and operation of a traceability system for tobacco products;
4. The Austrian Federal Tobacco Monopoly Act (Bundesgesetz, mit dem das Tabakmonopol neu geregelt wird (Tabakmonopolgesetz 1996 – TabMG 1996), BGBl. Nr. 830/1995 in der jeweils geltenden Fassung).

2. Registration

The draw of unique identifiers requires prior registration of the producer or importer to the MVG. For the registration the name of the enterprise, the postal address of the enterprise, a reachable email address, the VAT number and a reachable mobile telephone number are needed.

The registration can also be executed by an administrator of the producer. The administrator can nominate any desired number of users. By appointing an administrator, the producer or importer declares, that the administrator is entitled to act transactional for the producer or importer and to transfer this power to other users.

3. Order and serving of unique identifiers

Upon a request of the registered producer or importer the MVG delivers the requested unique identifiers to the producer or importer. The producer or importer is only allowed to use the unique identifiers for the purpose specified in his request and only according to the legal framework referred to in point 1; he is not allowed to transmit the unique identifiers to a third party. The producer or importer takes note, that the unique identifiers are only valid within a maximum period of six months from the date of receipt of the unique identifiers and that they must not be used to mark unit packets or aggregated packaging afterwards.

In General, the delivery times follow the legal requirements. Deviating from that, an „urgent“ delivery can be ordered. In this case the delivery of the code within 24 hours can be ordered. In the event of a cancellation of the order the costs will not be reimbursed.

4. Fee

The MVG is in accordance with § 16 Abs 4 of the Austrian Federal Tobacco Monopoly Act entitled to charge a fee for generating and issuing unique identifiers. The amount of the at a time valid fee complies with the table of charges published in the Amtsblatt (official journal) of the Wiener Zeitung. The total amount will be rounded to two places of decimals. The MVG will submit an invoice to the producers and importers per calendar month. These invoices become due within 30 days. At the beginning of the project the fees will not be charged each month. Appropriate supplementary payments are agreed upon.

5. Damage and Liability

Together with its technical partner, the Bundesrechenzentrum GmbH, the MVG is eager to process orders without complaints. In the case of occurring faults in processing the orders the MVG is only liable for damages caused to the producer or importer by the MVG unlawful and culpably – except personal injuries - in the case of intent or gross negligence. Any liability for force majeure, consequential damages or loss of profit is excluded.

6. Data protection

The MVG processes data provided by the producer or importer as well as order data for the purpose of performing its duties as ID issuer. Legal basis for this processing is Art 6 (1) lit b and c GDPR. A transmission of data takes place under the legal framework referred to in point 1 and if needed to authorities and courts and the legal representative of the MVG. The data are processed because of legal retention and documentation obligations, such as the Austrian Federal Tobacco Monopoly Act, the Austrian Commercial Code (UGB), the Austrian Tax Code (BAO) etc. The MVG processes and stores the provided data as long as they are needed for the above-mentioned purposes. After fulfilling this purpose and after expiration of legal retention obligations the data will be deleted. As far as provided in the GDPR, the data subject has in general the right of access, a right to ratification, a right to erasure, a right to restriction of processing, a right to data portability and a right to object. If the data subject thinks, that the processing of its data violates its right of data protection it can complain to a supervisory authority, in Austria the Datenschutzbehörde. Controller of the processing is the Monopolverwaltung GbmH in 1100 Wien, Am Belvedere 10 - Top 11. Data protection officer is Mag. Erika Pipal, erika.pipal@arw.gv.at, Tel 0 505 06 DW 85843.

7. Miscellaneous

These Standard terms and conditions are available in German and in English. In the case of inconsistencies only the German version is relevant.

For disputes related to the function of the MVG as ID issuer between the MVG at the one hand and producers or importers at the other hand exclusively Austrian Law excluding the UN Convention on Contracts for the International Sale of Goods and also excluding the conflict-of-law rules is applicable.

Any dispute or claim arising between the MVG as ID issuer and a producer or importer falls under the exclusive jurisdiction of the Bezirksgericht für Handelssachen Wien or the Handelsgericht Wien, depending on the competence.

Status: Vienna March 1, 2021