

# Terms and Conditions of IT Service Providing

## 1 General

- 1.1** An individual contract is entered into by way of the quote submitted by KISTERS and acceptance of these General Terms and Conditions by the Customer. The general terms and conditions of the customer shall find no application, unless expressly agreed to by KISTERS.
- 1.2** Where the Customer and KISTERS agree on services contained in the service certificate “IT Service Providing”, then these pertain primarily to services provided by KISTERS at their own premises, which are made available to the Customer via Internet/telecommunication. The purpose and content of IT Service Providing is the access to KISTERS IT Services, without any need for ceding KISTERS infrastructure or software to the Customer. The Customer shall only receive access to the results of the IT Services provided by KISTERS.
- 1.3** The Customer shall ensure that KISTERS receives all required information for quote creation. Where new circumstances or existing conditions arise, which KISTERS were not aware of at the time of contract conclusion, then the Customer shall be responsible for costs incurred by KISTERS due to these circumstances.
- 1.4** Should the Customer discover during the contract term that KISTERS will require additional information in order to comply with their contractual obligations, then the Customer shall request that information, including from third parties, to a reasonable extent and make that information available to KISTERS without delay.
- 1.5** Should the Customer be subjected to an audit/an investigation conducted by a governmental body (e.g. Federal Network Agency, the Public Prosecutor’s Office, etc.), then KISTERS will support the Customer to a reasonable extent. Any additional costs arising for KISTERS shall be remunerated by the Customer in addition to the basic remuneration.
- 1.6** The services provided by KISTERS shall be provided at the currently recognised standard of research and technology, as well as any other standards recognised by the IT sector.

## 2 Object of the contract

- 2.1** KISTERS operates IT infrastructures to provide IT Services for their customers. The Customer receives the technical means and authorisation to access the IT services via Internet/telecommunication. KISTERS provides the IT Service, i.e. the software applications operated within the IT infrastructure, for use by the Customer and for users authorised by the Customer for that specific purpose.
- 2.2** Where the IT Services are provided via the Internet, it is the Customer’s responsibility to ensure that he is given access to the IT Services provided by KISTERS online. Where the IT Services are provided via a WAN line, the service transfer point (STP) shall be the last router in the KISTERS network.
- 2.3** KISTERS shall inform the Customer at the time of contract conclusion, which system requirements will be needed on Customer side to utilise of the IT Services by KISTERS.
- 2.4** KISTERS will inform the Customer in good time if there are any changes to the necessary customer-side system requirements. The Customer is responsible for using the correct infrastructure on his side.

- 2.5** As a general rule, no installation of software and/or graphic user interface (GUI) and/or apps should be required in the Customer's systems. The contractual parties may otherwise agree on a different type of solution.

### **3 Availability**

- 3.1** The availability of the IT Services provided by KISTERS is derived from key performance indicators ("KPI") agreed as part of service level agreements ("SLA").
- 3.2** The number of users on the Customer side with access to the KISTERS IT Services shall be specified in the KISTERS quote. Where no specific number of users on Customer side is specified, then KISTERS may determine a number at their own reasonable discretion.
- 3.3** At the Customer's request, KISTERS shall make available an IT Services availability overview for the past calendar month latest 30 days after the end of a calendar month.
- 3.4** KISTERS shall inform the Customer about planned maintenance work with appropriate advance warning. Planned maintenance work will therefore be announced as early as possible.
- 3.5** KISTERS will announce unplanned maintenance work at least 48 hours in advance, unless earlier measures must be taken for important reasons; where that is the case, KISTERS shall announce these works as early as possible.
- 3.6** KISTERS shall, to a reasonable extent, make available a contact person/service desk representative on workdays between 8 am and 5 pm (CET, Monday - Friday), who will be able to answer requests.

### **4 Data security and documentation**

- 4.1** KISTERS shall provide commercial, state-of-the-art data security in compliance with recognised standards. A data backup of customer data shall only be carried out when ordered separately by the Customer.
- 4.2** At the Customer's request, KISTERS shall make available sufficient and reasonable documentation about their IT Services and their backup. The quality of the documentation should enable a professional to familiarise himself at any time in the shortest possible time.

### **5 Usage rights**

- 5.1** Where the use of KISTERS IT Services requires usage rights, the Customer shall be granted the non-exclusive, non-transferable and non-sub licensable right, limited to the term of the IT Service Providing Contract, to access the IT services via telecommunication/the Internet, and to utilise the functionalities associated therewith in accordance with the IT Service Providing Contract for their internal business purposes. The Customer shall not be granted any further rights, specifically rights pertaining to the software applications or the operating software.
- 5.2** The Customer is not entitled to use the IT Service beyond the use permitted in accordance with the IT Service Providing Contract, or to have it used by third parties, or to make it accessible to third parties. Specifically, the Customer is not permitted to reproduce, sell or temporarily transfer IT Services or parts thereof, to make temporarily accessible, rent or loan them to third parties.
- 5.3** For each instance, where the Customer culpably enables the use of the IT Service by third parties or users not specifically designated by the Customer, the Customer shall pay a lump-sum compensation amounting to one quarter of the remuneration due for the regular term of the contract. If the remaining term of the Contract is more than 36 months, only a period of 36

months is to be taken as a basis. The compensation will be set higher, if KISTERS proves a higher damage. KISTERS reserves the right to assert further claims for damages. If the Customer can credibly prove a lesser damage, the Customer shall only compensate for the actual damage.

**5.4** In the event of unauthorised transfer of use, the Customer must, upon request, immediately provide KISTERS with all information necessary for the assertion of claims against the user, in particular their full name and address, in accordance with the applicable data protection regulations.

**5.5** If KISTERS is permanently prevented from providing the IT service in accordance with the Contract due to property rights of third parties, then KISTERS is entitled to refuse to provide the services affected thereby. KISTERS shall inform the Customer immediately, and facilitate Customer access to their data in a suitable manner. The Customer will in that case not be obliged to pay. All other claims or rights of the Customer shall remain unaffected.

**5.6** When using third-party software (e.g. Microsoft products), these are subject to specific end-customer terms of use, which are then attached to the IT Service Providing Contract as an addendum.

## **6 Data security**

**6.1** Both parties shall comply with applicable data protection provisions, specifically those applicable in Germany, and shall oblige their employees deployed in connection with the IT Service Providing Contract to maintain data secrecy in accordance with Art. 28 GDPR (General Data Protection Regulation), where they are not generally obliged to do so.

**6.2** KISTERS may store personal data of the Customer as part of data collection and processing. KISTERS shall only use this data for processing purposes and as a legal basis when preparing quotes, processing orders and for sales activities with the Customer (Art. 6 para. 1 b p. 1 lit. b GDPR). For the purpose of order processing, the required data, including name, delivery and invoice address, as well as further details of an order, are required and must be provided by the Customer. KISTERS will use contact information like e-mail address or telephone number to confirm an order and schedule appointments.

**6.3** In order to regulate this data processing in compliance with data protection provisions, both parties shall conclude a "Contract on Commissioned Data Processing" in accordance with Art. 28 GDPR, an integral part of the IT Service Providing Contract.

## **7 Term, termination and cancellation**

**7.1** The term of the IT Service Providing Contract is derived from the information given in the quote. Where no such information is stated in the quote, then a minimum term of 3 years shall apply. Thereafter, the contract is extended by one year at a time if it has not been terminated at the end of a year with a 3-month notice period.

**7.2** KISTERS is entitled to withdraw from the contract completely or in part if the Customer suspends payments or services due to a lack of creditworthiness, if a provisional insolvency administrator is appointed, or if insolvency proceedings are opened against the Customer's assets. In the event of withdrawal, KISTERS shall be entitled to claim reasonable compensation for deliveries and services provided to date for the continuation of works.

**7.3** KISTERS shall thereafter retain the Customer's data for 4 weeks, the so-called "archive period", once termination has taken effect. During this archive period, KISTERS shall make the data

available to the Customer in a recognised and commercially available standard format for download, or on a portable data medium. KISTERS will be entitled to delete the data, once the archive period has elapsed.

- 7.4** During the archive period, KISTERS shall also make available all documentation and data for download or on a portable data medium.

## **8 Compensation**

Compensation is derived from the prices stated in the quote. Compensation becomes due immediately after receipt of the respective invoice. Unless agreed otherwise, KISTERS shall provide monthly billing for services provided.

## **9 Duty of cooperation and obligations of the Customer**

- 9.1** The Customer shall fulfil the duties to cooperate described in the quote for the performance and execution of the IT Service Providing Contract. The Customer shall furthermore comply with all obligations required and reasonable for contract compliance.
- 9.2** The Customer shall name all users intended by him for the use of the IT Service. Furthermore, the Customer undertakes to inform KISTERS of any change in the assignment of user accesses caused by organisational modifications, employee changes or similar.
- 9.3** The Customer shall protect the usage and access authorisations, as well as identification and authentication safeguards assigned to them or their users from access by third parties, and shall refrain from passing them on to unauthorised users.
- 9.4** The Customer undertakes that (e.g. when forwarding third-party texts and data to KISTERS servers) no industrial property rights and copyrights are infringed.
- 9.5** The Customer shall obtain the necessary consent of the respective data subjects insofar as the Customer collects, processes or uses personal data within the scope of the use of the IT Service and no legal grounds for permission apply.
- 9.6** The Customer shall not misuse the KISTERS IT Services or allow it to be misused, in particular, the Customer shall not transmit any offers of information with illegal or immoral content, or refer to information that promotes hate speech, incites criminal offences or glorifies or trivialises violence, information that is sexually offensive or pornographic, or could endanger children or young people morally or impair their well-being, or which could damage the reputation of KISTERS.
- 9.7** The customer shall refrain from attempting to retrieve information or data without authorisation, either himself or through unauthorised third parties, from interfering or allowing interference with programs operated by KISTERS or from penetrating data networks of KISTERS without authorisation.
- 9.8** The customer shall not misuse the possible exchange of electronic messages for the unsolicited sending of messages or information to third parties for advertising purposes (spamming).
- 9.9** The Customer shall back up the data transmitted to KISTERS regularly and in accordance with the risk of loss, but at least once a day, and shall create his own backup copies to ensure the possibility of reconstructing the data and information in the event of loss.
- 9.10** The Customer check any and all data and information for viruses before transmission, and shall use state-of-the-art virus protection programs for that purpose.
- 9.11** After submission of a fault report by the Customer, KISTERS shall be reimbursed for expenses incurred if it is found that there was no fault in the technical equipment made available by

KISTERS, and that the Customer could have recognised that fact by reasonably searching for the problem.

- 9.12** The Customer shall back up all his accessible data in the system (e.g. mailbox contents, directory contents and documents) by download until the termination of the IT Service Providing Contract, as it cannot be ruled out that this data will no longer be accessible to the Customer after the termination of said contract.

## **10 Liability**

- 10.1** KISTERS shall be liable for personal injury for which it is culpable up to EUR 1 million and, in the event of damage to property for which they are culpable, shall reimburse the cost of restoring said property up to an amount of EUR 1 million per loss event. In the event of damage to data storage media, the obligation to compensate shall not include the cost of recovering lost data and information. In the event of data loss, KISTERS shall only be liable for the expenditure required to restore the data, provided that the Customer has correctly backed up the data.
- 10.2** Any claims for defects, damages or reimbursement of expenses incurred by the Customer other than those expressly mentioned in these GTC – based on the contract, tort or any other legal grounds, and specifically claims for business interruption, loss of profit, consequential harm caused by a defect, and loss of information and data – shall be excluded, unless liability is mandatory, e.g. under the Product Liability Act or in cases of intent, gross negligence or breach of fundamental contractual obligations. Compensation for damages or expenses due to breach of material contractual obligations shall, however, be limited to foreseeable damage typical for this type of contract, unless intent or gross negligence can be proven. Material contractual obligations are those, whose fulfilment characterises the contract and on which the Customer may reasonably rely.
- 10.3** KISTERS shall not be held responsible for service restrictions and delays, specifically due to force majeure (e.g. mobilisation, war, rioting) or similar events (e.g. strike, lockout, computer viruses or hacker attacks).
- 10.4** Insofar as the contracting parties have agreed on a lump-sum compensation for a defect of a service as part of the SLA, the agreed provisions in the SLA shall apply to reduction, compensation for damages, and reimbursement of expenses due to the defect.
- 10.5** Claims and rights against KISTERS shall lapse 12 months after completion of the service provisioning or premature termination of the Contract, unless liability is mandatory, e.g. under the Product Liability Act or in cases of intent, gross negligence or breach of fundamental contractual obligations.
- 10.6** If a third party asserts claims against the Customer for the infringement of industrial property rights or copyrights (hereinafter: IPR) by the services supplied by KISTERS, and if the use of these services is impaired or prohibited as a result, KISTERS shall be liable as follows: KISTERS shall, at their discretion and expense, either modify or replace the services in such a way that they do not infringe these IPR, but still substantially comply with the agreed specifications, or indemnify the Customer against licence fees for the use of the services vis-à-vis the third party, or take back the services against reimbursement of the remuneration paid by the Customer less an amount that takes into consideration the time of use of the services rendered.
- 10.7** Prerequisite for KISTERS' acceptance of liability under Clause 10.6 is that the Customer notifies KISTERS immediately in writing of any claims by third parties for infringement of an IPR, does not concede the alleged infringement, and conducts any dispute – including any out-of-court settlement – only in agreement with KISTERS. If the Customer discontinues the use of the services

for reasons of mitigation of damages or other important reasons, he shall be obliged to point out to the third party that the discontinuation of use does not constitute an acknowledgement of the infringement of the IPR.

**10.8** Insofar as the Customer himself is responsible for the infringement of property rights, claims against KISTERS are excluded. The same shall apply insofar as the IPR is based on special specifications of the Customer, is caused by an application not foreseeable by KISTERS, or is caused by the fact that the part/work result is modified by the Customer, or is used with work results not supplied by KISTERS.

**10.9** Further claims of the Customer due to an infringement of third party IPR are excluded. The Customer's statutory right to cancellation for good cause remains unaffected.

**10.10** The Customer shall indemnify KISTERS against all claims of third parties resulting from an unlawful use of the IT Services by the Customer himself or a third party (e.g. authorised or unauthorised users), for which the Customer is at least negligently responsible, in particular to the extent that data protection, copyright or other legal disputes arise in connection with the unlawful use of the IT Services. If the Customer recognises or must concede that such illegal use might be imminent or is currently under way, then the Customer is obligated to inform KISTERS immediately.

## **11 Use of IT Services in breach of contract**

**11.1** KISTERS are entitled to block access to the IT Services for the Customer or users nominated by the Customer in the event of breaches of any of the obligations set out in section 9 of these Terms and Conditions. Access will only be restored, once the risk of repeated breaches has been eliminated in form of a submission of an appropriate punitive cease-and-desist declaration to KISTERS.

**11.2** The Customer shall remain obligated to pay the agreed remuneration in the event of the IT Services being blocked in accordance with Section 9.

## **12 Non-disclosure**

- 12.1** Business secrets of the Customer in the meaning of § 2 of the Federal Trade Secret Law shall be protected by KISTERS with appropriate confidentiality measures, and shall be released to the Customer immediately after the end of the Contract upon request, unless there is a contractual and legal necessity for the retention of such business secrets at KISTERS.
- 12.2** The Customer shall treat business secrets and other information obtained through KISTERS as confidential during the term of the Contract and beyond, as long as and to the extent that such information has not lawfully become general knowledge, or that KISTERS have consented in writing to its disclosure in a specific case, and shall use such information only for the purposes stipulated in the contract.

## **13 Other**

- 13.1** Ancillary agreements require the written form. This requirement may only be waived in written form.
- 13.2** German law shall apply to the exclusion of the United Nations Convention on Contracts for the International Sale of Goods (CISG).
- 13.3** Place of performance is the registered office of KISTERS. The place of jurisdiction is Aachen.