

Terms and Conditions for On-Premises Services

1 General

- 1.1** An individual contract is entered into by way of the quote submitted by KISTERS and acceptance of these GTC by the Customer. The general terms and conditions of the Customer shall find no application, unless expressly agreed to by KISTERS.
- 1.2** If the customer and KISTERS agree on the so-called "On-Premises Services" in the Service Level Agreement (SLA), these are services which shall be provided by KISTERS largely on the Customer's premises.
- 1.3** Where the provision of On-Premises Services requires the purchase of software, such software shall be acquired by KISTERS by way of a separate licence agreement and shall not be subject to these GTC.
- 1.4** 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.
- 1.5** 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.
- 1.6** 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.
- 1.7** 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 Use of the Customer's infrastructure

- 2.1** Should the use of infrastructure (e.g. server capacities, notebooks, premises, etc.) be required for service provision by KISTERS, then the Customer shall make this available within a reasonable scope. Remuneration for the use of this infrastructure is waived, as KISTERS have taken this participation by the Customer into account during quote creation.
- 2.2** KISTERS shall treat the infrastructure with care and use it appropriately during the utilisation period. The Customer shall remedy any defects without delay and free of charge during the use of the infrastructure by KISTERS, for which KISTERS is not culpably responsible.
- 2.3** The customer shall be liable for the provision of the infrastructure, unless damage is the result of an intentional or grossly negligent act on the part of KISTERS.

3 Work performances

- 3.1** Where KISTERS owe a success through its work performance, the Customer and KISTERS shall jointly agree on the criteria for successful acceptance in a timely manner.
- 3.2** Where the Customer and KISTERS agree on sub-projects or milestones for a project, each sub-project or milestone shall be completed with a successful acceptance.
- 3.3** KISTERS shall endeavour to ensure that the Customer is able to obtain reasonable information about the progress of the process during the creation of a work.
- 3.4** KISTERS shall announce the provision of their work results/works for acceptance latest one week before readiness in writing or via e-mail to the Customer.
- 3.5** Once the owed work has been made available to the Customer, he shall immediately carry out a functional test. Upon conclusion of this functional test, the Customer shall grant acceptance, provided the condition of the work does not preclude acceptance. The Customer shall declare acceptance, provided there are no defects or if there are only insignificant defects within the meaning of Defect Class 2, and the totality of defects is similarly insignificant. The Customer may only refuse acceptance completely if there are significant defects within the meaning of Defect Class 1.
- 3.6** Specific defect classes shall be defined for the classification into significant or insignificant defects. The classification of defects into defect classes is the responsibility of the Customer. KISTERS shall have the right to verify and refute the classification of defects.
- **Defect Class 1: “Significant defect”**
A defect in the sense of Defect Class 1 “Significant defect” exists if
 - an agreed function cannot be correctly performed,
 - the contractually agreed use of the subject matter of the contract infringes upon the rights of third parties,
 - a function contradicts legal and/or safety requirements (according to the state of the art) that can reasonably be expected.
 - **Defect Class 2 “Insignificant defect”**
A defect of Defect Class 2 exists in case deviations not covered by Defect Class 1, specifically deviations from the agreed or generally recognised performance standards, or deviations that affect the operation of the work only insignificantly, and are associated with disadvantages that are economically justifiable.
- 3.7** The Customer shall immediately draw up a list of defects and hand it over to KISTERS for all detected defects of Defect Class 2 “Insignificant defect”. KISTERS shall remedy such insignificant defects within a reasonable period of time free of charge. Once defect remediations are completed, KISTERS shall once again submit relevantly corrected results for acceptance.
- 3.8** Where the Customer does not initially accept a work after it has been made available for a reason other than a defect, the results shall be deemed to have been accepted one month after they have been made available for acceptance. Similarly, the Customer's productive use of the work shall be deemed as acceptance. Acceptance cannot be denied due to insignificant defects. Where the Customer accepts a defective work despite being aware of the defect, he shall only be entitled to defect-related rights if he reserves his rights regarding the defect at the time of acceptance.

4 Liability for material defects

- 4.1** The work provided by KISTERS is deemed free of material defects if it has the agreed quality. The agreed quality can be derived only relevantly concrete, prioritised descriptions in the specifications document or the quote document.
- 4.2** Claims for defects shall lapse one year after acceptance of the results. The same applies for the acceptance of partial works or milestones.
- 4.3** Where KISTERS create a new work or rectify a defect within the scope of subsequent performance, the limitation period from the original acceptance shall continue to apply.
- 4.4** If and to the extent that the Customer complains about a defect, KISTERS shall be entitled to a reasonable period of time to remedy the defect (subsequent performance). It is the responsibility of KISTERS to rectify the defect or to produce a replacement work. The Customer shall provide all cooperation necessary for this purpose to a reasonable extent free of charge. KISTERS may refuse subsequent performance without prejudice to Art. 275 (2) and (3) of the German Civil Code if such performance is only possible at disproportionately high costs. Should the subsequent performance fail, KISTERS have the right to remedy the defect a second time before the Customer may assert further rights.
- 4.5** Should defects have arisen due to circumstances for which the Customer is responsible, KISTERS shall remedy them at the customer's request and at the Customer's expense. KISTERS are entitled to remedy defects in the sense of management without a mandate if, for example, the remedy is absolutely necessary for the project, or in order to avert considerable damage.
- 4.6** If the work has perished, deteriorated or become unactionable as a result of a defect based on information, documentation, or works provided by the Customer, or as a result of an instruction given by the Customer for its execution, and without the contribution of a circumstance for which KISTERS are responsible, then KISTERS may demand a part of the remuneration proportionate to the work performed to date and reimbursement of the expenses not included in the remuneration.

5 Cooperation performance

- 5.1** A successful implementation of the project will require the mandatory cooperation of the Customer. In addition to the agreed obligation to cooperate, the Customer shall perform all necessary and customary cooperation free of charge, and shall offer and provide these independently and in good time without being requested to do so by KISTERS.
- 5.2** The obligation to cooperate specifically includes the provision of documentation, information and employees of the Customer, workspace and access to relevant infrastructures of the Customer or of third parties working with the Customer.
- 5.3** Due dates for the performance of cooperative works are non-binding planned dates, unless they are expressly marked as binding dates. The Customer shall inform KISTERS in a timely manner, should the Customer find that he will be unable to perform his cooperation for a planned date.
- 5.4** If the Customer's cooperation performance is not provided on time or not at all, the Customer shall be in default of his obligations to cooperate. KISTERS may demand reasonable compensation for the Customer's failure to cooperate or to cooperate in a timely manner. The amount of compensation shall be determined based on the duration of the delay and the amount of the agreed remuneration. KISTERS cannot be held in default for delays in performance caused by delays in the Customer's cooperation performance.

5.5 Where the Customer fails to perform his cooperation or fails to do so on time, KISTERS shall be entitled to terminate the Contract extraordinarily; the Customer shall then be liable for the services provided up to that point. Prerequisite is that KISTERS have granted the Customer a reasonable period of grace for the performance of his duty to cooperate, where feasible.

6 Services

6.1 KISTERS shall advise and support the Customer in detail in all areas listed separately. Unless agreed otherwise between the contractual parties, the place of service performance shall be the workplace of the KISTERS employee. On Customer request, KISTERS may also perform the agreed services at the Customer's premises or remotely.

6.2 Should a KISTERS employee be prevented from performing services due to illness, holiday or other reasons for which the Customer is not responsible, KISTERS shall, at the Customer's request, deploy another suitable employee within a reasonable period of time. Moreover, KISTERS may replace an employee with another suitable employee at any time.

6.3 KISTERS and the Customer shall each designate to the other a knowledgeable employee who may provide information and either make or bring about decisions necessary for the performance of this Contract.

6.4 The Customer is neither entitled to instruct KISTERS employees, nor shall these employees be integrated into the Customer's operations. Specifically, the Customer is prohibited give instructions to KISTERS employees regarding the specific content, performance, time and place of their activity. KISTERS employees shall be free to perform their services how and at what working hours they wish. However, this shall not release KISTERS from its obligation to perform their services in accordance with the Contract. The Customer undertakes to do everything in his power to ensure that KISTERS employees are not integrated into his operations, and that the services provided by a KISTERS employee do not become subject to instructions or determined by others in personal dependence on the Customer.

6.5 A service provided by KISTERS is deemed provided in compliance with the Contract, once the customer signs the timesheet submitted by KISTERS, or if the customer does not notify and complain about an improperly provided service within 4 weeks after its provision.

6.6 If services are not performed, are not performed in compliance with the Contract or are performed incorrectly due to circumstances for which KISTERS are responsible, KISTERS shall provide these services within a reasonable time frame. KISTERS shall only be obliged to make up for these services if the Customer expressly requests KISTERS to do so in writing.

7 Intellectual property

7.1 Where copyright works (hereinafter referred to as "work results") are created for the Customer as a result of the services provided by KISTERS, the Customer shall be granted rights of use in accordance with the following provisions.

7.2 The rights of use shall pass to the Customer upon their creation and in their relevant state of processing. KISTERS shall safeguard the work results until they are handed over to the Customer.

7.3 Upon full payment of the remuneration agreed in each individual Contract, the Customer shall be entitled to the unrestricted, irrevocable and transferable right to use the work results within the scope and for the purposes of the relevant individual Contract. Deviations from this usage arrangement require a separate written agreement.

8 Cancellation

- 8.1** KISTERS shall be entitled to demand the agreed remuneration if the customer unilaterally terminates an order. If the customer can prove that KISTERS generates savings as a result of the termination, KISTERS must take these savings into account.
- 8.2** The termination of a service relationship is governed by Art. 621 of the German Civil Code. In such a service relationship, termination shall be permitted on any day for expiry of the following day if the remuneration is measured in days; if the remuneration is measured in weeks, a termination shall be permitted latest on the first working day of a week for expiry on the following Saturday. Where remuneration is measured in months, quarter-yearly or longer, or is not measured in specific time periods, then the Customer can terminate the service with a 2-week notice period. In the event of an important reason, e.g. refusal to perform or deterioration of the service, the Customer is entitled to terminate the contract without notice.
- 8.3** If the Customer suspend payments or services due to a lack of creditworthiness, a provisional insolvency administrator is appointed, or if insolvency proceedings are opened against the Customer's assets, then KISTERS shall be entitled to withdraw from the contract in whole or in part. In the event of withdrawal, KISTERS shall be entitled to claim reasonable compensation for deliveries and services provided to date.

9 Compensation

- 9.1** Unless otherwise individually agreed between KISTERS and the Customer, KISTERS shall charge remuneration for work time, travel and waiting time, as well as other flat rates at the relevantly valid list prices. Day rates are based on an 8-hour work day. VAT shall be additionally charged. Invoicing shall take place on a monthly basis after services have been rendered on the basis of the service slips countersigned by the customer.
- 9.2** Payments are due immediately after receipt of invoice. For longer-term services, KISTERS shall issue invoices monthly in arrears. KISTERS shall not be entitled to any remuneration for employee absences caused by illness, holiday or other circumstances for which the Customer is not responsible.
- 9.3** Special rates shall apply for services rendered outside of KISTERS' regular working hours.
- 9.4** Where billing for ancillary costs like travel costs and other expenses is agreed on a time and material basis, the Customer shall reimburse KISTERS for:
- Travel by car: The relevantly applicable KISTERS list price per kilometre;
 - Travel by rail: A 2nd class ticket;
 - Travel by plane: One economy class ticket
 - Accommodation: Overnight accommodation with breakfast.
- 9.5** The Customer has the option of cancelling dates without incurring an obligation to pay up to 14 days before the start dates agreed for service provision. Where the written cancellation occurs between the 14th and 7th day before the start of service provision, the Customer shall be obliged to pay a cancellation and handling fee of 20% of the amount for the agreed dates. Where the cancellation occurs later (less than 6 days before the start of service provision), the Customer shall be obliged to pay 80% of the amount for the agreed dates.

10 Liability

- 10.1** KISTERS shall be liable for personal injury for which they are 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.

11 Data security

11.1 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). In the case of order processing, the necessary data, including name, delivery address and billing address as well as further details of an order are required and their provision by the Customer is mandatory. KISTERS will use contact information like e-mail address or telephone number to confirm an order and schedule appointments.

11.2 Recipients or categories of recipients of personal data are KISTERS employees in the areas of system support, system administration, project management, consulting, sales and marketing, as well as any subcontractors and service providers used for the provision of services, and the tax consulting company contracted by KISTERS. These subcontractors and service providers process the data as contracted processors and exclusively on the instructions of KISTERS, and are obligated to comply with applicable data protection regulations. All contracted processors have been carefully selected and will only have access to personal data to the extent and for the time required to perform these services.

11.3 It may be necessary to transfer personal data to recipients in third countries as part of order processing. KISTERS use EU standard contract stipulations for this purpose, and the Customer can view the relevant document on request.

11.4 In compliance with Art. 13 GDPR, KISTERS are obligated to inform the Customer whenever his data is collected. The names and contact information of the contact persons responsible at KISTERS shall be made available to the Customer for that purpose. The protection officer in charge at KISTERS is Dr. Heinz-Josef Schlebusch, Pascalstraße 8+10, 52076 Aachen, Germany, Phone: +49 2408 9385 -0, E-mail: datenschutz@kisters.de.

11.5 Legal retention obligations under German law allow KISTERS to store personal data within the scope of GDPR. An exception to the basic obligation to delete applies if the processing of personal data is necessary for the fulfilment of an obligation under German law or EU law (Art. 17 (3) (b) GDPR). The data will be deleted on request in accordance with the retention obligations under German law. Documents required by tax law or commercial law must be stored for a minimum of 10 years. Other business notes must be kept for at least 5 years.

11.6 Upon request, KISTERS will be happy to provide information about whether and which of the Customer's data is retained. In accordance with Art. 15 - 21 GDPR, the Customer has the right to information, correction, deletion, restriction of processing, as well as the right to object to processing and data transfer. The Customer furthermore has the right to revoke consent at any time without affecting the lawfulness of the processing carried out on the basis of consent until revocation. Customers may complain to the competent supervisory authority in accordance with Art. 77 GDPR if they are of the opinion that the processing of their personal data is carried out unlawfully.

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.