

General Terms and Conditions

These General Terms and Conditions („GTC“) apply to all contracts between **JMK Solutions OG**, Josef Preisegger-Gasse 15, 3130 Herzogenburg, Austria (the „Contractor“), and entrepreneurs within the meaning of § 1 UGB (the „Client“). Contracts with consumers within the meaning of the Austrian Consumer Protection Act (KSchG) are excluded. Company register number: FN 682521h, register court: Regional Court of St. Pölten. This English text is a convenience translation; in case of discrepancies, the German version prevails.

§ 1 Scope and conclusion of contract

1.1 These GTC are made available to the Client at the latest with the quotation or order confirmation, stating the version date, and become part of the contract upon its conclusion. Previous versions are available at jmk-solutions.at/en/agb/archiv. Conflicting or deviating terms of the Client are not recognised unless the Contractor expressly agrees to them in writing.

1.2 Individual written agreements (in particular quotations and order confirmations) take precedence over these GTC in the event of conflict.

1.3 Quotations are non-binding unless an express period of validity is stated. A contract is concluded by the Contractor's written order confirmation or by commencement of performance. Acceptance by email is deemed equivalent to written form.

§ 2 Subject matter of services

2.1 Depending on the agreement, the Contractor provides IT services, in particular: custom software development (web applications, mobile applications, backend systems, integrations); IT consulting, conception and architecture; feasibility studies, analyses and technical studies; commissioning, integration and training; maintenance and further development of existing systems.

2.2 The basis for performance is the scope of services defined in the quotation or order confirmation. The Client provides all information, access, test data and cooperation required for performance in good time, completely and free of charge.

2.3 If, during execution, the agreed service turns out to be factually or legally impossible, the Contractor will notify this without delay. The Client then decides whether the scope of services is adjusted or the order is terminated. If the impossibility results from circumstances within the Client's sphere or from a circumstance for which neither party is responsible, the services rendered up to that point are remunerated; the Contractor sets off expenses saved and other earnings within the meaning of § 1168 ABGB. If the impossibility results from circumstances within the Contractor's sphere, there is no claim to remuneration for the work attributable to it.

2.4 Changes to the agreed scope („change requests“) are agreed in writing and remunerated separately at the agreed hourly rate or the rate valid at the time of the change.

2.5 The Contractor may engage qualified subcontractors. Responsibility for contractual performance remains with the Contractor.

2.6 An accessibility-compliant design pursuant to the Austrian Accessibility Act (BaFG) and related ordinances is not included in the quotation unless expressly and separately agreed on an individual basis. Assessing whether the Client falls within the scope of the BaFG and determining the measures required in the individual case are the sole responsibility of the Client. Corresponding requirements must be communicated to the Contractor in writing before the order is placed. The Contractor's statutory duties to warn, inform and exercise due care remain unaffected.

2.7 System passwords, access data, API keys and administration access provided to or set up by the Contractor for performance are released to the Client on request, provided that (a) there is no ongoing maintenance or service order under which the Contractor uses this access, and (b) all due fees of the Client have been paid in full.

2.7a The Contractor accepts no warranty and no liability for changes made after release of the access by the Client or by third parties engaged by the Client. Claims of the Client that have already arisen remain unaffected.

§ 3 Client's duties to cooperate

3.1 The Client is responsible for providing all information, documents, access, test systems, test data and contact persons in good time.

3.2 The Client alone is responsible for backing up its live data. If a system provided for testing is already used in live operation, responsibility for data backup lies with the Client. The Contractor's statutory duties to warn, inform and exercise due care remain unaffected; this applies in particular where the Contractor recognises or must recognise that a planned measure may lead to data loss without a prior backup. Where data backup, data migration or restoration has been expressly commissioned, responsibility for it lies with the Contractor.

3.3 The Client alone is responsible for the legal admissibility of content and data provided by the Client (in particular under copyright, trademark, competition and data protection law).

§ 4 Prices, payment terms and hour packages

4.1 All prices are in euros and are net prices plus statutory value added tax (currently 20 %).

4.2 Unless otherwise agreed, the Contractor's hourly rates valid at the time of performance apply. Travel time is charged at half the hourly rate. In addition to travel time, a mileage allowance at the applicable official Austrian rate is charged separately for journeys made by private motor vehicle. Further travel and accommodation expenses are charged separately according to the collective-agreement rates valid at the time of travel; if none exist, the actual costs incurred are passed on against evidence.

4.3 Invoices are payable within 14 days of receipt without deduction, unless otherwise agreed in the quotation.

4.4 For projects lasting more than four weeks or with a total value exceeding €5,000, the Contractor may issue partial invoices according to project progress.

4.5 In the event of default, statutory default interest for commercial transactions pursuant to § 456 UGB and a lump-sum collection cost pursuant to § 458 UGB are charged. In the event of default the Contractor may suspend ongoing work until the arrears are settled; all associated costs and any loss of profit are to be reimbursed by the Client.

4.6 The Client is not entitled to withhold payments or set them off against the fee claim on account of complaints, warranty claims or counterclaims that have neither been legally established nor been acknowledged by the Contractor.

4.7 For continuing obligations (maintenance, service), the agreed fees are adjusted each year on 1 January in line with the change in the consumer price index (CPI) of the previous year published by Statistics Austria. The basis is the index published for the month in which the contract was concluded. No downward adjustment below the originally agreed fee takes place. The Contractor notifies the Client of the adjusted amounts at least four weeks before they take effect.

4.8 Hour packages (block hours). The Client may purchase hour packages („blocks") in advance. These are paid before work begins and then worked off. The applicable hourly rates, discount tiers and package sizes result from the separate quotation or terms sheet and are not part of these GTC.

4.8a By way of derogation from § 4.2, the hourly rate agreed when the package was purchased applies to packages paid in advance for the entire availability period. For services exceeding the package and for follow-up packages, the hourly rate valid at the time of commissioning applies.

4.9 All services rendered for the Client are counted against a package, in particular on-site and processing time, preparation, coordination, calls, ticket handling, research, documentation and emails between appointments. Travel time is counted at half the hourly rate. Preparation of quotations, invoicing and the Contractor's internal administration are not counted.

4.9a Services are recorded in increments of fifteen (15) minutes. At least one increment is counted per distinct task; started increments are rounded up to the next full increment.

4.10 Usage and third-party costs (in particular usage and API costs) as well as mileage allowance and other travel expenses pursuant to § 4.2 are not included in the package. They are invoiced separately and transparently at cost against evidence plus value added tax.

4.11 A package is available for twelve (12) months from the date of purchase, unless a different period is stated in the quotation. After this period expires, hours not called off lapse without compensation. Cash payment of hours not called off is excluded in any case.

4.11a If the Client purchases a further package within the availability period, the availability of the remaining credit from the previous package is extended by twelve (12) months from the date of the follow-up purchase.

4.11b The Contractor notifies the Client in writing of the remaining credit and the impending end of the availability period at the latest thirty (30) days before it expires.

4.11c If the Contractor is unable to render a service requested in good time and with sufficient specificity within a reasonable period for reasons outside the Client's sphere – in particular due to its own capacity constraints – the availability period is suspended for the duration of that impediment. The Client is not responsible for the impediment and does not lose any credit as a result.

4.11d If the Contractor terminates the contract, discontinues the service offering or is permanently unable to render the service, unused credit is refunded pro rata at the hourly rate paid. § 4.11 (expiry) does not apply in these cases.

4.12 The Contractor notifies the Client in writing without delay if a package is expected to be exhausted within the current working period (sprint). Continuation of the work requires the purchase of a further package.

4.12a By way of derogation, the Contractor is entitled to exceed the package by up to ten (10) per cent insofar as this is strictly necessary to avert a concrete risk of data loss, a security incident or an operational outage and the Client's prior consent cannot objectively be obtained in time. The Contractor limits itself to the strictly necessary work and informs the Client without delay. These hours are invoiced separately at the regular hourly rate.

4.13 The Contractor keeps a record of hours for the services rendered, with date, duration and task note per entry. The record is transmitted to the Client monthly and on request and additionally states the remaining credit and the end of the availability period.

4.13a Objections to the record of hours must be raised in writing within fourteen (14) days of receipt, identifying the entries objected to. After this period has expired without objection, the record is deemed approved. This legal consequence is expressly pointed out with each transmission.

4.13b For packages paid in advance, no separate final invoice is issued after completion, unless this is required by law.

4.14 The purchase of an hour package does not entail any guaranteed response, processing or restoration times. Services are rendered according to availability and the agreed urgency. Guaranteed service times may be agreed separately as a service agreement.

§ 5 Delivery dates

5.1 Delivery and completion dates are non-binding unless expressly agreed as binding.

5.2 Delays caused by incomplete or incorrect information from the Client, late cooperation or subsequent change requests extend the delivery periods accordingly. Additional costs arising from this are borne by the Client.

5.3 Force majeure (natural events, labour disputes, official orders, failure of critical infrastructure, serious cyber attacks on the Contractor's IT infrastructure, in particular ransomware attacks that could not be prevented despite appropriate security measures) entitles the Contractor to a reasonable extension of delivery periods.

5.4 If the Client fails to meet its duties to cooperate under § 3 despite a written reminder and a reasonable grace period of at least seven (7) working days, the Contractor may terminate the contract for good cause and claim the work performed up to that point plus lost profit pursuant to § 1168 ABGB.

§ 6 Acceptance

6.1 Custom software and separable partial services require acceptance by the Client. Defects must be reported in writing and reproducibly within 14 days of delivery. For extensive or complex services, a reasonably longer inspection period is to be agreed in the quotation.

6.1a Acceptance and the deemed acceptance under § 6.2 cover only defects that are discernible upon a reasonable inspection. Claims in respect of hidden defects remain unaffected within the warranty period under § 8.2.

6.2 If no qualified written notice of defects is given within this period, or if the Client uses the service productively in live operation, the service is deemed accepted. Acceptance triggers the payment period.

6.3 The Client is not entitled to refuse acceptance on account of insignificant defects.

§ 7 Rights of use and copyright

7.1 Upon full payment of the agreed fee, the Client receives a right of use to the project-specific work results for its own internal business operations that is unlimited in time and territory, non-exclusive, non-transferable and not sub-licensable.

7.2 An exclusive grant of use requires an express written agreement in the quotation or a separate contract addendum and is priced separately. § 40b UrhG applies accordingly.

7.3 Regardless of the scope of the rights of use, the Contractor reserves the right to use generic components, libraries, architectural patterns, frameworks and development tools that are reusable independently of the specific project and contain no business-specific information of the Client for other projects.

7.4 Handover of the source code and technical documentation takes place only upon express written agreement and in any case only after full payment.

7.5 Where third-party software (standard libraries, open-source components, commercial licences) is integrated into the service, its use is governed by the licence terms of the respective rights holder. The Contractor informs the Client of material licence terms.

7.6 The Contractor may use AI-assisted development tools (e.g. code assistants, large-language-model-based tools) for performance. This does not constitute a defect, provided the agreed functionality, quality and security of the work results are ensured. The Contractor is responsible for reviewing and approving all results produced with the support of such tools.

7.6a Confidential information of the Client, personal data and source code that is not publicly available are entered into external AI systems only where this is permissible under data protection and confidentiality law. Where personal data is processed in doing so, the respective provider is engaged as a sub-processor in accordance with § 10.2. Providers that use submitted content to train their own models are not used for confidential content. The Client may exclude the use of external AI systems for its content in writing.

§ 8 Warranty

8.1 The Contractor warrants that custom software essentially fulfils the agreed scope of functions, provided it is operated in the agreed system environment.

8.2 The warranty period is six (6) months from acceptance. The duty to inspect and give notice pursuant to § 377 UGB applies accordingly. The presumption of defectiveness pursuant to § 924 ABGB is excluded. Warranty claims lapse in any case one (1) month after expiry of the agreed warranty period; the possibility of raising a defence against the fee claim within the meaning of § 933 para 3 ABGB is excluded.

8.3 Defects must be reported in writing stating reproducible steps. In the case of a justified notice of defects, the Contractor will remedy the defect within a reasonable period by improvement. Improvement takes precedence over price reduction or rescission.

8.4 No warranty exists for defects attributable to: improper operation or configuration by the Client or third parties; changes to the software by the Client or third parties; altered operating system, runtime or infrastructure components; operation in a non-agreed system environment; faulty data, content or specifications provided by the Client.

8.5 For changes to existing software, the warranty relates exclusively to the change, not to the original system.

8.6 A duty to provide updates within the meaning of § 7 VGG is excluded to the extent legally permissible. Updates are provided only on the basis of a separate agreement.

§ 9 Liability

9.1 The Contractor is liable for demonstrably culpable damage only in the case of gross fault (gross negligence, intent). For personal injury, the Contractor is liable without limitation according to statutory provisions.

9.2 Liability for slight negligence and for indirect damage (in particular lost profit, business interruption, data loss, third-party claims, replacement costs or consequential damage) is excluded. This does not apply to data loss insofar as data backup, data migration or restoration was expressly part of the order.

9.3 The Contractor's total liability arising from or in connection with the respective contract is, to the extent legally permissible, limited to the higher of the following amounts: (a) twice the net order value of the affected project, or, for continuing obligations, twice the fees actually paid in the twelve (12) months before the damage occurred, or (b) the cover actually available for the specific loss under a business or financial loss liability insurance policy maintained by the Contractor. If no such insurance exists at the time of the loss, or if it does not respond in the specific case, the limit under (a) applies.

9.3a The limitations in §§ 9.1 to 9.3 do not apply to: intent; personal injury; breach of the confidentiality obligations under § 11; damage arising from expressly commissioned data backup, data migration or restoration; and claims for data protection breaches and other claims to the extent that a limitation of liability is not legally permissible.

9.4 Claims for damages lapse according to statutory provisions, but at the latest one (1) year after knowledge of the damage and the party causing it.

9.5 Where the Client obtains third-party services (hosting, cloud services, third-party APIs, hardware) under its own contractual relationship with the respective provider, the Contractor is not liable for their availability and performance. This restriction does not apply to the Contractor's own selection, advisory, integration and configuration services.

9.5a Where the Contractor engages subcontractors or third-party services in its own name, it remains the contracting party and responsible for contractual performance in accordance with § 2.5.

9.6 Insofar as the Contractor is entitled to warranty or damages claims against subcontractors or other third parties in connection with the service in question, the Contractor additionally assigns these claims to the Client on request. The Client is under no obligation to pursue the third party first; claims against the Contractor remain unaffected.

§ 10 Data protection

10.1 The parties comply with the provisions of the GDPR and the Austrian Data Protection Act (DSG). The Contractor provides the Client with the privacy notice pursuant to Art. 13 and 14 GDPR; this is attached to this agreement or communicated to the Client in writing by other means.

10.2 If personal data of the Client or its customers is processed in the course of performance, the parties conclude a data processing agreement pursuant to Art. 28 GDPR before processing begins. The Contractor may engage sub-processors (in particular hosting, infrastructure and development service providers); the sub-processors engaged are listed in the data processing agreement or submitted to the Client separately for approval. The Contractor contractually obliges sub-processors to a level of data protection in line with the GDPR.

10.3 The Contractor processes personal data exclusively for the intended purpose and deletes it once the purpose ceases to apply or on the Client's instruction, unless statutory retention obligations apply.

§ 11 Confidentiality and reference

11.1 Both parties treat all business and trade secrets of the other party that become known in connection with the contract as confidential and do not pass them on to third parties. The confidentiality obligation continues indefinitely beyond the end of the contract.

11.2 Excepted is information that (a) is or becomes generally known without breach of a confidentiality obligation, (b) was already known to the receiving party before conclusion of the contract without a confidentiality obligation, (c) was communicated by third parties without a confidentiality obligation, or (d) must be disclosed due to an official or court order.

11.3 Subcontractors engaged by the Contractor are not deemed third parties within the confidentiality obligation, provided they are subject to an equivalent confidentiality obligation.

11.4 After completion of the project, the Contractor may name the Client as a reference using its company name and a general, non-confidential project description. The Client may object to this in writing at any time; the Contractor then removes the reference within a reasonable period. This right to object is expressly pointed out in the quotation.

11.4a Use of the Client's word and figurative marks (in particular its logo) and publication of confidential technical or business details require the Client's prior written consent.

§ 12 Termination, withdrawal, cancellation

12.1 Project contracts end upon full performance and acceptance.

12.2 Continuing obligations (e.g. maintenance or service contracts) may be terminated by either party by ordinary written notice of three (3) months to the end of the month, unless otherwise agreed.

12.3 The right to extraordinary termination for good cause remains unaffected. Good cause exists in particular in the case of qualified breach of contract or default of more than 30 days despite a written reminder.

12.3a The opening of insolvency proceedings over the assets of a contracting party, or the filing of an application to that effect, does not in itself constitute good cause for termination. The mandatory provisions of §§ 21 to 25b of the Austrian Insolvency Act (IO), in particular § 25a and § 25b para 2 IO, remain unaffected.

12.4 Cancellations by the Client require the Contractor's written consent. In the case of a mutually agreed cancellation, services already rendered and costs incurred are remunerated in full; in addition, a lump-sum cancellation fee of 30 % of the not-yet-invoiced order value is payable. Hour packages already purchased remain available until the end of their availability period in accordance with § 4.11 and are not refunded in cash.

§ 13 Loyalty

13.1 The contracting parties undertake mutual loyalty. During the term of the contract and for twelve (12) months after its end, neither party will specifically and actively poach employees or subcontractors of the other party who were directly involved in performance.

13.2 The following are not covered in particular: general job advertisements and recruitment activities not directed at individual persons; unsolicited applications by the person concerned without prior targeted approach; and any employment or engagement resulting from such events. No prohibition on employing a person is agreed.

13.3 In the event of a breach of § 13.1, a contractual penalty amounting to three (3) gross monthly salaries of the person concerned is payable. The court's right of mitigation pursuant to § 1336 para 2 ABGB remains unaffected. Both parties remain free to prove higher or lower damage.

§ 14 Final provisions

14.1 Austrian law applies, excluding the UN Convention on Contracts for the International Sale of Goods and the referral norms of international private law.

14.2 The court with subject-matter jurisdiction at the Contractor's registered office is agreed as the exclusive place of jurisdiction.

14.3 Amendments and additions to these GTC or individual contracts require written form. This also applies to any amendment of this written-form clause. Written form is preserved by email.

14.4 Should individual provisions of these GTC be or become wholly or partly invalid, the validity of the remaining provisions remains unaffected. The invalid provision is replaced by the statutory provisions. To the extent legally permissible, the contract is to be interpreted supplementarily according to its economic purpose.

14.5 The parties recommend initiating mediation with registered mediators pursuant to the Austrian Civil Law Mediation Act (ZivMediatG) before taking legal action in the event of disputes.

14.6 These GTC are provided in a German and an English version. In case of discrepancies, the German version alone is authoritative.

If you have any questions about these GTC, please contact office@jmk-solutions.at.

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