

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, conclusion of contract and order of precedence

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 In the event of conflict, the components of the contract apply in the following order of precedence: (a) individual written agreements, in particular the quotation and order confirmation; (b) the scope of services, terms sheet and service level agreement (SLA); (c) the data processing agreement pursuant to Art. 28 GDPR – which takes precedence over (a) and (b) as regards the processing of personal data; (d) these GTC.

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. Ongoing operation, hosting and the provision of software for use over a network (software as a service) are provided only on the basis of a separate written agreement; supplementary terms apply to them.

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.

2.4 If the impossibility results from circumstances within the Client's sphere, 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 a circumstance for which neither party is responsible, the partial services rendered up to that point are remunerated to the extent that they are independently usable or exploitable by the Client; in all other respects the statutory provisions apply. If the impossibility results from circumstances within the Contractor's sphere, there is no claim to remuneration for the work attributable to it.

2.5 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.

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

2.7 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.

2.8 **Access data.** System passwords, access data, API keys and administration access to the Client's systems, accounts and infrastructure are released to the Client at any time and without delay upon request. This applies irrespective of ongoing contracts and irrespective of outstanding fees. For the term of a maintenance, service or operations order, the Contractor may maintain its own personal administration access; this is deactivated without delay at the end of the contract and is not transferred. Where required for continued operation, the Contractor beforehand sets up a separate administration access for the Client or transfers the necessary permissions to an access designated by the Client.

2.9 The Contractor has a right of retention exclusively in respect of its own work results that have not yet been paid for in full and not yet handed over, in accordance with § 7.5. There is no right of retention in respect of the Client's existing systems, data, accounts and access.

2.10 For changes made after release of the access by the Client or by third parties engaged by the Client, the Contractor's warranty and liability lapse to the extent that the defect or damage is causally attributable to those changes. 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 The hourly rate agreed when the order was placed applies to that order. If no hourly rate has been agreed, the Contractor's hourly rate valid at the time the order is placed applies. For contracts of indefinite duration and open framework agreements, the Contractor may adjust the hourly rates at the earliest twelve (12) months after the start of the contract and thereafter at most once a year; the adjustment is announced in writing at least six (6) weeks in advance. If the hourly rate increases by more than ten (10) per cent, the Client may terminate the contract extraordinarily within four (4) weeks of receipt of the announcement with effect from the date the increase takes effect.

4.3 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.

4.4 Invoices are transmitted exclusively in electronic form by email to the billing address provided by the Client. They are payable within 14 days of the invoice date without deduction, unless otherwise agreed in the quotation. If an invoice is demonstrably transmitted more than three (3) working days after the invoice date, the payment period begins upon its receipt. The Client notifies any change of billing address without delay. For fixed-price services subject to acceptance, the final invoice is issued upon acceptance pursuant to § 6.

4.5 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.

4.6 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. The Contractor may suspend ongoing work until the arrears are settled, following prior written notice and a reasonable grace period; the resulting additional costs are to be reimbursed by the Client.

4.7 The Client may withhold a reasonable portion of the fee on account of an alleged defect, in proportion to the scope and significance of that defect. Any withholding beyond this is excluded. Set-off against the fee claim is permitted only with counterclaims that have been legally established, acknowledged by the Contractor or are legally connected with the fee claim.

4.8 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.

4.9 **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. For packages paid in advance, the hourly rate agreed at purchase applies for the entire availability period; § 4.2 sentence 3 does not apply to them. For services exceeding the package and for follow-up packages, the hourly rate valid at the time of commissioning applies.

4.10 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.

4.11 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.

4.12 Usage and third-party costs (in particular usage and API costs) as well as mileage allowance and other travel expenses pursuant to § 4.3 are not included in the package. They are invoiced separately and transparently at cost against evidence plus value added tax.

4.13 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; § 4.16 and mandatory statutory claims remain unaffected.

4.14 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.

4.15 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. 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 does not lose any credit as a result.

4.16 Refund. 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. § 4.13 (expiry) does not apply in these cases. If the Contractor terminates the contract for good cause for which the Client is responsible, the Contractor may set off outstanding fee and damages claims against the refund amount.

4.17 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. 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.

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

4.19 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.

6.2 Acceptance and the deemed acceptance under § 6.3 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.

6.3 If no qualified written notice of defects is given within the inspection period, the service is deemed accepted. If the Client uses the service productively in live operation, it is deemed accepted in respect of the part actually used that is capable of acceptance. This does not apply where the use is exclusively for testing or trial purposes, or is necessary to avert material operational disadvantages, and the Client notifies the Contractor of this in writing without delay.

6.4 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 non-exclusive right of use to the project-specific work results, unlimited in time and territory, to the extent required to achieve the contractually agreed purpose. Where the quotation describes an intended purpose – such as operating a customer portal, a web shop, a platform or an application for end customers, partners or members – the right of use also covers making the results available to the group of users named there. If no purpose is described, use within the Client's own business operations is deemed agreed.

7.2 The Client may have the work results operated, maintained and hosted for its purposes by third parties engaged by it (in particular hosting providers and IT service providers). In the case of universal succession, reorganisation, merger or transfer of business, the right of use passes to the legal successor and may be extended to undertakings affiliated with the Client within the meaning of § 189a no 8 UGB. The Client notifies the Contractor accordingly. Any transfer or sub-licensing to third parties beyond this requires the Contractor's written consent.

7.3 An exclusive grant of use, as well as a right to modify and further develop the work results through third parties, requires an express written agreement in the quotation or a separate contract addendum and is priced separately. Mandatory statutory rights of use, in particular under §§ 40d and 40e UrhG, remain unaffected.

7.4 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.

7.5 Documentation and source code. The user and operating documentation required for the agreed use and operation forms part of the service and is handed over upon acceptance. Handover of the source code and of developer and architecture documentation takes place only upon express written agreement and in any case only after full payment.

7.6 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. Components under copyleft licences whose terms may trigger disclosure or distribution of the project-specific source code are used only with the Client's prior written consent.

7.7 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.

7.8 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 § 10.3. 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 and rescission. The Client's statutory rights to price reduction or rescission remain unaffected where improvement is impossible, is refused by the Contractor, does not take place within a reasonable period, involves considerable inconvenience for the Client or is unreasonable for the Client for weighty reasons attributable to the Contractor.

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. This applies in each case only to the extent that the defect is based on the circumstance in question.

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

8.6 The statutory duty to provide updates under § 7 VGG is excluded, to the extent legally permissible, for contracts between entrepreneurs (§ 1 para 3 VGG). Ongoing maintenance, security updates, adaptations to new operating system, browser or runtime versions and functional further development are therefore owed only to the extent expressly agreed – for example under a maintenance contract. Warranty claims in respect of defects already present at handover remain unaffected. Where ongoing operation, hosting or the provision of software for use over a network has been agreed separately, the service obligations assumed there remain unaffected by this exclusion.

§ 9 Liability

9.1 **Intent and personal injury.** The Contractor is liable without limitation under the statutory provisions for damage caused intentionally and for personal injury. The limitations in §§ 9.2 to 9.7 do not apply to these.

9.2 **Gross negligence.** For damage caused by gross negligence, the Contractor is liable subject to the caps in § 9.5.

9.3 **Slight negligence.** Liability for slight negligence is excluded. This does not apply to the breach of material contractual obligations whose fulfilment is essential to the proper performance of the contract and on whose observance the Client may rely; in that case liability is limited to the damage typically foreseeable at the conclusion of the contract and, in amount, to the caps in § 9.5.

9.4 **Excluded types of damage.** Liability for indirect and consequential damage, in particular lost profit, business interruption, replacement costs, third-party claims and data loss, is excluded. This exclusion does not apply to intent, to personal injury or in the cases covered by § 9.6.

9.5 **General cap.** Unless § 9.1 or § 9.6 applies, the Contractor's liability for all cases of damage arising from or in connection with a contract is limited in aggregate to twice the net order value, or, for continuing obligations, twice the fees actually paid in the twelve (12) months before the damage occurred, but in any case to at least €10,000 and at most €100,000.

9.6 **Special areas.** For damage arising from a breach of the confidentiality obligations under § 11, from breaches of data protection obligations and from expressly commissioned data backup, data migration or restoration, the Contractor is also liable for slight negligence; the exclusion in § 9.4 does not apply in these cases. Liability in these cases is limited in aggregate, for all cases of damage arising from or in connection with a contract, to five times the net order value, but in any case to at least €50,000 and at most €250,000.

9.7 **Mandatory claims.** Claims whose limitation is not legally permissible – in particular under the Austrian Product Liability Act and under Art. 82 GDPR vis-à-vis data subjects – remain unaffected by §§ 9.2 to 9.6.

9.8 **Limitation period.** Claims for damages against the Contractor lapse according to statutory provisions, but at the latest one (1) year after knowledge of the damage and the party causing it. This shortening does not apply to claims under § 9.1 nor to claims whose limitation period may not be shortened under mandatory law.

9.9 Third-party services. 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.

9.10 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 § 2.6.

9.11 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).

10.2 Insofar as the Contractor processes personal data for the initiation, performance and invoicing of the contractual relationship – in particular contact, contract and invoicing data of the Client's contact persons – it is an independent controller within the meaning of Art. 4 no 7 GDPR. It provides the Client with the information pursuant to Art. 13 and 14 GDPR and deletes this data once the purpose ceases to apply, unless statutory retention obligations apply.

10.3 Insofar as the Contractor processes personal data on behalf of and on the instructions of the Client – in particular when accessing the Client's systems and data holdings and when operating systems on the Client's behalf – it acts as a processor. For this purpose, the parties conclude a data processing agreement pursuant to Art. 28 GDPR before processing begins; that agreement conclusively governs the subject matter, duration, nature and purpose of the processing, instructions, technical and organisational measures, deletion and return, and takes precedence over these GTC in that respect.

10.4 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. The Contractor notifies the Client of intended additions or replacements at least four (4) weeks in advance; the Client may object on objective grounds. The Contractor contractually obliges sub-processors to a level of data protection in line with the GDPR.

§ 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 Naming the Client as a reference – with its company name, a project description or its marks and logo – and publishing technical or business details require the Client's prior written consent. Consent may be given in the quotation, in the order confirmation or separately and may be revoked at any time with effect for the future; the Contractor then removes the reference within a reasonable period.

§ 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.

12.4 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.

12.5 **Cancellation.** Cancellations by the Client require the Contractor's written consent. In the case of a mutually agreed cancellation, services already rendered and costs demonstrably incurred are remunerated. In addition, for fixed-price orders a lump-sum cancellation fee of 30 % of the net fixed-price portion attributable to the services not yet rendered is payable; services already rendered are disregarded in calculating this lump sum. The Client is free to prove that the Contractor suffered no damage or substantially less damage.

12.6 No cancellation lump sum arises for time-and-materials orders and for hour packages. Hour packages already purchased remain available until the end of their availability period in accordance with § 4.13; § 4.16 remains unaffected.

§ 13 Final provisions

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

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

13.3 Amendments and additions to these GTC or individual contracts require text form; this also applies to any amendment of this clause. Email in particular satisfies text form. Where these GTC require something „in writing", text form is sufficient unless a handwritten signature has expressly been agreed.

13.4 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.

13.5 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.

13.6 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.

Version of 1 August 2026