

General terms and conditions

Below you will find the general terms and conditions of Arabela Khan IT-Solutions.

Last update 10. September 2024

GENERAL

These General Terms and Conditions (hereinafter referred to as "Terms") apply to all contractual relationships of Arabela Khan IT-Solutions (hereinafter referred to as "AK") in which AK performs services for other companies, legal entities under public law or special funds under public law (hereinafter referred to as "Customer").

Conflicting or supplementary terms and conditions - in particular general terms and conditions of the Customer - shall not become part of the contract, even if AK executes a contract (Agreement) without expressly objecting to such terms and conditions. If, in particular due to technical circumstances at the Customer's, the Customer's terms and conditions of purchase or similar clauses are attached to the respective acceptance to the offer of AK (e.g. in orders), these terms and conditions shall not be valid, even if they are not expressly excluded in the acceptance to the offer itself.

1. DEFINITIONS

1.1 'Product(s) or Work Results' means all the results of the Services provided by AK in the course of the respective Contract.

1.2 'Customer Data' means any content, materials, data and information that Customer enters into in a by AK provided system Customer-specific data that is derived from Customer's use of the by AK provided system. In particular, this does not include products created and/or services provided by AK and/or its agents under a Contract as defined in these Terms.

1.3 'Consultants' means AK employees and subcontractors of AK, including Freelancers, used by AK in its sole discretion to provide and perform the Contractual Deliverables.

1.4 'Intellectual Property Rights' means any and every patent or other title to or right in an invention, copyright, right of authorship, mark, design, or other industrial right, and all rights to exploit or use it.

1.5 'Contract' means the agreements for the provision of the Services.

1.6 "Services" means all those services that AK in the meaning of section "General", Paragraph 1 makes part of this Terms that are described in a Contract.

1.7 'AK Software' means (i) all software products and related documentation developed for or by AK; (ii) all new versions (including, without limitation, releases, updates, patches, corrections) of such AK Software provided to Customer in performance of the Software Agreement; and (iii) all complete or partial copies thereof.

1.8 'Software Agreement' means the agreements for the transfer and maintenance of customized between AK and Customer under which Customer is granted the right to use AK Software.

1.9 'Confidential Information' means any information which AK or Customer protects against unrestricted disclosure to third parties, or that is considered confidential based on the circumstances of disclosure or its content. In any event, the following information shall be considered Confidential Information of AK: all AK software, programs, tools, data and other material, that AK provides to Customer before or on the basis of the Contract.

2. PROVISION OF SERVICES

2.1 AK shall provide the Customer with an individual offer. Further details result from the contract.

2.2 The contract is concluded by acceptance of the offer by the Customer in writing or verbal confirmation.

2.2 AK decides which consultants it will use for the performance and execution of the contract and reserves the right to replace them at any time. AK is liable for the fault of vicarious agents as for its own fault. The services to be delivered may, at AK's option, be performed at AK's business premises, at the Customer's place of business or remotely. Even to the extent that the services to be rendered are created at the Customer's premises, the Customer is not authorized to issue instructions to the consultants employed by AK. The consultants will not be integrated into the Customer's operations. The Customer may only give instructions to the AK project coordinator, not directly to the individual consultants.

2.3 The Customer bears the risk as to whether the services to be provided under the contract meet its wishes and needs. In case of doubt, the Customer shall seek advice in due time from AK's employees or from competent third parties. The Customer will independently check whether the underlying project in the contract gives rise to any additional need for adaptation.

2.4 Items (e.g. proposals, test programs, concepts) provided by AK to the Customer prior to the contract are the intellectual property of AK (see Section 7). They must not be reproduced and made available to third parties. If no contract is concluded, they must be returned or deleted and may not be used. In all other respects, the provisions of these Terms, in particular the limitation of liability clause of Section 10, shall also apply to the pre-contractual obligation relationship. If AK provides services beyond the scope of the contract with the Customer's consent, the provisions and conditions of the contract will apply accordingly to the services provided.

2.5 Acceptance

2.5.1 AK can request a written declaration of acceptance from the Customer for all Work Results subject to acceptance. The Customer shall immediately accept products in accordance with this Section 2.5. For this purpose, an acceptance statement to be signed by the Customer may be prepared.

2.5.2 If a contract covers several individual Work Results which can be used by the Customer independently of each other, these individual Work Results shall be accepted separately.

2.5.3 If partial Work Results are defined in a contract, AK may present partial Work Results for acceptance. During subsequent acceptances, only the functioning of the new partial Work Result and the correct interaction of the previously accepted partial Work Result with the new partial Work Result shall be checked.

2.5.4 If the contract contains the creation of a concept, in particular for the specification, modification or extension of AK Software, AK can demand a separate acceptance for the concept.

2.5.5 Customer must inspect the Work Result within 15 working days and either notify AK through the contact in writing that they are accepted or give a precise description of the defects found. If Customer does not give notice of acceptance or of defects within this period, or uses Work Results without giving defect notice, the Work Result will be deemed accepted. Immaterial defects are not grounds for withholding acceptance. In every case, Customer is deemed to have accepted any Work Results it uses, in whole or any in part, in live operation.

2.5.6 AK must remedy the defects notified in accordance with Section 2.5.5 within a period that is reasonable to the severity of the defect. Customer must inspect the Work Result within five working days after notice that the defect has been eliminated. All other provisions in section 2.5.5 also apply with the necessary modifications.

3. CUSTOMER'S DUTY TO COLLABORATE

3.1 The Customer must acquire the required operating environment (hereinafter: "IT Systems") for the performance of the services to be rendered under the contract at its own expense, if necessary, in accordance with the specifications of AK. It is the Customer's responsibility to ensure the proper operation of the necessary IT systems, if necessary, by entering into maintenance contracts with third parties. In doing so, Customer must follow AK's instructions.

3.2 The Customer must cooperate in the performance of the order to the extent necessary and free of charge, e.g. by providing employees, IT systems, data and telecommunications equipment in good time. Customer shall grant AK access to the software and IT systems directly and by means of remote data transmission. He shall answer questions and check results. To the extent that the Customer provides materials for the performance of services by AK, the Customer shall ensure that these are free from third party rights that could conflict with the performance of services by AK.

3.3 Customer must designate in writing a contact person for AK and an address and e-mail address at which the contact person can be reached. The contact person must be in a position to make necessary decisions for Customer or ensure that they are made without delay.

3.4 The Client must thoroughly test work results for a defect-free condition and for usability in the specific situation before commencing their operational use. This shall also apply to services which he receives within the scope of subsequent performance.

3.5 The Customer must notify AK without undue delay if the AK Software is defective (e.g. by regularly checking the results). In doing so, the Customer must immediately explain to AK in writing the circumstances of the occurrence of the faults and the effects thereof.

3.6 Customer undertakes to provide all further collaborative goods, works, and service needed for the performance of the Contract. If necessary, the Contract will specify any other provisions.

3.7 The performance of the cooperation obligations by the Customer is the main contractual obligation and a prerequisite for the proper performance of AK.

3.8 Customer bears all consequences and costs resulting from breach of its duties and indemnifies AK from all claims by third parties arising from such infringement.

3.9 The Customer must take reasonable precautions for data backup so that the data from the data files that are kept ready in machine-readable form can be reproduced with reasonable effort.

3.10 The Customer shall take reasonable precautions to maintain its business operations in the event that the services to be provided by AK are not available at short notice.

4. CHANGE REQUEST PROCEDURE

4.1 The contact persons of both contracting parties (Section 3.3) may at any time communicate changes to the contractually determined scope of the services to be provided by AK in writing.

4.2 In the event of a proposed change by the Customer, AK shall inform the Customer within ten working days whether the change is possible and what impact it will have on the contract, in particular taking into account the timing and remuneration. The Customer shall then notify AK in writing within five working days whether it wishes to maintain its proposed amendment on these terms or whether it wishes to continue the contract on the old terms. If the review of a change proposal represents a not inconsiderable effort, AK may invoice separately for the effort caused by the review. The customer must bear the expenses incurred as a result of the change request. This includes in particular the examination of the change request, the preparation of a change proposal and any downtimes.

4.3 In the event of a change proposal by AK, the Customer shall notify AK in writing within ten working days whether it agrees to the change.

4.4 As long as there is no agreement on the change, the work will continue according to the existing contract. The Customer may instead demand that the work be interrupted in whole or in part or finally terminated in accordance with the requirements of Section 12.1. In the event of interruption, compensation in the amount of the daily rate set in the Contract shall be due from the 1st working day per day per AK employee in the Project whose work is suspended. In the event of final termination, the legal consequences shall be determined in accordance with the provision of § 648 GERMAN CIVIL CODE (BGB).

5. FEES, PAYMENT, TAXES, RETENTION OF RIGHTS

5.1 Remuneration

5.1.1 The remuneration is based on the respective contract.

5.1.2 AK is entitled to invoice partial performances of the Work Results.

5.1.3 Invoicing on a time and material basis is based on a list of activities included in the invoice. If the Customer does not object in writing to the specifications made in the list within two weeks, these shall be deemed to be accepted.

5.1.4 AK may demand partial payments or full advance payments.

5.1.5 The Customer may only set off undisputed or legally established claims and may only base a right of retention on undisputed or legally established claims. He may not assign his claims to third parties in accordance with § 399 GERMAN CIVIL CODE BGB.

5.1.6 AK retains title and rights (Section 7) to the Work Results until its claims under the contract have been settled in full. The Customer must immediately notify AK in writing in the event of access by third parties to the reserved work result and inform the third party of AK's rights.

5.2 Invoicing and Due Date.

5.2.1 Invoicing shall be on a monthly basis. Payments are due 30 days after invoicing. No discount will be granted.

5.2.2 After the expiry of the payment deadline, the Customer falls into delay without further notice. A payment reminder is not necessary. Upon the due date, AK may charge default interest in the amount of the applicable statutory default interest rate.

5.3 Taxes. All prices are subject to the applicable statutory sales tax.

6. TERM / TERMINATION

6.1 Term of Contract. Unless otherwise specified in the applicable Contract, each Contract shall become effective on the date of its last signature or confirmation and shall continue for the term specified in the Contract.

6.2 Ordinary termination. Unless otherwise provided therein, a Contract may not be terminated for cause. Termination for good cause shall remain unaffected.

6.3 Extraordinary termination. Good cause shall be deemed to exist in particular if the Customer has not performed a due material obligation in accordance with the contract within 30 days, in particular, for example, if the Customer is more than 30 days in arrears with a payment under the respective contract.

6.4 Effect of termination. Upon termination of the respective Contract, all Confidential Information of the Parties shall be promptly returned to the respective disclosing Party or destroyed at the request of the respective disclosing Party and evidence of such destruction shall be provided accordingly.

7. RIGHTS

AK shall be exclusively entitled to all rights to the Work Results provided - in particular the copyright, the rights to inventions as well as technical property rights - in relation to the Customer, even to the extent that the Work Results provided have been created as a result of the Customer's specifications or collaboration. Unless otherwise agreed in writing, the Customer has a simple right of use to the rendered services until full payment has been received, including acceptance of the due partial amounts, for the purpose of processing its internal business transactions and those of affiliated companies, to the same extent and for the same duration as agreed under the software contract. Use exclusively for test purposes shall be permitted to the extent necessary prior to acceptance. The Customer is entitled to make necessary backup copies of the work results. Each backup copy must be marked as such and provided with the copyright notice of the original data carrier.

8. CONFIDENTIALITY, DATA PROTECTION

8.1 Use of Confidential Information. The contracting parties undertake to treat all confidential information of the other contracting party obtained before and in the course of the performance of the contract as confidential for an unlimited period of time and to use it only in the course of the performance and execution of the contract. The duplication of confidential information in any form is prohibited, unless it is done in the context of the execution of the contract and in fulfillment of the purpose of the respective contract. Duplications of confidential information of the other party shall contain all notices and annotations concerning its confidential or secret character contained in the original. With respect to each other's Confidential Information, (a) each party shall take all Reasonable Steps (as defined below) to keep all Confidential Information confidential, and (b) each party shall grant access to the other party's Confidential Information only to those persons who require such access for the performance and execution of the Contract. For purposes of this Contract, "Reasonable Steps" means those steps taken by the recipient to protect its own comparable Confidential Information that are at least equivalent to reasonable care, including, on the part of Customer, the careful custody and protection of the Confidential Information against misuse.

8.2 Exceptions. The foregoing Section 8.1. shall not apply to Confidential Information that (a) has been independently developed by the recipient without recourse to the Confidential Information of

the disclosing party or has been lawfully acquired, without any duty of confidentiality, from a third party authorized to provide such Confidential Information, (b) has become generally available to the public without breach of contract by Recipient, (c) was known to the recipient without restriction at the time of disclosure; or (d) is exempt from the foregoing upon written consent of the disclosing party; or (e) was lawfully obtained by the recipient from a third party having the right to disclose and providing the information without restriction as to use or disclosure.

8.3 Confidential Contract Content; Publicity. The Customer shall treat the provisions of the respective contract, in particular the prices contained therein, as confidential. Neither party shall use the name of the other party in any publicity, advertising or similar activities without the other party's prior written consent. Notwithstanding the foregoing, however, AK is authorized to use the name of the Customer in reference customer lists, as well as to prepare analyses (e.g. for demand forecasting) on the basis of the contractual contents and - subject to mutual agreement in each case - to use them in other marketing activities of AK. This includes the transfer to and use for demand analysis by companies affiliated with AK. As far as this includes the transfer and use of contact data of contact persons of the Customer, the Customer shall obtain any necessary consents.

8.4 Data Protection. With regard to possible commissioned data processing (in particular in the context of troubleshooting or the elimination of defects within the scope of the contract), AK collects, processes and uses personal data only to the extent that such data is required for the establishment, content-related structuring, processing, performance and amendment of the contractual relationship established with the Customer. Data will only be passed on to third parties if this is necessary to fulfill your requirements and wishes, in particular for the purpose of initiating and processing the contract. The Customer shall ensure that AK is informed of all relevant facts beyond the legal regulations, the knowledge of which is necessary for it for reasons of data protection and confidentiality. The Customer is responsible for compliance with laws and regulations on data protection and IT security. If the performance of a maintenance service or a service under warranty is not possible without access to personal data by AK, the respective third party provider, the Customer is informed that, in accordance with the legal requirements, it must inform the data subjects that it will disclose their data to AK or allow them to access their data.

9. DEFECTS OF QUALITY AND TITLE, OTHER DEFECTS OF PERFORMANCE

9.1 For the services subject to statutory liability for material defects and defects of title, AK warrants in accordance with Section 9.1 to Section 9.9 that the service has the expressly agreed characteristics and that the transfer of the agreed powers to the Customer (Section 7) is not opposed by any third party rights. AK does not owe any further properties. Public statements made by AK or its partners, for example in advertising, or general product descriptions are only deemed to be agreed between AK and the Customer if they are expressly confirmed in writing by AK in the Contract with the Customer.

9.2 The Customer shall promptly notify AK in writing of any defects that occur, including a detailed description of the problem and any information useful for troubleshooting. For this purpose, the Customer shall inspect the Work Results immediately after delivery by AK, insofar as this is feasible in the ordinary course of business, and, if a defect becomes apparent, shall notify AK thereof without undue delay. If the Customer fails to give notice, the work result is considered approved, unless it is a defect that was not recognizable during the inspection. If such a defect becomes apparent later, the notification must be made immediately after discovery, otherwise the Work Result is considered approved also in view of this defect. The timely dispatch of the notification is sufficient to preserve the rights of the Customer. If AK has fraudulently concealed the defect, AK cannot invoke the

provisions of the preceding sentences 2 to 5. Only the contact person (Section 3.3) is authorized to give notice of defects in the above sense.

9.3 In the event of proven material defects, AK shall provide warranty by subsequent performance in such a way that AK, at its option, provides the Customer with a new, defect-free state of the Work Results or eliminates the defect. The remedy of the defect may also consist in AK showing the Customer reasonable possibilities to avoid the effects of the defect. In the event of proven defects in title, AK shall provide warranty through subsequent performance by providing the Customer with a legally flawless opportunity to use the Work Results or, at its option, replaced or modified Work Results of equal value. The Customer must accept a new version of the Work Results if the contractual scope of functions is maintained and the acceptance is not unreasonable. The urgency of the fault rectification shall be determined by the degree to which the operation is hindered. The rules of these Terms and Conditions, in particular Section 3, shall apply accordingly.

9.4 If subsequent performance finally fails after expiry of a reasonable period of grace to be set by the Customer, the Customer may withdraw from the contract or terminate a continuing obligation or reduce the remuneration. The requirements of Section 12.1 must be met when setting the grace period. Compensation for damages or reimbursement of futile expenses due to a defect shall be paid by AK within the limits set forth in Section 10. Compensation for the costs of remedying a defect by the Customer or a third party (substitute performance) is excluded. Other rights due to material defects or defects of title are excluded.

9.5 The limitation period for the claims pursuant to Sections 9.1 to 9.4 shall be one year and shall commence upon acceptance of the respective work result. This shall also apply to claims arising from rescission and reduction pursuant to Section 9.4 Sentence 1.

9.6 For defects in rectification services, bypasses or new deliveries by way of supplementary performance, the limitation period shall also end at the point in time specified in Section 9.5. However, if AK, in agreement with the Customer, examines the existence of a defect or provides subsequent performance, the limitation period shall be suspended until AK notifies the Customer of the result of its examination or declares subsequent performance terminated or refuses subsequent performance. The limitation period shall commence at the earliest three months after the end of the suspension.

9.7 If AK provides services in troubleshooting or fault elimination without being obligated to do so, AK may demand compensation in accordance with Section 5.1. This applies in particular if a reported material defect cannot be proven or cannot be attributed to AK, or if the AK Software is not used in accordance with the Documentation. In particular, AK shall also be compensated for any additional expenses incurred in the elimination of defects due to the fact that the Customer has not properly fulfilled its obligations to cooperate, has improperly operated the AK Software or Work Results or has not made use of services recommended by AK.

9.8 The Customer shall indemnify AK against all liabilities asserted by third parties against AK due to infringing acts of the User.

9.9 If AK fails to perform or improperly performs services outside the scope of liability for material defects and defects of title or if AK commits any other breach of duty, the Customer shall always notify AK thereof in writing and grant AK a grace period within which AK shall be given the opportunity to properly perform the services to be performed or to otherwise remedy the situation. Section 12.1 shall apply. The limits set forth in Section 10 shall apply to damages or reimbursement of futile expenses.

10. LIABILITY

10.1 In all cases of contractual and non-contractual liability, AK shall pay damages or compensation for futile expenses only to the extent determined below:

10.1.1 AK shall only be liable for intent and gross negligence.

10.1.2 in other cases: at most in the amount of the last annual turnover of the User, which the User has paid to AK as fees for the respective product concerned. The prerequisite for the payment of a damage sum is,

10.1.2.1 that the Customer has actually paid the agreed fees,

10.1.2.2 that Customer is not in a test phase with the relevant product,

10.1.2.3 that the Customer has fulfilled his obligations to cooperate, and

10.1.2.4 that the compensation for damages has been confirmed by a German court.

10.3 For other damages, liability for damages caused by slight negligence on the part of AK or its vicarious agents is excluded.

10.4 AK is not liable for damages resulting from the modification, loss and knowledge of user input data or internal data by third parties.

10.5 AK shall not be liable for any damages or special expenses if the Customer fails to comply with its obligations to use up-to-date browsers and to allow additional features and plugins.

10.6 AK is not liable for damages due to force majeure. Force majeure is defined as all unforeseen events as well as such events whose effects on the performance of the contract are not the responsibility of either party. Such events include, in particular, lawful labor disputes, including in third party companies, official measures, failure of communication networks and gateways of other operators, disruptions in the area of service providers, other technical disruptions.

10.7 AK is not liable for actions of the cooperation partners or for actions of third parties in its area of responsibility (fire, power failure, theft, hardware damage, hacker or virus attacks, destruction and similar incidents).

10.8 AK is not liable for ensuring that all communication lines to and from the servers it provides are uninterrupted and error-free.

10.9 A limitation period of one year applies to all claims against AK for damages or reimbursement of futile expenses in the case of contractual and non-contractual liability. The limitation period shall commence at the point in time specified in § 199 GERMAN CIVIL CODE (BGB). The provisions of sentences 1 to 2 of this paragraph shall not apply to liability for personal injury or under the Product Liability Act. The deviating limitation period for claims due to material defects and defects of title (Sections 9.5 and 9.6) shall remain unaffected by the provisions of this paragraph.

11. CONTRACT TRANSFER

The customer is not entitled to transfer the respective contract or individual rights and obligations to a third party.

12. MISCELLANEOUS PROVISIONS

12.1 The cooperation requires a high degree of trust, cooperation and willingness to reach an agreement. Deadlines set by the customer by law or contract must be at least ten working days -

except in the case of risk of delay. If the fruitless expiry of a set deadline is to entitle the Customer to dissolve the contract (e.g. by rescission, termination or damages instead of performance) or to reduce the remuneration, the Customer must threaten these consequences of the fruitless expiry of the deadline in writing together with the setting of the deadline. After expiry of a deadline set in accordance with sentence 2, AK may demand that the Customer exercises its rights resulting from the expiry of the deadline within two weeks after receipt of the demand.

12.2 AK can accept offers from customers within four weeks. Offers by AK are subject to change unless otherwise agreed in writing. Upon doubt, the offer or the order confirmation issued by AK shall be applicable for the content of the contract.

12.3 AK is entitled to include or exclude certain content from the scope of use of the products at any time. This also applies to updates of the existing scope of use.

12.4 Time of Performance.

12.4.1 Deadlines are non-binding unless expressly agreed in writing to be binding. AK's obligation to perform shall not commence until the concept has been accepted by the Customer.

12.4.2 In case AK is waiting for the Customer's cooperation or information or is hindered in the execution of the order due to strike, lockout, official intervention or other circumstances beyond AK's control, delivery and performance deadlines are deemed to be extended by the duration of the hindrance and by a reasonable start-up time after the end of the hindrance. AK will notify the customer of the impediment.

12.4.3 Working days are the weekdays from Monday to Friday (09:00 to 17:00 CET), excluding public holidays and December 24 and 31.

12.5 German law shall apply exclusively to all contractual and non-contractual claims. The place of jurisdiction shall be Berlin.

12.6 Amendments and supplements to the contract as well as all declarations of intent relevant to the contract and declarations on the exercise of rights, in particular notices of termination, reminders or setting of deadlines, must be made in writing. This shall also apply to the waiver of the written form requirement. The written form requirement can also be met by correspondence, e-mails or (with the exception of notices of termination) by electronically transmitted signatures.

12.7 Work results to be provided that are not covered specific performance description of the respective contract shall be agreed upon separately in writing. Due to deviating work results to be provided, the monthly maintenance shall be subject to the master subscription agreement and the remuneration obligation in accordance with the respective Contract.

12.8 Severability clause. Should certain provisions of this Contract be or become invalid or void, this shall not affect the validity of the remaining provisions of this Contract.

12.9 Contract Language. This contract has been drawn up in both English and German. In the event of any inconsistency between the two versions, the German version shall prevail and be binding on the parties.