

## GENERAL TERMS AND CONDITIONS

of

**Know-Center GmbH**

**Research Center for Data-Driven Business & Big Data Analytics**

FN 199685 f

Sandgasse 36/4

8010 Graz, Austria

hereinafter referred to as "Know-Center"

represented by **Oliver Bernecker, MSc.**

### 1. APPLICABILITY

- 1.1. The General Terms and Conditions (GTC) as amended from time to time shall apply to all present and future services of Know-Center, in particular research, consulting and programming services, events (congresses, trade fairs, trainings, workshops etc.) as well as all services (SaaS services) and products provided via a platform, thus to all business relations of Know-Center.
- 1.2. Unless expressly agreed otherwise in writing, these GTC shall also apply to all future orders placed within the scope of the business relationship, in particular to additional and/or supplementary orders placed verbally.
- 1.3. In case of contradictory provisions, written individual agreements between the Know-Center and the contracting party shall prevail over these GTC. Should the Know-Center use specific GTC for sub-areas, such as in particular research, consulting and programming services, events (congresses, trade fairs, trainings, workshops, etc.) as well as all services (SaaS services) and products made available via a platform, the specific GTC shall prevail over the present GTC in case of additional or contradictory provisions. Subsidiarily, the validity of the present GTC shall remain unaffected.
- 1.4. The currently valid version of these GTC can be viewed and retrieved at any time at [www.know-center.tugraz.at/agb /](http://www.know-center.tugraz.at/agb/).
- 1.5. The Know-Center reserves the right to change the GTC accordingly in case of changes in the legal situation or jurisdiction or in case of changes in the economic situation. In this case the customer will be informed in advance in writing or electronically. If the customer does not give written notice of termination within four weeks of receipt of the notice of amendment, the amendments shall become part of the contract at the time they take effect.
- 1.6. Deviating contractual conditions of the contractual partner, in particular general terms

and conditions as well as purchasing conditions of the contractual partner, shall not become part of the contract, even if the Know-Center does not expressly object to them. Other contractual conditions of the Contractual Partner shall therefore only apply if the Know-Center expressly accepts them in writing in advance.

## **2. TERM AND TERMINATION OF THE CONTRACT**

- 2.1.** All information and offers of the Know-Center regarding the services provided are - unless otherwise agreed in writing - non-binding and subject to change. An order placed by the contracting party in this respect shall be deemed to be a binding offer to the Know-Center. The contract shall come into force either upon signature of a written contract by both contracting parties or upon electronic or postal receipt of an order confirmation by the Know-Center to the contracting party or impliedly upon commencement of the performance of the service by the Know-Center. In case of an offer expressly formulated as binding in writing, the contract shall enter into force immediately upon confirmation of the order by the contractual partner.
- 2.2.** The duration of the contract results from the respective individual contracts.
- 2.3.** In the case of contracts which are of a permanent nature and the content of which is a repeated exchange of services (continuing obligation), the contract may be terminated by either party in writing or by e-mail subject to a notice period of 3 months to 31 March, 30 June, 30 September or 31 December. The date of dispatch or the postmark shall be decisive for the timeliness.
- 2.4.** In addition, the contract may be terminated extraordinarily by either party for good cause. Important reasons are in particular the violation of essential contractual obligations as well as the rejection of the opening of insolvency proceedings due to the lack of cost-covering assets. The extraordinary termination can be declared by either contracting party in writing or by e-mail.

## **3. SUBJECT MATTER OF THE CONTRACT, TERMS OF PAYMENT**

- 3.1.** The subject matter of the contract and the terms of payment shall be determined by the agreements made in the respective individual contracts; these GTC shall apply in a subsidiary manner.
- 3.2.** Except in cases of free provision of services, the contracting parties undertake to pay the agreed fees in accordance with the individual contracts.
- 3.3.** If the contracting party makes use of services of the Know-Center that go beyond the agreed services, these shall be invoiced separately based on the individually agreed fee.
- 3.4.** Unless otherwise agreed in writing, the agreed fees shall be in Euro exclusive of the statutory value-added tax prescribed in Austria. All fees and taxes (in particular VAT)

shall be calculated on the basis of the respective valid legal situation. If, in addition, the tax authorities subsequently prescribe taxes or duties for the services rendered by the Know-Center, these shall be borne by the contractual partner.

- 3.5. The fees are due upon invoicing. In case of default of payment, the Know-Center reserves the right to postpone the fulfillment of its own obligations until such payment or other service has been affected, or to withdraw from the contract by granting a reasonable grace period of two weeks, or to terminate the contract extraordinarily.
- 3.6. In the event of default, the statutory interest rates shall be deemed to have been agreed.
- 3.7. The contracting party shall also reimburse the Know-Center for any dunning and collection costs incurred, including those of any legal representatives or collection agencies commissioned. In addition, the Contractual Partner undertakes to pay a lump-sum contribution to expenses of € 20.00 net for each reminder issued.
- 3.8. Counterclaims on the part of the contracting party - even if they arise from the same contract or its avoidance - may only be set off against claims of the Know-Center if the counterclaim in question has been expressly acknowledged by the Know-Center in writing or if there is a final and absolute judgment against the Know-Center.
- 3.9. In case of orders comprising several units, the Know-Center shall be entitled to invoice after delivery of each individual unit or service.
- 3.10. In the case of contracts against payment, the Know-Center shall be entitled to adjust the agreed fees and service contents in line with the market one month after written notification of the contractual partner, provided that such adjustment is reasonable for the contractual partner.
- 3.11. The fee adjustment shall be made on the basis of the consumer price index published monthly by Statistics Austria (base year 2015) or an index replacing it. The basis for the index calculation is the month of the conclusion of the contract. If the index fluctuation exceeds 3%, the value adjustment shall be made on January 1 of the following year. The non-assertion of the index adjustment does not mean a waiver of the assertion of the same. Index adjustments of the fees shall not entitle the contractual partner of the Know-Center to terminate the contract without notice.

#### **4. COOPERATION AND PROVISION OBLIGATIONS OF THE CONTRACTUAL PARTNER**

The contractual partner undertakes to support all measures of the Know-Center which are necessary for the performance of the services and to take all measures necessary for the performance of the services which are not included in the scope of services of the Know-Center. The contractual partner shall fulfill all its obligations to cooperate in a timely manner so that the services are not impeded or delayed. Provisions and co-

operation by the contractual partner shall be free of charge.

## **5. SUBSTITUTE**

The Know-Center is authorized to use a substitute for the execution of the contract. It shall enter into written agreements with these substitutes in its own name and on its own account, which shall ensure compliance with all provisions of this contract. The Contractor shall be liable for the fault of all persons whose services it uses to fulfill its contractual obligations to the same extent as for its own fault.

## **6. WARRANTY / LIABILITY**

- 6.1.** The Know-Center undertakes to duly execute the order placed with it in accordance with the generally recognized state of the art, the principles of economic efficiency and in compliance with international standards. Especially in the case of programming services and the provision of SaaS services, the occurrence of program errors cannot be completely excluded. Therefore, the Know-Center assumes no liability for the faultlessness of the software, provided that it is basically usable within the scope of the contractually agreed. Furthermore, in the field of research and consulting the Know-Center does not undertake to achieve a certain result or success, but only the proper execution of the order.
- 6.2.** The warranty period for the assertion of defects shall be three months from the completion of the services actually performed or from the receipt of the product, subject to the timely notification of defects according to the following point. The reversal of the burden of proof according to § 924 S 2 ABGB is excluded for transactions between entrepreneurs.
- 6.3.** After completion of the commissioned services or handing over of the products, the contractual partner of the Know-Center shall immediately inspect them for any defects. Any defects shall be reported to the Know-Center in writing within one week after performance of the services, stating and describing the defects in detail. Should the contractual partner fail to comply with these obligations or fail to comply with them in due time, there shall be no claim to warranty, compensation for damage caused by defects and consequential damage caused by defects, or rescission of the contract due to error as to the defect-free nature of the item.
- 6.4.** The Know-Center undertakes to remedy the defects as soon as possible. The Contractual Partner shall be obliged to grant the Know-Center the access necessary for the rectification of defects and to permit all examinations and measures necessary for the rectification of defects. Insofar as the removal of defects is impossible or impracticable due to a breach of the contractual partner's duty to cooperate, the Know-Center shall be released from the obligation to remove the defects.
- 6.5.** Any liability shall be excluded for defects which are - even if only partially - attributable to the conduct of the Contractual Partner or a third party attributable to the Con-

tractual Partner.

- 6.6.** The Know-Center shall be liable to the Contractual Partner for damages demonstrably caused by the Know-Center unlawfully only in case of gross negligence. Liability for slight negligence is excluded, unless personal injury is involved. This shall apply mutatis mutandis to the liability for vicarious agents of the Know-Center.
- 6.7.** The claim for damages due to violation of essential contractual obligations shall be limited to the foreseeable damage typical for the contract; moreover, liability shall only exist up to the amount of the order sum.
- 6.8.** Liability for consequential harm caused by a defect - in particular loss of profit, costs of business interruption, loss of data or claims by third parties - is expressly excluded.
- 6.9.** Claims for damages may only be asserted in court within six months after the contractual partner has become aware of the damage, but at the latest within one year after the occurrence of the (primary) damage due to the event giving rise to the claim. The burden of proof for the fault of the Know-Center, the existence and the amount of the damage shall be on the contractual partner.
- 6.10.** Insofar as and as long as obligations cannot be fulfilled on time or properly as a result of force majeure, such as in particular war, terrorism, natural disasters, fire, strike, lockout, sovereign intervention, failure of the power supply, failure of means of transport, failure of telecommunication networks or data lines, this shall not constitute a breach of contract, but shall release the contracting parties from the fulfillment of the contractual obligations under the contract for the duration of the event. The contracting party prevented from fulfilling the contract shall be obliged to notify the other contracting party without delay, stating the circumstances preventing it from fulfilling the contract. In addition, it shall do everything in its power and economically reasonable to remove the impediment to performance or acceptance without delay.

## **7. DATA PROTECTION, DATA SECURITY AND CONFIDENTIALITY**

- 7.1.** The Know-Center undertakes to comply with the provisions of § 16 of the Data Protection Act (data secrecy). This obligation shall continue to exist after the termination of this contract.
- 7.2.** The Know-Center shall treat all transferred personal data of the contractual partner in accordance with the applicable data protection provisions. In particular, the Know-Center undertakes not to collect, record or store, modify, block or delete personal data without authorization for any purpose other than the legitimate performance of the respective task, to disclose or make the data accessible to third parties or to use them in any other way. For detailed information, please refer to Know-Center's Privacy Policy, the terms of which are hereby made part of these General Terms and Conditions. If you would like to view the Know-Center Privacy Policy, please [click here](#).

- 7.3.** If the Contractual Partner transfers personal data to the Know-Center in the course of the execution of the order, he shall warrant that he is entitled to do so in accordance with the applicable provisions, in particular those of data protection law. The Know-Center does not assume any examination of the legal admissibility of the data and contents stored and processed for the customer. The permissibility of the transfer of personal data as well as the processing thereof by the Know-Center shall be ensured by the Customer. This shall also apply if and to the extent that customer-specific data are modified or supplemented.
- 7.4.** The Know-Center is not responsible if third parties succeed in gaining access to the data and information in an illegal manner despite the measures taken by the Know-Center to protect the data of the contracting party.
- 7.5.** The contracting parties undertake to keep confidential all information they receive from the other contracting party, in particular concerning the entire intellectual property, software, computer code, algorithms, procedures, ideas, offers, concepts, inventions, know-how. The contractual partners undertake to treat all information received from the other contractual partner, in particular regarding all intellectual property, software, computer code, algorithms, processes, ideas, offers, know-how, technical and financial information, technical drawings, development tools, techniques and all other business, product, research and development information, as confidential information and to keep it secret, unless such information is already publicly available, has been released in writing or must be disclosed on the basis of a legally binding official or judicial decision.
- 7.6.** The contractual partner of the Know-Center undertakes to use all confidential information received from the Know-Center only to the extent necessary for the performance of the contract and not to make it accessible to unauthorized third parties. This also includes contractors and employees of the contractual partner of the Know-Center, unless the disclosure of the information is necessary for the proper performance of the contract. The contractual partner of the Know-Center shall also undertake to prevent the misuse of confidential information of the Know-Center.

## **8. COPYRIGHTS**

Unless these GTC expressly provide otherwise, nothing in these GTC shall grant either party any rights to the intellectual property of the other party. All rights of use under copyright law and other industrial property rights or other rights to protectable materials shall remain the sole intellectual property of the respective owner.

## **9. FINAL PROVISIONS**

- 9.1.** The German version of these GTC shall prevail. The English version serves for information purposes only.
- 9.2.** The contract shall be governed by Austrian substantive law to the exclusion of its

conflict of laws rules and the UN Convention on Contracts for the International Sale of Goods.

- 9.3.** Unless otherwise agreed in writing, the place of performance shall be the registered office of the Know-Center.
- 9.4.** The exclusive place of jurisdiction for all disputes arising from the contract shall be the competent court in Graz.
- 9.5.** All contracts concerning the main service as well as any collateral agreements shall be made in writing or in electronic form.
- 9.6.** Should some provisions of these GTC be or become void, unenforceable and/or invalid, this shall not result in the voidness, unenforceability and/or invalidity of the entire GTC or the entire contract. In place of the invalid or unenforceable provisions, such valid provision shall be deemed to have been agreed upon as the contracting parties would presumably have agreed upon if they had been aware of the invalidity, unenforceability or absence of the relevant provisions at the time of the conclusion of this Agreement.