

## General Terms and Conditions of Business

As of 17 Dec. 2024

### 1. Validity of these Terms and Conditions

The services rendered by KPS to traders in the sense of Sec. 14 German Civil Code (Bürgerliches Gesetzbuch, "BGB"), public law entities and public law funds (hereinafter referred to as „Customer“) are governed exclusively by the terms and conditions („GTC“) set out below (including all future services in the case of continuous business relations) also if no express reference is made to them, except as expressly agreed otherwise in accordance with the GTC. These GTC can also be accessed at any time at <https://kps.com/global/en/gtc.html> KPS reserves the right to amend these GTP at any time; the amendments shall then apply automatically. Any deviating terms and conditions are subject to KPS's express written approval. This applies also if KPS performs services unconditionally with knowledge of the Customer's terms and conditions.

### 2. Scope of Duties

2.1 KPS undertakes to work as Consultant for the Customer. KPS will especially perform the following tasks:

- Strategy and Process Consultancy
- Organisational and Business Planning
- Transformational Consultancy
- Implementation Consultancy
- Technical Advice and Assistance
- Amendments and Additions to Standard Software and other Software or corresponding Assistance
- Installation of Standard Software and other Software and Programming of the necessary Interfaces of corresponding Assistance
- Training of Customer Employees
- Further KPS Services

2.2 Unless dictated otherwise by the circumstances (such as a mutual understanding, tacit or otherwise), the specific services of KPS are defined exclusively by KPS's latest project proposal as applicable from time to time or a project agreement entered into by KPS and the Customer in writing („Individual Agreement“). Any change requests will be discussed and remain subject to a written agreement; both KPS and the Customer may submit change requests, which shall be sufficiently detailed to allow the other party to recognise and assess their implications for the project (especially in view of content, costs and time). The activities of KPS are services; KPS owes no specific work results. Any agreement on specific work results must be set out in writing and include an express reference to this sec. 2.2. The Customer is responsible for the overall management of a project.

2.3 KPS is free to organise its work and shall not be bound by the instructions of the Customer. In particular, KPS shall be free to determine its working time as well as its working place. So far as meetings or the presence of KPS on the Customer's premises are required, that is arranged from time to time with KPS. Both parties will avoid integration of KPS employees with Customer Businesses.

2.4 KPS shall perform its consultancy services on its own responsibility observing the generally recognised standard of the profession conscientiously and to the best of its abilities, in every respect and to safeguard the Customer's interests.

2.5 The parties agree that KPS may employ its own employees or freelancers or even third parties to perform its services. If any KPS partners or employees are identified by name in an Individual Agreement, KPS shall seek to ensure their availability to the extent defined in the Individual Agreement. Where any changes in the designated KPS employees are deemed necessary by KPS, KPS shall give the Customer timely prior notice of such changes and provide the Customer with such information about the substitute as deemed necessary in KPS's discretion.

### **3. Duties of the Customer**

3.1 The Customer agrees to provide KPS and its employees, at Customer's expense, with the infrastructure as is reasonably required to duly fulfil the contract. In particular, the Customer shall provide working space, telephones and fax machines, computers, a state-of-the-art internet connection, secretarial services, and similar. It lies within the Customer's responsibility to ensure the proper functioning of IT systems, if necessary by means of maintenance contracts with third parties. In particular, the Customer shall comply with instructions issued by KPS.

3.2 The Customer undertakes to provide KPS, at Customer's expense, with all information and other material necessary for the performance of the contractual duties by KPS. The Customer shall ensure that the information and material necessary provided to KPS are true, accurate and not misleading in all material respects. KPS accepts no responsibility whatsoever for any loss, damage, or failure of services to comply with the contract, incurred by reason of inaccurate, incomplete or otherwise deficient information and/or material necessary provided by the Customer.

3.3 The Customer will also provide KPS with any cooperation and assistance required to enable KPS to perform its contractual duties. He shall grant KPS access directly or by means of data transmission to Software and to the IT Systems.

3.4 The Customer shall ensure that his employees are available and have the skills and expertise required to render the requested support services. Furthermore, the Customer shall nominate a contact person in writing for KPS and an address as well as a mail address at which the availability of the contact person is guaranteed. The contact person shall ensure good cooperation with KPS.

3.5 The Customer shall thoroughly test work results prior to commencing operative use.

3.6 The Customer shall take adequate measures in the event that the work results are faulty (e.g. through regular backups, fault diagnosis, regular checking of the results). In the absence of express written instructions, the employees of KPS can always assume that all data with which they come in contact with have been backed up.

3.7 Where the Customer employs the services of third parties in support of the project in which KPS renders services (other service providers, suppliers, or similar), the Customer will agree reasonable terms with such third parties which enable KPS to render its services in conformity with the contract. Unless agreed otherwise in writing in the Individual Agreement by reference to this sec. 3.7., the Customer remains responsible for directing the third parties employed by the Customer and for the quality of the work.

#### 4. **Acceptance**

The Customer will accept delivery of the KPS services in accordance with the Individual Agreement and the documentation laid down therein. In doing so the Customer confirms the conformity of the services with the contract; the same shall apply if the Customer uses the services for the Customer's own purposes or pays for the services or fails to make a statement to the contrary, including reasons, within a time limit explicitly fixed by KPS (by reference to the consequences).

#### 5. **Time Schedules**

Where any Individual Agreement provides for or refers to time schedules, KPS shall seek to comply with its contractual obligations in accordance with such time schedules. However, the defined time schedules only serve purposes of planning and estimation of the required timeframe; they are not binding, unless expressly agreed otherwise in writing by the parties in an Individual Agreement by reference to this sec. 5. Compliance with time schedules also expressly presupposes the timely and proper fulfilment of all duties of the Customer.

#### 6. **Remuneration, Price Adjustment Clause, Reimbursement of Expenses**

6.1 KPS will bill the fees based on the price conditions defined in the Individual Agreement (usually based on KPS's price list for consulting and services valid at the time of the offer) provided or other fees have later been agreed on in writing in the Individual Agreement.

6.2 The agreed fee rates shall apply subject to adjustment in accordance with this Clause 6.2. If, after conclusion of contract, the wage and salary costs in the IT services sector, which are the sole decisive factor for the calculation of the fee rates, increase, the fee rates shall be adjusted as of 1 April of each calendar year by the percentage by the percentage of the increase in wage and salary costs indicated by the German Federal Statistical Office in its nominal wage index for the economic sector "provision of information technology services (Erbringung von Dienstleistungen der Informationstechnologie)" as an increase in wage and salary costs when balancing the quarterly reports for the same period of the previous year (nominal wage index in Germany, currently, as of September 2023, available at: [https://www.destatis.de/DE/Themen/Arbeit/Verdienste/Realloehne-Nettoverdienste/\\_inhalt.html#\\_zvd37k1ry](https://www.destatis.de/DE/Themen/Arbeit/Verdienste/Realloehne-Nettoverdienste/_inhalt.html#_zvd37k1ry)). The adjustment shall be made by increasing the nominal wage index by 0.1 % for each further adjustment by at least 0.1 % until the price adjustment since the beginning of the contract reaches the full original value of the fee rate. In the event that this value is reached, the parties will seek to agree a new base fee rate. If this fails, KPS has a special right of termination. KPS will inform the client with an appropriate lead time of the exact value by which the price adjustment will be realised due to the change in the relevant nominal wage index. Should the nominal wage index cease to apply, the index that replaces it will be used as a basis.

6.3 For services billed on a time and material basis, the fees will be billed on the basis of 8 working hours per day unless provided for otherwise in an Individual Agreement. An employee who works more than four hours a day is deemed to have worked a whole day. If KPS employees have to work on site for a longer period of time, KPS may flexibly arrange their working hours at the Customer sites and the normal place at work. Travel time shall be billed as working time, except the time spent travelling to Customer's business premises from a local accommodation. Unless agreed otherwise in the Individual Agreement, overtime will be billed on a prorated basis; overtime accrues as soon as an employee works more than eight hours a day. KPS will monthly send the Customer a list of expenses included in the invoice. If the Customer does not raise a written objection to the findings contained in that list within two weeks, these shall be deemed accepted.

- 6.4 Cost estimates of any kind, be it for planning or other purposes, shall be without commitment.
- 6.5 Insofar as expenses accrue in connection with the consultancy services, these expenses are compensated with the fee under clause 6.1. This does not apply to postal charges, telephone cost and travel expenses (taxi, flight, train, hotel and rental car) against receipt. Unless otherwise agreed, travel- and subsistence expenses will be charged according to expenditure and depending on the residence of the KPS employee. Travel expenses arise from travel from the employee's home to the respective place of performance of the Customer or between different places of performance of the Customer.
- 6.6 All fees and expenses are exclusive of taxes and duties. The Customer is obliged to pay to KPS or the relevant authority all taxes (especially VAT) and duties required by law, except those taxes and duties relating to KPS's net earnings.
- 6.7 All invoices on a time and material basis will be raised monthly. Invoices based on other calculation methods will be issued in accordance with the payment schedule laid down in the Individual Agreement. Unless defined otherwise in the Individual Agreement in writing by reference to this sec. 6.6, (i) all invoices are in EURO and (ii) are payable in EURO. All invoices fall due and payable net, promptly on receipt. KPS shall be authorised to invoice partial performance.
- 6.8 Subject to 30 days prior written notice to Customer, KPS will have the right to adjust the time and material-based fees agreed in an Individual Agreement. Any such adjustment may be justified, for example, by the transportation of employees rendering services for Customer. The fees stated in the Individual Agreements with Customer refer to the site(s) agreed therein. Any changes to the site(s) may result in an adjustment of the fees.
- 6.9 Any setoff by the Customer against claims of KPS shall be excluded, except with counterclaims that are acknowledged, uncontested or established by final enforceable judgment; further, the Customer may assert rights of retention against KPS only on the basis of claims from the same contractual relationship that are acknowledged, uncontested, or established by final enforceable judgment.

## **7. Rights of Use in Work Results**

KPS retains the ownership and the entire rights on the the work results, materials, concepts and methods – in particular the copyrights, the rights on inventions as well as technical property rights. This also applies if such work results are based on instructions or cooperation by the Customer. With the payment of the agreed fee the Customer is granted with a simple right to use the work results, materials, concepts and methods only for his internal business events and those of companies affiliated with him in the sense of sec. 15 AktG (Stock Corporation Act) ("Corporations of a Group"), unless otherwise agreed.

## **8. Restrictions on Competition**

- 8.1 For the term of an Individual Agreement or within 12 months after the premature termination or expiry thereof, neither party is permitted to entice away employees of the other party who are or were involved in the performance of the contract, without the other party's written consent. For any breach of the above obligations, the breaching party will, on the request of the other party, immediately pay a contractual penalty in the amount of one yearly salary of the employee who has been enticed away. Payment of the contractual penalty will not release the breaching party from the payment of further damages.
- 8.2 The Customer and KPS are obligated to reciprocal loyalty.

8.3 KPS shall be Preferred Supplier of the Customer, i.e. KPS will be preferred when requesting for a project which is similar to the one, falling under these GTC.

## 9. Secrecy

9.1 Both parties agree to not disclose to third parties without the other party's consent any confidential information brought to their knowledge for reason of or in connection with the acceptance or provision of services. This shall apply to information that has been designated confidential, to verbal information whose confidential nature was immediately confirmed in writing, and to any kind of information that is obviously confidential. Both parties undertake to use the confidential information received from the other party only for purposes of providing or accepting services in connection with an Individual Agreement between the parties. This confidentiality undertaking shall not extend to information (including know-how),

- That is or becomes public domain, except by a breach of the obligations set forth in this sec. 9.;
- Received by a party from a third party not subject to any confidentiality undertaking in respect of such information;
- That was developed independently by or known previously to the receiving party.

9.2 Notwithstanding sec. 9.1. above, both parties shall have the right to disclose information (including know-how) in either of the following cases: (i) to a third party as required by a decision of a court or authority of jurisdiction (including regulatory authorities) or by law (in which case the other party shall be given at least two working days prior written notice of the disclosure, as far as permitted by law and practicable), or (ii) to their respective insurers or legal counsel.

9.3 Notwithstanding the provisions of sec. 9.1. and 9.2., KPS may use the services rendered to the Customer as a reference for existing or prospective customers.

9.4 Both parties will comply with secrecy regulations and conclude a respective agreement in an Individual Agreement.

## 10. Data protection

10.1 As far as necessary for the business transaction, order-related Customer data will be collected and processed by KPS in the course of the business relationship. This Customer data is transmitted internally to our consultants and service staff and, if necessary subject to sec. 9, to external business partners for a specific purpose.

10.2 The Customer agrees that his data may also be used for the purpose of sending him information about KPS' products and services. The Customer can revoke his consent for this at any time.

10.2 The Customer agrees that KPS may invoice its services electronically until revoked. This explicitly includes the sending of electronically written invoices, credit notes and, if applicable, reminders, while at the same time waiving the sending of paper invoices.

10.3. The confidential and secure handling of data in accordance with the Federal Data Protection Act and other data protection regulations such as the EU Data Protection Regulation is assured. This applies to the purpose-related transfer to third parties, for example by concluding contracts for commissioned processing with the inclusion of suitable guarantees with careful selection of the partners and service providers of KPS.



10.4. Our other provisions on data protection remain unaffected by this.

## **11. Duration and Termination of the Contractual Relationship**

11.1 An Individual Agreement commences on the day defined therein. If no such day has been stipulated, it shall commence either on the day KPS begins to render services for Customer or on the day of signature of the Agreement by both parties, whichever comes first. The contractual relationship shall remain in place until all services have been rendered unless it is terminated prematurely in accordance with the terms below.

11.2 Without prejudice to the provisions relating to a termination for cause, an Individual Agreement may be terminated by either party at any time, subject to 30 days prior written notice. If the Customer exercises this right of termination, the Customer will remunerate KPS on a time and material basis for all services rendered until the effective date of termination. If a different calculation basis is applied, the Customer will settle all partial invoices that are due by the effective date of termination and thereafter will remunerate, on a time and material basis, all services that are rendered by KPS for the Customer until the effective date of termination and were not billed in the final partial invoice. Further, the Customer shall bear the costs incurred by KPS as a result of the early termination. In particular, this includes the fees of subcontractors as well as any costs incurred by changing the arrangements. KPS shall undertake reasonable efforts to minimise such costs. If KPS proves that the KPS staff intended to render the services cannot be assigned wholly or partly to other projects, the Customer must put KPS in the position that would have prevailed if the employees had been assigned to Customer's project in accordance with the contract.

11.3 The right to terminate this agreement for cause remains unaffected. In particular, a cause for termination shall be deemed to exist for (i) the Customer if KPS acts in breach of material obligations under an Individual Agreement and fails to cure such breach within a reasonable respite of at least 20 days to be granted by the Customer, and for (ii) KPS if the Customer acts in breach of material obligations under an Individual Agreement or if insolvency proceedings are applied for or opened on the Customer's assets or if the Customer's financial situation deteriorates materially.

11.4 Upon termination of the contractual relationship each party shall return to the other party all items that are the property of the other party. KPS may retain a copy of every documentation or software product produced by KPS, and of every documentation serving as basis for KPS's services.

## **12. Liability**

12.1 KPS is liable to the Customer from contractual or statutory claims as follows:

12.2 Unlimited liability: KPS shall be liable without limitation in the event of intent on the part of its executive bodies and senior employees, as well as in the event of their grossly negligent breach of "cardinal obligations" (i.e. those which are essential for achieving the purpose of the contract and on whose compliance the Customer as a contractual partner may regularly rely) and in the event of defects which KPS has fraudulently concealed or whose absence KPS has guaranteed or in the event of the assumption of the procurement risk, as well as if the health, body or life of people have been injured due to breaches of duty by KPS. In particular, KPS shall also be liable without limitation for claims under the Product Liability Act. KPS shall also be liable for vicarious agents in place of its organs and executive employees in the above cases if, in addition to liability for the vicarious agent according to the law, the selection of the vicarious agent by organs or executive employees was culpable

– in other cases there shall be no liability after KPS has assigned claims against the vicarious agents to the Customer (in these cases the customer shall be obliged to accept the assignment).

- 12.3 Limited liability: In the event of a slightly negligent breach of a cardinal obligation by KPS' executive bodies and senior employees and such a grossly negligent breach by vicarious agents, KPS shall only be liable for the foreseeable, typically occurring damage.
- 12.4 Exclusion of liability: KPS shall not be liable in the event of a slightly negligent breach of an obligation that is not a cardinal obligation. KPS shall only be liable for cases of impossibility if KPS is at least grossly negligent.
- 12.5 KPS shall only be liable for consequential damages and indirect damages, for loss of profit, loss of production, loss of use, expert's fees, etc., in the event of at least grossly negligent breaches of cardinal obligations up to the amount of the foreseeable.
- 12.6 Under no circumstances will the liability of KPS exceed EUR 100,000 for gross negligence and EUR 10,000 for ordinary negligence.
- 12.7 Insofar the liability of KPS is excluded or limited, this shall apply equally with regard to a personal liability for damages of its organs, employees, workers, staff, representatives and vicarious agents towards the Customer.
- 12.8. This does not imply a change in the burden of proof to the detriment of the Customer.
- 12.9. The Customer's claims for damages for which liability is limited under this clause shall become time-barred one year after the beginning of the occurrence of the damage. This does not apply for liability in the event of intent or gross negligence, personal injuries or liability under the Product Liability Act.

### **13. Warranty**

- 13.1 In principle, KPS renders services and owes no warranty.
- 13.2 Where the performance owed by KPS is a work result under a contract for work and services (Werkvertrag), the Customer will be entitled to warranty claims for defects only if the Customer reserved the right to such claims upon acceptance of the work results or refused to accept the work results to that extent. The Customer's warranty claims are limited to remedial action, i.e. free of charge rectification of the defect; remedial action will be undertaken at the original place of performance. KPS may refuse to perform remedial action if it would incur unreasonable costs. If remedial action fails or is refused by KPS, the Customer may, at the Customer's option, terminate (not withdraw from) the Individual Agreement or reduce the price. Remedial action shall be deemed failed at the earliest after three unsuccessful attempts. The Customer's claims for damages are governed exclusively and exhaustively by sec. 12. hereof. Warranty claims become time-barred one year after delivery or acceptance, as the case may be; the limitation of claims for damages is governed by sec. 12. as well.

### **14. Indemnifications**

Unless agreed otherwise in the Individual Agreement, the services of KPS are rendered solely for the benefit of and usage by the Customer. For this reason, the Customer shall have no right to make copies of the work products for or transfer the benefit of the services to any third party. KPS accepts no responsibility or liability whatsoever to third parties that

receive the benefits or make use of or gain access to the work products. The Customer indemnifies KPS with regard to any and all losses, damage, expenses and other costs as reasonably incurred by KPS in connection with third party claims raised against KPS (i) as a result of the Customer granting a third-party access to the work products and the benefits of the services, or (ii) in connection with the services. This shall apply mutatis mutandis in the event a third party takes recourse against KPS for any infringement of intellectual property rights or other rights in connection with information and/or operational resources provided to KPS by the Customer.

## **15. Miscellaneous**

- 15.1 Any assignment or other transfer of claims or rights by Customer with the exception of monetary claims in commercial transactions shall be subject to KPS written approval.
- 15.2 Subject to the provisions of this GTC hereof, any delay in the enforcement of individual provisions by KPS shall not affect or restrict the rights and powers of KPS laid down herein; any waiver of claims or rights must be set out in writing.
- 15.3 Where the Individual Agreement requires for the other party to be notified in writing (not only text), such notice must be delivered personally or by fax or registered letter to the other party's address stated in the Individual Agreement or such other address as notified in writing during the term of the contract.
- 15.4 Any changes or amendments to services or conditions must be set out in writing with a reference to the relevant provision of the GTC or the Individual Agreement and be signed by both parties.
- 15.5 Any provisions of an Individual Agreement or these GTC which, by express or implied agreement, shall survive and remain valid after the termination of the Individual Agreement, shall remain binding on the parties thereafter.
- 15.6 Nothing in the Individual Agreement shall be deemed to restrict KPS in its right to also work for other Customers, except as agreed otherwise in writing by reference to this sec. 14.6.
- 15.7 The Individual Agreement, including all its schedules and other documents referenced therein, represents the agreement in respect of the services to be rendered by KPS. The Individual Agreement supersedes any and all previous offers, correspondence, letters of intent or other notices, whether written or verbal.
- 15.8 If any provision of the Individual Agreement or these GTC is or becomes invalid, nothing in this shall prejudice the validity of the remaining provisions of the Individual Agreement or these GTC. The parties shall construe and amend the agreement such that the purpose of the invalid provision is accomplished as closely as possible.
- 15.9 In the event of any discrepancy between these GTC and the Individual Agreement or any other document that forms integral part of the contract, these GTC shall prevail, except as expressly set forth otherwise in the Individual Agreement by reference to the relevant section of these GTC. In the event of any discrepancy between the Individual Agreement and a schedule or any other document forming integral part of the contract, to the exception of these GTC and only to the extent of such discrepancy, the Individual Agreement shall prevail.
- 15.10 The Individual Agreement and any other related contractual arrangement between KPS and the Customer as well as these GTC shall be governed exclusively by the laws of Germany to the exclusion of the UN Sales Convention.



- 15.11 Any and all disputes arising out of or in connection with an Individual Agreement shall be resolved by negotiations on the management level, wherever possible. Any such negotiations on the management level require a written invitation from the other party, indicating the negotiator authorised by the management and giving at least fifteen working days prior notice of the negotiation date; negotiations will be deemed failed if so declared by written notice of either party to the other party, which may also be given before negotiations upon the other party's invitation take place. Unless negotiations have failed as described above, recourse to the ordinary courts of law shall be excluded, to the exception of proceedings for injunctive relief.  
For any dispute that cannot be resolved amicably, Munich shall be the place of jurisdiction. However, we are also entitled to bring an action at any other statutory place of jurisdiction. Notwithstanding the foregoing, KPS as claimant may, instead of an ordinary court of law, appeal to an arbitration court in accordance with the Arbitration Rules of the German Institution of Arbitration (DIS, Deutsche Institution für Schiedsgerichtsbarkeit e.V.); Munich shall be the forum of arbitration. the language of the arbitration shall be determined at KPS' discretion (German or English).
- 15.12 In the event of any discrepancy between the English and the German version of this GTC or in case of doubt the German version of this GTC shall be the prevailing document.