

# General Terms and Conditions

## of Kraus & Naimer GmbH for the Development of Software

### § 1 Scope

1. These General Terms and Conditions for the Development of Software (hereinafter referred to as „GTC“) apply to the provision of software development services by Kraus & Naimer GmbH, Wikingerstraße 20-28, 76189 Karlsruhe, Germany (hereinafter referred to as „Contractor“). The services are offered exclusively to customers who qualify as entrepreneurs (Unternehmer) within the meaning of § 14 of the German Civil Code (BGB).“
2. Subject of the contract is the development or adaptation of customerspecific software (e.g., in the context of automation projects) and the provision of related consulting and other services. These GTC do not apply to the delivery of goods (e.g., switches) and standard software; instead, Contractor’s General Terms and Conditions of Delivery apply.
3. The scope and nature of the services, timelines, and remuneration are specified in individual contracts that reference these GTC. An individual contract is regularly concluded when the customer accepts a corresponding offer from Contractor. In the event of contradictions, the individual contract and provisions in other customer-specific contract documents (e.g., in Contractor’s offer) shall take precedence over the GTC. The customer’s general terms and conditions shall not apply even if Contractor provides services without objecting to them.
4. These GTC in their current version shall also apply to all future contracts for the provision of software development services between Contractor and the customer, even if this is not expressly stated again.
5. In the absence of other agreements, the contractual and license terms of the respective manufacturer or supplier shall apply to third-party software and open source software (OSS) (hereinafter referred to as „Third-Party Software“) supplied by Contractor to the customer. These may contain deviating provisions regarding the granting of rights of use as well as warranty and liability. Contractor shall inform the customer of the contractual and licensing terms and conditions for Third-Party Software upon conclusion of the contract. If the contractual and licensing terms and conditions for Third-Party Software contain gaps, the provisions of the respective individual contract and these GTC shall apply in addition.

### § 2 Delineation of Types of Services

1. Unless expressly agreed otherwise, Contractor shall perform the agreed services as services (Dienstleistungen) within the meaning of § 611 of the German Civil Code (BGB). In this case, the customer shall be responsible for the project organization and for the professional, timely, and budget-compliant implementation of its project.
2. If it is apparent from the individual contract that Contractor assumes responsibility for achieving a specified result (e.g., if Contractor agrees to implement a program specification created by the customer prior to conclusion of the contract), Contractor shall also provide the customer with work services (Werkleistungen) within the meaning of § 631 of the German Civil Code (BGB). For Contractor’s performance of work ser-

vices, the special terms set forth in §§ 8 and 9 shall apply in addition to, and supplementing, the other provisions of these GTC.

### § 3 General Rules for the Performance of Services

1. Contractor shall perform the agreed services in accordance with the currently recognized state of the art. The implementation of or compliance with legal, official, or other regulatory requirements applicable to the customer, as well as technical requirements from standards and norms, shall only be included in the scope of services if and to the extent that this is expressly agreed between the contracting parties.
2. If Contractor develops software for the customer or adapts it to the customer’s specifications, the creation and provision of documentation (in particular development and/or user documentation) shall only take place if expressly agreed in the individual contract. The customer shall receive the compilable source programs and/or project files for the software developed for the customer (e.g., XML or Java files) in order to generate the machine code. Unless otherwise agreed in the individual contract, the software shall be provided via download or on a suitable data carrier (e.g., USB stick).
3. The expected timeline for the provision of services shall be set out in an initial schedule. The dates and/or deadlines specified therein are non-binding target dates, unless they are expressly designated as binding. They shall be postponed or extended by the period during which Contractor is waiting for the necessary assistance or cooperation from the customer or is prevented from fulfilling the contract through no fault of its own, e.g., due to force majeure or other unforeseen events, and by a reasonable restart period after the obstacle has been removed.
4. Each contracting party shall appoint one or more contact person(s) responsible for the project and the cooperation between the parties. These person(s) are authorized to make and receive the declarations required for their party within the scope of the performance of the contract and to make the necessary decisions. The contracting parties shall only replace their contact person(s) for good cause and shall inform each other immediately in the event of a replacement.
5. Contractor is entitled to use employees or subcontractors at its own discretion to perform the services. The selection and assignment of employees is the sole responsibility of Contractor. If employees are named by Contractor (e.g., in an individual contract), this is done according to the respective state of knowledge and planning at the time of conclusion of the contract. When performing the tasks they have undertaken, Contractor’s employees are not subject to any instructions from the customer regarding the scheduling and organization of their work, regardless of the place of performance, and do not enter into an employment relationship with the customer. If it becomes necessary to replace employees, Contractor shall ensure that they have comparable qualifications. The customer may request the replacement of employees for good cause. In this case, the costs of training a new employee shall be borne by the customer.

6. Contractor may take records of the content of project meetings. These shall be binding on both parties if Contractor provides them to the customer and the customer does not object in writing or in text form (e.g., by email) within one (1) week of receipt, stating the reasons for doing so.
7. Contractor is entitled to use AI tools in the context of software development projects, in particular to increase the efficiency of software development and reduce expenses and costs for the benefit of the customer. The selection and use of the AI tools used are at the discretion of Contractor. Contractor shall comply with the relevant legal provisions, in particular the German Copyright Act (UrhG), the German Trade Secrets Protection Act (GeschGehG), the General Data Protection Regulation (GDPR), and the AI Act, as well as the terms of use of the AI tool providers.

#### **§ 4 Changes to Services**

1. If the customer wishes to change its requirements and/or the agreed scope of services during the project, Contractor shall first review the customer's change request and submit a corresponding offer to the customer. Contractor may charge a fee based on the agreed hourly rates for reviewing a change request and preparing a supplementary offer. The change in services shall only be implemented after a supplementary contract has been concluded. The costs of implementing such changes shall be borne by the customer.
2. Unless otherwise specified in the supplementary contract, agreed dates and deadlines shall be postponed or extended by at least the number of calendar days on which the contractual work had to be interrupted due to the change request, as well as by a reasonable restart period. The contracting parties shall expedite all processes in connection with changes to services as far as possible in order to avoid project delays.
3. Contractor may reject a change request by the customer if the change is not technically feasible, if Contractor expects negative effects on services already performed, or if, due to capacity constraints, Contractor is unable or temporarily unable to carry out the change or if such performance cannot be reasonably required of Contractor.

#### **§ 5 Granting of Rights of Use to Work Results**

1. All copyrights, industrial property rights, and other protective rights to work results created for the customer (including draft and concept documents, documentation, specifications, etc.) shall be exclusively vested in Contractor in relation to the customer, even if the work results were created on the basis of specifications or with the cooperation of the customer.
2. Unless otherwise agreed in the individual contract, the customer shall receive, with respect to all work results that Contractor creates for the customer and/or provides to customer, a non-exclusive, non-transferable, irrevocable, worldwide, perpetual right to use such work results for the customer's own business purposes as agreed by the parties or as assumed by both parties; such right shall arise only upon Customer's full payment of the remuneration agreed for such work results.
3. Within the scope of the contractually agreed use, the customer is entitled to reproduce and distribute the software created for it by installing it on the machines specified in the offer and distributing it to customers as part of its machines. Use of the software in connection with other machines belonging to the customer requires the express prior consent of Contractor.
4. If the customer makes changes to the software itself or through third parties on its behalf, Contractor shall not be responsible for such changes and any consequences for other parts of the work results. In particular, the customer bears the burden of

proof that any defects in the work results were not caused by such changes made by the customer itself.

#### **§ 6 Responsibility and Cooperation of the Customer**

1. The customer shall provide the agreed and necessary cooperation (Mitwirkung) free of charge, in a timely, proper, and complete manner as an essential contractual obligation. This includes, in particular, cooperation resulting from Contractor's offer or from the individual contract.
2. The customer shall ensure that its employees have the necessary qualifications and experience for the cooperation and shall release them from other activities to the extent necessary.
3. The customer shall provide complete and consistent information and documents, test cases, test data, and a test environment to the extent necessary, shall cooperate in the preparation of specifications, and shall be responsible for testing the work results, in particular with regard to the completeness of the test scope.
4. The customer shall create all conditions necessary for the proper provision of services within its sphere of operation. In particular, it shall grant Contractor access to those parts of its hardware and software environment to which Contractor must have access in order to provide its services.
5. The customer shall be responsible for checking any third-party industrial property rights (e.g., patents, trademarks, registered designs, etc.) and corresponding register entries that may conflict with Contractor's services, unless otherwise agreed in the individual contract.
6. If the customer commissions other service providers, these shall be deemed to be vicarious agents (Erfüllungsgehilfen) of the customer. The customer shall be responsible for defining, coordinating, and monitoring the activities of the various service providers. The customer shall perform the necessary management and control tasks independently and in such a way that Contractor does not experience any delays, waiting times, and/or additional expenses.
7. The customer is responsible for backing up its data. In the absence of an express written notice in individual cases, Contractor's employees can always assume that all data with which they come into contact is sufficiently secured against loss.
8. The waiting and downtime, costs, and additional expenses incurred by Contractor as a result of the delayed, non-performance, or poor performance of cooperation obligations shall be invoiced to the customer at the agreed hourly rates. If any cooperation obligations to be performed by the customer are not performed despite the unsuccessful expiration of a reasonable deadline set for such performance (or, where immediate action is required to avert imminent harm, even without setting a deadline), and Contractor performs such obligations on a substitute basis, the customer shall also compensate Contractor for the resulting additional costs and expenses, based on the effort incurred. Further claims of Contractor remain unaffected.

#### **§ 7 Remuneration and Terms of Payment**

1. The amount of remuneration shall be specified in the individual contract. Unless otherwise agreed by the contracting parties, remuneration for services shall be based on the hourly rates agreed in the individual contract. If Contractor's offer specifies a certain number of person-days or person-hours, these shall be considered non-binding estimates unless expressly agreed otherwise.

2. The time-and-materials remuneration shall be invoiced to the customer on a monthly basis at the beginning of the month following the provision of services, together with Contractor's usual activity reports. Contractor shall inform the customer if it becomes apparent to Contractor that the estimated expenditure will be exceeded. At the customer's request, Contractor shall provide a monthly budget report.
3. The customer has the option of placing a binding order for certain resources or quotas of person-days over a specific period. Services from a bindingly ordered quota that are not called up during the agreed period shall be remunerated under the terms of the individual contract, provided that Contractor was unable to deploy the employees in other projects.
4. For weekend and holiday work (holiday regulations in Baden-Württemberg and December 24 and 31) as well as night work (from 6 p.m. to 7 a.m.) performed by Contractor at the customer's request, a surcharge of 50% shall be added to the applicable hourly rate.
5. The customer's reimbursement of travel expenses shall be as set forth in the applicable offer or individual contract.
6. All prices are subject to the applicable statutory value added tax. Payments must be made by the customer within 30 calendar days of the invoice date without deduction.
7. If the customer defaults on payment, Contractor may, after a two-week grace period has expired without result, suspend its contractual services with immediate effect, until the customer has fulfilled its payment obligations in full and settled all outstanding claims. Further rights of Contractor due to the customer's default in payment (e.g., termination for cause (außerordentliche Kündigung) of the contract) remain unaffected.

## § 8 Execution and Acceptance of Work Services

1. If Contractor performs work services or if the contracting parties expressly agree to carry out an acceptance (Abnahme) of work results (with legal effect), the following acceptance procedure shall apply in the absence of any deviating agreement in the individual contract.
2. Contractor shall make the work results available to the customer for acceptance and notify the customer that they are ready for acceptance. The customer shall carry out the acceptance test within two (2) weeks at the latest and declare acceptance if no defects (Mängel) preventing acceptance have been found during the acceptance test. Only defects in the work results that prevent or significantly restrict their use can prevent acceptance and justify discontinuation of the acceptance test.
3. Acceptance may also take place by way of conclusive conduct, e.g., by putting the work results to be accepted into productive operation (i.e., not for mere testing purposes), by unconditional payment of the remuneration, or by the customer calling off further services based on the work results to be accepted. The work results shall also be deemed accepted if the customer does not notify Contractor in writing or in text form (e.g., by e-mail) of any defects preventing acceptance within two (2) weeks of Contractor's notification of readiness for acceptance.

## § 9 Defects of Work Products

1. Contractor warrants (gewährleistet) that the work results provided to the customer correspond to the agreed service description. If Contractor (i) performs services according to the customer's specifications and requirements, (ii) integrates third-party or customer components into its own developments at the customer's request, or conversely (iii) integrates its own developments into third-party or customer components, Con-

tractor shall not be responsible for the technical and legal properties of these third-party components or the consequences of implementing the customer's specifications.

2. Functional impairments resulting, for example, from improper operation of the work results by the customer, from the customer's hardware or software environment, or from other reasons originating in the customer's area of risk do not constitute a defect. Contractor's liability for defects is conditioned on the customer not modifying the work results or using them in breach of the contractual requirements, unless the customer proves that the defect is unrelated to such modification or non-conforming use.
3. In the event of defects, Contractor shall provide warranty by means of subsequent performance (Nacherfüllung), which shall be carried out at Contractor's discretion either by subsequent delivery of a defect-free work result or by rectification of the defect. Rectification of the defect may also consist of Contractor first showing the customer reasonable ways of avoiding or circumventing the effects of the defect.
4. If the subsequent performance ultimately fails (at least two (2) attempts per duly reported defect), the customer may withdraw from the contract or reduce the remuneration. Due to the complexity of the services, more than two (2) attempts at subsequent performance may be appropriate and reasonable for the customer. There is no right of withdrawal (Rücktrittsrecht) in the event of only insignificant deviations of the work results from the agreed quality (vereinbarte Beschaffenheit). Contractor shall pay compensation or reimburse futile expenses due to a defect within the limits specified in § 11 of the GTC. Otherwise, the customer's rights due to defects are excluded.
5. If Contractor performs services to locate or remedy defects without being obliged to do so, Contractor may demand separate remuneration from the customer for this on a time and material basis. This applies in particular if a defect reported by the customer cannot be verified or cannot be attributed to Contractor. Contractor shall have no entitlement to additional compensation if the customer could not reasonably have recognized that the issue was not a defect in Contractor's services.
6. The limitation period (Verjährungsfrist) for claims for defects by the customer is one (1) year. This does not apply if Contractor caused the defect intentionally or through gross negligence, fraudulently concealed it from the customer, or if any other mandatory statutory provision prohibits a shortening of the limitation period.

## § 10 Infringements of Property Rights

1. Contractor warrants that the work results provided to the customer are free of third-party property rights and indemnifies the customer in accordance with the following provisions against legally established claims by third parties based on property rights infringements.
2. If third parties assert claims against the customer arising from the infringement of their property rights by the work results produced by Contractor, the customer shall inform Contractor of this immediately in writing and in full. Contractor shall be entitled, but not obliged, to conduct the dispute with the third party in and out of court alone. If Contractor makes use of this option, the customer shall grant Contractor all necessary powers and support Contractor in defending against the claims to a reasonable extent free of charge. The customer shall not acknowledge the claims of the third party on its own initiative.
3. If the work results have a defect of title (Rechtsmangel) at the time of transfer of risk (Gefahrübergang), Contractor shall

provide the customer with a legally sound possibility of using the work results. Alternatively, Contractor may also modify the affected work results or replace them (in whole or in part) with equivalent work results in order to remedy the defect. If an infringement of third-party property rights and/or a legal dispute over the third party's claims can be eliminated or avoided by the customer using a more recent version of the work results provided by Contractor free of charge, the customer shall be obliged to accept and use it within the scope of its duty to mitigate damages, unless the customer can prove that the use of the more recent version is unreasonable for it.

4. Within the liability limits set forth in § 11 of these GTC, Contractor shall indemnify and hold the customer harmless from all claims and damages arising from any infringement of third-party intellectual property rights, to the extent such claims and damages have been finally adjudicated and are based on a defect of title for which Contractor is responsible in the work results used by the customer in accordance with the contract. In all other respects, the provisions for material defects (Sachmangel) in § 9 shall apply mutatis mutandis to the customer's claims based on defects of title.
5. Contractor shall not be liable, in particular, if claims by a third party based on alleged infringements of property rights are based on the fact that the work results have been modified by the customer or used in violation of the contractually agreed conditions of use or for purposes other than those contractually agreed.

## § 11 Liability

1. Contractor shall only compensate for material damage, financial loss, and futile expenses, regardless of the legal basis, to the following extent:
  - a. in the event of intent and gross negligence, as well as in the event of the assumption of a guarantee in full;
  - b. in all other cases, only in the event of a breach of a material contractual obligation, without which the achievement of the purpose of the contract would be jeopardized and on the fulfillment of which the customer may therefore regularly rely (so-called cardinal obligation (Kardinalspflicht)); in these cases, liability shall be limited to compensation for typical damage that was foreseeable at the time the contract was concluded, but capped per claim at the respective order value of the affected individual contract; however, if the order value is less than EUR 50,000 (gross), the cap shall be at least EUR 50,000.
2. The customer must take all necessary and reasonable measures to prevent or limit damage; in particular, the customer must ensure that its data is backed up regularly. Contractor shall only be liable for the recovery of data within the limits of § 11 (1) if the customer has ensured that the data can be reproduced from electronically stored inventories with reasonable effort.
3. The above limitations of liability also apply in favor of Contractor's legal representatives, vicarious agents, and employees.
4. Liability for damages resulting from injury to life, limb, or health, as well as under the German Product Liability Act (ProdHaftG), remains unaffected by the above provisions

## § 12 Confidentiality; Reference

1. The contracting parties undertake to maintain confidentiality regarding all trade and business secrets of the other contracting party that have been entrusted to them, made available to them or otherwise become known to them, and to use such

confidential information only for the purpose specified in the individual contract. The contracting parties shall only grant access to the confidential information to those employees and approved subcontractors who need to have knowledge of it for the purposes of the individual contract. The confidentiality obligation shall remain in force for a period of three (3) years after the termination (Beendigung) of the individual contract.

2. The confidentiality obligation shall not apply to confidential information that was already known to the recipient prior to the conclusion of the individual contract without any obligation of confidentiality, or that is or becomes generally known without the recipient being responsible for this, or that was lawfully disclosed to the recipient by a third party without any obligation of confidentiality, or that was demonstrably developed independently by the recipient.
3. The provisions of this § 12 do not restrict the right of the contracting parties to continue to use ideas, concepts, or procedures relating to the contractual services that have become part of the general knowhow of their respective employees in the course of their cooperation, provided that this does not infringe any property rights of the other contracting party or a third party.
4. The contracting parties undertake to store all business items and documents made available to them in a proper manner and to hand them over to the other contracting party at any time upon request. In particular, they shall ensure that unauthorized third parties are unable to gain access to them as far as possible.
5. If the customer agrees to be named as a reference customer (e.g., in an individual contract), Contractor may use the customer's name for marketing purposes, in particular include it in a list of reference customers, and in this context also use the customer's company logos, trademarks, and logos in printed publications and online, e.g., on Contractor's website or in social networks.

## § 13 Term and Termination

1. Unless otherwise specified in the individual contract, either party may terminate (kündigen) the contractual relationship with one (1) month's notice to the end of any calendar month.
2. The right of both contracting parties to terminate the individual contract for cause remains unaffected. Cause shall be deemed to exist for Contractor in particular if the customer is in default of payment of a not insignificant part of the remuneration due for a period of more than two (2) months or if the customer, despite a corresponding request combined with the setting of a reasonable deadline, does not perform its obligations to cooperate, or does not perform them completely or properly.
3. Any termination must be in writing to be effective.
4. In the event that one of the contracting parties exercises its right of termination, Contractor undertakes to hand over to the customer the contractual services and work results produced up to that point. Contractor may refuse to hand over the services and results if and as long as there are still outstanding and due remuneration claims.

## § 14 Final Provisions

1. Any assignment or transfer of contractual rights and obligations by the customer to third parties – including affiliated companies of the customer within the meaning of §§ 15 ff. of the German Stock Corporation Act (AktG) – requires the prior written consent of Contractor. § 354a of the German Commercial Code (HGB) remains unaffected.

2. All amendments and additions to the contract must be made in writing to be effective. The transmission of electronically signed (e.g., via DocuSign) or signed and scanned business letters by email satisfies the contractual requirement for the written form. The requirement for the written form can only be waived in writing.
3. The law of the Federal Republic of Germany applies, excluding the UN Convention on Contracts for the International Sale of Goods. The exclusive place of jurisdiction for all disputes arising in connection with the contract is the registered office of Contractor. However, Contractor has the right to bring legal action at any other nationally or internationally competent court.
4. If these GTC are provided to the customer in a language other than German, this shall only be done to facilitate understanding. In the event of contradictions or discrepancies in interpretation, the text in German shall prevail.
5. Should individual provisions of these GTC or other contractual documents be or become invalid, or should the contract contain a loophole, this shall not affect the validity of the remaining provisions. In place of the invalid or missing provision, the contracting parties shall agree on a valid replacement provision that comes closest to what they intended economically at the time the contract was concluded

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