

These General Terms and Conditions ("TOS") of Kivito GmbH i.G. ("Kivito" also "Kivito GmbH") refer to agreements between Kivito and the customer / user (collectively the "parties") about services provided by Kivito and conclusively regulate the mutual rights and obligations of the parties with respect to these agreements. Users are also persons and organizations who have used, downloaded or registered products or services free of charge. The guiding document is the German version.

1. General regulations

1.1 Scope, structure of the regulations

1.1.1 These terms and conditions apply in particular to all services and works as well as deliveries that are provided within the framework of IT services or service contracts by Kivito GmbH i.G., Eberhardstr. 65, 70173 Stuttgart, Germany.

1.2 Offer and acceptance

1.2.1 Kivito objects pre-contracted to the customer (e.g., offers, suggestions, test programs, concepts) are the intellectual property of the Kivito. They may not be reproduced and made accessible to third parties. If no contract is concluded, they must be returned or deleted and may not be used. Incidentally, the provisions of these terms and conditions of the Kivito also apply to the pre-contractual obligation.

1.2.2 Offers of Kivito are non-binding, unless explicitly stated otherwise in the offer.

1.2.3 Guarantees require the express and written confirmation of the management of Kivito.

1.2.4 If the customer also uses General Terms and Conditions, the contract is concluded without express agreement on the inclusion of the General Terms and Conditions. As far as the different general terms and conditions agree, they are considered agreed. The contradictory individual regulations are replaced by the regulations of dispositive law. The same applies in the event that the terms and conditions of the customer include provisions that are not included in these terms and conditions. If these terms and conditions contain provisions that are not contained in the terms and conditions of the customer, then these terms and conditions shall apply.

1.3 Performance

1.3.1 Kivito provides the contractually agreed service in accordance with the principles of proper professional practice.

1.3.2 To the extent that the services are delivered on the customer site, Kivito alone is authorized to give instructions to its employees. The employees are not integrated into the operation of the customer.

1.3.3 The customer bears the risk of whether the services ordered meet his requirements and needs. In case of doubt, he must be advised in good time by employees of Kivito or by expert third parties.

1.3.4 Kivito decides which team members will be employed and reserves the right to change them at any time. Kivito can also

use freelancers and other companies within the scope of the order fulfilment at any time.

1.3.5 For Kivito deskMate and all services rendered hereby the current service agreement (SLA) applies.

1.4 Remuneration and payment terms

1.4.1 Remunerations and quoted prices are always net prices plus statutory sales tax.

1.4.2 All Invoices are payable immediately upon receipt without deduction. Discounts will not be granted.

1.4.3 Unless otherwise agreed, the fee will be charged at cost to the prices of the Kivito, which are generally valid at the time of provision of the service. As far as a price list is available, this must be applied. Billing according to expenditure takes place on presentation of the usual activity certificates at Kivito. The customer may object to the stipulations made there within two weeks in writing. After the expiry of these two weeks without objections from the customer, the proof of activity shall be deemed accepted.

1.4.4 14 days after invoicing, the customer is in default of payment. In the event of late payment, Kivito is entitled to issue a reminder with a reminder fee. For each reminder, Kivito GmbH may charge a flat-rate reminder fee of 12% p.a. of the outstanding invoice amount plus 50,- € processing fee per payment reminder or letter of reminder.

1.4.5 Unless otherwise agreed, travel costs, ancillary costs and material costs shall be reimbursed to Kivito in accordance with the price list valid at the time the service is provided.

1.4.6 The customer is only entitled to set-off rights if his counterclaims have been legally established, are undisputed or recognized by Kivito. In addition, the customer is entitled to exercise a right of retention insofar as his counterclaim is based on the same contractual relationship.

1.4.7 All online bookable services are payable in advance via automated payment systems as a recurring subscription. The payment period depends on the subscription you have chosen.

1.5 Performance dates, delay

1.5.1 Fixed service dates must be expressly agreed in a documented form. The agreement of a fixed service date is subject to the proviso that Kivito receives the services of its respective subcontractors and subcontractors on time and in accordance with the contract.

1.5.2 If a cause for which Kivito is not responsible, including a strike or lockout, adversely affects the adherence to schedule ("disruption"), the deadlines shall be postponed for the duration of the incident, including, if necessary, a reasonable restart period. A party shall inform the other party promptly and timely of the cause of a disruption occurring in its area and the duration of the delay.

1.5.3 If the effort increases due to a disruption, Kivito can also demand the reimbursement of the additional expenses.

1.5.4 If the customer can withdraw from the contract due to improper performance of Kivito and / or demand compensation instead of the performance, the customer will, at the request of Kivito within a reasonable period set out in writing, whether he asserts these rights or continues to wish the service , In the case of a resignation the customer has to reimburse the Kivito the value of previously existing possibilities of use; The same applies to deterioration due to intended use.

1.5.5 If Kivito is in default of providing the service, the customer's claim for damages and reimbursement of expenses shall be limited to 0.5% of the price of the part of the service due to the delay for each completed week of delay, which are not used due to the delay. The default liability is limited to a maximum of 5% of this price. This does not apply if a delay is due to gross negligence or intent of Kivito.

1.5.6 In the event of a delay in performance, the customer has a right of withdrawal within the scope of the statutory provisions only if the delay is responsible for Kivito. If the Customer is entitled to compensation for damages or reimbursement of expenses for the delay, he is entitled to charge 0.5% of the price of the part of the service for each completed week of delay, which can not be used due to the delay , but in total not more than 5% of this price.

1.6 Ranking, exchange ratio

1.6.1 In the interpretation of the contract, the following regulations apply in the order named:

- I. The regulations of the contract,
- II. The terms of reference in the special performance forms attached to the contract,
- III. the offer
- IV. these terms of contract
- V. the regulations of the BGB and HGB,
- VI. further legal regulations.

1.6.2 Concrete descriptions of general tasks restrict the performance obligation to the respective negotiated concrete specification. The first-mentioned provisions always take precedence over the latter in the case of contradictions. Gaps are filled in by the respective subordinate provisions. For arrangements in chronological order, the younger has priority over the older one.

1.6.3 Services are exchanged with this contract. A corporate law connection between the parties is not justified by this.

1.7 Co-operation obligations of the customer

1.7.1 The customer is obliged to support Kivito and in his operating environment all conditions necessary for the proper execution of the order, e.g. to create the required operating and operating conditions. In particular, he will provide necessary information and, if necessary, enable remote access to the customer system. The customer also ensures that expert personnel are available to support Kivito. Insofar as special security requirements apply to the operation of the customer, the customer shall inform Kivito of these before the conclusion of the contract. The required operating and operating conditions result from the contract.

1.7.2 Insofar as it is agreed in the contract that services can be rendered on site at the customer's premises, the customer provides sufficient jobs at the request of Kivito free of charge.

1.7.3 The customer is responsible for the proper data backup, insofar as corresponding services of Kivito can not be provided in accordance with the contractual agreements. Proper data protection includes all technical and / or organizational measures to ensure the availability, integrity and consistency of IT systems, including data, programs and procedures stored on those IT systems and used for processing purposes. Proper data protection means that the measures taken, depending on the data-sensitivity, allow an immediate or short-term restoration of the state of systems, data, programs or procedures after a perceived impairment of availability, integrity or consistency due to an adverse event; The measures include at least the production and testing of the ability to reconstruct copies of the standard software, data and procedures in defined cycles and generations.

1.7.4 Unless otherwise agreed, the customer shall additionally keep all documents, information and data handed over to him, in such a way that they can be reconstructed in the event of damage or loss of data carriers.

1.7.5 The customer acknowledges that created software together with the operating instructions and other documents - also in future versions - are protected by copyright.

1.7.6 Kivito may require additional compensation for your expenses, to the extent that

- I. it acts on the basis of a report without a defect, unless the customer was able to recognize with reasonable effort that there was no defect, or
- II. a reported incident is not reproducible or otherwise demonstrable by the customer as a defect.

1.7.7 The customer informs Kivito of any changes in the employees and users of the services to be provided by Kivito, insofar as these are of importance for the provision of services. The additional costs resulting from changes will be borne by the customer.

1.7.8 The Customer, in its sphere of control, ensures that the storage and use of data by Kivito on its behalf - e.g. private data of his employees in the context of the use of e-mails - complies with the applicable legal requirements. At the request of Kivito, proof must be provided without delay. If such proof can not be provided, Kivito may refuse the corresponding service. In this case, the payment obligations of the customer remain.

1.7.9 The customer is responsible for proper license management. As far as software is provided by Kivito, a licensing on the customer can take place. If Kivito has paid the remuneration for the software licensed to the customer, the software shall be issued and / or transferred to Kivito upon termination of the relevant service certificate or the entire contract. The customer will make all necessary declarations and perform actions that enable the publication and / or transfer and further use of the software by Kivito.

1.7.10 Changes to the services of Kivito or to the IT infrastructure operated by Kivito by the customer are only permitted after prior agreement of the parties. Unless agreed changes lead to additional expenses for the Kivito, these shall be remunerated by the customer in accordance with the price list valid at the time the service is provided.

1.7.11 If third parties commissioned by the customer use Kivito to make untimely changes to Kivito's services or to the IT infrastructure operated by Kivito, Kivito shall not be responsible for downtime, disruptions and damages, and the customer bears the additional expenses incurred by Kivito.

1.7.12 The customer shall ensure that no data theft takes place in its organizational area on shared systems operated by Kivito.

1.8 Assignment of rights

1.8.1 The customer may assign rights under the contract to third parties only with the prior consent of Kivito.

1.8.2 Kivito is entitled to transfer to third parties all obligations and rights to which it is entitled under the contracts. Kivito will ensure that the customer does not suffer any disadvantages.

1.8.3 Kivito is further entitled to have all duties performed by third parties on behalf of the order. In this case, Kivito continues to ensure as the contracting party the proper fulfillment of its contractual obligations towards the customer, and the customer accepts the service rendered as Kivito's service.

1.9 Confidentiality, custody, control rights

1.9.1 Both parties strictly agree to keep each other's know-how and trade secrets, which they learn about each other during the execution of this contract, and to keep all know-how, which is not generally known, secret from third parties and to oblige their employees accordingly.

1.9.2 The parties are aware that electronic and unencrypted communication (eg by e-mail) is subject to security risks. In this type of communication, they will therefore not assert any claims based on the absence of encryption, except where encryption has been previously agreed.

1.9.3 The customer is not permitted to remove protective mechanisms or protective routines from hardware and software.

1.10 Retention of title

1.10.1 Kivito retains title to the hardware and / or software supplied to the customer until full payment of all existing or future claims arising from this contractual relationship at the time of delivery; when paying by check or bill of exchange until their redemption.

1.11 Economic inability

1.11.1 In the event of an economic inability of the customer to fulfill his obligations to the Kivito, Kivito can terminate existing exchange contracts with the customer by rescinding, continuing obligations by termination without notice, even if the customer files for bankruptcy. § 321 BGB and § 112 InsO remain

unaffected. The customer will inform Kivito early in writing about an impending insolvency.

1.12 liability

1.12.1 The claims of the customer for damages or reimbursement of futile expenses shall be determined without regard to the legal nature of the claim according to Number 1.12.

1.12.2 Kivito shall be liable without limitation for damages resulting from injury to life, limb or health, which are based on a negligent breach of duty by Kivito or a willful or negligent breach of duty by a legal representative or vicarious agent of Kivito.

1.12.3 In the case of other liability claims, Kivito shall be liable without limitation only in the absence of the guaranteed quality as well as for intent and gross negligence of its legal representatives and executive employees. For the fault of other vicarious agents, Kivito is liable only to the extent of liability for slight negligence according to Number 1.12.4.

1.12.4 For slight negligence, Kivito shall only be liable if a duty is violated whose observance is of particular importance for the achievement of the purpose of the contract (cardinal duty). In case of violation of the cardinal obligation the liability for all damage cases is limited to 100.000,00 EUR. This also applies to lost profits and lost savings. Further liability for negligence as well as for other, consequential damages is excluded.

1.12.5 The liability of Kivito for damages resulting from the provision of the contractual services is limited to intentional and grossly negligent actions. The customer indemnifies Kivito against liability to third parties.

1.12.6 Liability for loss of data is limited to the typical recovery effort that would have been incurred in the case of regular and risk-adequate backup copies.

1.12.7 The above regulations also apply in favor of the employees of the Kivito.

1.12.8 Liability under the Product Liability Act remains unaffected (§ 14 ProdHG).

1.12.9 Kivito assumes no liability for provided software and patches, updates or other program renewals related to third parties.

1.13 Force majeure

1.13.1 Force majeure is defined as such circumstances and occurrences that could not be prevented with the care of proper business management. Force majeure of any kind, unpredictable operating, traffic or shipping disruptions, fire damage, floods, unpredictable manpower, energy, raw materials or excipients, strikes, lockouts, official orders or other obstacles beyond the control of Kivito, which reduce the performance, Delay, prevent or make unreasonable exempt for the duration and scope of the disruption from the obligation to provide services.

1.13.2 If, as a result of the disruption, the service provision is exceeded by more than eight weeks, both parties are entitled to

withdraw. In the case of partial or complete omission of the sources of supply, Kivito is not obliged to stock up on third party suppliers. In this case, Kivito is entitled to distribute the service quotas taking into account the own needs. There are no other claims for the customer.

1.14 Property rights of third parties

1.14.1 The customer will not remove existing markings, proprietary notices or property notices from Kivito in the software and the hardware, but may also include them in copies made.

1.15 Custody, reporting and toleration obligations of the customer

1.15.1 The customer must treat with care the hardware and / or software provided to him by Kivito (hereinafter referred to as "transfer components") and protect them from damage. He will ensure the proper use and operation of the leased components by adequately qualified personnel. The customer will follow Kivito's maintenance, care and use instructions, in particular the instructions contained in the provided user manual and documentation. Markings of the leasing components, in particular signs, numbers or inscriptions, may not be removed, changed or made illegible.

1.15.2 The customer is obliged to keep passwords and access data secret from unauthorized third parties. Passwords and access data must be stored in such a way that access to this data by unauthorized third parties is impossible in order to prevent misuse by third parties.

1.15.3 The customer ensures that the use of the administrator rights is only available to authorized employees.

1.15.4 The customer grants Kivito's employees and agents free access to the components for maintenance and repair work within normal operating hours.

1.16 Changes to the provided components; Change of site

1.16.1 Kivito is entitled to make changes to the provided components, provided they are for preservation or improvement. This does not apply if the measures are unreasonable for the customer. Kivito will inform the customer about appropriate measures in advance.

1.16.2 Modifications and additions to the leasing components by the customer require the prior consent of the Kivito. This applies in particular to attachments or installations as well as the connection of the leasing components with other devices, EDP systems or networks.

1.16.3 The preparation of the leasing components at a site other than the one specified in the service certificate requires the prior consent of the Kivito. The Kivito may require that transportation and reinstallation be made by qualified professionals. The costs associated with a change in location expenses and follow-up costs and any resulting additional costs for maintenance and care shall be borne by the customer.

1.17 Return

1.17.1 Upon termination of the contractual relationship, the customer must return Kivito the provided components in the proper condition at the place of business of the Kivito. The return obligation also includes the provided software on the original data media including manuals and documentation. Any copies of the computer programs provided must be completely and permanently deleted.

1.17.2 Upon return of the leasing components, a log will be drawn up to record any damage or defects in the leased components. The customer has to reimburse the costs for the restoration in case of damages or defects for which he is responsible.

1.18 Acceptance for works contract services

Insofar as work-contractual services are agreed between the Kivito and the customer, the following applies to the acceptance:

1.18.1 The acceptance takes place with the successful performance of the functional test. As far as Kivito installs the services as agreed, the functional test will be performed after delivery and installation of the services at the Kivito site. The customer is entitled to participate in the functional test. After a successful functional test, the Kivito informs the customer about the operational readiness of the services. For all other services, Kivito or the respective manufacturer performs the functional test during the final inspection; here, the acceptance shall be deemed to have taken place unless the customer expressly objects in writing within 8 days after delivery of the services under exact name of the defect of the acceptance.

1.19 Terms of Contract for Free Software

1.19.1 Free Software as defined in these Terms and Conditions is a software program created from what is known as free or open source software provided by third parties or Kivito.

1.19.2 Software to be provided by Kivito is free software, if explicitly mentioned. Such software is under license conditions, which include i.a. allows free modification, copying and sharing. The license conditions of the free software apply to the customer and must be observed by him.

1.19.3 Kivito is entitled to offer individual packages and software both as free software and as proprietary software as far as the license conditions of the free software permit. The respective terms of contract apply, which are referred to in the contract.

1.19.4 With a license, Kivito grants the customer the right to use the software within the scope of the license itself and under these terms of contract. The license conditions of the free software are not restricted or changed by this license agreement. All additional rights to individual packages that result from the license terms for these packages are expressly not restricted. Additional rights are not granted.

1.19.5 Any use of the free software contrary to these terms and conditions immediately terminates the rights of use of the offender.

1.19.6 The liability and warranty for free software are limited to intent and gross negligence.

1.20 Software for testing and demonstration purposes

1.20.1 If software is presented to the customer for demonstration and test purposes, the software remains the property of Kivito and the rights of use are only agreed as a simple right of use for the time of the agreed test or demonstration period, maximum 4 weeks from handover.

1.20.2 For free test installations or demonstration versions Kivito is liable only for intent and gross negligence.

1.21 Reference Customer Agreement

1.21.1 The customer and user of products and services grants Kivito the gratuitous, temporally, spatially and contentwise unlimited right to

- include the name and the logo of the customer / user
- to have a written reference of the used Kivito solution (naming the name and the logo of the customer / user) made,

in the Kivito database and by Kivito GmbH and its affiliated companies for advertising, marketing and sales purposes in all internal and external media.

1.21.2 The customer / user further agrees that both the logo and the font of the name of the color of advertising, marketing and sales media may be adjusted.

1.22 choice of law

1.22.1 The parties agree with respect to all legal relationships arising from this contractual relationship, the application of the law of the Federal Republic of Germany under exclusion of the UN Sales Convention.

1.23 jurisdiction

1.23.1 Insofar as the customer / user is a merchant within the meaning of the German Commercial Code, legal entity under public law or special fund under public law, the place of business of Kivito is the exclusive place of jurisdiction for all legal disputes arising as a result of this contractual relationship and within the framework of the execution of this contractual relationship.

1.24 Severability clause

1.24.1 If individual provisions of these terms and conditions are or become wholly or partially invalid or the contracts contain a loophole, this does not affect the validity of the contracts as a whole and the other provisions of the contract. In the case mentioned above, both parties undertake to make a provision which, taking into account the agreements made in the respective contract, best meets mutual interests.