General Terms and Conditions for Contracts with Businesses (B2B Terms and Conditions)

I. Scope of Application

These General Terms and Conditions form the basis for contracts entered into by TKI mbH with businesses within the meaning of Section 14 of the German Civil Code (BGB) in the following areas:

1. Software: Granting rights to use software developed by TKI mbH and third-party software distributed by TKI mbH or integrated into its own software
2. Services: Consulting services and migrations provided by TKI mbH, e.g. project management, analyses, migrations and support
3. Sale and Rental of Electronic Hardware

The details of the services to be provided are specified in the respective contractual offers issued by TKI mbH and any associated product descriptions. Together with these Terms and Conditions, they govern all rights and obligations of the contracting parties, unless mandatory statutory provisions provide otherwise.

The incorporation and application of any other terms and conditions are excluded.

II. Software Usage Rights

II.1. Where the contract includes the granting of rights to use software developed by TKI mbH, TKI mbH grants the Customer, subject to full payment of the applicable licence fee (without prejudice to the assertion of any warranty claims or similar rights), a non-exclusive, non-transferable and non-assignable right to use the software (licence). This licence is limited to the period of use agreed in the contractual offer (software rental) and may be exercised only within the territory specified in that offer, regardless of whether such territory is defined by geographical or administrative boundaries (city, municipality, district or similar) or parts thereof. The licence also covers and permits the use of third-party software integrated into TKI mbH software or distributed by TKI mbH. TKI mbH warrants that it is entitled to grant rights to use such software. These Terms and Conditions apply accordingly to those rights of use.

II.2. The following Sections III and IV additionally apply to the provision of access to internet-based software use (Software as a Service, SaaS) and the hosting of Customer data on servers operated by TKI mbH or third parties.

II.3. The software may not be used for any purpose other than that specified in the contractual offer.

II.4. The licence permits use of the software only by the number of Customer users agreed in the contractual offer. However, the Customer may permit users of affiliated companies within the meaning of Section 15 of the German Stock Corporation Act (AktG) to use the software within the agreed number of users.

II.5. The software may be copied once only, exclusively for backup and archiving purposes, and only if the copy bears a comprehensive copyright notice identifying TKI mbH's rights in the software, all additional restrictions on use under this contract and the designation of the original version. This also applies to updates and extensions of software already in use.

II.6. Where TKI mbH software contains programs known as licence managers, which control and monitor the number of concurrent users in a network environment and the number of licensed software copies, excluding backup copies, the Customer consents to the inclusion and use of such licence managers and other software protection mechanisms. Circumventing, removing, reverse-engineering or copying any such licence manager or other protection mechanism or technical restriction is prohibited.

II.7. Except for modifications to the user interface and extensions to the data model that do not affect the functionality of the software, the software may not, in whole or in part, be modified, decompiled, disassembled, reverse-engineered, broken down or converted into human-readable form. Nor may it be passed on or made available, whether for consideration or free of charge, to third parties other than those referred to in Section II.4 without the prior written consent of TKI mbH.

III. Internet-Based Software Use (SaaS), Data Hosting, Ownership and Usage Rights

III.1. Where the right to use software is granted through internet-based access (SaaS), the software may not be downloaded to, installed on or used on computer systems. This also applies where TKI mbH provides the software to the Customer via virtual workstations (so-called hosted workstations).

III.2. SaaS and data hosting require the Customer to transmit to TKI mbH personal data, including data relating to persons associated with the Customer. By acquiring the relevant licences or, where acquisition occurs only after use has commenced, by commencing use, the Customer expressly consents to the processing of such data by TKI mbH. TKI mbH processes the data exclusively for the agreed provision of the applications, in accordance with its privacy policy, available at https://www.tki-chemnitz.de/de/datenschutz.html and incorporated into the licences as amended from time to time, as well as the agreed data processing agreement (DPA) and the applicable technical and organisational measures (TOMs) for data protection. https://www.tki-chemnitz.de/de/datenschutz.html

III.3. All data, content, documents and other information entered, stored, processed or generated in the software by the Customer or its users (hereinafter "Customer Data") remain the exclusive property of, or subject to the exclusive rights of, the Customer. Storage or processing of Customer Data in TKI mbH systems does not transfer any ownership, usage or other rights in Customer Data to TKI mbH.

TKI mbH receives only the non-exclusive rights to use Customer Data that are necessary to perform the contractually agreed services, limited to the term of the contract.

III.4. TKI mbH shall not use Customer Data, in whole or in part, for the development, training, optimisation, validation or operation of artificial intelligence, machine-learning models, large language models (LLMs) or comparable automated systems.

Customer Data shall be used exclusively to provide the contractually agreed services, analyse and rectify errors, ensure system security and comply with legal obligations. Any other use requires a separate written agreement between TKI mbH and the Customer.

IV. Software Customisation and Support

IV.1. All services (maintenance, customisation to user requirements or similar) provided by TKI mbH in connection with software licences granted by it constitute services within the meaning of Section 611 BGB, unless otherwise agreed in these Terms and Conditions or in writing.

IV.2. TKI mbH shall provide these services in accordance with the current state of the art and developments in information technology, and the standards of proper professional practice.

IV.3. A specific outcome or result is owed only if agreed in text form or in writing before performance of the service begins.

V. Warranties and Guarantees

V.1. TKI mbH warrants that the software provided for use will function in accordance with the product description during the agreed period of use, provided that the Customer installs and operates it in accordance with the product or installation documentation.

V.2. A software error constitutes a defect giving rise to a warranty claim only if it impairs the functionality described in the relevant product description to more than an insignificant extent.

V.3. Where a warranty claim exists, the Customer is entitled to have TKI mbH, at its discretion and expense, take one of the following measures within a reasonable period:

- replace the software so as to restore the impaired functionality (including replacement with a newer version or equivalent software);
- restore the functionality specified in the product description by other measures, e.g. program corrections (patches), provision of updates or instructions for circumventing errors (workaround solutions).

Any further claims are excluded. The Customer understands and acknowledges that no software is entirely free of errors and that occasional failures and interruptions may occur during operation.

V.4. TKI mbH shall determine the place at which defects are remedied.

V.5. In the case of internet-based software use, TKI mbH provides no warranty for faults or interruptions in transmission technology beyond its control.

V.6. Warranty claims are excluded for support, other services and consulting services.

V.7. For hardware sold or rented, warranty remedies are limited to replacement or repair. Claims for damages are excluded unless TKI mbH fraudulently concealed the defect.

VI. Obligations of Software Users

VI.1. The software provided for use by TKI mbH and its related services require users to employ third-party computer equipment (hardware) and computer programs (software) whose specifications are set out by TKI mbH in the product descriptions. Unless otherwise agreed, the Customer alone is responsible for meeting these specifications and obtaining the necessary usage rights for any third-party software specified as required. The same applies to providing the necessary data transmission infrastructure (e.g. internet and intranet).

VI.2. The Customer shall ensure that users and operators of the software provided by TKI mbH possess the knowledge necessary to use the software properly in accordance with the product descriptions and operating instructions supplied by TKI mbH.

VI.3. If software provided by TKI mbH is to be used outside the Federal Republic of Germany, the Customer shall ensure compliance with all applicable laws and other provisions governing its import, export and use. In particular, the Customer shall comply with all trade restrictions (embargoes) applicable in the country in which it is established, the country of intended software use, the European Union and the Federal Republic of Germany. Embargoes imposed by other countries or associations of countries must also be observed where violations are subject to sanctions (secondary sanctions). The Customer shall indemnify and hold TKI mbH harmless against all third-party claims arising from a culpable failure to comply with these obligations and shall compensate TKI mbH for any loss not covered by such indemnification.

VI.4. TKI mbH shall not be liable for restrictions on the use of software supplied by it or for damage arising from failure to comply with these obligations or from malfunctions of the third-party computer equipment (hardware), computer programs (software) or connectivity infrastructure referred to in paragraph 1.

VII. Damages and Liability

VII.1. TKI mbH shall be liable for damages in accordance with statutory provisions unless otherwise provided below.

VII.2. TKI mbH shall not be liable for damage arising directly or indirectly from the acquisition of usage rights, the use or operation of software, or software failures. In particular, it shall not be liable for loss of profit, unrealised cost savings, loss of data or other disadvantages arising therefrom. This limitation of liability also applies where TKI mbH has been informed of the possibility of such damage.

VI.3. TKI mbH shall be liable for damage other than personal injury only in cases of intent or gross negligence, the burden of proof resting with the Customer, and only to the extent specified below:

TKI mbH shall be liable without limitation for personal injury and intentional misconduct; in all other cases, liability shall be limited to typically foreseeable damage and to breaches of obligations whose fulfilment is essential for proper performance of the contract, whose breach jeopardises achievement of the contractual purpose and on whose fulfilment the Customer may ordinarily rely (material contractual obligations, or “cardinal obligations”). Liability shall further be capped at the total remuneration payable under the respective contract, but in no event more than EUR 100,000.

VII.4. The defences of contributory negligence and failure to mitigate loss remain unaffected.

VII.5. The limitation of liability applies to all claims for damages, irrespective of their legal basis, including but not limited to contractual, pre-contractual or quasi-contractual claims and claims in tort. This limitation also applies to all employees, representatives and vicarious agents of TKI mbH. The limitation of liability does not apply in cases of data protection breaches.

VII.6. Liability for damage attributable to causes beyond the legal or actual control of TKI mbH is excluded unless TKI mbH has assumed a legally binding guarantee.

VIII. Contract Term and Termination

VIII.1. Contracts with TKI mbH enter into force upon the Customer’s acceptance of its contractual offers. They terminate upon expiry of the periods or fulfilment of the conditions specified in the contractual offer. Partial termination is excluded.

VIII.2. The right to extraordinary termination without notice in the event of a material breach of contract remains unaffected if the breach is not remedied within 14 days following a request in text form, provided that allowing a cure period is reasonable for the terminating party.

VIII.3. Upon termination of the contract, all rights to use software granted under it expire. Within thirty days, the software, including all copies or partial copies made and all modified components, must be returned to TKI mbH or destroyed. Destruction must be confirmed to TKI mbH in writing. For its part, TKI mbH shall, within thirty days, make all data stored by the Customer in the software relating to the Customer or its customers available to the Customer in full, in structured form and a commonly used data format (CSV, RTF or JPEG), readily retrievable or on suitable data carriers, and provide the Customer with all reasonable assistance in obtaining such data.

IX. Price Adjustments

IX.1. TKI mbH is entitled to adjust agreed remuneration if the costs relevant to pricing change materially after conclusion of the contract. Relevant costs include in particular:

a. prices for hosting, cloud and data centre services;

b. licence prices for third-party software distributed by TKI mbH or integrated into its own software;

c. subcontractor prices;

d. IT infrastructure and telecommunications costs;

e. public charges and taxes.

IX.2. TKI mbH shall notify the Customer of the price adjustment, stating the reasons, at least six weeks before it takes effect.

IX.3. Where a contract term has been agreed during which ordinary termination is excluded, price increases are permitted only after that term has expired.

IX.4. If a price adjustment increases the remuneration by more than 10%, the Customer may terminate the contract effective as of the date on which the price adjustment takes effect, subject to two weeks' notice.

X. Confidentiality and Data Protection

X.1. TKI mbH shall maintain strict confidentiality regarding all business and operational matters of the Customer of which it becomes aware, whether concerning the Customer itself or its business relationships, unless the Customer expressly releases TKI mbH from this obligation in an individual case. The duty of confidentiality continues after termination of the contract.

X.2. TKI mbH shall safeguard business and operational documents entrusted to it, protect them against inspection by third parties and return them, including all copies made, upon termination of the contract. Reports, expert opinions and other records of the results of its services, whether in writing or text form, shall be disclosed to third parties only with the Customer's consent.

XI. Amendments to the Terms and Conditions

Amendments or additions to these Terms and Conditions must be made in writing to be legally effective, unless another form is agreed in these Terms and Conditions. This also applies to any waiver of the written-form requirement.

XII. Governing Law and Place of Jurisdiction

XII.1. Contractual relationships with TKI mbH shall be governed exclusively by the laws of the Federal Republic of Germany.

XII.2. All terms and designations used shall be interpreted as defined and construed under the laws and case law of the Federal Republic of Germany and the European Union.

XII.3. Only the German-language version is binding. Versions in other languages are provided solely for ease of understanding.

XII.4. The place of jurisdiction for asserting all claims shall be Chemnitz, including where the Customer has no registered office, branch, domicile or place of residence in the Federal Republic of Germany.