KIX Service Software GmbH General terms and conditions of business

Chemnitz, April 01, 2023

1 Definitions, conclusion of the contract, scope and special terms of business for individual services

1.1 KIX Service Software GmbH (hereinafter referred to as "KIX-GmbH") provides the services defined in the offers. The scope of the individual service(s) due from KIX-GmbH in individual cases shall be in accordance with the offer and the applicable service-level agreements and special terms and conditions of business of KIX-GmbH.

1.2 The offers of KIX-GmbH are aimed exclusively at business customers.

1.3 A contract shall come into existence once KIX-GmbH accepts, in writing, the commission that has been issued by the Client in writing (hereinafter referred to as "the Contract", regardless of whether the singular or plural is used).

1.4 The general terms and conditions of business shall apply to all contracts between KIX-GmbH and its clients, and to services provided within the framework of the Contract. In addition, depending on the specific type of services due, the corresponding special terms and conditions of business (STCs) (special terms and conditions of business for a project, software and additional modules, operation, support and/or cloud) shall apply. The regulations of those special terms and conditions of business shall prevail over the provisions of these general terms and conditions of business.

1.5 The respective general terms and conditions of business and the special terms and conditions of business shall apply exclusively. The general terms and conditions of business of the client shall not apply. Any statements to the contrary on the part of the client with reference to its own terms and conditions of business are hereby expressly rejected to the extent that such terms contain provisions that deviate from or contradict these general terms and conditions of business or the special terms and conditions of business.

1.6 All agreements that contain an amendment or addition to the Contract, or that serve to make the Contract more specific, as well as separate guarantees and agreements, must be in written form. Any waiver of the written-form clause must be in written form.

2 Cancellation of the commission; revocation of the contract

2.1 The commission can be cancelled by one party only in accordance with the statutory provisions.

2.2 However, the contracting parties can reach agreement concerning the revocation of the contract concluded in accordance with Subclause 1.2 of these general terms and conditions of business. If the contract is revoked, KIX-GmbH shall be entitled to charge for the services provided in accordance with Clause 4 of these general terms and conditions of business and request compensation for expenses.

3 Special protective and ancillary obligations, duties of cooperation, virus protection, non-disclosure obligations

3.1 In relation to KIX-GmbH, the client undertakes to perform the cooperative actions necessary for the provision of the agreed services. In particular, the client shall make all necessary information and documents available without charge, and shall nominate a specialist contact person for the performance of the respective contract. The information and documents submitted shall form an essential basis for the performance of services by KIX-GmbH. The disclosure of incorrect or incomplete information shall be at the expense of the client,

3.2 Should the client provide KIX-GmbH with materials (video, images, audio, text, etc.), it shall ensure that it retains a copy of the materials, generally of the corresponding data, for back-up purposes.

3.3 The client hereby vouches that the materials provided to KIX-GmbH are free of proprietary or other third-party rights that could restrict or prevent the planned use. The client shall relieve KIX-GmbH of all third-party claims asserted against KIX-GmbH due to existing rights in respect of the materials provided. In such a context, the client shall assume, in particular, all obligations in relation to copyright-protection societies.

3.4 The client shall be solely responsible for backing up its data in a manner appropriate to its significance. In particular, the client shall be obliged, prior to all work provided by KIX-GmbH that involves its IT infrastructure (databases, servers, software, etc.), to ensure that all data is backed up on an external system or storage media.

4 Remuneration, payment and invoicing methods

4.1 If a fixed price is agreed for one-off payment, this shall be due for payment without deduction following receipt of the invoice. If a payment of the fixed price in instalments is agreed (payment on account), the agreed instalment shall be due without further deductions following receipt of the interim invoice.

4.2 If a fixed price is agreed as a one-off payment in respect of services to be provided within a contractually agreed period (continuing obligation over a service period), the remuneration for the service period shall be paid in advance, and subsequently on a yearly basis. The remuneration shall be due for the first time on the date stated in the offer or its appendix. If the remuneration is to be paid annually, this shall be paid at the end of the first contractual month.

4.3 Should the agreed service be remunerated at cost (cost remuneration), the invoicing shall take place monthly in arrears for the previous month. The invoice shall be issued on the basis of written proof of services rendered, which shall be attached to the invoice. The services shall be documented by KIX-GmbH with the smallest unit of 15 minutes (0.25 hours). The proof of services rendered shall be deemed to have been accepted if the client does not object within a maximum of 5 working days after their receipt.

4.4 In cases of fixed-term contracts, KIX-GmbH shall be entitled to adjust the prices, as well as the rates for an agreed remuneration according to cost, to the general development in prices, following the expiry of the agreed contractual term. If the fee increase amounts to more than 5%, the client shall be entitled to terminate the contractual relationship.

4.5 Clause 4 herein shall apply accordingly to agreed partial services and to interim invoices.

4.6 Invoices shall be payable without discount 14 days after their submission. The requirements and consequences for default shall be in accordance with the statutory provisions, unless otherwise agreed in the special terms and conditions of business.

4.7 Offsetting shall only be permitted for both contracting partners with claims that are recognised by a court, undisputed and due, and that have arisen out of the same legal relationship and out of a claim that would have entitled the creditor of the counterclaim to assert a right of retention or right of refusal to provide services.

5 Travel and accommodation expenses

5.1 If the reimbursement of travel and accommodation costs and expenses of the deployed employees of KIX-GmbH is agreed, the client shall reimburse the travel and accommodation costs incurred. If no flat-rate travel expenses are agreed, the basis of the reimbursement shall be the receipts for the costs incurred, which c.a.p.e IT shall submit to the client without solicitation.

5.1.1 Additional expenses for meals during business trips shall be reimbursed by the client in accordance with the applicable flat rates under tax law.

5.1.2 Hotel costs shall be reimbursed to a maximum of € 120 per person per night.

5.1.3 If journeys are made using a KIX-GmbH car, travel expenses will be charged based on a flat rate of € 0.40 per kilometre.

5.2 If no flat-rate travel expenses are agreed, travel times shall be remunerated at 50% of the agreed hourly rate. If remuneration according to daily rates is agreed, the full hourly rate shall amount to 1/8 of the daily rate, based a working day of eight hours without taking any necessary breaks into account. KIX-GmbH shall document the travel times. Subclause 4.4 of these general terms and conditions of business shall apply accordingly for the invoicing of the costs in accordance with Clause 5 herein.

6 Liability of KIX-GmbH

6.1 KIX-GmbH shall be liable for losses incurred by the client due to intent or gross negligence, due to the lack of a guaranteed quality in respect of the object of service, due to a culpable breach of substantial contractual obligations (so-called material obligations – see Subclause 6.3), as a consequence of culpable injury to health, body or life, or where liability is incurred under the German Product Liability Act (*Produkthaftungsgesetz*).

6.2 Material obligations are those contractual obligations whose fulfilment is essential for the proper performance of the contract to be possible, on compliance with which the contracting partners may regularly rely and whose breach by the other party jeopardises the achievement of the contractual purpose.

6.3 In case of breach of a material obligation, the liability shall be limited to such losses as are foreseeable and whose occurrence can be typically expected within the framework of contracts such as those between KIX-GmbH and the client, provided the loss is merely due to simple negligence and does not involve body, life or health.

6.4 In case of breach of a material obligation, the liability shall also be limited as follows, provided the loss is merely due to simple negligence and does not involve body, life or health:

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6.4.1   For material damage, KIX-GmbH shall be liable for up to € 50,000 per loss event, to a maximum total of € 100,000 per contract;

6.4.2   For financial losses, KIX-GmbH shall be liable for up to maximum of 50% of the total contract price per loss event, to a maximum of up to the total price of the contract (in case of fixed-term contracts, the remuneration for a contractual year shall form the basis).

6.4.3   Claims due to loss of profit shall be excluded.

6.5   Otherwise, liability of both KIX-GmbH and its vicarious agents and agents in performance shall be excluded, regardless of legal reason.

6.6   The liability of KIX-GmbH for loss of data shall be limited to the typical costs of recovery that could not have been avoided even in the case of the regular creation of backup copies appropriate to the risk.

6.7   No-fault liability on the part of capeIT for a defect existing at the time the contract was concluded according to § 536 a BGB is excluded.

7   Subcontractors

7.1   KIX-GmbH shall be entitled to engage subcontractors in respect of the provision of the services due.

8   Confidentiality

8.1   The client undertakes to permanently treat as confidential, not disclose to third parties, reproduce or exploit in any other way, all information concerning KIX-GmbH of which it has or will become aware in connection with this Contract, that is identified as confidential or is recognised as a commercial or operational secret on the basis of other circumstances (such as the design and implementation of programming by KIX-GmbH and other KIX-GmbH technical and technological expertise), unless KIX-GmbH has expressly agreed to the disclosure or use in writing, or the information has to be disclosed by law, a decision of a court or an official order.

8.2   To the extent that is applicable, the client shall ensure, by means of suitable contractual agreements with its employees and all other persons in its employment, that the said persons also refrain from any disclosure, exploitation, forwarding or duplication of information that is to be kept confidential.

8.3   Information shall not be designated as confidential under Clause 8 herein if:

- it was already known to the client without the information having been subject to a confidentiality obligation,

- it is or becomes generally known without a breach of the assumed confidentiality obligations,

- it is disclosed to the client by a third party without a breach of a confidentiality obligation.

8.4   If the client breaches one of the obligations set out in this clause, KIX-GmbH shall be entitled to an extraordinary termination of the Contract. The right to further claims and more extensive claims, in particular claims for damages, shall be retained by KIX-GmbH.

8.5   The obligations under Clause 8 herein shall persist beyond the end of the contract.

9   Reference statements

9.1   KIX-GmbH shall be entitled to make reference to the services to be provided or already provided to the client on its own website and in its own documents as references for advertising purposes, and shall also be entitled to use the logo and company name of the client (in abbreviated form if applicable). In addition, KIX-GmbH shall be entitled to publish press releases concerning the client's commission and the project.

10   Data protection

10.1   To the extent that KIX-GmbH gathers, processes and uses personal data from the client's environment as part of the contractual negotiations, substantiation of the contract and performance of the contract, this shall be done in compliance with the applicable statutory data-protection regulations and, in particular, only within the context of the contractual purpose.

10.2   In relation to KIX-GmbH, the client shall undertake to gather, process and use personal data from KIX-GmbH, in particular that of its employees, only in accordance with the statutory regulations. KIX-GmbH hereby informs the client that to the extent that KIX-GmbH is to provide IT hosting services, the client is itself obliged to comply with the provisions under data-protection laws in relation to its clients/users.

11   Place of performance

The place of performance for all obligations under the respective contract shall be the place of business of KIX-GmbH if the client is a businessperson as defined in the German Commercial Code (HGB), a legal entity under public law or a special fund under public law.

12   Applicable law

The law of the Federal Republic of Germany shall apply to the contract, including these general terms and conditions of business, the special terms and conditions of business, and all other contractual documents, to the exclusion of any other law. The applicability of German international private law, the EU Rome I and Rome II Regulations as well as the UN Sales Convention are expressly excluded.

13   Place of jurisdiction

The place of jurisdiction for all disputes arising directly or indirectly from or in connection with the contractual relationship shall be Chemnitz if the client is a businessperson as defined in the German Commercial Code (HGB), a legal entity under public law or a special fund under public law. This shall also apply to bills of exchange or cheques.

14   Severability clause

If one of the provisions of these general terms and conditions of business, the special terms and conditions of business or another contractual document is or becomes ineffective, this shall not affect the validity of the remaining clauses.