

General Terms and Conditions

Archived version. This version (Version July 2026) was in force until 26 July 2026 and is no longer updated. The currently valid version applies.

These General Terms and Conditions („GTC“) apply to all contracts between **JMK Solutions OG**, Josef Preisegger-Gasse 15, 3130 Herzogenburg, Austria (the „Contractor“), and entrepreneurs within the meaning of § 1 UGB (the „Client“). Contracts with consumers within the meaning of the Austrian Consumer Protection Act (KSchG) are excluded. Company register number: FN 682521h, register court: Regional Court of St. Pölten. This English text is a convenience translation; in case of discrepancies, the German version prevails.

§ 1 Scope and conclusion of contract

1.1 These GTC become part of the contract upon its conclusion. Conflicting or deviating terms of the Client are not recognised unless the Contractor expressly agrees to them in writing.

1.2 Individual written agreements (in particular quotations and order confirmations) take precedence over these GTC in the event of conflict.

1.3 Quotations are non-binding unless an express period of validity is stated. A contract is concluded by the Contractor's written order confirmation or by commencement of performance. Acceptance by email is deemed equivalent to written form.

§ 2 Subject matter of services

2.1 Depending on the agreement, the Contractor provides IT services, in particular: custom software development (web applications, mobile applications, backend systems, integrations); IT consulting, conception and architecture; feasibility studies, analyses and technical studies; commissioning, integration and training; maintenance and further development of existing systems.

2.2 The basis for performance is the scope of services defined in the quotation or order confirmation. The Client provides all information, access, test data and cooperation required for performance in good time, completely and free of charge.

2.3 If, during execution, the agreed service turns out to be factually or legally impossible, the Contractor will notify this without delay. The Client then decides whether the scope of services is adjusted or the order is terminated. Work performed up to that point is remunerated in any case.

2.4 Changes to the agreed scope („change requests“) are agreed in writing and remunerated separately at the agreed hourly rate or the rate valid at the time of the change.

2.5 The Contractor may engage qualified subcontractors. Responsibility for contractual performance remains with the Contractor.

2.6 An accessibility-compliant design pursuant to the Austrian Accessibility Act (BaFG) and related ordinances is not included in the quotation unless expressly and separately agreed on an individual basis. Assessing whether the Client falls within the scope of the BaFG and determining the measures required in the individual case are the sole responsibility of the Client. Corresponding requirements must be communicated to the Contractor in writing before the order is placed.

2.7 System passwords, access data, API keys and administration access provided to or set up by the Contractor for performance are released to the Client only under the following conditions: (a) there is no ongoing maintenance or service order under which the Contractor uses this access, (b) all due fees of the Client have been paid in full, and (c) the Client declares in writing a waiver of warranty and liability regarding all changes made after release of the access by the Client or third parties.

§ 3 Client's duties to cooperate

3.1 The Client is responsible for providing all information, documents, access, test systems, test data and contact persons in good time.

3.2 The Client alone is responsible for backing up its live data. If a system provided for testing is already used in live operation, responsibility for data backup lies with the Client.

3.3 The Client alone is responsible for the legal admissibility of content and data provided by the Client (in particular under copyright, trademark, competition and data protection law).

§ 4 Prices, payment terms and hour packages

4.1 All prices are in euros and are net prices plus statutory value added tax (currently 20 %).

4.2 Unless otherwise agreed, the Contractor's hourly rates valid at the time of performance apply. Travel time is charged at half the hourly rate. Travel and accommodation expenses are charged separately according to the collective-agreement rates valid at the time of travel; if none exist, the actual costs incurred are passed on against evidence.

4.3 Invoices are payable within 14 days of receipt without deduction, unless otherwise agreed in the quotation.

4.4 For projects lasting more than four weeks or with a total value exceeding €5,000, the Contractor may issue partial invoices according to project progress.

4.5 In the event of default, statutory default interest for commercial transactions pursuant to § 456 UGB and a lump-sum collection cost pursuant to § 458 UGB are charged. In the event of default the Contractor may suspend ongoing work until the arrears are settled; all associated costs and any loss of profit are to be reimbursed by the Client.

4.6 The Client is not entitled to withhold payments or set them off against the fee claim on account of complaints, warranty claims or counterclaims that have not been legally established.

4.7 For continuing obligations (maintenance, service), the agreed fees are adjusted each year on 1 January in line with the change in the consumer price index (CPI) of the previous year published by Statistics Austria. The basis is the index published for the month in which the contract was concluded. No downward adjustment below the originally agreed fee takes place. The Contractor notifies the Client of the adjusted amounts at least four weeks before they take effect.

4.8 Hour packages (block hours). The Client may purchase hour packages („blocks") in advance. These are paid before work begins and then worked off. The applicable hourly rates, discount tiers and package sizes result from the separate quotation or terms sheet and are not part of these GTC.

4.9 On-site and processing time as well as preparation, coordination, calls and emails between appointments are counted against a package; travel time is counted at half the hourly rate.

4.10 Usage and third-party costs (in particular usage and API costs) are not included in the package. They are shown separately and transparently at cost against evidence plus value added tax.

4.11 A package is available from purchase for the period stated in the quotation. Unused hours do not expire and are not refunded in cash but, unless otherwise agreed, remain usable as credit for twelve (12) months from purchase.

4.12 If a package is exhausted during a working period (sprint), this must be reported before further work. Continuation requires the purchase of a further package.

4.13 A record of hours is kept for the services rendered (date, hours and task note per entry). For packages paid in advance, no further invoice is issued after completion; only the record of hours follows.

§ 5 Delivery dates

5.1 Delivery and completion dates are non-binding unless expressly agreed as binding.

5.2 Delays caused by incomplete or incorrect information from the Client, late cooperation or subsequent change requests extend the delivery periods accordingly. Additional costs arising from this are borne by the Client.

5.3 Force majeure (natural events, labour disputes, official orders, failure of critical infrastructure, serious cyber attacks on the Contractor's IT infrastructure, in particular ransomware attacks that could not be prevented despite appropriate security measures) entitles the Contractor to a reasonable extension of delivery periods.

5.4 If the Client fails to meet its duties to cooperate under § 3 despite a written reminder and a reasonable grace period of at least seven (7) working days, the Contractor may terminate the contract for good cause and claim the work performed up to that point plus lost profit pursuant to § 1168 ABGB.

§ 6 Acceptance

6.1 Custom software and separable partial services require acceptance by the Client. Defects must be reported in writing and reproducibly within 14 days of delivery.

6.2 If no qualified written notice of defects is given within this period, or if the Client uses the service productively in live operation, the service is deemed accepted. Acceptance triggers the payment period.

6.3 The Client is not entitled to refuse acceptance on account of insignificant defects.

§ 7 Rights of use and copyright

7.1 Upon full payment of the agreed fee, the Client receives a right of use to the project-specific work results for its own internal business operations that is unlimited in time and territory, non-exclusive, non-transferable and not sub-licensable.

7.2 An exclusive grant of use requires an express written agreement in the quotation or a separate contract addendum and is priced separately. § 40b UrhG applies accordingly.

7.3 Regardless of the scope of the rights of use, the Contractor reserves the right to use generic components, libraries, architectural patterns, frameworks and development tools that are reusable independently of the specific project and contain no business-specific information of the Client for other projects.

7.4 Handover of the source code and technical documentation takes place only upon express written agreement and in any case only after full payment.

7.5 Where third-party software (standard libraries, open-source components, commercial licences) is integrated into the service, its use is governed by the licence terms of the respective rights holder. The Contractor informs the Client of material licence terms.

7.6 The Contractor may use AI-assisted development tools (e.g. code assistants, large-language-model-based tools) for performance. This does not constitute a defect, provided the agreed functionality, quality and security of the work results are ensured. The Contractor is responsible for reviewing and approving all results produced with the support of such tools.

§ 8 Warranty

8.1 The Contractor warrants that custom software essentially fulfils the agreed scope of functions, provided it is operated in the agreed system environment.

8.2 The warranty period is six (6) months from acceptance. The duty to inspect and give notice pursuant to § 377 UGB applies accordingly. The presumption of defectiveness pursuant to § 924 ABGB is excluded. Warranty claims lapse in any case one (1) month after expiry of the agreed warranty period; the possibility of raising a defence against the fee claim within the meaning of § 933 para 3 ABGB is excluded.

8.3 Defects must be reported in writing stating reproducible steps. In the case of a justified notice of defects, the Contractor will remedy the defect within a reasonable period by improvement. Improvement takes precedence over price reduction or rescission.

8.4 No warranty exists for defects attributable to: improper operation or configuration by the Client or third parties; changes to the software by the Client or third parties; altered operating system, runtime or infrastructure components; operation in a non-agreed system environment; faulty data, content or specifications provided by the Client.

8.5 For changes to existing software, the warranty relates exclusively to the change, not to the original system.

8.6 A duty to provide updates within the meaning of § 7 VGG is excluded to the extent legally permissible. Updates are provided only on the basis of a separate agreement.

§ 9 Liability

9.1 The Contractor is liable for demonstrably culpable damage only in the case of gross fault (gross negligence, intent). For personal injury, the Contractor is liable without limitation according to statutory provisions.

9.2 Liability for slight negligence and for indirect damage (in particular lost profit, business interruption, data loss, third-party claims, replacement costs or consequential damage) is excluded.

9.3 The Contractor's total liability arising from or in connection with the respective contract is, to the extent legally permissible, limited to the net order value of the affected project. For continuing obligations, liability is limited to the sum of the fees actually paid in the twelve (12) months before the damage occurred.

9.4 Claims for damages lapse according to statutory provisions, but at the latest one (1) year after knowledge of the damage and the party causing it.

9.5 For the availability of externally sourced services (hosting, cloud services, third-party APIs, hardware), the Contractor is liable only within the scope of the respective contracts with these third-party providers.

9.6 Insofar as the Contractor is entitled to warranty or damages claims against subcontractors or other third parties in connection with the service in question, the Contractor assigns these claims to the Client. In this case the Client must primarily pursue the third party.

§ 10 Data protection

10.1 The parties comply with the provisions of the GDPR and the Austrian Data Protection Act (DSG). The Contractor provides the Client with the privacy notice pursuant to Art. 13 and 14 GDPR; this is attached to this agreement or communicated to the Client in writing by other means.

10.2 If personal data of the Client or its customers is processed in the course of performance, the parties conclude a data processing agreement pursuant to Art. 28 GDPR before processing begins. The Contractor may engage sub-processors (in particular hosting, infrastructure and development service providers); the sub-processors engaged are listed in the data processing agreement or submitted to the Client separately for approval. The Contractor contractually obliges sub-processors to a level of data protection in line with the GDPR.

10.3 The Contractor processes personal data exclusively for the intended purpose and deletes it once the purpose ceases to apply or on the Client's instruction, unless statutory retention obligations apply.

§ 11 Confidentiality and reference

11.1 Both parties treat all business and trade secrets of the other party that become known in connection with the contract as confidential and do not pass them on to third parties. The confidentiality obligation continues indefinitely beyond the end of the contract.

11.2 Excepted is information that (a) is or becomes generally known without breach of a confidentiality obligation, (b) was already known to the receiving party before conclusion of the contract without a confidentiality obligation, (c) was communicated by third parties without a confidentiality obligation, or (d) must be disclosed due to an official or court order.

11.3 Subcontractors engaged by the Contractor are not deemed third parties within the confidentiality obligation, provided they are subject to an equivalent confidentiality obligation.

11.4 The Contractor may name the Client as a reference after completion of the project (company name, logo, general project description). Publication of confidential technical or business details requires the Client's written consent. The Client may object to being named as a reference in writing.

§ 12 Termination, withdrawal, cancellation

12.1 Project contracts end upon full performance and acceptance.

12.2 Continuing obligations (e.g. maintenance or service contracts) may be terminated by either party by ordinary written notice of three (3) months to the end of the month, unless otherwise agreed.

12.3 The right to extraordinary termination for good cause remains unaffected. Good cause exists in particular in the case of qualified breach of contract, default of more than 30 days despite a written reminder, or the opening of insolvency proceedings over the assets of a contracting party.

12.4 Cancellations by the Client require the Contractor's written consent. In the case of a mutually agreed cancellation, services already rendered and costs incurred are remunerated in full; in addition, a lump-sum cancellation fee of 30 % of the not-yet-invoiced order value is payable. Hour packages already purchased are treated as credit in accordance with § 4.11 and not refunded in cash.

§ 13 Loyalty

13.1 The contracting parties undertake mutual loyalty. During the term of the contract and for twelve (12) months after its end, neither party will actively poach or employ employees or subcontractors of the other party who were involved in performance. A breach obliges the payment of lump-sum damages amounting to one gross annual salary of the person concerned.

§ 14 Final provisions

14.1 Austrian law applies, excluding the UN Convention on Contracts for the International Sale of Goods and the referral norms of international private law.

14.2 The court with subject-matter jurisdiction at the Contractor's registered office (Regional Court of St. Pölten) is agreed as the exclusive place of jurisdiction.

14.3 Amendments and additions to these GTC or individual contracts require written form. This also applies to any amendment of this written-form clause. Written form is preserved by email.

14.4 Should individual provisions of these GTC be or become wholly or partly invalid, the validity of the remaining provisions remains unaffected. The invalid provision is replaced by a rule that comes closest to the economic purpose of the invalid clause.

14.5 The parties recommend initiating mediation with registered mediators pursuant to the Austrian Civil Law Mediation Act (ZivMediatG) before taking legal action in the event of disputes.

14.6 These GTC are provided in a German and an English version. In case of discrepancies, the German version alone is authoritative.

If you have any questions about these GTC, please contact office@jmk-solutions.at.

Last updated: July 2026