



NoKantDo eG

GENERAL TERMS & CONDITIONS

1. General information and scope of application

- 1.1. These terms and conditions shall apply to all legal transactions conducted between NoKantDo and its clients. By concluding a contract or accepting a service, the client recognises these general terms and conditions. The client's terms and conditions shall not apply, even if we have not expressly objected to these. Deviating or conflicting conditions require our express written consent, whereby these terms and conditions shall continue to apply in addition.
- 1.2. These terms and conditions shall apply to contractors, legal persons under public law and special estates under public law.
- 1.3. We reserve the right to amend our terms and conditions in future and shall notify the client of any such amendment in writing or text form. They must raise any objections to the amendments within two weeks of receipt of notification. Unless objections are raised in a timely manner, the amendments shall be deemed to have been accepted. When giving notification, we shall refer specifically to the right to object and the legal implications of silence.

2. Quotations, cost estimates, conclusion of contracts

- 2.1. Our quotations and cost estimates are valid for a period of four weeks. However, only our order confirmation in text form or in writing shall constitute a contract.
- 2.2. If an order should be regarded as a quotation, we can accept this within two weeks.
- 2.3. We reserve the ownership rights and copyright for all documents and information provided in conjunction with the placing of an order (e.g. drafts, test versions, calculations, drawings, images, graphics, animations etc.). These documents must not be made accessible to third parties without our express written consent. Should the order not be placed, the documents must be returned to us immediately or, if they have been provided on data carriers, should be deleted permanently. Please note that the content of such documents may be encumbered with third party rights and rights of use may have been allocated to us for presentations only.

3. Compensation and reimbursement of costs

- 3.1. Unless the contracting parties agree a separate compensation agreement, compensation shall be calculated based on costs at the general standard prices upon conclusion of the contract.
- 3.2. Working time shall be calculated based on units of 15 minutes begun. We are obliged to engage in financially responsible time management.
- 3.3. Unless otherwise expressly agreed, we are entitled to bill and issue invoices immediately following provision of the service. For activities which may take place over a period longer than one month, we



may issue a monthly invoice at the end of the month. Services invoiced on a cost basis are documented by us according to activity and duration and sent with the invoice.

- 3.4. Our invoices are payable in full 14 days following receipt. Agreed deposits or advance payments are payable immediately following the issuing of the invoice.
- 3.5. Payments must be made to the bank account stated at no cost to us. Should we authorise another payment method, we shall only accept this on account of performance prior to performance completion.
- 3.6. Unless a fixed price agreement has been made, we reserve the right to make appropriate changes to the price due to changes in salary, material and operating costs for services which occur three months or later following conclusion of the contract.
- 3.7. Prices are subject to the VAT applicable at the time the services are provided.
- 3.8. Travel and other expenses are reimbursed separately at the amount actually incurred to an appropriate extent. Travel time up to 1 hour per day shall not be considered working time. Other travel times are counted as 50% working time; this shall apply particularly when journeys are expressly requested by the client.
- 3.9. Should costs be incurred during order fulfilment, these must be reimbursed. For costs which exceed the amount of €1000 (one thousand), we reserve the right to claim an advance payment to the amount of the costs. Travel on the customer's account requires agreement from both parties.

4. Service provision and performance

- 4.1. Our services are provided in accordance with generally recognised technical regulations.
- 4.2. Fixed deadlines are subject to us receiving services from our suppliers in a timely manner and as contractually stipulated. Fixed deadlines should be expressly agreed in writing or electronic documentation. Deadline confirmations on our part are only binding if they have been confirmed by the specified contacts or the executive board.
- 4.3. Regular checks and monitoring of systems and services (e.g. monitoring/availability checks for services, data back-up checks, malware protection updates, reports, etc.) must be individually determined and agreed in writing. The same applies to agreements on the availability of systems and services ("Service Level Agreement" - SLA).
- 4.4. We may commission suitable and qualified third parties (subcontractors) in the service provision process, should we believe this to be appropriate. In particular, we may involve the members of our cooperative in the provision of services. This also applies to the partial provision of services.
- 4.5. The client is not entitled to request that services be provided by particular persons. We are entitled to replace the people required to perform the services, as long as they possess the required qualifications and shall not cause any inappropriate detriment to the client.
- 4.6. Unless otherwise agreed, the client is responsible for project management, project organisation and project planning. Our designated contact shall assist the project manager and he/she shall be responsible for the agents we use with respect to technical and disciplinary matters, irrespective of place of performance.



- 4.7. Should contacts be designated for specific matters or the entire performance of the contract, they shall be responsible for the relevant matters in provision of the services, in particular for agreeing deadlines, notifications and agreements. In case of an obstacle to them performing their duties, the deputy shall be responsible; should no deputy be designated, responsibility will fall to the executive board.

5. Client cooperation and obligations

- 5.1. The client is obliged to assist us in fulfilling principal and secondary contractual obligations. They must ensure that all services of cooperation required for the provision of the agreed services must be properly provided in a timely manner, in full and at no cost to us, unless we are required to fulfil them. This includes but is not limited to workplaces for activities on-site and entry and access to the client's systems. The client furthermore guarantees that the assistance required for contractually stipulated performance shall be provided by the client's specialist staff. The client's services of cooperation are a prerequisite for our provision of services as contractually stipulated.
- 5.2. We may assume that documents, data and other information delivered or made available to us are complete and accurate. This shall not apply if we identify or are forced to identify that the documents are inaccurate or incomplete.
- 5.3. Should the client fail to fulfil their cooperation obligations or fail to do so in good time, any resulting postponement of deadlines and increases in compensation cost shall be at the client's expense.
- 5.4. The client guarantees that any supplies, information, content and other materials (e.g. text, images, music files, videos, animations, software etc.) provided or made available by them for the purposes of performance of the contract shall not unlawfully affect the rights of third parties. In particular, the client guarantees that it has the required rights of use for the contract performance. We must be informed voluntarily in writing or text form of any potential limitations of use. The client shall release us from any claims in relation to this and refund us the appropriate costs for legal defence.
- 5.5. We must receive detailed and comprehensible notification immediately in writing of any defects, stating any appropriate information, particularly process steps which led to their occurrence and the consequences thereof.
- 5.6. The client must ensure that damages due to data loss and downtimes are minimised as far as possible by means of regular back-ups. Specifically, the client must create back-ups prior to advertised changes or adaptations to the systems and services.

6. Changes and additions to services / change request

- 6.1. During performance of the contract it may be necessary to change or add to the services being provided. A request for change and/or addition (change request) must be made to us in writing or text form, stating all necessary factors for inspection or evaluation.
- 6.2. We shall inspect the change request and inform the client of the outcome of the inspection in an appropriate period of time, within a maximum of 14 days, stating the effects on costs, expense and delivery dates. If the time period is not sufficient for an inspection, the deadline must be extended appropriately. We shall inform you of the costs of the inspection and its possible consequences in advance. The costs of the inspection can be calculated appropriately according to time taken. Should



the client wish an inspection not to be carried out, although we believe this to be necessary, we may reject the change request.

- 6.3. We must be notified of the decision to conduct the change request within 14 calendar days of receipt of the outcome of the inspection. Should a change request not be processed or decided upon or the involved parties not be informed of its existence within the agreed period, it shall be deemed rejected and not a contractual object.
- 6.4. Should costs increase or deadlines be affected as a result of service modifications arising from a change request, we are entitled to an appropriate increase in compensation and/or adjustment to the deadline. Should the cost decrease as a result, the client may request a reduction in compensation. However, we shall be due appropriate remuneration for the proportion of the originally agreed compensation that is ultimately cancelled during performance of the contract. This applies accordingly if the calculation is based on cost and services were already ordered prior to the change request.
- 6.5. The designated contacts shall be responsible for requests, inspection and approval.
- 6.6. This provision applies accordingly if we propose a change or addition to the client.

7. Approval

- 7.1. Should the client be required to approve the performance object, we shall ask the client to give approval. Unless another deadline is agreed, the client has two weeks following receipt of the request to inspect the performance object to ensure it conforms to the stipulations of the contract (inspection period) and declare approval, insofar as the performance object is worthy of approval. Approval must not be refused unreasonably.
- 7.2. Any defects detected shall be assigned to the following categories by the client and the client shall be informed thereof immediately upon detection, in accordance with cooperation obligations:
 - Category 1: The defect makes contractual use possible only with severe limitations or not at all.
 - Category 2: The defect limits contractual use but does not constitute a Category 1 defect.
 - Category 3: The defect only limits contractual use to a negligible extent.
- 7.3. The performance object is worthy of approval if the client cannot refuse approval. The client may refuse approval if a Category 1 defect is present or several Category 2 defects lead collectively to the consequences of a Category 1 defect. We shall deal with duly reported defects which prove an obstacle to approval within a reasonable period. The client's inspection period shall be extended appropriately should it not be possible to carry out the inspection due to a defect, removal thereof or its consequences. Claims for defects following approval remain unaffected.
- 7.4. Prior partial approvals shall remain unaffected by subsequent approval inspections for other performance objects.
- 7.5. The performance object shall also be deemed approved without express declaration from the client if the client does not approve the performance object within an appropriate period of time stipulated by us, despite having an obligation to do so.



- 7.6. Approval shall also be deemed declared if the client absorbs the performance object into production operations.
- 7.7. The preceding provisions shall also apply to the approval of definable partial services.

8. Transfer of risk

- 8.1. Should performance objects be transmitted in electronic form, the risk of accidental destruction in transmission to the teleservice provider we use for transfers shall be transferred to the client.
- 8.2. Should performance objects be made available for download, the risk of accidental destruction arising from provision and giving notification thereof shall be transferred to the client.

9. Rights to deliverables, copyright and usage and exploitation rights

- 9.1. Unless otherwise agreed, the client shall be granted non-exclusive rights of use of created content, deliverables, property rights and created software for its own purposes as part of the contract fulfilment. It shall only be granted the use required for the fulfilment of the contract purpose. The same shall apply to local use. More extensive rights of use and exploitation, particularly exclusive rights of use, shall only be granted by written agreement and for a regular additional payment.
- 9.2. Should the deliverables only be consigned temporarily (e.g. hire/leasing), the rights of use shall be time-limited to the duration of the contract. Rights of use shall otherwise be granted for an unlimited period of time.
- 9.3. A transfer of rights of use for an unlimited period of time is only permissible if the client fully waives its rights. We must be informed of the purpose of use in writing by request. The client must also impose its duties and limitations of use on third parties.
- 9.4. We are authorised to protect our performance objects from non-contractual use through technical measures, insofar as contractual use shall not be thereby significantly impeded.
- 9.5. Should the client require the acquisition of rights of use or licences from third parties for the performance of the contract or the operation of a service, we shall inform the client thereof in good time. The client shall abstain from any use for which it has not acquired the necessary rights of use or licenses.
- 9.6. We have the right to be named as copyright holders and may for this purpose attribute the mark ourselves, insofar as this is not unusual or in conflict with the contract purpose. The copyright notice may not be deleted without our consent.
- 9.7. In case of unlawful or non-contractual use, we reserve the right to claim appropriate compensation and demand a financial penalty to the amount of 100% of the appropriate compensation.
- 9.8. We reserve the right to prohibit the use of the performance objects if the client has significantly contravened the limitations to its use or provisions for the prevention of unwarranted use and we have set a deadline for remedy in advance. In repeated instances, no deadline is set for remedy. The client must confirm the cessation of use in writing. Should the client prove conclusively that there is no longer any contravention of the rights of use granted and the consequences thereof have been dealt with, we shall grant the use of the software once again.



- 9.9. The granting of rights of use and exploitation is subject to the preceding condition of full payment of the agreed compensation.
- 9.10. Should the client fall into arrears, we are entitled to refuse further use of the services provided for an appropriate period of time. This refusal does not constitute a withdrawal and the period of refusal may not usually exceed six months.

10. Reservation of title

- 10.1. We reserve ownership rights to the items delivered until the complete payment of all receivables arising from the contract. In case of unlawful conduct on the part of the client, we are entitled to take back the purchased item.
- 10.2. While the property has not yet been transferred to the client, the latter must handle the purchased item carefully and perform the required maintenance and repair works at its own expense. If the object is impounded or exposed to other such interventions by third parties, we must be informed immediately. If it is not possible to procure the judicial and extrajudicial costs for third party opposition proceedings from the third party, the client shall be liable for the losses.

11. Service disruptions

- 11.1. Should the agreed deadlines be impeded by any cause (including strike or lockout) for which we are not responsible, the deadlines shall be postponed for the duration of the cause plus an appropriate restart phase where required. The contracting parties shall inform each other immediately of any such causes in their areas and the duration thereof.
- 11.2. Should the client be responsible for a disruption whose cause is within its area of responsibility, compensation according to the contractual agreement shall be due to us for the additional costs arising therefrom.
- 11.3. The client may only withdraw due to a dereliction of duty not arising from a defect in a purchased item or work if we are responsible for this dereliction of duty.
- 11.4. Should the client withdraw due to a dereliction of duty concerning a definable service, the other services shall not be affected by this withdrawal. A definable service is one which may be provided independently of other services to be provided, taking into account the client's reasonable interests.

12. Warranty

- 12.1. For sales and service contracts, we guarantee the agreed quality of the performance object and that it may be used by the client without contravening third party rights.
- 12.2. The client must immediately assess the performance object following receipt or provision for obvious defects and inform us of these immediately should they be present. A warranty for these defects is not otherwise possible. This applies accordingly if any such defect is revealed at a later stage. Section 377 of the German Commercial Code (HGB) is applicable.



- 12.3. Should the client have claims for defects, they may first of all enforce their right to rectification within the framework of legal provisions. Rectification shall take place at our option through repair or replacement of the performance object. If performance cannot be rectified, the rectification fails or cannot be performed for other reasons, the client may enforce its legal claims for defects taking into account the other contractual terms. However, there is no right of withdrawal for negligible defects.
- 12.4. Expenditure required for self-execution may not exceed the value of the order.
- 12.5. As part of a replacement for contract software, the client shall install where necessary a new update of the software, unless this leads to unreasonable impediment. We shall also fulfil our duty of repair by offering the client an update to download which installs automatically and telephone assistance to resolve any problems arising from installation.
- 12.6. The warranty for material defects shall not apply to defects to contract software which arise from said software being used in a hardware or software environment which is inappropriate for the contractually stipulated requirements or to changes and modifications that the customer has made to the software without being permitted to do so either by law, this contract or our prior written consent.
- 12.7. The limitation period for claims for defects is twelve months. Should we have concealed the defect in bad faith or should monetary compensation be required due to a defect, the relevant legal limitation periods shall apply.
- 12.8. Should a maintenance contract be agreed between the parties, the deadline for dealing with defects shall be based on the periods stated in this maintenance contract.

13. Infringement of third party rights

- 13.1. Should the rights of third parties be infringed upon by the performance object supplied by us in a manner which prevents, limits or excludes contractual use by the client, we shall release the client from any claims arising therefrom. The client shall inform us immediately of the enforcing of any corresponding claims and shall pass on to us all decisions regarding the significant defensive measures and not make a confession or reach any settlement over the claims being enforced without agreement.
- 13.2. In the event of wrongful prosecution, the client shall assign any claims for compensation which may be due to them from the third party to us.
- 13.3. Should the rights of third parties be infringed upon, we shall provide the client at our option with either a legally impeccable option to use the performance object due or change this in a reasonable manner so that the rights of third parties are no longer infringed upon.

14. General liability

- 14.1. Liability will not be accepted for minor negligence unless the claim is based on the dereliction of a contractual obligation whose fulfilment is fundamental to the proper performance of the contract or



whose infringement jeopardises the attainment of the contract purpose and compliance with which the client may ordinarily trust based on the contract purpose (significant contractual obligations).

- 14.2. We shall only be liable for payment of damages from a written guarantee if we have expressly stated this in the guarantee.
- 14.3. Should we have infringed upon a significant contractual obligation or a written guarantee through minor negligence, liability for property and financial damage is limited to the foreseeable, contractually typical damages. The limitation period for such claims is one year.
- 14.4. Liability due to injury to life, limb or health and claims under product liability laws are unaffected by the previous limitations.
- 14.5. The contracting party must allow its contributory negligence to be deducted in cases of damages in accordance with legal provisions. In the event of data loss, we shall be liable for the expense incurred in case of proper and regular data back-up by the client for the updating of data. In this instance, with regard to back-ups, the client must take into account the appropriate due diligence required for the type of data and its significance for business operations. The restriction shall not apply if and insofar as the data back-up is part of the services to be provided by us.
- 14.6. We shall not be liable for damages arising from causes which are not within our area of responsibility. This shall apply in particular to damages arising from disruptions to connections, servers and other facilities or systems which are not within our area of responsibility.
- 14.7. The preceding provisions shall also apply to our subcontractors, representatives and bodies.

15. Duty of confidentiality

- 15.1. The contracting parties are obliged to maintain secrecy regarding all confidential matters, processes and information which come to their knowledge as part of their business relationship and to only use this within the framework of the contract purpose. This applies particularly to operating and business secrets of other associated companies and corporations, with regard to all data and information (duty of confidentiality).
- 15.2. All documents subject to the duty of confidentiality must accordingly be labelled suitably and clearly as “confidential”, unless it is not clear from the circumstances that the duty of confidentiality should apply.
- 15.3. The duty of confidentiality shall continue beyond the end of this contract. The duty of confidentiality shall become invalid if and when
- the information affected becomes public knowledge.
 - one contracting party releases the other from the duty of confidentiality and silence is not mandated by law.
 - one of the contracting parties has demonstrably received information from a third party without being bound by confidentiality.
 - disclosure is mandated by law.
- 15.4. The contracting parties guarantee that all third parties, companies and subcontractors in their employ shall observe this duty of confidentiality. In particular, they shall oblige them to do so using the same method.



16. Data protection

- 16.1. Both contracting parties undertake to comply with legal provisions on data protection.
- 16.2. If we collect, process or use the client's personal data, we shall conclude appropriate provisions with the client which meet the legal requirements.

17. Duration, cancellation, withdrawal

- 17.1. If the beginning of the performance of the contract is not yet fixed and the beginning of the contractual obligations cannot be inferred from the circumstances, the provisions and obligations of the contract shall begin on conclusion of the contract.
- 17.2. Unless otherwise agreed, continuing obligations shall apply initially for a period of one year. If the contract is not cancelled by a contracting party with a notice period of 3 months prior to its expiry, it shall automatically renew for a period of one year.
- 17.3. Should a minimum contractual period be agreed, ordinary termination prior to the end of this period is not possible.
- 17.4. Should the client not be in a financial position to meet their obligations arising from the contract (financial incapacity), we may withdraw from exchange contracts and cancel continuing obligations without prior notice. This shall also apply should the client file for insolvency. Section 321 of the German Civil Code (BGB) and Section 112 of the German Insolvency Act (InsO) remain unaffected. We must be informed immediately of impending insolvency.
- 17.5. The right of termination for good cause shall remain unaffected.
- 17.6. Cancellations must be made in writing.

18. Assignment, set-off, right of retention

- 18.1. The client's contractual rights and obligations may not be assigned in full or in part to third parties without our prior written consent. Consent must not be refused unreasonably.
- 18.2. Set-off is only permitted for those counterclaims which are legally binding, undisputed or recognised in writing.
- 18.3. Unless otherwise determined, the right of retention may only be exercised when the counterclaim stems from the same contractual relationship and is legally binding, ready to be ruled upon, undisputed or recognised in writing. A right of retention due to lapsed claims is excluded.

19. Arbitration agreement

- 19.1. For all disputes arising from this contract or regarding its validity, prior to bringing an action before the ordinary courts of law, the contracting parties undertake to enter into arbitration proceedings with the



object of developing an agreement serving the interests of those involved, with the assistance of a neutral arbitrator, taking into account the financial and legal circumstances, and to settle this in whole or in part. A previous failed mediation regarding the object of the dispute shall not substitute the arbitration proceedings.

- 19.2. The arbitration board shall be the “Deutsche Institution für Schiedsgerichtsbarkeit e.V. (DIS)” [German Institution for Arbitration]. The arbitration shall be conducted in accordance with the applicable provisions of the Rules of Procedure at the time of appeal to the arbitration board. Irrespective of the amount in dispute, the arbitration shall be performed by an arbitrator who must be qualified to hold the position of a judge in Germany.
- 19.3. The limitation period for all claims arising from the situation forming the object of arbitration is suspended from the application for arbitration to the end of the arbitration proceedings. Section 203 of the German Civil Code (BGB) shall apply accordingly.
- 19.4. Arbitration shall not prevent the parties from conducting summary proceedings in court, such as, in particular, attachment proceedings or a preliminary injunction.
- 19.5. The following shall apply to arbitration proceedings, deviating where necessary from the previously intended mediation regulations:
- The proceedings shall be performed at NoKantDo's place of business, unless the parties agree on another location.
 - The language in which the proceedings shall be performed is German. Pleading documents may also be provided in English, if they are not also available in German.
 - German law, excluding the CISG, shall apply.
 - During the proceedings, the parties are obliged to properly continue their business relationship. Entering into arbitration proceedings does not entitle either party to cease provision of any or all of its services.

20. Other provisions

- 20.1. For contractual partners in Germany and foreign countries where German is an official language, the language of the contract shall be German. Essential specialist terminology may be used in English. For contracting parties in other foreign countries, the language of the contract shall be English. Should contracts be translated into languages other than the contractual language, the copy in the contractual language shall be decisive for its content and interpretation.
- 20.2. The law of the Federal Republic of Germany shall apply exclusively to all legal relationships. The CISG and provisions on conflict of laws in international civil law shall not apply.
- 20.3. Text form may also constitute the written form, unless the written form is legally required.
- 20.4. The place of performance shall be NoKantDo's place of business.
- 20.5. The exclusive jurisdiction is the place of business of NoKantDo, unless another jurisdiction is mandated by law.