



# General Terms and Conditions of konplan Schweiz AG

## 1. Scope of GTC

These GTC govern the relationship between the customer and konplan Schweiz AG, Suurstoffi 2, 6343 Rotkreuz (hereinafter referred to as konplan) and apply to all services provided by konplan. Changes to these GTC are only effective if konplan confirms them in writing.

## 2. Services of konplan

### 2.1 Scope of services

konplan's order confirmation and/or konplan's offer determine the scope and performance of the individual services. konplan's development or service will only achieve a particular purpose or a particular performance level if such purpose or performance level is expressly described in konplan's offer or konplan's order confirmation. konplan will regularly report to the customer on the status of the work, any findings konplan has made in the course of the project, next steps konplan anticipates making until the next report and, if konplan's price offering is time-and-material based, the actual costs accrued so far.

### 2.2 Additional services

The customer must pay for any of konplan's services that exceed the scope described in konplan's offer (additional services) according to konplan's then-current hourly rates. Additional services are deemed accepted by the customer if they are agreed upon in writing (paper, e-mail) between the customer and konplan. An oral agreement for additional services will be recorded by konplan and sent to the customer in writing (paper, email). If the customer does not object to such additional services in writing within three working days after receipt of konplan's communication, the customer is deemed to have accepted that konplan performs such additional services.

### 2.3 Deadlines

konplan will be in default if konplan does not comply with a deadline agreed upon in konplan's offer or otherwise in writing (paper, email), the customer has requested konplan to remedy such delay by granting a reasonable grace period and konplan still does not comply within such grace period. If konplan cannot meet such deadlines for circumstances beyond its control, these deadlines will be extended by the period corresponding to the duration of the circumstances beyond konplan's control.

## **2.4 Place of performance**

Unless expressly agreed otherwise, konplan's principal place of business shall be deemed the place of performance for konplan's services under this contract.

# **3. Obligations of the customer**

## **3.1 Prices**

The prices payable by the customer are based on konplan's offer or konplan's order confirmation. The prices are exclusive of value added tax. Value added tax will be charged additionally by konplan. Travel time is deemed working time, unless otherwise stated in the offer. Travel costs and other expenses are reported and charged to the customer without surcharge. After consultation with the customer, konplan is entitled to adjust the prices once annually to reflect increases in its input costs, such as for salaries, material, taxes, duties, etc.

## **3.2 Cooperation of the customer**

The customer shall support konplan within the scope of what is reasonable and necessary, in a timely manner and at his own expense, in the fulfillment of the contract, be it in terms of resources, information, access to customer's premises, electronic data storage and project management tools, etc. In particular, the customer shall provide qualified personnel in sufficient quantity to support the project. These persons must have the necessary authority to make binding decisions in the project.

## **3.3 Responsibilities of the customer**

The customer shall ensure that the products and services for which he has contracted with konplan are used in accordance with the law and the contract. The customer and not konplan is the potential distributor of the work products (especially with regard to products qualifying as medical devices). Safety-relevant information shall be passed on by the customer to the users of the work product in an appropriate form.

## **3.4 Specifications of applicable norms**

konplan's services comply with such norms and standards that are explicitly stated in konplan's offer or in konplan's order confirmation. Subsequent deviations from such norms or standards are contract changes, require an analysis of the impact on the project and are, if accepted by konplan for implementation, subject to charge. The corresponding costs will be documented in an amendment to the offer.

## **3.5 Acceptance by the customer**

The customer must continuously check the interim work products (test results, documents, specifications, program components, etc.) during the project and notify konplan in writing and without delay (but at the latest within three working days of discovery) of any objections and defects.

Upon completion of the work product, the customer is entitled to a test period of thirty (30) days. The test period starts when konplan has delivered the work product. Within the test period, the customer must either declare acceptance by signing an acceptance protocol or refuse acceptance in writing by substantiating why the customer refuses acceptance. If the customer uses the work product in production, the work product is deemed accepted with the first such use. If the customer has neither declared nor refused acceptance on or before the last day of the test period, the work product is deemed accepted at the end of the test period.



Defects that do not substantially limit the use of the work product (non-substantial defects) do not entitle the customer to refuse acceptance.

Documents and other written materials are deemed accepted if they have been delivered to the customer and the customer has not objected to them in writing within thirty (30) days of such delivery.

## 4. Invoices and payment terms

konplan invoices its services to the customer monthly, unless otherwise agreed in writing. Unless otherwise agreed, invoices are payable net within thirty (30) days after issuance of the invoice. Unless the customer notifies konplan to the contrary, the invoice is deemed accepted after the expiry of the payment term.

If the customer is in arrears with a payment for any reason, konplan may, without limiting its other remedies and at its sole discretion, suspend further performance of the contract until new payment terms are agreed and konplan has received sufficient collateral for further performance of the contract. If such an agreement cannot be reached within a period of thirty (30) days or if konplan does not receive sufficient collateral, konplan may terminate the contract with immediate effect, without prejudice to its statutory remedies. Claims for damages remain reserved in any case. A default interest of 5% per year applies.

## 5. Warranty in work-for-hire contracts

If the contract between the parties qualifies as a work-for-hire contract, konplan undertakes to remedy serious and disruptive defects notified in time at its own expense, first by modifying the work product or, if this is not possible, second by replacing it with another functionally equivalent work product (right and obligation to remedy defects). The customer is required to notify konplan in writing and in a substantiated manner of any defects that were recognizable during the acceptance test in accordance with section 3.5 (open defects) no later than on the last day of the test period. Defects that the customer could not have detected despite a careful acceptance test according to section 3.5 (hidden defects) must be reported to konplan in writing and substantiated by the customer immediately after discovery, but no later than six (6) months after acceptance according to section 3.5. There is no warranty for defects that the customer does not report within these deadlines.

All other warranty remedies (in particular price reduction, rescission and damages) of the customer are hereby expressly excluded to the extent permitted by law. In addition, konplan excludes any warranty of title, i.e., the warranty that the work products do not infringe any intellectual property rights of third parties, to the greatest extent permitted by law.

## 6. Liability of konplan

To the extent permitted by law and for contractual and non-contractual claims, konplan excludes all liability for all direct and indirect damages (including personal injury, property damage and financial loss) incurred by the customer in connection with the contractual relationship with konplan and the performance of such contract, unless the damage was caused by gross negligence or intent. Claims arising from product liability remain reserved.

This exclusion of liability also applies to the liability of the principal according to Art. 55 CO and the liability of auxiliary persons according to Art. 101 CO.



## 7. Specific limitations of liability/indemnification by the customer

Any liability of konplan is excluded if the customer has made changes or repairs to work products without konplan's consent, or if the customer uses the work products for purposes other than those intended by the parties, unless konplan has acted with gross negligence or intent. The customer agrees to fully indemnify konplan in case of claims for damages that are the result of such changes / repairs or the customer's use of the work products for purposes other those intended by the parties.

konplan does not assume any warranty or liability for products purchased by konplan on specific instruction of the customer.

## 8. Other terms

### 8.1 Intellectual property rights

All intellectual property rights (in particular copyrights and patent rights) to the work products specifically developed for the customer belong to the customer and are assigned to the customer subject to the condition that the customer has made all due payments to konplan in full. As long as the customer has not made all due payments to konplan in full, such intellectual property rights belong to konplan.

All intellectual property rights to standard software and other products that konplan has not specifically developed for the customer are the exclusive property of konplan or its licensors.

### 8.2 Confidentiality

The customer and konplan agree to maintain confidentiality of facts and data that are neither in the public domain nor generally accessible. In case of doubt, facts and data must be treated in confidence. In particular, konplan's offer is confidential and shall not be disclosed to third parties. Notwithstanding the preceding two sentences, konplan is allowed to send offers, order confirmations and invoices to the customer via e-mail (also in unencrypted form).

The parties may agree on supplementary arrangements regarding confidentiality in a separate non-disclosure agreement.

### 8.3 Non-solicitation

During the term of the contract and for one year thereafter, solicitation, direct or indirect employment or use of services in any form of the other party's employees or auxiliary persons assigned to perform services under this contract require the prior written agreement of the parties.

### 8.4 Contractual penalty

In the event of a breach of the non-solicitation clause, the breaching party shall pay the other party a contractual penalty of CHF 50,000.00. The payment of the contractual penalty will not exempt the other party from further compliance with the non-solicitation clause and will not preclude any claims for compensation for further damages.

### 8.5 Authority to instruct

When dispatching its employees to the customer's premises to provide the contractual services, konplan at all times retains full authority to issue instructions to such employees under applicable labor laws.



## 8.6 Set-off

The customer cannot set off debts to konplan against its own claims without konplan's written consent.

## 9. Term and termination

Subject to mandatory legal provisions to the contrary and subject to other contractual agreements, either party may terminate the contract with a notice period of thirty (30) days at the end of each month. The client undertakes to pay konplan's fees and costs accrued until the termination becomes effective.

## 10. Final provisions

### 10.1 Assignment and transfer

The rights and obligations arising out of this contract may only be assigned to third parties (including affiliated companies) with the prior written consent of the other party. Such consent may not, however, be refused without reason.

### 10.2 Written form

Any amendments and modifications to these GTC as well as any collateral agreements require the written form and the signature of both parties in order to be valid. This also applies to the amendment of this written form requirement.

### 10.3 Legal provisions

In addition, the statutory provisions on the mandate (in the case of services qualifying as mandate agreement) and on the work-for-hire contract (in the case of services qualifying as work-for-hire contracts) will apply.

### 10.4 Applicable law and jurisdiction

Swiss substantive law is applicable, excluding the UN Convention on Contracts for the International Sale of Goods (CISG). The exclusive place of jurisdiction is the seat of konplan.

Rotkreuz, July 2023

