

General Terms and Conditions for

K.A.R.L.®-Consulting Services & K.A.R.L.®-Software

Part 1 - General Provisions and Special Provisions for K.A.R.L.®-Consulting Services

1. Scope of application, defence clause, written form

1.1. The following General Terms and Conditions (hereinafter referred to as "**GTC**") are an integral part of every contract by which KA Köln.Assekuranz Agentur GmbH (hereinafter referred to as "**KA**") provides a **K.A.R.L.® consultancy service** described in more detail in the respective contractual offer to the contractual partner (hereinafter referred to as "**contractual partner**") and/or grants access to the **K.A.R.L.® software** via web browser, app or interface. Depending on the contractually agreed scope of services, the Special Provisions **K.A.R.L.®-Consulting Services** in Part 1 and/or the Special Provisions for the Use of the **K.A.R.L.®-Software** in Part 2 of these GTC apply to the contract in addition to the General Provisions in Part 1. In the event of contradictions between the General and Special Terms and Conditions and in the event of contradictions between the Special Terms and Conditions for **K.A.R.L.® consultancy services** and those for the use of the **K.A.R.L.® software**, the latter shall take precedence.

1.2. These GTC apply exclusively. Conflicting, deviating or supplementary terms and conditions of the contracting party will not be recognised unless KA expressly agrees to their validity in writing.

1.3. Oral agreements made in relation to the contract require written confirmation by KA in order to be valid, "in writing" in these GTC being understood in the sense of § 127 BGB.

1.4. The scope of the order shall be based on the agreement reached between the parties and recorded in writing. Changes and/or extensions to the originally agreed order must be recorded in writing in a supplementary agreement, taking into account the additional work involved.

2. Contractual Services

2.1. The subject of the contract is the **K.A.R.L.® consulting service** described in more detail in the respective contract offer and / or the transfer of rights of use to the **K.A.R.L.® software** within the scope of a web browser or app access. A specific economic or other success is not owed (service contract).

2.2. In particular, all information, advice, reports or statements made by KA within the framework of the **K.A.R.L.® consultancy service** or the use of the **K.A.R.L.® software** are always to be understood as suggestions to the contracting partner: These suggestions are intended to serve as a supportive decision-making aid for the improvement of the assessed risk, without the implementation of individual or all suggestions being able and intended to guarantee an increased or otherwise determined

degree of safety. In the case of services to be rendered by KA, no specific success or specific result beyond the advisory service is owed as a matter of principle. The assessment of the entrepreneurial expediency and the entrepreneurial implementation is the sole responsibility of the contracting partner. KA also does not owe a legal review.

2.3. In its services, KA takes into account the recognised rules of science (e.g., theory of risk and probability) and technology applicable at the time of conclusion of the contract or receipt of information, and the principles of proper professional practice.

2.4. Subsequent changes in the valuation of a site which was previously the subject of a valuation by a **K.A.R.L.® consultancy service** or the use of the **K.A.R.L.® software** do not trigger any information obligations of KA vis-à-vis the contracting party or warranty claims of the contracting party.

2.5. As a rule, results obtained within the scope of the **K.A.R.L.® consultancy service** or using the **K.A.R.L.® software** are presented in the form of a report. The preparation and provision of reports is based on a service contract (§§ 611 ff. BGB).

2.6. The risk classifications made are generally based on globally available geological, geographical and meteorological data sets, which are regularly maintained, expanded and specified at KA. Likewise, the calculation methods used are continuously improved and adapted to the current state of knowledge. The results thus reflect the current state of knowledge at the time of report preparation. The risk ratings stated in the reports are based on the respective data sources stated, the empirical values underlying the **K.A.R.L.® consulting service** or the **K.A.R.L.® software** and the information supplied by the contracting party in accordance with item 3.3 (in particular vulnerabilities of an object).

2.7. Since these are risk analyses and not predictions, hazards for which a low risk or no risk at all has been shown may suddenly and unexpectedly experience major loss events. No warranty or other liability can be assumed for the realisation of these risks unless a case of para. 4.1 exists.

2.8. KA is entitled to make use of expert external consultants and institutions for the execution of the contract.

General Terms and Conditions for

K.A.R.L.®-Consulting Services & K.A.R.L.®-Software

3. Obligations of the contracting partner to provide information and to cooperate

- 3.1. The contracting partner shall ensure, without special request, that KA receives in due time all documents and information of which the contracting partner is aware and which might be of importance for the execution of the order.
- 3.2. When executing the order, KA is entitled to assume that the facts stated by the contracting partner, in particular figures and documents handed over, are correct and complete. The verification of the correctness, completeness and regularity of the documents and figures submitted is part of the contractual services only if this has been expressly agreed in writing or if the duty to verify arises from the nature of the contract.
- 3.3. Without being requested to do so, the contracting party must provide KA with all documents, information, etc. necessary for the execution of the order in due time, in full and free of charge; this in particular applies to object vulnerabilities. Upon request, the contracting party must confirm to KA in writing the correctness and completeness of the documents as well as of the information provided orally. Any errors in advice based on information not provided or not provided correctly will be borne by the contracting party.
- 3.4. To the extent that the contract is not executed due to circumstances within the sphere of the contracting party, KA is entitled to reimbursement of all expenses incurred up to that point as well as to payment of a remuneration corresponding to the actual services rendered.
- 3.5. Instead, KA may also claim liquidated damages in the amount of 10% of the order value. The contracting party is at liberty to prove that no damage has been incurred at all or that the damage is lower than the lump sum.

4. Liability, warranty

- 4.1. KA is liable in accordance with the statutory provisions in case of intent, gross negligence, culpable injury to life, body or health, in case of the assumption of a guarantee or a procurement risk and in case of liability under the Product Liability Act.
- 4.2. KA is also liable in the event of a breach of material contractual obligations due to simple negligence, i.e., obligations the fulfilment of which is a prerequisite for the proper performance of the contract and on the observance of which the contracting party regularly relies on and may rely. In this case, however, KA's liability is limited to a total amount of € 250,000.00 (EURO two hundred and fifty thousand).
- 4.3. Any further liability of KA is excluded.
- 4.4. The above provisions shall also apply if damage is caused by organs, legal representatives, employees or other vicarious agents of KA.

- 4.5. To the extent that KA's liability is excluded or limited in accordance with the above provisions, this also applies to the personal liability of KA's executive bodies, legal representatives, employees and other vicarious agents.
- 4.6. Insofar as the contractual partner can assert warranty rights, these shall become statute-barred after 12 months, unless a case of para. 4.1 applies. For claims due to material defects or defects of title in the software, the warranty period shall begin with the delivery of the access data.
- 4.7. Insofar as KA is obliged to provide a warranty on the basis of statutory provisions, KA is initially entitled to rectify the defect. Only after the rectification of defects has failed twice within a reasonable period of time, the contracting party may assert further claims.
- 4.8. Events of force majeure, unavoidable accidents or strikes shall not constitute grounds for default. Equivalent are such circumstances which make the provision of services unreasonably difficult or temporarily impossible. In such cases, KA has the right to postpone its services by the duration of the impediment as well as by a reasonable start-up period.

5. Copyright and rights of use; granting of rights

- 5.1. The documents and documentation, analyses and other materials (hereinafter "**Materials**") handed over by KA to the contracting party within the scope of the contract are protected by copyright and are exclusively intended for the contracting party's own use within the scope stipulated in the contract.
- 5.2. The rights to the elaborations provided by KA remain with KA. KA's work may only be published with its written consent and with reference to the source.
- 5.3. If KA has taken possession of materials of the contracting party for the purpose of executing the contract, these must be taken back by the contracting party at its own expense upon termination of the execution of the contract.
- 5.4. KA is entitled to make copies of the materials returned by the contracting party for the purpose of fulfilling legal storage and documentation obligations.
- 5.5. If the contracting party is an end user, the following applies:

KA grants the contracting party an exclusive right of use, unlimited in time and space, to the work results achieved on the basis of the respective order. The results of the work may only be used by the contracting party within the scope of the purpose of the contract and may not be made accessible to third parties outside the purpose of the contract.

The contracting party is granted the non-transferable and non-sublicensable right to use the services of KA for the contractually underlying purposes for purely internal purposes of the contracting party.

General Terms and Conditions for

K.A.R.L.®-Consulting Services & K.A.R.L.®-Software

5.6. If the contracting party is a reseller, the following shall apply:

KA grants the contracting party the right to resell the services acquired from KA to end users to the extent stipulated in the contract. The contracting party is obliged and shall ensure that end-users are obliged to comply with the obligations and restrictions of use set out in section 5.5 and to ensure that end-users comply with the correspondingly applicable obligations and restrictions of use.

6. Delivery, Performance Times

6.1. The delivery and performance dates stated in the offer are always to be understood as approximate only.

6.2. Compliance with deadlines for services to be rendered by KA presupposes the timely receipt of all documents to be provided by the contracting party, the provision of cooperation services, as well as compliance with the agreed terms of payment and other obligations. If these preconditions are not fulfilled in time, the deadlines for KA's performance will be extended appropriately.

6.3. If KA is unable to meet delivery or performance deadlines or dates, KA will inform the contracting party thereof without delay and, at the same time, communicate the expected new deadline or date.

6.4. Any rights due to delayed delivery or performance can only be asserted by the contractual partner after an unsuccessful reminder with a reasonable deadline.

6.5. Partial deliveries and partial services are permissible to a reasonable extent and can be invoiced as such.

7. Remuneration

7.1. The remuneration and its calculation shall result from the contract and shall be agreed between the parties individually and in writing for each order. The remuneration shall be due upon issuance of the invoice without any discount.

7.2. In the event of remuneration on a time and material basis, the working and travelling times incurred shall be invoiced at the respectively valid calculation rates and parts used shall be invoiced at the prices valid at the time of performance. Other services, including accommodation and travel costs, shall be charged additionally.

7.3. All prices are increased by the applicable value added tax.

8. Term, Termination of the Order

8.1. In the case of contracts aimed at the one-off provision of a service (hereinafter "**project contract**"), the performance period shall be specified individu-

ally in the contract. In the case of contracts that enable the possibility of use within a fixed period of time (hereinafter "**term contract**"), the contract shall be extended by a further 12 months in each case. This shall not apply if one party has terminated the term contract with a notice period of 3 months.

8.2. The right to ordinary termination of both parties is excluded. This does not affect the right to terminate the contract for good cause.

8.3. An important reason for KA exists in particular if

- the contracting party fails to fulfil the necessary obligations to cooperate despite being requested to do so;
- the contracting party fails to pay a due invoice within a reasonable period of time despite a reminder;

and KA, taking into account all circumstances of the individual case and weighing the interests of both parties, cannot reasonably be expected to continue the contract until the originally agreed termination.

8.4. Any termination must be in writing.

9. Confidentiality and Data Protection

9.1. KA will treat as confidential all data, facts and other information entrusted to it or made known to it during the execution of the contract. In particular, it will only disclose the results of its consultancy services and/or expert opinions to third parties with the written consent of the contracting party, within the framework of the applicable laws. If, at KA's due discretion, third parties are involved in the execution of the contract, they must be bound to confidentiality by KA by means of appropriate agreements. For the further development of the **K.A.R.L.® software**, KA may use the data, facts and other information in anonymised form.

9.2. The processing of personal data in accordance with data protection laws is carried out in compliance with applicable data protection law, in particular the EU-General Data Protection Regulation (GDPR).

9.3. The comprehensive explanations on data protection and information security are available on KA's homepage at any time:

<https://www.koeln-assekuranz.com/en/datenschutz>

10. Prohibition of assignment and set-off

The contracting party may neither assign claims arising from this contract nor set them off against claims against KA, unless they are undisputed or have been finally determined by a court of law.

11. Applicable law, place of performance, place of jurisdiction, severability clause

11.1. The contract shall be governed exclusively by German law.

11.2. Place of performance is Cologne.

General Terms and Conditions for**K.A.R.L.®-Consulting Services & K.A.R.L.®-Software**

- 11.3.** The exclusive place of jurisdiction for all claims arising from the contract is Cologne, provided that the contractual partner is a merchant, a legal entity under public law or a special fund under public law or has no general place of jurisdiction in the Federal Republic of Germany.
- 11.4.** Insofar as a provision of this contract is or should become invalid, the remaining provisions of this contract shall remain valid. The contracting parties undertake to replace the invalid or void provision with a provision that comes as close as possible to the economic intention of the invalid or void provision in a legally permissible manner.

General Terms and Conditions for

K.A.R.L.[®]-Consulting Services & K.A.R.L.[®]-Software

Part 2 - Special Provisions for the Use of the K.A.R.L.[®]-Software

If KA grants the contracting partner access to use the K.A.R.L.[®] software (via web browser, app or interface), the following provisions shall apply to this software use in addition to Part 1 above.

12. Software

12.1. Software within the meaning of these GTC are all programmes and functionalities listed in detail within the framework of the contract with the contractual partner as well as the documentation and programme-specific files of the **K.A.R.L.[®] software** required for use (hereinafter "**software**"). In the case of the provision of the software via app (see definition in para. 14.1), the definition of "Software" also includes the App. The source code of the software is not disclosed and is not the subject of the granting of rights of use.

12.2. KA is entitled to further develop and modify the software, provided that such further development or modification (i) is necessary for KA's compliance with mandatory legal requirements, (ii) merely means an adaptation to the respective proven or current state of the art or (iii) does not go beyond what is customary in the trade for comparable software and reasonable for the contracting party, i.e. does not disappoint the contracting party's legitimate expectation of continuing to use essential available functions of the software, which include, for example, the creation of reports.

13. Scope of the right of use, intellectual property

13.1. The contracting party is entitled to use the software operated by KA during the term of the contract via the access granted by KA, subject to the provisions of these GTC. This right of use is non-exclusive, non-transferable and limited to the contracting party's internal business activities. The granting of rights is furthermore conditional upon compliance with the obligation of the contracting party to pay the agreed usage fee plus the legally applicable value added tax. Within the scope of its internal business activities, the contractual partner is entitled to sub-license the right to use the software to a customer, insofar as this is agreed accordingly in the contract. In this case, the customer shall be obligated in accordance with the agreements of these GTC. Any further sub-licensing is excluded.

13.2. Insofar as this is necessary for the intended use of the software within the scope of his business, the contractual partner may pass on the log-in data used by him within his company and, insofar as contractually agreed, to his customers within the scope of internal business activities. Costs arising from improper use (e.g., requesting reports for a user's personal purposes or requesting reports for fantasy locations) shall be borne by the contractual partner.

13.3. The software may not be passed on to third parties except in the cases expressly provided for in these GTC and the contract; likewise, any use for the benefit of third parties requires the prior written consent of KA. Any disclosure of the log-in data to third parties requires the prior written consent of KA.

13.4. The contractual partner may neither change nor modify the access to the software.

13.5. In the event of a breach of the described scope of use, KA is entitled to compensation for the damage it has suffered in accordance with the statutory provisions.

13.6. KA is exclusively entitled to all rights to the software. The contracting party shall only be entitled to the rights to the software regulated in these GTC.

14. Provision and access to the software

14.1. Depending on the agreement, KA shall provide the contracting party with access to the software either via a web browser, a web app (hereinafter referred to as "**app**") which is also to be accessed via a browser, or an interface to the systems of the contracting party in accordance with the provisions in Clause 15 (hereinafter referred to as "**Interface**") and informs the contracting party in writing of the log-in data.

14.2. The use of the software requires a sufficient internet connection, for which the contracting partner must provide himself. Offline use of the software is not possible. The contractual partner is also responsible for compliance with the system requirements necessary for the use of the software, in particular with regard to the operating systems and web browsers used by him.

14.3. KA will enable the use of the software within the framework of the proven state of the art and will endeavour to ensure the greatest possible availability. KA reserves the right to temporarily restrict access to the software or the possibility of using it, in whole or in part, if this is necessary with regard to capacity limits, the security or integrity of the servers or for the implementation of technical measures and if this serves the proper or improved provision of the services (e.g., in the case of maintenance work, updates, upgrades).

14.4. KA is not obliged to provide updates or upgrades for the software or to adapt the software in any other way to any changes in hardware and/or software (in particular operating systems or web browsers).

General Terms and Conditions for

K.A.R.L.®-Consulting Services & K.A.R.L.®-Software

15. Interface

- 15.1. If the parties agree that the contractual partner is granted access to the software via an interface, the conditions of this section 15 shall apply in addition.
- 15.2. The contracting party requests KA to develop an interface adapted to the individual needs of the contracting party, through which a connection between the software and the systems of the contracting party is to be established. KA will perform the development services to be rendered by it on its own responsibility in accordance with the principles of proper professional practice and the respective proven state of the art.
- 15.3. The contracting party shall provide KA with all information and documents concerning the requirements made by the contracting party for the interface to be developed and, in addition, shall provide KA with any support required for the development of the interface.
- 15.4. The contracting party will test the interface developed by KA after its completion and prepare written documentation of the test results, in particular of any defects.
- 15.5. At the time the interface is provided, KA shall transfer to the contracting party a limited right of use to the interface in accordance with the provisions of Clause 13 limited right to use the interface.
- 15.6. For the development of the interface as well as the related granting of rights according to Clause 15.5 KA shall receive an expense-based remuneration in accordance with the provisions of subclause 7.2 and the contract concluded between the parties.

16. Organisation and induction

- 16.1. KA's expenses for organisational advice, familiarisation and training will be borne by the contracting party. If, in special cases, KA should waive the charging, the costs according to para. 16.2 will be invoiced.
- 16.2. Travel times, costs and expenses of KA shall be paid by the contracting party after separate invoicing.

17. Special warranty regulation for material defects of the software

- 17.1. The contracting party must notify KA immediately and in writing of any material defects of the software. In the written notice of defects, the material defect and the corresponding data processing environment shall be described as precisely as possible.
- 17.2. The contracting party has no warranty rights if the material defect of the software has arisen due to inadmissible, unsuitable or improper handling or use of the software by the contracting party or due to a modification of the software not authorised by KA. The same applies if the contracting partner makes

meaningless entries such as fantasy locations (e.g., "Lummerland").

- 17.3. If the software has a material defect, KA must first be given the opportunity to remedy the defect within a reasonable period of time. The defect shall be remedied by providing a defect-free software or by removing the material defect. The elimination of the defect may also consist in KA showing the contracting party a reasonable workaround. KA has the free right to choose between the types of defect removal.
- 17.4. If the rectification of the defect fails within a reasonable period of time, the contractual partner may terminate the contract or reduce the remuneration. This shall not affect any claims for damages of the contractual partner to which clause 4 shall apply. In the event of justified notices of material defects, the contractual partner may withhold payments to an extent that is in reasonable proportion to the material defects that have occurred. If the notice of material defects is unjustified, KA is entitled to demand reimbursement of the expenses incurred from the contracting party. Further or other claims of the contracting party than those 17 claims of the contracting party against KA due to a material defect of the software are excluded. The strict liability for defects existing at the time of the conclusion of the contract according to § 536a para. 1 BGB is also excluded.

18. Legal Defects

- 18.1. KA warrants that the software is provided free of industrial property rights and copyrights of third parties (hereinafter "**property rights**").
- 18.2. If a third party raises claims against the contracting party for the infringement of property rights using the software in accordance with the contract, KA will, at its own discretion and at its own expense, (i) obtain a corresponding right of use for the software, (ii) modify the software in such a way that the property right is not infringed, or (iii) replace the software. If this is not possible for KA under reasonable conditions, the contracting party is entitled to the statutory rights of withdrawal and reduction. Any claims for damages shall be subject to the provisions of para. 4 shall apply.
- 18.3. The above obligation under this clause 18.2 exists only if the contracting party immediately notifies KA in writing of the claims asserted by the third party, does not acknowledge an infringement and KA reserves the right to take all defensive measures and to conduct settlement negotiations.
- 18.4. KA is entitled to take on the extrajudicial and judicial defence against claims of third parties at its own expense. In this case, the contracting party will provide KA with all information necessary for defence and conduct court proceedings in agreement with KA. KA reserves the right to decide on a settlement.
- 18.5. Claims of the contracting party are excluded if the contracting party is responsible for the infringement of property rights. Claims of the contracting party are also excluded if the infringement of property rights is caused by special specifications of the contracting party, by an

General Terms and Conditions for**K.A.R.L.®-Consulting Services & K.A.R.L.®-Software**

application not foreseeable by KA or by the fact that the software is modified by the contracting party or used together with products not supplied or authorised by KA or in an unauthorised system environment.