

# **General Terms and Conditions**

**JAWA Management Software GmbH**

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# **1. Scope of Application and Amendments to the Terms and Conditions**

**1.1** JAWA Management Software GmbH with headquarters in Graz, Austria (hereinafter "JAWA"), generally offers individual software solutions and related services on its website [www.jawa.at](http://www.jawa.at) (hereinafter "Website").

**1.2** The following general terms and conditions (hereinafter "Terms and Conditions") apply to all usage, license and consulting agreements as well as equivalent agreements (hereinafter the "Contracts") concluded between JAWA, the client (hereinafter "Customer") and partners. By concluding the contract, the Customer declares to agree to these Terms and Conditions. The Terms and Conditions apply exclusively, insofar as they are not amended or supplemented by express written individual agreement.

**1.3** All orders and agreements are only legally binding if they are signed by JAWA in writing and in accordance with company regulations and only bind JAWA to the extent specified in the order confirmation. Deviating, contradictory or supplementary general terms and conditions of the Customer will not become part of an order or the entire business relationship, even if known, unless JAWA expressly agrees to their validity in writing.

**1.4** The Terms and Conditions apply in their respective version valid at the time of contract conclusion. The current and valid version is published on the Internet at [www.jawa.at](http://www.jawa.at). They apply in any case even if they are not referred to in later concluded contracts.

**1.5** JAWA will inform the Customer in writing by email about changes to the Terms and Conditions. The amended conditions become effective if the Customer does not object to their validity in writing within six weeks of notification. The Customer may be notified of changes to the General Terms and Conditions through any means of communication whose use has been agreed between JAWA and the Customer.

## **2. Services and Contract Conclusion**

**2.1** The services offered on JAWA's website do not yet constitute a legally binding offer, but merely an invitation for the Customer to obtain an offer. Contract conclusion between the Customer and JAWA occurs in any case through written order by the Customer and order confirmation by JAWA.

**2.2** The specific content and scope of the services to be provided by JAWA as well as the remuneration to be paid therefor are governed by the agreement concluded between JAWA and the Customer.

**2.3** All agreements made between the parties at the time of contract conclusion are completely recorded in writing in the offer and contract; all previously made oral agreements and side agreements become invalid upon contract conclusion, insofar as they do not correspond to the

agreements recorded in writing in the contract and offer. JAWA's employees are not authorized to make oral side agreements that deviate from or go beyond the written contractual agreement.

**2.4** JAWA reserves the right to expand, restrict or make other modifications of any kind to its products or services at any time, particularly for reasons of technical or legal necessity. Substantial changes will be notified to the Customer at least one month before implementation. In case of substantial changes that result in a significant reduction in service, Customers may extraordinarily terminate their existing contractual relationship for the use of the software within one month of receipt of the change notification with effect from the effective date of the change. Such termination must be in writing.

**2.5** Service dates and deadlines may be changed for organizational reasons, insofar as they are not expressly designated as binding. JAWA will notify the Customer of changes to dates and deadlines within a reasonable period.

**2.6** We expressly point out that barrier-free design (of websites) within the meaning of the Federal Act on Equal Treatment of People with Disabilities ("Federal Disability Equality Act") is not included in the offer, unless this was specifically and explicitly requested by the Customer. Should barrier-free design not have been expressly agreed upon, it is the Customer's responsibility to review the service for its permissibility with regard to the Federal Disability Equality Act. Likewise, the Customer must review content provided by them for legal permissibility, particularly under competition, trademark, copyright and administrative law. In case of slight negligence or after fulfillment of any duty to warn the Customer, the Customer is not liable for the legal permissibility of content if this was specified by the Customer.

## **3. Remuneration and Payment Terms**

### **3.1. General**

All prices are in Euro exclusive of VAT.

Costs for travel, daily and overnight allowances will be charged separately to the Customer according to the respectively valid rates. Travel time counts as working time.

### **3.2. Payment Terms**

These payment terms are applicable for all agreements between JAWA and the Customer, insofar as no deviating written agreement has been made.

For the billing of license, maintenance and support fees (due date), the ordinary business year (January 1 to December 31) applies if nothing different has been agreed. Remuneration to be paid is due in advance.

If a contract is concluded during the year with an annual billing period, the first billing occurs for the period from contract commencement to December 31 of the respective year.

The Customer is not entitled to withhold payments due to incomplete total delivery, warranty or guarantee claims or objections.

### **3.3. Delivery Date**

JAWA endeavors to adhere to the agreed dates of fulfillment (completion) as accurately as possible.

The targeted fulfillment dates can only be met if the Customer provides all necessary work and documents completely at the dates specified by JAWA, particularly the service description accepted by them, and fulfills their cooperation obligation to the required extent.

Delivery delays and cost increases arising from incorrect, incomplete or subsequently changed information and data or provided documents are not JAWA's responsibility and cannot lead to JAWA's default. The Customer bears the resulting additional costs.

For orders comprising multiple units or programs, JAWA is entitled to make partial deliveries or partial billing.

### **3.4. Acceptance, Testing and Defect Notification**

Insofar as JAWA provides software to the Customer, a written provision notification is made to the Customer for acceptance testing (hereinafter "Provision Notification").

The Customer is obligated to accept all services from JAWA, particularly individual software adaptations, immediately after receipt of the Provision Notification and to test for defects. All obvious defects must be reported immediately, all hidden defects immediately after their discovery, in writing. JAWA is entitled to a written acceptance declaration.

The service is deemed accepted without further action as soon as the Customer uses the software operationally or commercially or allows a third party to use it. Commissioning is deemed to have occurred if no substantial defects were reported in writing within 15 calendar days after provision of the respective services for acceptance.

Customer change requests after acceptance will be charged in their entirety regardless of the order value.

### **3.5. Prices**

JAWA reserves the right to adjust prices annually, particularly license fees, maintenance fees, and prices for consulting services. Value stability is expressly agreed. The Consumer Price Index 2020 published monthly by Statistics Austria or an index replacing it serves as the measure for calculating value stability.

The basis for the value security calculation is the index number published at the time of contract conclusion (for that month). An increase occurs annually on January 1.

Should this index no longer be published, the value security agreement will be replaced by a corresponding successor index that best corresponds to the contractual intention of preserving the

purchasing power of the originally agreed price.

If no adjustment is made based on value security, this does not constitute a conclusive waiver of adjustment. A waiver of applying value security requires an agreement.

### **3.6. Payment Default**

All invoice amounts must be credited to JAWA's account specified in the invoice without deductions and free of charges according to the agreed payment terms after receipt of the invoice. For partial invoices, the payment conditions established for the total order apply analogously. A longer period may be established in the offer with the Customer.

The Customer is only entitled to withholding or offsetting against counterclaims if their claims have been legally established or recognized by JAWA. This restriction does not apply to claims for partial non-performance or for defects based on the same contractual relationship as JAWA's claims.

If a defect exists, the Customer may only withhold payments to a proportional extent considering the defect and only if the defect is beyond doubt.

In case of payment default by the contractual partner, JAWA is entitled to charge default interest according to § 456 UGB (insofar as the Customer is an entrepreneur within the meaning of the UGB) and to make the provision of further services dependent on payment.

If the Customer is more than one month in default with their payment(s), JAWA is entitled to block access to software usage after prior written notice.

JAWA expressly reserves the assertion of further claims due to payment default.

## **4. Cooperation; Customer Responsibilities**

**4.1** The following cooperation services are main performance obligations of the Customer and are not to be valued solely as secondary obligations or duties.

**4.2** The Customer must support JAWA in fulfilling the services contractually owed by JAWA. For this purpose, the Customer provides information, data and other material necessary for the provision of the agreed services by JAWA in a timely manner.

**4.3** Any deadlines at JAWA's expense only begin to run when the Customer has fulfilled their obligations.

**4.4** If tasks must be performed twice due to the Customer's non-cooperation or untimely cooperation, JAWA is entitled to additionally charge for this work after prior notification stating the expected additional costs.

**4.5** Insofar as JAWA's services are provided wholly or partially via an Internet connection, JAWA provides the services within the framework of its technical and operational possibilities. The Customer will establish all Internet connections at their own cost and responsibility.

## **5. Usage Rights to Software; Requirements**

**5.1** Upon acquisition of the usage license, the Customer receives a simple (non-exclusive), non-transferable usage right limited to the agreed number of employees and temporally limited to the contract duration. All offered software is JAWA's property. The transfer of any software components is expressly prohibited.

Upon acquisition of the usage right, the Customer is entitled in terms of content to process and store their own data of employees working in their business operation (hereinafter "User Data") for their own purposes within the framework of the account set up for them or their employees and the software's functionalities.

**5.2** Which system landscapes, browsers and operating systems are specifically supported by the software is determined by JAWA. JAWA informs the Customer about the supported browser versions before contract conclusion. There is no entitlement to support for specific system landscapes, operating systems or browser versions.

**5.3** It is expressly pointed out that the Customer is responsible for compliance with data protection and other legal provisions. The Customer must take appropriate precautions to protect the software from unauthorized access by third parties. The Customer is obligated to bear the costs caused by a violation of this duty and indemnifies JAWA from costs and third-party claims arising from violation of this duty. Third parties within the meaning of this paragraph are not affiliated companies within the meaning of § 189a Z 8 UGB.

**5.4** The Customer is responsible for the professional administration of the software themselves. This applies regardless of whether JAWA supports the Customer in setting up the software in any form.

**5.5** The Customer is exclusively responsible for the content and data processed with the software. The Customer hereby undertakes to use the software only in accordance with the contract and within the framework of applicable legal provisions and not to violate third-party rights when using it.

**5.6** The Customer is expressly prohibited from analyzing or replicating the software through reverse engineering, decompilation or disassembly.

## **6. Security, Data Protection**

### **6.1. Security Measures**

The Customer ensures the confidentiality of identification and authentication data assigned to their users, including, for example, the organizational and possibly technical prohibition of password sharing as well as prohibition of using so-called "shared accounts".

If software is operated by JAWA on customer servers at the customer's request, the security of the

server, surrounding network, as well as data storage and backup locations lies solely and exclusively in the Customer's responsibility.

## **6.2. Data Protection and Data Collection**

JAWA collects and uses the Customer's personal data only within the framework of the respectively applicable legal provisions. The contracting parties conclude an agreement (Data Processing Agreement) to the extent required by the respectively applicable provisions.

## **7. Liability and Warranty**

**7.1** For only insignificant deviations of the services from the contractual condition or usability, no warranty claims against JAWA exist.

**7.2** Liability for claims under damages law is limited for claims against JAWA as described below. In case of simple negligence, JAWA is only liable:

- (i) for damages from injury to life, body or health,
- (ii) for damages from not insignificant violation of an essential contractual obligation (i.e., obligations whose fulfillment enables the proper performance of the contract in the first place and on whose compliance the contractual partner regularly relies and may rely); in this case, however, liability is limited to compensation for foreseeable, typically occurring damage and is in any case not above the annual remuneration to be paid by the Customer from license usage, without addition of additionally charged services.

**7.3** Otherwise, JAWA is liable for damages - regardless of the legal basis - only in case of intent and gross negligence. In case of gross negligence, however, liability is limited to compensation for foreseeable, typically occurring damage and is in any case not above the annual remuneration to be paid by the Customer from license usage and without addition of additionally charged services.

**7.4** Liability for lost profits, business interruptions, data loss, indirect or consequential damages is excluded insofar as legally permissible.

**7.5** JAWA is not liable for loss of data insofar as the damage would have been avoidable with proper and regular data backup by the Customer.

**7.6** Force majeure events as well as other circumstances unforeseeable for JAWA, particularly delivery disruptions, pandemics, epidemics, disasters, wars, strikes, lockouts, hacker attacks, free JAWA from performance obligations for the duration of the disruption as well as an appropriate start-up time - even during already existing default. If performance becomes impossible or economically unreasonable due to the mentioned circumstances, JAWA is freed from its contractual obligations; and the Customer's damage compensation claims are then excluded.



## **8. Contract Duration, Termination**

**8.1** Insofar as no other regulations have been made (e.g., for fixed-term contracts), contractual relationships may be terminated by both contracting parties without stating reasons while observing text form and a termination period of three months to the end of the calendar year. The Customer must declare termination in text form and is responsible for proof of receipt.

**8.2** JAWA may extraordinarily terminate the contract with immediate effect if the Customer violates essential contractual obligations and continues the violation despite warning by JAWA or does not remedy the violation. The same applies if the Customer is in default with a due payment for more than 30 days despite reminder.

**8.3** In case of termination by the Customer, JAWA provides them with all data stored within the software in a common format. Provision occurs within a period of 30 working days from termination of the contractual relationship. The associated services are separately charged according to actual effort based on JAWA's respectively valid hourly rates.

## **9. Confidentiality, Copyright, Trademark Protection**

**9.1** The software provided by JAWA to the Customer is protected by copyright. JAWA remains owner of the software and the underlying source code. Provision of source code is not part of the contractual relationship and the Customer has no claim to its provision. Changes or manipulations by the Customer to the software, unless clearly approved in writing by JAWA, constitute a substantial violation of the Customer's contractual obligations.

**9.2** All extensions, adaptations or customer-specific configurations (customizing) developed by JAWA within the framework of the contractual relationship are - regardless of place of use or individualization - JAWA's copyright property. The Customer is granted no rights of any kind thereto, particularly no editing, reproduction or publication rights.

**9.3** Neither contracting party is entitled to transmit confidential information of the respective other contracting party to third parties without express consent (at least in text form). All information, whether recorded in writing or transmitted orally, that

(i) by nature of the matter is considered confidential or requiring confidentiality

or

(ii) the contracting party to whom the information is transmitted must already recognize as confidential or requiring confidentiality based on the external circumstances of transmission. Confidential information includes particularly product descriptions and specifications, contract conditions, as well as prices deviating from those on JAWA's website.

**9.4** Both contracting parties undertake to use confidential information only for contractually agreed purposes. Both contracting parties take at least those precautionary measures that they also

take with regard to their own confidential information. Such precautionary measures must at least be appropriate to prevent transmission to unauthorized third parties. Both contracting parties are furthermore obligated to prevent unauthorized transmission or use of confidential information by their customers, employees, subcontractors or legal representatives. The contracting parties will mutually inform each other in writing if misuse of confidential information occurs.

The confidentiality obligation expires insofar as information:

- (i) was demonstrably known to the contracting party before notification,
- (ii) was known to the public or generally accessible before notification,
- (iii) becomes known to the public or generally accessible after notification without involvement or fault of the informed contracting party,
- (iv) substantially corresponds to information disclosed or made accessible to the informed contracting party at any time by an authorized third party.

**9.5** The Customer furthermore undertakes to treat all business, technical and scientific know-how obtained from JAWA in connection with contract fulfillment confidentially and to make it available to third parties only with JAWA's express consent. The Customer furthermore undertakes not to file intellectual property applications for know-how obtained from JAWA within the framework of contract fulfillment.

**9.6** The confidentiality obligation ends seven years after contract termination, insofar as legal or contractual regulations do not provide for a longer confidentiality obligation.

**9.7** Both parties will observe the respectively applicable data protection provisions, particularly those valid in Austria, and obligate their employees used in connection with the contract to data secrecy within the meaning of the DSG and GDPR, insofar as they are not already generally correspondingly obligated.

## **10. Final Provisions, Jurisdiction Agreements and Choice of Law**

**10.1** Amendments and supplements to contracts require text form for their validity. This applies particularly also to changing the text form itself.

**10.2** Should individual or multiple provisions of the respective contracts (including these Terms and Conditions) be ineffective or invalid or become so, or have a gap, the validity of the remaining provisions remains unaffected thereby. The invalid or ineffective provisions are to be interpreted or replaced such that they best correspond to the intended purpose of the agreement. The same shall apply in case of a contractual gap.

**10.3** For all disputes arising directly or indirectly from the contract, the Austrian court with local and subject matter jurisdiction for JAWA (headquarters in 8041 Graz) is exclusively agreed.

Insofar as JAWA should actively file a lawsuit, this may occur in addition to the previously described jurisdiction at any other permissible jurisdiction (jurisdiction agreement).

**10.4** Austrian law applies to the legal relationship between JAWA and the Customer. Austrian law also applies exclusively when the Customer has its headquarters abroad or the contract is fulfilled abroad. The provisions of the United Nations Convention on Contracts for the International Sale of Goods (CISG) do not apply. Likewise, the referral or conflict of laws rules of international private law do not apply (choice of law).