

## GENERAL TERMS AND CONDITIONS FOR SERVICES

### 1. SCOPE OF APPLICATION AND CONCLUSION OF CONTRACTS.

- 1.1. These General Terms and Conditions for Services shall apply to the provision of services by Kubermatic. .
- 1.2. For the purpose of these General Terms and Conditions for Services the contracting parties are referred to individually as “Kubermatic” and the “Customer” and jointly as the "Parties".
- 1.3. Unless otherwise agreed in writing, Kubermatic provides services exclusively on the basis of the relevant order form agreed to by Kubermatic (hereinafter referred to as: “Order Form”) in connection with the present General Terms and Conditions for Services hereinafter referred to as the “Agreement”. The Customer’s general terms and conditions shall not apply, even if the Customer refers to them in a standard order form or otherwise in connection with an order and even if Kubermatic has not objected to them explicitly. In the event of differences between these General Terms and Conditions for Services and the Order Form and when the Order Form contains more detailed provisions than these General Terms and Conditions for Services, the relevant terms of the Order Form shall prevail.

### 2. SCOPE AND EXECUTION OF SERVICES.

- 2.1. Kubermatic provides the services specified in the Order Form for the remuneration agreed upon in the Order Form based on the assumptions and prerequisites defined therein. The scope of services is described in the relevant binding specifications and/or the relevant Statement of Work (hereinafter referred to as: “Services”). For the provision of Services, Kubermatic deploys its own staff of the worldwide Kubermatic Group. Companies of the Kubermatic Group and their employees are not regarded as subcontractors.
- 2.2. For services based on time and material, the estimate is based on the information provided by Customer to Kubermatic and defined in the Statement of Work. The estimated fees, timelines, and scope may be subject to change and the total actual amount of services provided will be invoiced based on time and material. A daily service fee refers to eight working hours on working days. Additional work is to be remunerated pro-rata. In general, for operations with the Federal Republic of Germany, Kubermatic charges 1.5 times the hourly service fee for weekends and public holidays (nationwide public holidays and 24 and 31 December) and for nighttime consultancy (22.00-6.00) and two times the service fee for spot Consulting assignments. Engagements are calculated with at least four working hours per day.
- 2.3. The service fees are exclusive of additional costs.
- 2.4. In addition, Kubermatic is entitled to engage subcontractors with the provision of services, without being obliged to obtain the Customer's consent.
- 2.5. When the Customer notifies Kubermatic in writing of any change or supplementation requests regarding the contractually agreed services, Kubermatic will review them for their feasibility, required time, and resulting additional costs, if any. The expenses for this review are to be paid by the Customer in accordance with the daily rates agreed in the Order Form. Any change in the originally agreed services (change request) requires a written agreement. Until an agreement has been achieved regarding the change request, Kubermatic is entitled and obliged to render the originally agreed services.

### 3. CUSTOMER DUTIES.

- 3.1. **Obligation to cooperate.** The Customer assumes the material contractual duty to support Kubermatic to the best possible extent in the provision of services. For this purpose, the Customer shall provide, at no cost and in a timely manner, all resources, information, and documents necessary for the successful provision of the services as well as adequate infrastructure, including office rooms, IT, and communication equipment at no cost. In addition, the Customer is obliged to fulfill all duties to cooperate specified in the Order Form in a timely manner and as agreed.

If the Customer fails to fulfill its duties to cooperate as agreed or in a timely manner, and deadlines defined in applicable schedules cannot be met as a result, the relevant agreements on deadlines shall no longer be valid. In this case, the parties are obliged to agree upon new deadlines for the provision of services taking Kubermatic’s resources planning into account. The Customer is obliged to reimburse any additional expenses incurred by

Kubermatic due to a violation by Customer of its duties to cooperate. Kubermatic shall notify the Customer in writing and by specifying a reasonable period for fulfillment or mitigating its failure to cooperate. If this period passes without substantial fulfillment by Customer, Kubermatic is entitled to terminate the Order Form immediately upon written notice.

The above-mentioned provisions shall apply without prejudice to any other rights available.

**3.2. Third-Party Products.** The provision of products of third parties (in particular of hardware and software) is, as a general principle, the responsibility of the Customer, unless otherwise agreed explicitly in writing. When the service to be provided by Kubermatic requires the availability or purchase of third-party products, their procurement is the responsibility of the Customer and a prerequisite for the proper provision of services by Kubermatic. Affiliated companies of Kubermatic may be the provider of third-party products. Kubermatic does not assume any warranty or guarantee for third-party products. Kubermatic, its affiliated companies, and subcontractors are entitled to accept and receive benefits in connection with the delivery of third-party products, e.g. discounts, commissions, and similar benefits, irrespective of whether the third-party products are sold to the Customer by Kubermatic directly or indirectly or by a third party. The agreement to such benefits does not constitute a conflict of interest.

#### **4. HAND-OVER AND ACCEPTANCE OF SERVICES.**

**4.1.** Training, consulting, support, repair, and maintenance services are not subject to acceptance. They are deemed to be accepted upon provision of the services.

**4.2.** Documents (in particular concepts, specifications, and presentations) are delivered to the Customer for a review of whether they are in accordance with the Order Form and other arrangements of the Parties. The Customer shall notify Kubermatic within 10 working days of necessary modifications. Changes in the context of justified modification requests shall be performed by Kubermatic within a reasonable period of at least 10 working days. Documents revised as required are then regarded upon as delivered and as provided in accordance with the contract.

**4.3.** Subject to the agreed assumptions and prerequisites the Customer shall review services subject to the law of contracts for work (Werkvertragsrecht) and services subject to the law of contracts for sale (Kaufvertragsrecht) to determine whether they are in accordance with the specifications of the contract and shall declare the acceptance of the services unless there are more than insignificant deviations from the agreed specifications. Kubermatic is entitled to request partial acceptances for any completed partial services based on the progress of work and to be present during the acceptance test performed by the Customer. Unless otherwise agreed in writing, the period for testing is three weeks from the provision of services by Kubermatic. After the expiry of the testing period, the services are deemed to have been accepted, unless the Customer has notified Kubermatic during the testing period in writing by specifying the defects as not in accordance with the contract to a significant extent and describing their occurrence. Upon commercial use of the service, acceptance is deemed to have been given unless the commercial use of the service is due to damage minimization purposes on the part of the Customer.

**4.4.** For services under a contract for sale, the Customer has the immediate obligation to review and notify Kubermatic in writing of any deficiency.

#### **5. FEES AND PAYMENT TERMS.**

**5.1. Fees and Payment Terms.** Customer will pay the Fees, and any fees for the services, in the currency set forth in the applicable Order Form, as further described in each applicable Order Form. Unless otherwise set forth in an Order Form, fees are due within 14 days from the date of invoice. Fees are non-refundable.

**5.2. Taxes.** All fees are exclusive of all applicable taxes, levies, or duties, and Customer will be responsible for payment of all such taxes, levies, or duties, excluding taxes based solely on Kubermatic's income. Customer will pay all fees free and clear of, and without reduction for, any VAT, GST, withholding, or similar taxes; any such taxes imposed on payments of fees will be Customer's responsibility, and Customer will provide receipts issued by the appropriate taxing authority to Kubermatic on request to establish that such taxes have been paid. Customer will be responsible for any taxes, penalties, or interest that might apply based on Kubermatic's failure to charge appropriate tax due to incomplete or incorrect location information provided by Customer.

**5.3. Late Payment.** If Customer fails to pay an invoice in a timely manner, Kubermatic will give Customer

written notice. If such notice has been provided and payment has not been made within 5 days of the receipt of the notice by Customer, then at Kubermatic's sole discretion interest will accrue on all amounts payable from the original date due to the date paid, at the lesser of the rate of 12% per year or the highest rate allowed by applicable law plus collection costs (if any).

## **6. ADDITIONAL COST.**

Additional costs are calculated as follows: To cover all incidental costs (vehicle use, accommodation costs, expenses, other travel expenses) for assignments on the premise, an additional cost allowance plus travel times per advisor per consulting day will be charged. For travel times, half the consulting hourly rate of the consultant will be billed. There are no additional costs for remote services. The additional costs are calculated in accordance with the Kubermatic price and conditions list valid at the time of the offer. All above prices are exclusive of VAT.

## **7. WARRANTY.**

**7.1.** Business, training, consulting, support, repair, and maintenance services are carried out by properly qualified staff with due care and diligence and in a workmanlike manner.

**7.2.** Where Kubermatic provides services under a contract for work or services that are subject to the law of contracts for sale, Kubermatic warrants that the services rendered by Kubermatic are in accordance with the contractually agreed requirements. When a defect exists in the contractual service, Kubermatic shall rework or re-perform the service at its option. If Kubermatic twice fails to rectify the defect within a reasonable period of time, or if rectification of defects fails finally, the Customer may request a reduction of remuneration for the defective portion. Where a significant deviation from the contractually agreed specifications for a service exists, the Customer may also cancel the contract, after having sent a written warning in advance. Any further claims for defects are excluded.

**7.3.** The Customer shall make a claim to have a defect rectified immediately in writing by precisely specifying and describing the defect and its occurrence. The Customer is obliged to support Kubermatic to a reasonable extent in the rectification of defects in services.

**7.4.** Claims for defects are statute-barred after twelve months from delivery or acceptance of the contractual services.

**7.5.** In the event it is discovered during work in connection with a notice of defects that the Customer has no justified claim upon Kubermatic for re-work or new delivery, Kubermatic shall be entitled to charge expenses incurred based on time and materials at the agreed prices.

## **8. LIABILITY**

**8.1.** Kubermatic shall be fully liable for intentional or grossly negligent damage, for damage due to injury to life, body, or health, and for any claims under the German Product Liability Act. The relevant statutory periods of limitation shall apply.

**8.2.** In addition, Kubermatic shall be liable for ordinary negligence only when a material contractual duty (Kardinalpflicht) has been violated. This liability is limited to the foreseeable damage typical for such contracts.

**8.3.** In addition, the liability of Kubermatic is limited to the amount agreed as limitation of liability in the Order Form. The liability for consequential and indirect losses such as lost profits, business interruption damage, or lost savings is excluded.

**8.4.** Kubermatic is liable for the loss of data saved only when the Customer has ensured by proper data backups that this data can be restored with reasonable efforts. The amount of liability is limited to the expenses incurred for restoration of data.

**8.5.** Damage claims and expenses reimbursement claims become statute-barred after a year from provision of the last service/from acceptance.

**8.6.** If Kubermatic is obliged, due to a separate written agreement, to pay a penalty or a malus as monetary compensation, these payment obligations shall be counted against the agreed limitation of liability.

**8.7.** Kubermatic assumes any guarantees, representations of qualities or of properties within the meaning of sections 443 and 444 of the German Civil Code (BGB) only when they are identified explicitly in writing as “representation of quality”, “representation of property”, or “guarantees”.

**8.8.** These liability regulations shall apply to all damage and expenses reimbursement claims, irrespective of the relevant legal reason, whether in tort or in contract, and include pre-contractual claims (vorvertragliche Ansprüche) and secondary claims (nebenvertragliche Ansprüche).

## **9. INDEMNIFICATION.**

**9.1. Indemnification.** At its sole expense, Kubermatic will defend Customer against any third party claim arising out of any allegation that the services infringe upon any copyright or trademark or misappropriate any trade secret of a third party. Subject to the conditions set forth Section 9.2 having been met, Kubermatic will pay damages finally awarded by a competent court as a result of such claim or agreed to in settlement of such claim.

**9.2. Conditions.** As conditions of Kubermatic’s obligations under this Section 9, Customer must: (a) promptly notify Kubermatic in writing of such claim and furnish a copy of each communication or notice relating to the alleged infringement; (b) give Kubermatic sole control over the defense and negotiation of any settlement of such claim; and (c) give Kubermatic all reasonable assistance as requested by Kubermatic.

**9.3. Exclusions.** Kubermatic’s obligations under this Section 9 do not apply to any Service to the extent that it (a) has been modified by persons or entities other than Kubermatic if the alleged infringement relates to such modification, (b) has been combined with other products, processes or materials not supplied or recommended by Kubermatic, where the alleged infringement relates to such combination, (c) is the result of Kubermatic’s compliance with Customer’s direction to modify the Service or Documentation, or (d) continues to be used after Kubermatic has made available to Customer a non-infringing release of the Service.

**9.4. Other Terms.** In the event of any claim brought or threatened against any party that would enjoin or otherwise limits the use of the Service, then Kubermatic may, at its option in the event the Enterprise Edition is affected: (a) obtain for Customer the right to continue to use the Service; or (b) replace or modify the Service so it becomes non-infringing. If the resolutions described in sub-sections (a) and (b) are not reasonably available to Kubermatic, Kubermatic may terminate the applicable Order Form and refund a prorated amount of the Fees.

**9.5. Sole Remedy.** This Section 9 states the entire liability of Kubermatic with respect to any third-party claim concerning infringement of intellectual property.

## **10. CONFIDENTIALITY.**

**10.1. Obligations.** Each party agrees not to permit access to, nor to disclose or display, the other party’s Confidential Information other than to its authorized employees, contractors, and advisors who are bound by confidentiality agreements that are similarly restrictive and who need to use or have access to the other party’s Confidential Information as permitted by the Agreement. Each party will use such Confidential Information solely in connection with the performance of the activities described in the Agreement. Each party will use at least the same degree of care in protecting the other party’s Confidential Information as such party generally exercises in protecting its own similar proprietary information. Notwithstanding any provision to the contrary, either party may disclose the other party’s Confidential Information as required by a court order or other legal demand; provided that such party gives reasonable notice to the other party of such request to allow the other party to seek a protective order or similar legal protection. Each party agrees that, in the event of a threatened or actual unauthorized disclosure of Confidential Information, the disclosing party will be entitled to such equitable or injunctive relief as may be deemed proper by a court of competent jurisdiction.

**10.2. “Confidential Information”** includes documents, data, software, and information which, when provided by one party to the other, are clearly identified as “Confidential” or “Proprietary”, or that a reasonable person would understand to be confidential or proprietary based on the content of the information and the circumstances of its disclosure. “Confidential information” does not include information that: (a) is already known to the receiving party at the time of disclosure; (b) is or subsequently becomes publicly available through no wrongful act of the receiving party; (c) is disclosed to or provided to the receiving party by a third party without restriction; or (d) is developed

independently by the receiving party without use of or access to the disclosing party's Confidential Information. The requirements described in Section 10.1 (Obligations) notwithstanding, Kubermatic's Confidential Information includes the Enterprise Edition. In addition, in no event will suggestions for new or enhanced functionality for Kubermatic's products or services be considered confidential or proprietary to Customer.

## 11. RIGHTS OF USE.

The Customer is granted an irrevocable, unlimited, non-transferable, simple right of use in the work results Kubermatic created in carrying out the contractual duty to perform.

## 12. TERM; RENEWAL AND TERMINATION.

**12.1. Term.** The term of the Agreement will begin on the Effective Date as set forth in the Order Form and remains in full force until the contract is fulfilled or until terminated as set forth in this Section 12.

**12.2. Termination for Breach.** In addition to any other termination rights provided in the Agreement, either party may terminate the Agreement and applicable Order Form immediately upon written notice if the other party materially breaches any provision of the Agreement and fails to cure such breach within 30 days after delivery of a written notice describing the breach provided, however, that termination by Kubermatic arising out of Customer's material breach shall not relieve Customer of paying any outstanding Fees.

**12.3. Customer Obligations upon Termination.** Upon termination of the Agreement or any Order Form, Customer will: (a) cease the use of the Service; and (b) return to Kubermatic or delete all complete or partial copies of any item received.

**12.4. Survival.** The provisions of the following Sections will survive any termination of the Agreement: Section 5 (Fees and Payments), Section 9 (Intellectual Property Indemnification), Section 10 (Confidentiality), Section 8 (Liability), Sections 12.2 - 12.4 (Termination), and Section 13 (General).

## 13. GENERAL.

**13.1. Marketing Rights.** Kubermatic may use Customer's trade names, trademarks, service marks, logos, domain names, and other distinctive brand features in presentations, marketing materials, customer lists, financial reports, and Web site listings (including links to its website) for the purpose of advertising or publicizing the use of the Programs. Customer may opt-out of granting Kubermatic the foregoing license, or require that Kubermatic execute a separate agreement therefore, by providing written notice to Kubermatic within 5 calendar days of the date Customer enters into the Agreement.

**13.2. U.S. Government Restricted Rights.** The Service may consist of commercial computer software and commercial documentation that have been developed solely with private funds and is provided to any United States Government end-user with RESTRICTED AND LIMITED RIGHTS. If the Program is being acquired by or on behalf of the United States Government or by a United States Government prime contractor or subcontractor (at any tier), then in accordance with DFARS 227.7201 through 227.7202-4 (for DOD acquisitions) and with FAR 12.212 and FAR 27.400 through 27.409 (for non-DOD acquisitions), the Government's rights in the Service will be only as expressly set forth in the Agreement. The manufacturer is Kubermatic.

**13.3. Remedies.** Nothing in the Agreement waives or limits remedies or causes of action available to Kubermatic to protect its intellectual property rights in the Programs. Customer acknowledges that the Service may contain certain trade secrets and proprietary information owned by Kubermatic and its licensors and that, in the event of a threatened or actual unauthorized disclosure of such information, Kubermatic will be entitled to such equitable or injunctive relief as may be deemed proper by a court of competent jurisdiction.

**13.4. Waiver.** If one party fails to enforce any provision of the Agreement, it will not be precluded from enforcing the same provision at another time.

**13.5. Severability.** In the event that any provision of the Agreement is held by a court or other tribunal of competent jurisdiction to be unenforceable, such provision will be deemed modified to the minimum extent

necessary to render the provision enforceable in a manner that most closely represents the original intent of the parties. In such an event, the remaining terms and conditions of the Agreement will remain in full force and effect.

**13.6. Notices.** All notices, requests and demands, and other communications required or permitted under the Agreement will be in writing and will be deemed effective only: (a) upon delivery; if delivered personally to a party; (b) 1 business day after deposit, if delivered to a nationally recognized courier service offering guaranteed overnight delivery; or (c) 3 business days after having been deposited in the mails, certified mail, postage prepaid, return receipt requested. All notices for each party will be sent to the addresses set forth in the preamble of the Agreement.

**13.7. Counterparts and Facsimile.** The Agreement may be executed in one or more counterparts, each of which will be deemed to be an original and which together will constitute one and the same instrument. The signature of any of the parties may be evidenced by a facsimile copy of the Agreement bearing such signature and such signature will be valid and binding as if an original executed copy of the Agreement had been delivered.

**13.8. Force Majeure.** Neither party will be responsible for delays or failures in performance resulting from acts beyond its control. Such acts include acts of God, labor conflicts, acts of war or civil disruption, governmental regulations imposed after the fact, public utility failures, industry-wide shortages of labor or material, or natural disasters.

**13.9. Governing Law.** The Agreement, as well as all Order Forms made under it, will be governed by and construed in accordance with the laws of Germany and if Customer is a merchant within the meaning of the German Commercial Code (HGB), section 1, or a public-law juristic person or special fund, the sole place of jurisdiction for all differences arising out of or in connection with the Agreement and/or an Order Form shall be Hamburg, Germany. In any event, the Agreement will be construed without regard to any provisions of law governing conflict of laws. Either party may seek injunctive or other emergency relief in any competent court. The parties expressly disclaim the application of the United Nations Convention on Contracts for the International Sale of Goods and Uniform Computer Information Transactions Act.

**13.10. Assignment.** Neither party may assign any of its rights or obligations hereunder, whether by operation of law or otherwise, without the other party's prior written consent (not to be unreasonably withheld) except as provided in this Section 13.10. Notwithstanding the foregoing, either party may assign the Agreement in its entirety (including all Order Forms) to its Affiliate or in connection with a merger, acquisition, corporate reorganization, or sale of all or substantially all of its assets without the other party's consent, provided the assignee has agreed to be bound by all of the terms of the Agreement and all fees owed to the other party are paid in full. If a party is acquired by, sells substantially all its assets to, or undergoes a change of control in favor of, a direct competitor of the other party, then such other party may terminate the Agreement upon written notice.

**13.11. Entire Agreement.** The Agreement constitutes the complete and exclusive statement of the terms and conditions between the parties governing the provision of products and services by Kubermatic to Customer. The Agreement supersedes all other agreements and communications, oral or written, with respect to its subject matter. It may be amended only by a written agreement between the parties.