

AiDEXA GmbH - PROFESSIONAL SERVICES GENERAL TERMS AND CONDITIONS



AiDEXA GmbH, Bergmannsgasse 45/10, A-8010 Graz, AUSTRIA

These Professional Services General Terms and Conditions (“**Conditions**”) set forth the general terms and conditions under which Customer engages AiDEXA to provide certain professional, technical and educational services to Customer on a project basis pursuant to a Statement of Work (“**SOW**”) entered into between Customer and AiDEXA. The SOW together with these Professional Services Terms and Conditions will together constitute the “**Agreement**”.

This is a legal agreement between the Customer and AiDEXA GmbH (“**AiDEXA**”):

All references to “**Customer**” shall be deemed to mean the customer set forth in an applicable SOW.

1. **SERVICES.** AiDEXA shall provide the services described in the SOW (“**Services**”). Each SOW will be signed by the parties and shall include, without limitation, pricing and a detailed description of the Services to be provided. In the event of any conflict or inconsistency between these Conditions and SOW, these Conditions shall control. Any quotation for services shall not constitute an offer and shall only be valid for a period of 90 days from its date of issue.

2. TERM AND TERMINATION.

2.1 **Term.** The Agreement shall commence on the date of last signature of the SOW and shall continue in effect until Customer’s acceptance of the completed Services or earlier termination under this Agreement. Sections 2.1,3 to 8 and 10 will survive the termination or expiration of this Agreement. For the avoidance of doubt, upon termination of this Agreement all Services shall automatically terminate.

2.2 **Termination for Breach.** Either party may terminate the Agreement in the event that the other party commits a material breach of a material provision of the Agreement and such breach remains uncured not less than thirty (30) days from the date of receipt of such notice.

2.3 **Cancellation.** A minimum of three (3) weeks’ written notice is required for rescheduling or cancelling the SOW prior to the commencement of the Services. Cancellations or rescheduling less than three (3) weeks prior to commencement of the Services shall only be permitted with the agreement of both parties.

3. INTELLECTUAL PROPERTY.

3.1 **Ownership.** All written reports, analyses and other working papers delivered to Customer in the course of performing the Services shall belong to Customer (“**Deliverables**”), subject to Customer’s payment in full under such SOW and subject to AiDEXA’s rights in the underlying Intellectual Property Rights embodied therein or used by AiDEXA to perform the Services (“**AiDEXA Proprietary Works**”). Nothing herein shall preclude AiDEXA from developing, using or marketing services or materials that are similar or related to such Deliverables, excluding any part of the Deliverables that embodies Customer Confidential Information. All materials provided by Customer to AiDEXA in connection with the Services shall remain Customer property. “**Intellectual Property Rights**” means (by whatever name or term known or designated) copyrights, trade secrets, trademarks, patents, and any other intellectual and industrial property and proprietary rights, including registrations, applications, renewals and extensions of such rights existing anywhere in the world.

3.2 **License Grant.** Upon Customer’s payment in full for the Deliverables and to the extent that AiDEXA Proprietary Works are contained in the Deliverables, Customer is hereby granted a non-exclusive, non-transferable, royalty free, without rights to sublicense, worldwide license to use such AiDEXA Proprietary Works for the purpose for which the Deliverables were provided. Customer may not modify, alter decompile, disassemble, reverse-engineer, or create derivative works from the Deliverables. This license is not a license to any software generally made available and sold under commercial licenses. In the event that the Services involve AiDEXA software products licensed to Customer under a separate license agreement, only the terms set out in such separate license agreement shall apply in respect for each such AiDEXA software product. Subject to the foregoing license, AiDEXA reserves all rights to the AiDEXA Proprietary Works and to all other rights not expressly granted to Customer in this Agreement.

3.3 **Software License.** If Customer requires a license to use AiDEXA software solely in conjunction with the SOW (“**Project License**”), such license shall consist solely of a non-exclusive, non-transferable, and without rights to sublicense right to use such software only in direct connection with this SOW and Customer may not reverse engineer, copy, modify decompile, disassemble or create derivative works from such software. The term of the Project License shall start on delivery of the software and expire upon completion of the SOW.

3.4 Training Services. Notwithstanding any contrary provision in this Agreement, if the Services constitute training and education services, all materials provided by AiDEXA for such Services are the sole property of AiDEXA. Customer shall not duplicate such materials and may use the materials solely in conjunction with the training provided by AiDEXA under the SOW.

4. CONFIDENTIALITY.

4.1 “Confidential Information” means any information or materials provided by one party to the other party which are in tangible form and labelled as confidential or, if disclosed orally, are identified as being confidential at the time of disclosure and within thirty (30) days thereafter are summarized to the other party in writing and marked as confidential. Notwithstanding the foregoing, the following information shall always be deemed to be Confidential Information, regardless of whether in writing or marked as confidential: (i) for AiDEXA: product roadmaps, source code, formulae, processes, release dates, feature sets, strategic business plans, methodologies; and (ii) for Customer: its customer data, strategic business plans and architecture.

4.2 Each party shall: (i) use Confidential Information of the other party only to exercise its rights or performing its obligations under the SOW; (ii) restrict disclosure of the other party’s Confidential Information to such of its employees and consultants that have a ‘need to know’ in order to carry out the Services and who are bound by written confidentiality obligations similar to those set out herein and (iii) use at least reasonable care to protect disclosure of such Confidential Information to any third parties for a period of three (3) years from the date of disclosure provided, however, that Confidential Information that constitutes or contains AiDEXA proprietary rights shall not be disclosed by the receiving party at any time. Notwithstanding the foregoing, a receiving party may disclose Confidential Information pursuant to a valid order of a court or government authority provided that the receiving party has given the disclosing party prompt notice, to the extent legally permissible, so that the disclosing party may defend, limit or protect against such disclosure. The restrictions on disclosure and use set forth herein shall not restrict or limit the right of the receiving party to (a) independently, and without use of the disclosing party’s Confidential Information, design, develop, acquire, market, service or otherwise deal in, directly or indirectly, products or services competitive with those of the disclosing party; or (b) assign personnel for any purpose.

4.3 Confidential Information does not include information that: (i) is rightfully in the receiving party’s possession without obligation of confidentiality prior to receipt from the disclosing party; (ii) is in the public domain through no fault of the receiving party; (iii) was independently developed by the receiving party without use of the Confidential Information of the disclosing party; or (iv) becomes known to the receiving party by a third party, without restriction.

5. PAYMENT TERMS.

5.1 Payment. AiDEXA will provide the Services for the fixed price or the time and materials rates as described in the SOW, plus applicable taxes and out-of-pocket travel and accommodation expenses pre-approved by the Customer. Invoices will be issued monthly in arrears or, if stated in the SOW, upon Customer acceptance of the applicable milestone(s) and must be paid within thirty (30) days of the date of invoice, without deduction, set-off or withholding. All charges and fees shall be paid in the currency described in the SOW. A consulting day is defined as eight (8) hours on a weekday.

5.2 Taxes. All charges and fees set out in the SOW are quoted exclusive of applicable taxes, duties or similar charges. Customer shall pay all sales, use, withholding, excise or other taxes or duties arising out of the SOW; provided, however, that Customer shall not be responsible for taxes on the net income of AiDEXA.

5.3 Late Payments. AiDEXA may charge interest on any overdue invoices at a rate of one- and one-half percent (1.5%) per month or the maximum amount permitted by law, whichever is less. If payment of invoices remains overdue more than seven (7) days from AiDEXA’s rectification notice to Customer prompting payment, AiDEXA may also suspend provision of the Services until payment is received in full.

5.4 Purchases from a Third-Party Reseller. This Section 5.4 shall not apply to Customers who purchase Services directly from AiDEXA. If Customer purchases from a party other than AiDEXA (each a “Reseller”) then Customer acknowledges that its payment for the Services is subject to the agreement between the Customer and the Reseller. Otherwise, Customer agrees that the Agreement, except for the ‘Payment Terms’ provisions above, shall apply to Customer’s receipt and use of the Services, notwithstanding anything to the contrary in Customer’s agreement with the Reseller. AiDEXA shall not be liable for any representations, warranties, indemnities or damages beyond those set forth in the Agreement. Customer acknowledges that if AiDEXA does not receive payment for the Services from the Reseller, AiDEXA shall have the right to suspend the Services until payment is received, without liability to Customer and Customer shall look solely to the Reseller for any damages or liability associated with such suspension.

6. WARRANTY AND LIMITATION OF LIABILITY.

6.1 Limited Warranty. AiDEXA shall perform the Services in a workmanlike manner in accordance with standards of the industry. Customer must notify AiDEXA of any failure to so perform within ten (10) days after completion of the Services and if such notification is not received within this period, the Services and all Deliverables will be deemed acknowledged and accepted. AiDEXA's entire liability, and Customer's sole remedy, for AiDEXA's failure to so perform shall be for AiDEXA to, at its option and expense: (i) use reasonable efforts to correct such failure; and/or (ii) terminate the SOW and refund that portion of any fees received that correspond to such failure to perform.

6.2 Disclaimer and Exclusions. THE EXPRESS WARRANTIES SET FORTH ABOVE ARE IN LIEU OF (TO THE FULLEST EXTENT PERMITTED BY LAW) ALL OTHER WARRANTIES, EXPRESS, IMPLIED, STATUTORY OR OTHERWISE WITH RESPECT TO THE SERVICES AND DELIVERABLES, OR AS TO THE RESULTS WHICH MAY BE OBTAINED THEREFROM, AND AIDEXA DISCLAIMS ALL IMPLIED WARRANTIES OF SATISFACTORY QUALITY, FITNESS FOR A PARTICULAR PURPOSE, OR NONINFRINGEMENT. THE SERVICES AND DELIVERABLES ARE PROVIDED ON AN 'AS IS' BASIS.

6.3 AiDEXA shall not be liable for any loss of profits, loss of business, loss of data and/or use or for any incidental, consequential, exemplary, special or indirect damages, even if advised of the possibility thereof, arising under or in connection with the Agreement. AiDEXA's total liability under the Agreement shall not exceed the fees paid for the Services and Deliverables provided by AiDEXA under the SOW. The foregoing limitations and exclusions apply irrespective of whether such damages arise in breach of contract, negligence or otherwise.

6.4 Notwithstanding anything to the contrary, nothing in this Agreement shall operate as to limit or exclude the liability of either party for a party's indemnification obligations under Section 7 or for any other liability which cannot be excluded by applicable law. In addition, where this Agreement is governed by Austrian law as specified in Section 10.11, nothing in this Agreement shall operate to exclude or limit the liability of either party for death or personal injury caused by negligence or for fraudulent misrepresentation.

7. IP INDEMNIFICATION. AiDEXA shall defend Customer against any third party claim that the Services and the Deliverables provided by AiDEXA to Customer infringe a patent, or a copyright enforceable in a country that is a signatory to the Berne Convention, and pay the resulting third party costs and damages finally awarded by a court of competent jurisdiction or agreed in settlement by AiDEXA. Customer shall defend AiDEXA against any third party claim that the materials provided by Customer or its agents for use by AiDEXA in providing the Services infringe a patent, or a copyright enforceable in a country that is a signatory to the Berne Convention, and pay the resulting third party costs and damages finally awarded by a court of competent jurisdiction or agreed in settlement by Customer. The foregoing obligations are subject to the following: the indemnitee (i) notifies the indemnitor promptly in writing of such claim, (ii) grants the indemnitor sole control over the defense and settlement thereof, (iii) reasonably cooperates in response to an indemnitor request for assistance, at indemnitor's cost, and (iv) is not in material breach of the Agreement. Should such a claim be made, or in the indemnitor's opinion be likely to be made, the indemnitor may, at its option and expense, (a) procure for the indemnitee the right to make continued use thereof, (b) replace or modify such so that it becomes non-infringing, or (c) request return of the subject material and terminate the Agreement and refund the portion of any part of the charges paid for the Services that corresponds to the period of Service discontinuation. The indemnitor shall have no liability under this Section 7 to the extent that the alleged infringement arises out of or relates to: (1) the use or combination of the subject Services and/or Deliverables with third party products or services, (2) use for a purpose or in a manner for which the subject Services and/or Deliverables were not designed, (3) any modification to the Services and/or Deliverables made by anyone other than the indemnitor or its authorized representatives, (4) any aspect of, or modifications to, the Services and/or Deliverables made by the indemnitor pursuant to the indemnitee's specific instructions, or (5) any technology owned or licensed by the indemnitee from third parties. THIS SECTION STATES THE INDEMNITEE'S SOLE AND EXCLUSIVE REMEDY AND THE INDEMNITOR'S ENTIRE LIABILITY FOR THIRD PARTY INFRINGEMENT CLAIMS.

8. NON-SOLICITATION. During the term of the Agreement and for a period of one (1) year thereafter, Customer shall not offer employment or engagement (whether as an employee, independent contractor or consultant) to any AiDEXA employee or consultant who performs any of the Services.

9. CUSTOMER OBLIGATIONS.

9.1 The Customer shall provide AiDEXA with all necessary co-operation, information and support that may reasonably be required by AiDEXA for the performance of the Services including, without limitation, access to suitably configured computers, software products and applicable passwords, at such times as AiDEXA request. Customer shall further perform such other Customer obligations as specified in the SOW (if any).

9.2 In the event that AiDEXA delivers Services to Customer acting as outsourcer of a third party outsourced customer: (i) Customer shall ensure that its outsourced customer provides AiDEXA with all necessary co-operation, information and support that may reasonably be required by AiDEXA for the performance of the Services including (if required for delivery of the Services) access to suitably configured computers, software products and applicable passwords, at such times as AiDEXA requests; and (ii) Customer must ensure that its outsourced customer provides

AiDEXA personnel with access to all buildings, parking, phone systems, internet access, server rooms, and workstations, and will provide all necessary passes, if required, for access to such areas. Customer represents and warrants that it has the authority and required authorizations from its outsourced customer to enter into the SOW with AiDEXA.

10. GENERAL

10.1 No Assignment. The Customer shall not assign, transfer, charge, sub-contract or deal in any other manner with all or any of its rights or obligations under the Agreement without the prior written consent of AiDEXA.

10.2 Notices. Any notices permitted or required under the Agreement shall be in writing and shall be delivered by: (i) pre-paid first-class post or recorded delivery post, with proof of delivery; (ii) in person; (iii) by courier, upon written confirmation of receipt; or (iv) by facsimile or email, with confirmation of receipt. Notices shall be sent to the address, email address and facsimile number specified in the SOW.

10.3 Severance. If any provision of the Agreement is held to be unenforceable, void or invalid under applicable law, such provision shall be deemed omitted and the remaining provisions will remain in full force.

10.4 Independent Contractors. The relationship between AiDEXA and Customer established by the Agreement is that of independent contractors. Nothing in the Agreement shall be deemed to constitute either party as an agent, partner or representative of the other party or otherwise grant either party the authority to bind the other party to any obligation. Customer shall make no representations or warranties on behalf of AiDEXA with respect to the Services and/or Deliverables.

10.5 Export Control. Customer will obtain any export licenses that may be required under applicable international laws prior to the export or re-export of Deliverables, materials or information provided under the SOW.

10.6 Entire Agreement. The parties agree that the Agreement constitutes the entire agreement between the parties with regard to the subject matter hereof and supersedes all previous communications and agreements (whether written or oral). All terms of any purchase order or similar document provided by Customer or that are implied by trade, custom, practice or course of dealing are expressly excluded and shall be of no legal effect. No employee, agent, representative or affiliate of AiDEXA has authority to bind AiDEXA to any warranty concerning the Services or Deliverables; any representation or warranty not expressly set out in the Agreement will not be enforceable.

10.7 Force Majeure. Neither party will incur any liability to the other party for any loss or damage resulting from any delay or failure to perform any part of the Agreement if such failure or delay is caused by circumstances beyond the parties' reasonable control including, without limitation, flood, fire, acts of war, earthquake and acts of God however inability to meet financial obligations is expressly excluded. AiDEXA shall not be liable for any failure of delay in performing its obligations on account of Customer's failure to perform its obligations under this Agreement.

10.8 Third Party Rights. A person who is not a party to the Agreement shall not have any rights under or in connection with it.

10.9 Variation. Any variation to the Agreement, shall only be binding when agreed in writing and signed by both parties.

10.10 Counterparts. The SOW may be executed in counterparts, each of which so executed will be deemed to be an original and such counterparts together will constitute one and the same agreement. This SOW may be executed and delivered by facsimile or in Portable Document Format ("PDF") and the parties agree that such facsimile or PDF execution and delivery shall have the same force and effect as delivery of an original document with original signatures, and that each party may use such facsimile or PDF signatures as evidence of the execution and delivery of this SOW by all parties to the same extent that an original signature could be used.

10.11 Governing Law: This Agreement is governed by Austrian laws without regard to conflict of laws, principles and in any dispute arising out of or in connection with this Agreement. The Customer consents to the exclusive jurisdiction of the European Union courts. The United Nations Convention for the International Sale of Goods shall not apply to the Agreement.

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