

KISS Technologies General Terms and Conditions

KISS

Technologies

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1 Services and Statement of Work

KISS Technologies GmbH (subsequently called “KISS Technologies”) will provide the services (“Services”) as described in each Statement of Work (“SOW”). A SOW may only be amended or modified by a written change control document signed by authorized representatives of KISS Technologies and Customer. In the event of any conflict between this Agreement and an applicable SOW, the SOW shall govern, but only as to that specific SOW.

2 Customer’s Duties and Responsibilities

Customer shall make available in a timely manner at no charge to KISS Technologies all technical data, computer facilities, programs, files, documentation, test data, sample output, or other information and resources reasonably required by KISS Technologies for the performance of the Services. Customer will be responsible for, and assumes the risk of any problems resulting from, the content, accuracy, completeness and consistency of all such data, materials and information supplied by Customer. Customer shall provide, at no charge to KISS Technologies, office space, services and access to equipment (such as copiers, fax

machines, and modems) as KISS Technologies may reasonably require to provide the Services.

3 Relationship of Parties

Each party will be and act as an independent contractor and not as an agent or partner of, or joint venturer with the other party, and neither party will by virtue of this Agreement have any right, power or authority to act or create any obligation, express or implied, on behalf of the other party.

4 Confidentiality

KISS Technologies and Customer each agree to retain in confidence the Confidential Information of the other party. Each party agrees to: (a) preserve and protect the confidentiality of the other party's Confidential Information; (b) refrain from using the other party's Confidential Information except as contemplated herein; and (c) not disclose such Confidential Information to any third party except as is reasonably required in connection with the exercise of its rights and obligations under this Agreement (and only subject to binding use and disclosure restrictions at least as protective as those set forth herein). Notwithstanding the foregoing, either party may disclose Confidential Information of the other party which is: (i) already publicly known; (ii) discovered or created by the receiving party without reference to or use of the Confidential Information of the disclosing party, as shown in records of receiving party; (iii) otherwise known to the receiving party through no wrongful conduct of the receiving party, or (iv) required to be disclosed by law or court order. The confidentiality obligations of this Section 4 shall survive the termination of this Agreement for a period of five (5) years. "Confidential Information" means all non-public information, trade secrets, know-how, inventions, techniques, processes, methodologies, programs, schematics, software, source code, data, work product, or any materials which are either designated as proprietary and/or confidential, or by the nature of the circumstances surrounding disclosure, should reasonably be understood to be confidential. If either party breaches any of its confidentiality or other obligations hereunder, the other party shall be entitled to seek such equitable relief, including but not limited to injunctive relief, in addition to any monetary damages to which it may be entitled.

5 Intellectual Property Rights

5.1 Retention of Rights

Where generally applicable works are developed, KISS Technologies retains all right, title and interest in and to the materials, deliverables, Services and work product provided under each SOW, including patents, trademarks, copyrights (including the right to any derivative works), and all other intellectual property rights. Generally applicable in this context means not related in to the business of the Customer. By way of example, this could be driver or infrastructure software, generally applicable algorithms and procedures, Engineering Best Practices documents, hiring questionnaires, etc. These examples are not exhaustive.

Where works specifically related to Customer's business are developed, Customer retains all right, title and interest in and to the materials, deliverables, Services and work product provided under each SOW, including patents, trademarks, copyrights (including the right to any derivative works), and all other intellectual property rights. By way of example, this could be a Flight Training Device for a specific aircraft model, integration and/or improvement of Customer's software products, a document evaluating Customer's development processes, etc. These examples are not exhaustive.

In particular, Rights to works developed in software and document repositories of KISS Technologies or in public repositories are retained by KISS Technologies.

Notwithstanding anything to the contrary in this Agreement, KISS Technologies shall obtain no right, title or interest in any of Customer's Confidential Information.

5.2 Nonexclusive License

KISS Technologies grants to Customer a nonexclusive, non-transferable, royalty-free license to use the deliverables for Customer's use as he deems necessary, pursuant to the applicable license or subscription agreement relating to the KISS Technologies software product at issue.

6 Customer Security Regulations/Work Policy

Customer shall provide to KISS Technologies, and KISS Technologies shall ensure that its personnel or subcontractors make commercially reasonable efforts to comply with Customer's security regulations. Unless otherwise agreed to by both parties, KISS Technologies's personnel (including its subcontractors) will observe the working hours, working rules, and holiday schedules of Customer while

working on Customer's premises provided that KISS Technologies's personnel are provided reasonable prior notice of all such hours, rules and schedules.

7 Warranty and Disclaimer

KISS Technologies WARRANTS THAT IT WILL USE ITS COMMERCIALY REASONABLE EFFORTS TO ENSURE THAT ALL SERVICES RENDERED PURSUANT TO THIS AGREEMENT WILL BE PERFORMED IN A WORK-MANLIKE MANNER CONSISTENT WITH INDUSTRY PRACTICES. EXCEPT FOR THE FOREGOING, SERVICES, DELIVERABLES AND WORK PRODUCT ARE PROVIDED "AS IS," WITHOUT ANY WARRANTY OF ANY KIND. KISS Technologies AND ITS SUPPLIERS AND/OR SUBCONTRACTORS DISCLAIM ANY AND ALL WARRANTIES, EITHER EXPRESS OR IMPLIED, INCLUDING BUT NOT LIMITED TO ANY WARRANTY OF MERCHANTABILITY AND/OR FITNESS FOR A PARTICULAR PURPOSE. KISS Technologies AND ITS SUPPLIERS AND/OR SUBCONTRACTORS DO NOT WARRANT THAT SERVICES, DELIVERABLES, OR WORK PRODUCT WILL MEET CUSTOMER'S REQUIREMENTS OR THAT THE PERFORMANCE OR USE THEREOF WILL BE UNINTERRUPTED OR ERROR-FREE.

8 Limitation of Liability

NOTWITHSTANDING ANYTHING ELSE HEREIN, ALL LIABILITY OF KISS Technologies AND/OR SUPPLIERS AND/OR SUBCONTRACTORS UNDER THIS AGREEMENT OR ANY SOW HEREUNDER SHALL BE LIMITED TO THE AMOUNT PAID BY CUSTOMER TO KISS Technologies UNDER THE SOW WHICH IS THE SOURCE OF THE LIABILITY. ALL LIABILITY UNDER THIS AGREEMENT IS CUMULATIVE AND NOT PER INCIDENT. FOR SERVICES PROVIDED FREE OF CHARGE, NO LIABILITY EXISTS.

9 Consequential Damages Waiver

IN NO EVENT SHALL KISS Technologies OR ITS SUPPLIERS OR SUBCONTRACTORS BE LIABLE UNDER THIS AGREEMENT FOR (A) ANY INCIDENTAL OR CONSEQUENTIAL DAMAGES, LOST PROFITS, LOST DATA, OR ANY OTHER INDIRECT DAMAGES EVEN IF SUCH PARTY HAS BEEN INFORMED OF THE POSSIBILITY THEREOF, OR (B) ANY COSTS OR EXPENSES FOR THE PROCUREMENT OF SUBSTITUTE EQUIPMENT OR SERVICES.

10 Term and Termination

10.1 Commencement

The term of this Agreement shall commence on the Effective Date stated in the Order Form and shall continue in full force unless terminated earlier under the provisions of this Section 10.

10.2 Termination

This Agreement or any SOW may be terminated for convenience by either party upon seven (7) days prior written notice. Any such termination shall not relieve either party of their respective obligations under any SOW in effect at the date of termination of a SOW or the Agreement (which obligations shall remain in effect for such SOW), except as otherwise mutually agreed in writing by the parties.

10.3 Notification

Failure by either party to comply with any material term or condition under this Agreement or a SOW issued hereunder shall entitle the other party to give the party in default written notice requiring it to cure such default. If the party in default has not cured such default within seven (7) days of receipt of notice, the notifying party shall be entitled, in addition to any other rights it may have, to terminate this Agreement (and all SOWs issued hereunder) and/or the individual SOW by giving notice effective immediately.

10.4 Cessation of business

This Agreement or individual SOW may be terminated immediately by either party through written notice in the event that either party ceases to carry on business as a going concern, becomes the object of the institution of voluntary or involuntary proceedings in bankruptcy or liquidation, or a receiver is appointed with respect to a substantial part of such party's assets.

10.5 Payment

KISS Technologies will send invoices to Customer at regular intervals, normally at the end of each calendar month.

No longer than 15 days after reception of each invoice, Customer shall pay the indicated amount to KISS Technologies including VAT.

Upon termination of this Agreement and/or any SOWs, Customer shall pay KISS Technologies for all work performed under the affected SOW(s) up to the effective date of termination. In addition Customer agrees, within ten (10) days after termination, to deliver to KISS Technologies at KISS Technologies's discretion either: (i) the original and all copies of the Deliverables and related materials received by Customer in connection with the terminated work for which KISS Technologies has not been paid in the course of performance; or (ii) a certificate certifying that Customer has destroyed the original and all copies of such Deliverables and related materials.

10.6 Non-exclusive remedies

The rights and remedies of KISS Technologies provided in this Section 10 shall not be exclusive and are in addition to all other rights and remedies provided at law, in equity or otherwise under this Agreement or SOWs hereunder.

10.7 Survival of clauses

Sections 3, 4, 5, 8, 9, 11, and 17 of this Agreement and any accrued rights to payment shall survive termination, regardless of the reason for termination.

11 Assignment and Subcontracting

Customer shall not assign or transfer any obligations or benefits under this Agreement without the prior written consent of KISS Technologies. Subject to the foregoing, this Agreement will bind and inure to the benefit of the parties and their respective successors and permitted assigns. The Services may be provided by KISS Technologies or individuals or organizations employed by or under contract with KISS Technologies, at the discretion of KISS Technologies, provided that KISS Technologies shall be responsible for the performance of such individuals or organizations.

12 Notice

All notices required or permitted hereunder will be in writing and deemed received when (a) delivered personally; (b) delivered by E-Mail

13 Force Majeure

Except for payment obligations, each party shall be excused from any delay or failure in performance hereunder caused by reason of occurrence or contingency beyond its reasonable control.

14 Mutual Non-Solicitation

Customer agrees that during the present contractual relationship with KISS Technologies and for three years after the termination thereof, not to recruit, solicit, or induce, or attempt to recruit, solicit, or induce, any employee or contractor of KISS Technologies to terminate their relationship with KISS Technologies.

KISS Technologies agrees that during the present contractual relationship with Customer and for three years after the termination thereof, not to recruit, solicit, or induce, or attempt to recruit, solicit, or induce, any employee or contractor of Customer to terminate their relationship with Customer.

If any party hires an employee or contractor of the other party in violation of the above Non-Solicitation agreement, this party shall pay the other party an indemnification fee of three monthly gross salaries of the hired employee or contractor in his or her new contract.

15 Free services

KISS Technologies provides certain services free of charge on its website. Any such free service may be changed, updated, or discontinued at any time. By using KISS Technologies's free services, you agree to the applicable clauses of these Terms and Conditions, in particular to this clause and clauses [7](#), [8](#) and [9](#).

16 No scraping

Unless noted otherwise or accepted in a licensing agreement, you are not allowed to use computer programs to copy output from public KISS Technologies web and other services to your own systems for further processing or analysis (scraping).

17 Miscellaneous

17.1 Customer Affiliates

KISS Technologies agrees that Customer's Affiliates shall be permitted to purchase Services under this Agreement, provided, however, that any such purchase(s) shall be evidenced by a separate SOW and Customer and its Affiliate(s) shall be jointly and severally liable for the compliance by the Affiliate(s) with the terms and conditions of this Agreement. For purposes of this Agreement, the term "Affiliates" means any affiliated entity that Controls, is Controlled by, or is under common Control with a party to this Agreement, and the term "Control" means the possession, directly or indirectly, of the power to direct or cause the direction of the management and operating policies of an entity through the ownership of voting securities (at least fifty-one percent (51%) of its voting or equity securities), contract, voting trust, or otherwise.

17.2 Export Control

Customer acknowledges and agrees that the deliverables may be subject to restrictions and controls imposed by a countries law and the regulations thereunder. Customer agrees and certifies that it will not export or re-export either the deliverables or any directly related materials to or into any country in violation of such controls or any other laws, rules or regulations of any country, state or jurisdiction.

18 Waived clauses

Individual clauses of these Terms and Conditions can be waived or replaced by mutual agreements for specific Customers and/or SOWs. Waivers are valid only in writing and if duly signed by a KISS Technologies and Customer representative. Any waiver must bear the number and title of the waived clause.