

General Terms and Conditions

By creating an account on the website of K2Prime GmbH (hereinafter referred to as "K2Prime"), the customer (hereinafter referred to as "customer") unconditionally accepts the following General Terms and Conditions (hereinafter also referred to as "GTC").

K2Prime reserves the right to change the content of these General Terms and Conditions if new or changed services are made available or legal changes make it necessary or meaningful to adapt them.

1 Introduction

1. K2Prime reserves the right to change these conditions at any time and without giving reasons. The amended terms and conditions shall become effective upon their publication on the website. K2Prime will make every effort to inform the customer of the amended terms and conditions.
2. K2Prime shall provide its customers with Software-as-a-Service (hereinafter also referred to as "SaaS") via the Internet in the area of electronic assessment (hereinafter also referred to as "e-assessment").
3. The object of the contract:
 - a. the provision of software by K2Prime for use via the Internet and
 - b. the storage of customer data (data hosting)

2 Software licensing

1. K2Prime shall make the current version of the product or service available to the customer via the Internet for a fee for the duration mentioned in the contract. For this purpose, K2Prime makes the software available on a server that can be accessed by the customer via the Internet.
2. K2Prime shall continue to develop the Software and shall improve it by means of ongoing updates and upgrades.
3. K2Prime monitors the functionality of the software and eliminates software errors to the extent technically possible. An error exists in particular if the software does not fulfil the functions specified in the service description or does not function properly in some other way, so that the use of the software is impossible or considerably restricted.

3 Rights of Use to the Software

1. K2Prime grants the customer the non-exclusive and non-transferable right to use its products and services as intended within the framework of the SaaS services for the duration of the contract.
2. The customer may neither copy nor edit the software unless this is expressly permitted in the current service description on the website. In particular, the temporary installation or storage of the software on data carriers (hard disks, etc.) used by the customer (with the exception of RAM) is prohibited.
3. Any form of making the software available to third parties is expressly prohibited for the customer.
4. The customer undertakes to arrange his possible contractual relationships with third parties in such a way that a free use of the software by third parties is excluded.
5. In addition to the Products & Services, the customer may order various additional packages (e.g. support packages) from K2Prime and/or individualize the Software. Both cases require a written contract between the customer and K2Prime.

4 Data Hosting

1. K2Prime provides the customer with a defined storage space on a server for storing his data. If the storage space is not sufficient to store the data, K2Prime will inform the customer in good time. Unless the customer subsequently orders additional storage space for a fee, data exceeding the available storage space will no longer be stored.
2. K2Prime shall ensure that the stored data can be accessed via the Internet to the extent technically possible.
3. The customer is not entitled to make this storage space available for use to a third party, in whole or in part, neither for a fee nor free of charge.
4. The customer undertakes not to store any content on the storage space whose provision, publication and use violates applicable law or agreements with third parties.
5. K2Prime is obliged to take appropriate and reasonable precautions against data loss and to prevent unauthorized access by third parties to the customer's data within the scope of technical possibilities. For this purpose, K2Prime will make regular backups, check the customer's data for viruses and install firewalls.
6. In any case, the customer remains the sole owner of the data and can therefore demand that K2Prime surrender individual or all data during the term of the contract without any right of retention on the part of K2Prime. As a rule, the data is surrendered by transmission via a data network. The customer has no claim to the software suitable for the use/use of the data.
7. after termination of the contract, the customer shall be entitled to demand the surrender of his data under the provisions of clause 6 above for a period of one month (from the date of termination). K2Prime is not obliged to store data of the customer beyond this period. If a customer requests the surrender of data after the one-month period has expired and if this data is still available, K2Prime will surrender the data to the customer after payment of the actual costs incurred for this.

5 Support & Customer Service

K2Prime will respond (by e-mail) to customer enquiries regarding Products & Services within the business hours published on the website www.k2prime.com as soon as possible after receipt.

6 Impairment of availability

1. Adjustments, changes and additions to the contractual SaaS services as well as measures which serve to identify and remedy malfunctions shall only lead to a temporary interruption or impairment of accessibility if this is necessary for technical reasons.
2. The basic functions of the SaaS services are monitored on a daily basis. The maintenance of the SaaS services is generally carried out from Monday to Friday 09:00 - 17:00 hrs. K2Prime will notify the customer in good time of any unscheduled maintenance work and carry it out as quickly as possible.
3. The availability of the individual SaaS service is 99.5% on an annual average.

7 Obligations of the customer

1. The customer is obliged to prevent unauthorized access to the software by third parties by taking appropriate precautions. For this purpose, the customer shall, if necessary, inform his employees of compliance with copyright law. In particular, the customer shall instruct his employees not to copy the software or pass on access data to third parties.
2. The customer shall be responsible for entering and maintaining the data and information required for the use of the SaaS services, without prejudice to K2Prime's obligation to back up data.
3. The customer is obliged to check his data and information for viruses or other harmful components before entering them and to use state-of-the-art virus protection programs for this purpose.
4. The customer must generate a "User ID" and a password when using the SaaS services for the first time, which are required for further use of the SaaS services. The customer is obliged to keep the "User ID" and password secret and not to make them accessible to third parties.
5. The customer must inform K2Prime immediately of any unauthorized use of "user ID" and password or any other attacks on the security. In such cases, K2Prime will change the "User ID" and password of the customer in agreement with the customer.
6. The customer shall take all measures that K2Prime deems necessary to maintain or improve the security of the data, software and network connections. For example, the user undertakes to change the password regularly, but at least every hundred and eighty (180) days.

8 Remuneration

1. The customer undertakes to pay K2Prime the fee agreed in its subscription plus statutory VAT for the provision of software and data hosting.
2. K2Prime shall provide the customer with an invoice for the contractually owed fee.

3. K2Prime shall be entitled to adjust the fees and service content on the next possible termination date by notifying the customer in writing. Reasons for such a change in services are in particular the technical progress and further development of the software. If the customer does not wish to continue the contract at the changed rates, he is entitled to an extraordinary, written cancellation with a period of notice of 14 days at the time of the change.

9 Warranty/Liability

1. K2Prime warrants the functional and operational readiness of the SaaS services in accordance with the provisions of these GTC.
2. The customer undertakes to indemnify K2Prime against all claims by third parties based on the data stored by him and to reimburse K2Prime for all costs incurred as a result of possible legal infringements.
3. K2Prime is entitled to immediately block access if there are reasonable grounds to suspect that the stored data is unlawful and/or violates the rights of third parties. A well-founded suspicion of illegality and/or a violation of rights exists in particular if courts, authorities and/or other third parties inform K2Prime thereof. K2Prime must inform the customer immediately of the removal and the reason for it. The block must be lifted as soon as the suspicion is completely invalidated.
4. Within the framework of the statutory provisions, K2Prime excludes any liability towards the customer (or any third party), in particular for the fulfilment of its contractual and non-contractual obligations and for the loss of data and profits (including negligence). This exclusion of liability shall also apply to damage caused directly or indirectly by the use of the products & services offered.
5. In all cases, regardless of the basis of liability, the mutual liability of the contracting parties is limited to the amount of the monthly access fees in the last twelve months prior to the occurrence of the damage.

10 Term/termination/rescission

1. The contractual relationship begins with the registration by the customer. Currently, the customer has the possibility to choose freely between monthly and annual subscriptions.
2. Monthly subscriptions are concluded for an indefinite period and can be cancelled by either party at the end of each month, subject to a one-month period of notice.
3. Annual subscriptions are concluded for a period of one year. If the customer does not cancel in writing at the latest 30 days before the end of the one-year period, the subscription is automatically extended by a further year in each case. The annual subscription is invoiced annually in advance.
4. The parties reserve the right to terminate the contract immediately for good cause. An important reason for the immediate termination of this contract exists for K2Prime in particular then,
 - a. if the customer is declared bankrupt or the opening of bankruptcy proceedings has been suspended due to lack of assets;

- b. if the customer is in default with payment obligations arising from this contractual relationship to the extent of at least one month's remuneration and has been reminded without success, setting a grace period of two weeks and threatening to terminate the contract;
- c. if the customer culpably violates legal regulations or infringes copyrights, industrial property rights or naming rights of third parties when using the contractual services;
- d. when using the services offered by K2Prime for the purpose of promoting criminal, unlawful and ethically questionable actions by the customer.

11 Data Protection/Secrecy

1. K2Prime undertakes to maintain secrecy about all confidential processes, in particular business or company secrets of the customer, which come to its knowledge in the course of the preparation, execution and performance of this contract and not to pass this information on to third parties without the customer's authorization. This shall apply to any unauthorized third parties, unless the disclosure of information is necessary for the proper fulfilment of the contractual obligations on the part of K2Prime.
2. K2Prime is entitled to publicly name the customer - subject to his written objection - as a reference and to use general information about the agreed contract in an appropriate manner for marketing and sales purposes.
3. K2Prime is authorized within the framework of the statutory provisions to store and evaluate user data for operational purposes (in particular market research). The customer hereby expressly agrees to this.

12 Intellectual property rights

All intellectual property rights in the products & services, the website and the documentation on products & services remain the property of K2Prime.

13 Communications

1. All notifications must be sent in writing to the address indicated when registering the customer or on the K2Prime website, unless a stricter form is stipulated in this agreement or by law. Sending by e-mail shall satisfy the written form requirement in each case. Communications from K2Prime to the e-mail address provided by the customer upon registration shall in any case be deemed to be written communications.
2. The contracting parties are obliged to notify the other contracting party immediately of any changes of address (incl. e-mail). Otherwise, notifications to the address last notified in writing shall be deemed legally effective.

14 Severability clause

In the event of the total or partial invalidity of individual clauses of the present agreement, any invalid provisions shall be reinterpreted, supplemented or replaced in such a way that the economic purpose pursued by the invalid provision is achieved. The same shall apply in the event that loopholes should exist in this agreement.

15 Jurisdiction

Swiss law applies exclusively. Place of jurisdiction is Basel-Stadt.

16 Validity

These terms and conditions are valid from 02.01.2019.

You can reach out to us under the following contact details:

K2Prime GmbH
Zwingerstrasse 12
4053 Basel
Schweiz

rev 1.0 | 04.09.19

