

## General Terms and Conditions of the AJ&Smart GmbH Innovation Toolkit

Scope: Provision of access and use of the AJ&Smart Innovation Toolkit

As of: June 27, 2022

### 1. General

- 1.1. These General Terms and Conditions (hereinafter “**GTC**”) shall apply for all contracts between the AJ&Smart GmbH, Köpenicker Str. 10a, 10997 Berlin, Germany, entered in the commercial register of the Berlin Local Court (Charlottenburg) under HRB 159502 (hereinafter: “**AJ&Smart**”) and its customers (hereinafter: “**Customer**”) for the Provision of access to a bespoke education platform containing tools and materials to facilitate the learning of the principles and practices of innovation, structured collaboration and facilitation, which is made available to the Customer at “[**website domain**]” (hereinafter: the “**Platform**”). The Customer wishes to order licenses to enable its employees (hereinafter: “**Participant**”) to use the Platform via individual accounts for Participants (hereinafter “**License**”). Customer and AJ&Smart hereinafter together also referred to as the “**Parties**”.
- 1.2. Unless agreed otherwise, the GTC shall apply in the version valid at the time the Customer places the order or at any rate in the version last notified to the Customer in text form as a master agreement, also for future contracts of the same type, without AJ&Smart having to cite the GTC again in each individual case.
- 1.3. These GTC and the documents cited therein shall apply exclusively. Differing, conflicting or supplementary general terms and conditions of the Customer shall become an integral part of the contract only if and in so far as AJ&Smart has expressly agreed to the applicability of the same.
- 1.4. Individual agreements agreed with the Customer in a specific case (including side agreements, additions and changes) shall always have priority over these GTC. A written agreement and/or written confirmation by AJ&Smart shall be definitive and required for such agreements.
- 1.5. References to the applicability of statutory provisions have a clarifying role only. Even without such clarification, the statutory provisions shall therefore apply, in so far as they are not directly amended or expressly excluded in these GTC.

### 2. Features and Provision of Platform, Certificates

- 2.1. The Platform contains extensive video courses offering two separate paths of learning and additional tools (hereinafter “**Courses & Tools**”):
  - a. “**Accelerating Innovation Course**”: The Accelerating Innovation Course will teach learners how to develop strong capabilities to engage, collaborate and problem-solve with diverse and inclusive teams, enabling them to have more innovative outcomes and solutions to problems;
  - b. “**Confident Facilitator Course**”: The Confident Facilitator Course will teach learners how to confidently facilitate and deliver workshops, meetings and design sprints, as well as teaching participants the techniques to design their own custom workshop to target and solve specific challenges; and

- c. **“Tools”**: Additionally, the Platform contains a toolkit of resources, including sample exercises and workshop templates, Miro and Mural boards, printable guides, FAQs, and facilitator checklists.
- 2.2. The Platform itself will be customizable by the Customer for all of their respective Participants. This includes a landing page and the user accounts for Participants, which can be customized to include company branding, custom text throughout the Platform and the ability to remove video content or add their own.
- 2.3. AJ&Smart reserves the right to modify, discontinue, remove or prevent access to any content or other materials on the Platform without prior notice. In the event that a significant restriction of Customer rights occurs, the Customer is entitled to terminate the corresponding license without notice.
- 2.4. The minimum technical requirements are specified in a corresponding document which is provided to the Customer upon request and which is subject to change due to technological changes.
- 2.5. Participants who have completed certain training programs on the Platform may be issued a certificate confirming their participation in the respective training.

### **3. Contractual Relationships, Terms of Use**

- 3.1. To access or use the Platform, Customer and Participants are required to register for an account (**“Account”**).
- 3.2. If the Customer allows Participants to use a License and to register for an Account, the individual contract for the use of the Platform is still concluded between AJ&Smart and the Customer.
- 3.3. The Customer and every Participant can only use the Platform if each of them has deposited its personal data and agreed to the Terms of Use found at [\[link to Terms of Use\]](#) as amended from time to time; they apply both to Participants and correspondingly to Customers. The Customer shall ensure that Participants comply with the Terms of Use. A violation of the Terms of Use by a Participant shall be attributed to the Customer.

### **4. Scope of the License for the use of the Platform**

- 4.1. Licenses will be purchased by the Customer in bulk and assigned to Participants through the Platform. Licenses assigned to Participants cannot be transferred in the event of Participant departure or completion of a course, a separate license will have to be used for each new Participant. Similarly, the license belongs to the Customer, not the Participant, and cannot be brought with them to another company or a private email address. Unused licenses will not expire.
- 4.2. All Participants will receive unlimited indefinite access to the Platform and all content. AJ&Smart however retains the right to cease operating the Platform at any time, in which case the Customer will be notified. From the point of notification, the respective Participants will have twelve (12) months of access to the Platform and its content before it is shut down.
- 4.3. All ownership rights and rights to the services relating to the Platform shall remain with AJ&Smart and its suppliers. AJ&Smart grants the Customer a non-exclusive, non-transferable

and non-sublicensable right to use the Platform and the provided contents. Customer and user shall not modify, rent, lend, sell or market the software, content or materials provided. The right of use for the Customer's employees according to the Terms of Use remains unaffected.

- 4.4. The subject matter of the contract is the provision of Licenses limited to the term of the contract and the granting of the rights required for contractually compliant use by the Customer.
- 4.5. The Customer shall not be entitled to provide the Licenses to third parties, in particular to sell, rent out or otherwise provide the same for use, without AJ&Smart's permission. The Customer must take suitable precautions to protect the use of the Licenses from unauthorized access by third parties.

## **5. Availability and support**

- 5.1. Access to the learning Platform is generally granted continuously, less regular or necessary maintenance periods. Any claim for damages due to the unavailability of the Platform or the contents is excluded. If Participants are not able to use the Platform due to the unavailability of the Platform, for which AJ&Smart is responsible, the corresponding usage rights shall be credited to the Customer account within the scope of the Licenses.
- 5.2. AJ&Smart shall provide the Customer with email support services during normal business hours. Particular response times are not assured. Nevertheless, AJ&Smart shall strive to respond within a reasonable period of time, subject to the Customer having furnished a sufficiently detailed fault description which contains the fault behavior, affected product components and steps already taken.

## **6. Fees and payment conditions**

- 6.1. The pertinent charge for providing and maintaining the Platform together with the granting of required Licenses (hereinafter “**License Fee**”) shall be set forth in the contract. The License Fee is a once-off cost.
- 6.2. The License Fee is payable in advance and shall be invoiced at the start of the pertinent contract and is due and payable within thirty (30) days.
- 6.3. Unless agreed otherwise in writing in a specific case, License Fees are quoted in euros and “net” plus sales tax at the pertinent statutory rate, in so far as there is a duty to pay sales tax.
- 6.4. If the Customer is in default of payment, AJ&Smart is entitled to block access to the Platform at its own discretion. The Customer's payment obligation remains unaffected by such blocking.

## **7. Liability**

- 7.1. AJ&Smart and its legal representatives and vicarious agents shall be liable for slight negligence only in the event of the breach of essential contractual obligations, and such liability shall be limited to the typical damage foreseeable when concluding the contract. Essential contractual obligations are obligations which must be fulfilled to enable the proper performance of the contract and compliance of which the Participant may rely upon on a regular basis. AJ&Smart and its legal representatives and vicarious agents are fully liable for damage to life, limb or health. Liability for the loss of data shall be limited to the amount that would have been incurred for its restoration if the data had been properly and regularly backed up. The liability for

foregone profit and unrealized savings is hereby excluded. AJ&Smart shall not be liable for the Customer's lack of economic success. The above liability restrictions shall also apply mutatis mutandis in favor of AJ&Smart's employees and agents.

- 7.2. Apart from the liability under section 7.1, the liability of AJ&Smart and its legal representatives and vicarious agents is limited to willful intent and gross negligence.
- 7.3. Without prejudice to the statutory liability of the provider for positive knowledge of unlawful contents, AJ&Smart is not responsible for any content posted by Participants. In the event of a claim due to an infringement of copyright or property rights for which the Participant is responsible, the Customer shall indemnify AJ&Smart against all claims asserted against AJ&Smart and the associated expenses in this respect.

## **8. Force majeure**

In cases of force majeure, the affected Party shall be released from its performance obligation for the duration and on the scale of the impact. Force majeure is every event outside the scope of influence of the pertinent party through which the latter is completely or partly prevented from meeting its obligations, including fire damage, lightning strikes, flooding, strikes and lawful lock-outs and also operational disruptions for which it is not at fault or public-authority orders. The affected Party shall notify the other Party without undue delay about the onside and end of the force majeure and do its utmost to overcome the restrictions arising from said force majeure and to limit the impact thereof as far as possible. The Parties shall coordinate the next steps in the event of force majeure arising. This notwithstanding, each Party shall be entitled to rescind the affected contract if the force majeure continues for more than six (6) weeks from the agreed performance date. This shall be without prejudice to every Party's right to terminate the contract in the case of protracted force majeure for good cause.

## **9. Confidentiality**

- 9.1. The parties have a duty to keep business secrets and other confidential information (information and records marked confidential or to be considered confidential from the circumstances, in particular information about business procedures, business relationships and know-how) confidential. This duty shall continue for a period of three (3) years after the contract ends.
- 9.2. Excluded from this duty is such confidential information, (a) which was already demonstrably known by the recipient when the contract was concluded or furnished thereafter by a third party known without this breaching a confidentiality agreement, statutory provisions or public-authority orders; (b) which was public knowledge when the contract was concluded or became public knowledge thereafter in so far as this did not involve a breach of this contract; (c) which had to be disclosed due to statutory provisions or the order of a court of law or public authority; in so far as permissible and possible the recipient under an disclosure obligation shall inform the other Party in advance and give it an opportunity to challenge the disclosure.
- 9.3. The Parties shall only give access to confidential information to such persons who are bound by a professional duty of confidentiality or who have first been bound by obligations comparable to the confidentiality obligations under this contract. In addition, the Parties shall only disclose the confidential information to those employees who have to know it in order to carry out this

contract and bind those employees to confidentiality.

#### **10. Data protection**

The Parties shall comply with the pertinent data protection provisions. AJ&Smart shall process personal data within the meaning of the GDPR and the Federal Data Protection Act (FDPA) in every case only within the framework of the Customer's instructions. The Customer shall in every case remain the controller for any personal data processed by AJ&Smart within the framework of fulfilling the contract. The Customer alone shall be responsible for the permissibility of the data processing carried out as per its instructions.

#### **11. Customer Reference**

AJ&Smart is entitled to use the Customer's company name for reference purposes and to publish it in a manner customary in the industry.

#### **12. Final provisions**

- 12.1. The Customer may transfer rights and duties under or in conjunction with the contract to third parties only after AJ&Smart's prior written consent.
- 12.2. Insofar as the services of AJ&Smart provided with reference to these GTC are subject to the export control laws of a country, the Customer shall not provide related documentation or other information to a governmental authority for the examination of a possible granting of rights of use or other official approval without the prior written consent of AJ&Smart. Customer shall not export the services to countries or to natural or legal persons for which export bans apply according to the respective export laws. Further shall the Customer be responsible for compliance with all applicable legal provisions of the country in which the Customer's head office is located as well as other legal provisions in other countries in relation to the use by the Customer and for these services authorized users of the AJ&Smart services provided under these GTC.
- 12.3. Changes and additions to this contract must be made in writing. This shall also apply for changing or revoking this written form clause. Transmission by fax and email shall satisfy the written form requirement, in so far as receipt of the same can be proven.
- 12.4. The place of fulfilment is where AJ&Smart has its registered office. German law shall apply to the exclusion of the laws on the international sale of goods and laws referring to foreign jurisdictions. The exclusive place of jurisdiction shall be Berlin.
- 12.5. Should individual provisions of the contract be or become void or infeasible, this shall not otherwise affect the validity of the other provisions. The parties shall strive to replace the void or infeasible provision by a valid and feasible provision most closely meeting the legal and commercial purpose of the contract. This shall apply mutatis mutandis in the event of a lacuna in the contract.