
1. Scope of the Terms of Use

- 1.1 These Terms of Use shall apply exclusively to the use of the KURZ Transfer Software ("KTS") including but not limited to the download, upload and exchange of data using the KTS by a business customer ("Customer") of the LEONHARD KURZ Stiftung & Co. KG ("we" or "KURZ"). By clicking the "ACCEPT" button, the Customer agrees to the following Terms of Use. If the Customer is accepting the Terms of Use on behalf of a company or other legal entity, the Customer represents that he has the authority to bind such entity to these Terms of Use, in which case the term "Customer" shall refer to such entity. If the Customer does not have such authority or if the Customer does not agree with the Terms of Use, the Customer must select the "DECLINE" button and may not use the KTS.
- 1.2 These Terms of Use shall **not** apply for KURZ employees. For KURZ employees the **"Leitfaden für IT- Anwender, Version 2.1 vom 06.02.2008"** shall be the conclusive and only regulation for the use of the KTS. By clicking the "ACCEPT" button, the KURZ employee confirms that he has read and accepted the **"Leitfaden für IT- Anwender, Version 2.1 vom 06.02.2008"** prior to the use of the KTS.
- 1.3 Any diverging terms and conditions of the Customer shall not apply unless we have expressly agreed to them in writing.

2. Account Creation and Access

- 2.1 Before the Customer is able to use the KTS, we will provide the Customer with an Account identification and password through an E-Mail ("Invitation"). With the Account identification and password, the Customer will be able to register for an individual account for the KTS ("Account"). Without an Invitation, the Customer shall not be able to use the KTS. In this Invitation we will also provide the Customer with the information for which fixed period of time ("Term"), the Customer will be granted the Right of Use and the access for the KTS as well as the content, files and data transmitted while using the KTS ("Data"). At the end of the Term, the Customer will lose his Right of Use and access to the KTS and the Data will be deleted automatically by our computer system.
- 2.2 At any time Customer may request that any Personal Data provided as part of registering for an Account or use of the KTS to be corrected or removed from Account information by us. However, removal of Account information may prevent access to the KTS. The Customer is responsible to protect his Account identification and password and shall control who may access or use the KTS on Customer's behalf.

3. Right of Use

- 3.1 We grant the Customer a non-exclusive and non-transferrable right of use to the KTS for the Term, within the limits of the purpose of the Invitation, free of charge ("Right of Use"). The granting of any Right of Use hereunder shall not be construed as granting of any additional rights or licenses for any purpose, explicitly or implicitly, including, without limitation under any trademark, patent, copyright, trade secret or any other intellectual property right, nor shall it be implied or construed to create any future obligation to grant such rights or licenses. If the use of the KTS infringes any third party rights, we are entitled to deny the use of the KTS.

- 3.2 The Customer shall not be authorized to diverge from clause 3.1, included but not limited to
- allowing a third party access to or usage of the KTS; or
 - without our specific written approval to do so, assigning or granting a sub-license of its Right of Use to the KTS, granting a security interest in or over its Rights of Use to the KTS, or otherwise transferring any part of its Rights of Use to the KTS.
 - reproducing, duplicating, reverse-engineering, decompiling, adapting or changing the KTS or parts thereof; or
 - creating derivative works; or
 - removing copyright notes or markings; or
 - violating any law of, or committing conduct that is tortious or unlawful in, any applicable jurisdiction; or
 - displaying, performing, sending, receiving or storing Data that is obscene, pornographic or excessively violent; or
 - advocating or encouraging violence against any government, organization, group, individual or property; or
 - accessing, sending, receiving, displaying, disclosing, storing or executing any Data in violation of any copyright, right of publicity, patent, trademark, service mark, trade name, trade secret or other intellectual property right; or
 - obtaining unauthorized access to any system, network, service or account; or
 - introducing or activating any viruses or other malware.

4. Exclusion of Liability

- 4.1 Any liability for us in respect of the KTS and the use of the KTS by the Customer shall be excluded.
- 4.2 4.1 shall not apply where e. g. under the Product Liability Act or in cases of wilful misconduct, gross negligence, bodily injury or a breach of substantial contractual obligations, there is a legally binding liability.
- 4.3 We do not warrant that the use of the KTS will be uninterrupted, secure, error-free or free of viruses or other malware. We do not warrant any availability of the KTS. The Customer is responsible for the Data obtained or transmitted while using the KTS and obliged to check Data for viruses or other malware prior to using it in connection with the KTS.
- 4.4 The Customer shall be aware that we do not maintain a backup system for the KTS to protect any of the Customer's Data from data loss. The Customer is responsible to provide sufficient protection for his Data.
- 4.5 The Customer shall be aware that all and any Data uploaded by the Customer while using the KTS is irreversibly deleted after the Term automatically without a prior warning. It is the own obligation of the Customer to ensure that through this automatic deletion no important Data is lost. No liability for us shall emerge from this potential loss of data of the Customer.

5. Indemnity

The Customer agrees to indemnify, defend and hold us harmless against any third party claim arising out of or relating to:

- violation of the Terms of Use by Customer or any of its employees; or
- Data created within KTS or provided, uploaded, or transferred to KTS by Customer or any of its employees

6. Termination

We may terminate Customer's Right of Use and access to KTS for cause if Customer does not comply with the Terms of Use and such noncompliance is not remedied within a reasonable time after receiving written notice from us.

8. Tracking of Customer's Activity

We have the right to monitor and log any and all aspects of our computer systems including, but not limited to, monitoring file and data up- and downloads, and all communications sent and received by Customer using the KTS. Customer expressly consents to allow KURZ personnel access to and review of all material created, stored, sent or received by the Customer by using the KTS.

9. Data Privacy

In relation to all Personal Data provided by or through Customer to us, Customer will be responsible as sole Data Controller for complying with all applicable data protection or similar laws such as EU Directive 95/46/EC and national laws (e.g. Bundesdatenschutzgesetz) implementing that Directive that regulate the processing of Personal Data and special categories of data as such terms are defined in that Directive. Customer agrees to obtain all necessary consents and make all necessary disclosures before including Personal Data in Data and using the KTS.

10. Compliance with Applicable Export Law

Customer agrees to comply with all applicable import and export laws and regulations, including those of Germany, the European Union and the United States regarding embargo and sanctions regulations and prohibitions on export by certain end users or for any prohibited end uses (including nuclear, space or missile, and chemical and biological weapons). Customer represents that Data will not, in whole or part, be controlled under the U.S. International Traffic in Arms Regulation (ITAR).

11. Jurisdiction

The exclusive place of performance and jurisdiction is Nuremberg, Germany.

12. Applicable Law

German substantive law shall apply exclusively. The United Nations Convention on Contracts for the International Sale of Goods of 11 April 1980 shall be excluded.