

General Terms and Conditions of Business

Goods and Services provided by Xavo Systems AG

Scope of Conditions

1.1 The following General Terms and Conditions of XAVO SYSTEMS apply exclusively for all contracts and business relationships between Xavo Systems AG (hereinafter referred to as "Xavo Systems") and the customer of Xavo Systems (hereinafter referred to as "Customer"). These also apply even if the Customer has deviating general terms and conditions, which shall only become part of the contract if Xavo Systems expressly agrees to these in writing.

1.2 The General Terms and Conditions agreed with the Customer are valid until new general terms and conditions have been concluded, even in the event of a modified individual contract or any other individual contracts agreed between the Parties.

1.3 Verbal subsidiary agreements, supplements or contractual amendments must be confirmed in writing by Xavo Systems in order to become effective.

2 Object of Service and Conclusion of Contract

2.1 The object of service shall be determined by the Parties in a separate agreement. Orders within the scope of these General Terms and Conditions must be in written form. Performance specifications provided by the Customer only form a part of the Contract if Xavo Systems expressly accepts these in writing.

2.2 All offers from Xavo Systems are non-binding. The Contract is validated through a written order confirmation from Xavo Systems, upon delivery of the Software, or as soon as Xavo Systems begins performing the services. Verbal agreements are only valid once they have been confirmed in writing.

2.3 Performance periods are only binding for Xavo Systems if they have been explicitly agreed to in writing. The performance period does not begin until the Customer has fulfilled all of the contractual obligations necessary to properly perform the services prior to their commencement. Xavo Systems is authorized to cancel the Contract or modify the agreed performance periods as required for services performed by Xavo Systems which are dependent on the correct or timely supply of third parties if Xavo Systems has not been properly supplied by these third parties itself. Partial deliveries are permissible.

3 Terms of Payment and Conditional Sale

3.1 The Parties shall agree to prices, i.e. the type and scope of payment for the services to be performed by Xavo Systems in individual contracts. Agreed prices shall only be understood as lump-sum or fixed prices if these have been expressly designated and agreed to as such. All prices exclude the applicable value-added tax.

3.2 Except where otherwise agreed, Xavo Systems is authorized to adjust the agreed prices/payments in relation to higher wage, material and raw material costs. Such an adjustment is only possible for agreed prices if the amount of time between the conclusion of the Contract and the provision of services is greater than two months and the increases in costs have occurred after the Contract has been concluded.

3.3 All invoices issued by Xavo Systems within the scope of this Contract are due in full within 15 days of the invoice date. In the event the Customer defaults on payment obligations, Xavo Systems may charge interest in the amount of 5% p.a. The respective due date is determined by the individual contract.

3.4 The Customer may not withhold or offset payments based on counterclaims of the Customer which are disputed by Xavo Systems and/or have no legal force.

3.5 Goods and services provided by Xavo Systems remain the property of Xavo Systems until payment has been made in full by the Customer. Xavo Systems may register the reservation of title. The Customer is obligated to take part in measures needed to protect the property of Xavo Systems.

3.6 Once a reasonable grace period has expired, Xavo Systems is authorized in the event of default in payment or any other behaviour on the part of the Customer contrary to the Contract to cancel any temporary usage rights without notice and to demand the return of produced and supplied software without cancelling the rest of the Contract. In this case, the Customer is obligated to return the software immediately.

4 Transfer of Risk and Obligation to Report Defects

4.1 If the purchase of EDP equipment and accessories is a part of the contractual relationship between the Customer and Xavo Systems, risk is transferred to the Customer the moment the goods have left Xavo Systems' warehouse. This also applies for partial deliveries. If the shipment is delayed due to circumstances for which the Customer is responsible, risk is transferred to the Customer from the day of notification that the goods are ready to be sent to the Customer.

4.2 Pursuant to Art. 201 of the Swiss Code of Obligations (Obligationenrecht – OR), the Customer is obligated to inspect the delivered goods and report any defects immediately in writing once the goods have been received.

4.3 All of the Customer's warranty and concurrent claims will become invalid if the Customer fails to fulfil the obligation to inspect goods and report defects according to Art. 201 of the Swiss Code of Obligations. The notification of defects is considered to have been given "immediately" when the Customer reports identifiable defects to Xavo Systems within two workdays or as soon possible in the event of subsequently discovered defects.

5 Acceptance

5.1 A formal acceptance procedure will take place between Xavo Systems and the Customer upon delivery/completion of the goods and services provided by Xavo Systems. The acceptance and any defects determined during the acceptance must be documented. Xavo Systems will notify the Customer that services are ready to be accepted once the services to be performed have been completed. The Parties shall arrange a date for the acceptance within eight workdays of this notification. The services to be performed by Xavo Systems are considered accepted if Xavo Systems does not receive a reasonable and specific complaint of the individual defects within ten days after the acceptance procedure has been completed or after the period for arranging such an acceptance date has passed. Use of the services on the part of the Customer, whether in part or whole, constitutes the acceptance of the services.

5.2 The Customer must report recognizable programming errors during the acceptance and hidden errors as soon as they are discovered. Art. 201 of the Swiss Code of Obligations is applicable.

6 Copyright and Right of Use, Professional Secrecy and Scope of Software Supply

6.1 Xavo Systems holds the exclusive copyright to all results of work done by Xavo Systems within the scope of the provision of services including, e.g. software, documentation, reports, performance specifications, etc.

6.2 The Customer may only use the results of work done by Xavo Systems for their intended purpose. The Customer receives a non-exclusive and simple usage right for this. However, the Customer is authorized to reproduce work results (software, documentation, reports, etc.) and use these within the Customer's company. The Customer is not authorized to make the results available to third parties. The Customer must receive written consent from Xavo Systems should he desire to make the results available to third parties.

6.3 Both Contractual Partners are in agreement that all documentation, information and data obtained over the course of the cooperation, in particular such as required for performing the Contract, will only be used for the purpose of performing the Contract. If this information and documentation is not publicly available or if it can be proven that the other Contractual Partner was already aware of this information and documentation prior to receiving it, the Contractual Partners shall handle said documentation and information confidentially when dealing with third parties not involved in the performance of the Contract. This obligation shall remain in force even after the Contract has ended.

6.4 The software to be supplied to the Customer is provided without source code. The source code is not a part of the scope of supply. Extensions and modifications to the software as well as care, maintenance, installation or other support services are not a part of the scope of supply of Xavo Systems unless otherwise explicitly agreed to with the Customer in writing. The software to be supplied by Xavo Systems is provided in the latest valid release version. The Customer does not receive regular updates from Xavo Systems unless agreed to in writing.

7 Warranty

7.1 In the event that the supplied goods or services have faults for which Xavo Systems is responsible, Xavo Systems is authorized to improve the defective parts or the provided services or to re-supply the Customer for deliveries of goods. If more than two improvement attempts fail or if improvements are not made within reasonable time as determined by the Customer, the Customer has the right to request a reduction in payment. Cancellation of the Contract is excluded. The warranty from Xavo Systems only covers the products or services provided by Xavo Systems. The Customer is not authorized to claim a reduction due to minor defects.

7.2 In particular, the warranty does not cover the faultless functioning of a total system if this has not been supplied by Xavo Systems in its entirety within the scope of the Contract. Xavo Systems performs the services due according to the principles of professional practice.

7.3 The forfeiture of warranty claims on the part of the Customer is determined by the respective legal provisions.

7.4 Improper modifications or maintenance work performed by the Customer or third parties on the goods/services provided by Xavo Systems will void Xavo Systems' warranty obligations if Xavo Systems has not authorized the type and content of the modification or maintenance work in writing.

7.5 The Customer is obligated to grant Xavo Systems unrestricted access to the devices and systems necessary to fulfil any warranty obligations.

7.6 If Xavo Systems provides goods/services to the Customer which do not originate from Xavo Systems but from other suppliers, Xavo Systems fulfils its warranty obligation by

transferring all warranty claims it has against its suppliers to the Customer. The Customer accepts the transfer of claims on account of performance. As needed, the Customer must provide Xavo Systems with documentation that he has been unsuccessful in enforcing the warranty claims against the manufacturer.

8 Liability

8.1 The liability of Xavo Systems is limited in all cases to direct damages. The maximum compensation due for damages is limited to the total contract value. This limitation does not apply if the Customer can prove that Xavo Systems is responsible for damages exceeding the contract value caused intentionally or due to gross negligence on the part of Xavo Systems.

8.2 The Customer is obligated to maintain backup copies to the necessary extent as is customary in EDP of all data managed by Xavo Systems programs to keep possible damages caused by loss of data to a minimum. In the event of data loss and consequential damages, Xavo Systems is only liable for the costs of any necessary data transfer from the backup copies.

8.3 Further claims on the part of the Customer, in particular with regard to punitive damages for direct or indirect damages, lost profit or damages due to disruptions in business activities, compensation claims resulting from the conclusion of contract and caused by positive breach of contract, are excluded insofar as these damages have not occurred to the contract item itself.

8.4 An exclusion of liability does not apply in the case of a breach of duty resulting from intent or gross negligence on the part of Xavo Systems.

9 Court of Jurisdiction

9.1 **Reinach (Switzerland) is agreed as the exclusive court of jurisdiction.** The exclusive place of performance for all claims arising from the Contract – to the extent that it is legally permissible – is the seat of Xavo Systems. The contractual relations are subject to substantive Swiss law under the exclusion of international agreements.

10 Other Provisions

10.1 Integral parts of the Contract and subsidiary agreements that deviate from these General Terms and Conditions must be in written form.

10.2 If single provisions of these General Terms and Conditions are invalid or unenforceable or become invalid or unenforceable at a later time, the validity of the remainder of these General Terms and Conditions shall remain unaffected.

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