

## General Terms and Conditions for Goods and Services provided by Xavo USA Inc.

### 1 Scope of Conditions

The following General Terms and Conditions apply exclusively for all contracts and business relationships between Xavo USA Inc. (hereinafter called "Xavo") and Xavo's customer (hereinafter called "Customer"). These also apply even if the Customer has deviating General Terms and Conditions. Moreover, General Terms and Conditions provided by the Customer are not considered a part of the Contract even if they are sent to Xavo and Xavo does not expressly reject them. Verbal subsidiary agreements, supplements or contractual amendments must be confirmed in writing by Xavo in order to become effective. This also applies for integral parts of the Contract and subsidiary agreements that deviate from these GTCs.

### 2 Object of Service and Conclusion of Contract

- 2.1 The object of service – including but not limited to orders for the development of software services – shall be determined between the Parties to the Contract in a separate agreement. Orders placed within the scope of these GTCs must be submitted in writing. Performance specifications provided by the Customer only form a part of the Contract if Xavo expressly accepts these in writing.
- 2.2 All of Xavo's offers are non-binding and subject to confirmation. The Contract is validated through a written order confirmation from Xavo, upon delivery of the Software, or as soon as Xavo begins executing the order. Verbal agreements are only valid once they have been confirmed in writing.
- 2.3 Performance periods are only binding for Xavo if they have been explicitly agreed to in writing. The performance period shall not begin until the Customer has fulfilled all of the contractual obligations necessary to properly perform the services prior to their commencement. Xavo is authorized to cancel the Contract or modify the agreed performance periods as required for services performed by Xavo which are dependent on the correct or timely supply of third parties if Xavo 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 to the Contract shall agree to prices, i.e. the type and scope of payment for the services to be performed by Xavo 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 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 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 may charge interest 3 % above the respective bank rate of the European Central Bank. The respective due date is determined by the individual Contract.
- 3.4 The Customer may not withhold or reduce payments based on counterclaims of the Customer disputed and/or determined as unlawful by Xavo.
- 3.5 Goods and services provided by Xavo remain the property of Xavo until payment has been made in full by the Customer. The Customer is obligated to take part in measures needed to protect the property of Xavo.
- 3.6 After the lapsing of a suitable grace period, Xavo is authorized in the event of default in payment or any other behaviour contrary to the Contract on the part of the Customer 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, risk is transferred to the Customer the moment the goods have left Xavo's warehouse. This also applies for partial deliveries. If the shipment is delayed due to circumstances under the customer's control, risk is transferred to the Customer from the day of notification that the goods are ready to be sent to the Customer.
- 4.2 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. The notification of defects is considered to have been given "immediately" when the Customer reports identifiable defects to Xavo 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 and the Customer upon delivery/completion of the goods and services provided by Xavo. The acceptance and any defects determined during the acceptance must be documented. Xavo will notify the Customer that services are ready to be accepted once the services to be performed have been completed. The Parties to the Contract shall arrange a date for the acceptance within 8 workdays of this notification. The services to be performed by Xavo are considered accepted if Xavo does not receive a reasonable and specific complaint of the individual defects within 10 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.

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

- 6.1 Xavo holds the exclusive copyright to all results of work done by Xavo within the scope of the provision of services including, e.g. software, documentation, reports, specifications, etc.
- 6.2 The Customer may only use the results of work done by Xavo 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 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 the mentioned 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 Xavo's scope of supply unless otherwise explicitly agreed to with the Customer in writing. The software to be supplied by Xavo is provided in the latest valid release version. The Customer does not receive regular updates from Xavo unless otherwise agreed to in writing.

## 7 Warranty

- 7.1 In the event that the supplied goods or services are determined to be faulty for reasons beyond Xavo's control, Xavo 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 an appropriate time period as determined by the Customer, the Customer has the right to request a reduction in payment (claim to reduction) or to cancel the Contract (cancellation of sale). Xavo's warranty only covers the products or services provided by Xavo. The Customer is not authorized to claim a reduction or cancel the Contract 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 in its entirety within the scope of the Contract. Xavo performs the services due according to the principals of proper professional qualification and according to the present state of knowledge and experience; here, however, the possibility of errors cannot be completely excluded in the area of data processing with regard to the state of technology.
- 7.3 The statute of limitations for 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 will void Xavo's warranty obligations for the modified or affected goods/service unless Xavo has authorized the type and content of the modification or maintenance work in writing.
- 7.5 The Customer is obligated to grant Xavo unrestricted access to the devices and systems necessary to fulfil any warranty obligations.
- 7.6 If Xavo provides goods/services to the Customer which do not originate from Xavo but from other vendors, Xavo fulfils its warranty obligation by transferring all warranty claims it has against its vendors to the Customer. The Customer accepts the transfer of claims on account of performance. As needed, the Customer must provide Xavo with documentation that he has been unsuccessful in enforcing the warranty claims against the manufacturer.

## 8 Liability

- 8.1 Xavo's liability 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 is responsible for damages exceeding the contract value caused intentionally or due to gross negligence on the part of Xavo.
- 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 programs to keep possible damages caused by loss of data to a minimum. In the event of data loss and consequential damages, Xavo 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 the 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 or one of its executives. Moreover, the abovementioned

limitation of liability does not apply for claims arising from death, injury to body or health caused by a breach of duty. In addition, the abovementioned limitation of liability does not apply in the event that Xavo assumes liability based on legal requirements.

## 9 Court of Jurisdiction

- 9.1 The Local Court of New York is the exclusive court of jurisdiction for all disputes arising from this contractual relationship in which the Customer is a general merchant, a legal entity governed by public law or special assets under public law. However, Xavo is authorized to take legal action at the location of the Customer's headquarters. The exclusive place of performance for all claims arising from the Contract – to the extent that it is legally permissible – is the location of Xavo's headquarters. The contractual relationships are subject to the law of New York.

## 10 Other Provisions

- 10.1 Integral parts of the Contract and subsidiary agreements that deviate from these GTCs must be in written form.
- 10.2 If single provisions of these GTCs are or become ineffective or impracticable at a later time, the validity of the remainder of these GTCs shall remain unaffected.

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