

GENERAL TERMS AND CONDITIONS

May 2020

x-tention Informationstechnologie AG

Bellerivestrasse 3

8008 Zurich, Switzerland

1 General

These General Terms and Conditions were originally drawn up in German. In case of discrepancies between the German text version of the General Terms and Conditions and any translation, the German version shall prevail.

Deliverables, services and offerings of x-tention Informationstechnologie AG ('**x-tention**') are subject to these General Terms and Conditions ('**T&Cs**'). These T&Cs are valid for all business transactions between x-tention and its customer ('**Client**'), insofar as no alternative arrangements have been made in the contracts between x-tention and the Client.

The Client's T&Cs are not applicable unless x-tention has expressly consented to their validity. Contradictory or differing terms and conditions are not recognized unless x-tention has expressly consented to their validity in writing. The following terms and conditions will also apply exclusively if x-tention provides deliverables and services unreservedly in the knowledge of contradictory conditions and/or conditions that deviate from these T&Cs.

2 Remuneration

All **prices** are net – **not including value-added tax** – and are in Swiss francs, unless expressly stated otherwise.

Information on time and quantity stated in the separate contract is based on estimates made by x-tention. Payments will be calculated based on actual time spent or actual consumption, unless agreed otherwise.

Ancillary costs will be billed to the Client separately. The amounts charged will be based on the agreed prices. **Travel time** for x-tention employees counts as working time. The Client will be billed for **travel expenses** and other outlays, amounting to the costs actually incurred.

All prices are ex works from the x-tention site and do not include assembly, or installation.

Assembly and installation will be charged based on actual time spent at the agreed hourly rates.

Ongoing payments for services are subject to an **annual pricing adjustment** based on the percentage rate of change compared to the previous year according to the Swiss Consumer Price Index (CPI), which is published by the Swiss Federal Statistical Office. Payments may be adjusted up to the amount that the CPI has changed. If the CPI is no longer published, then the index taking its place will apply. After the first year, the

published CPI figure for the month in which the contract was signed will be the reference figure for pricing adjustments.

x-tention is entitled to revise these payments from 1 January in a given year.

If salary costs change based on updates to the Swiss standard employment contract or internal company decisions, or if other cost centres relevant to the calculation change, or if service delivery costs change, such as those for materials, energy, transport, external services and financing, then x-tention has the right to **increase or reduce** its prices accordingly.

All fees and taxes (in particular value-added tax) resulting from the contractual relationship will be charged based on the respective applicable legislation.

x-tention may at any time make its provision of services dependent on the Client making payments or providing other guarantees to an appropriate extent.

3 Payment terms, default interest

Payments will be calculated as follows, unless contractually agreed otherwise:

- Payments for deliveries will become due on (partial) delivery.
- Flat fees will be invoiced quarterly in advance.
- Payments calculated by time spent will be invoiced monthly after the fact.
- Payments are to be made promptly on receipt of the invoice, at the latest 30 calendar days following receipt of the invoice, in full and free of charges.

Payments by the Client are only considered to have been made once they appear in x-tention's business account. For partial invoices, the payment terms specified in the overall order will apply.

If the payment due date is based on the calendar, the Client will be considered to be in default as soon as the deadline is missed. Otherwise, the Client will be in default after receiving a payment reminder, or at the latest if they have not paid within 14 days of the amount becoming due and of receipt of an invoice. If payment is delayed, the interest rate for payment claims is five percentage points above the base rate. The obligation to pay default interest does not exclude x-tention's right to claim for additional default damages.

If the Client's payment is more than 28 days late, x-tention has the right to cease all deliveries and services or to demand advance payment or guarantees from the Client. Moreover,

x-tention has the right to demand immediate payment for all services already provided, regardless of any payment terms.

The Client may only **set off the amount** against a counterclaim that has been recognized by x-tention or established by law.

The Client does not have a right of lien.

4 Contract termination

Unless agreed otherwise, contracts that were concluded for an unlimited period can be terminated in writing by either party with a notice period of three months before 31 December in a given year. Compliance with the notice period shall be determined by the posting date.

Both contracting parties have the right to an extraordinary termination of the contract with immediate effect if there is good cause. Specifically, there is good cause for x-tention to terminate if

- the Client does not meet a contractual obligation to provide information;
- the Client is more than 60 days late in making due payments, despite reminders and an additional grace period;
- the Client makes it impossible to provide the services by refusing to fulfil its duty to cooperate;
- there are circumstances that clearly make timely or continued fulfilment of the agreed services impossible, insofar as they are the responsibility of the Client;
- the Client repeatedly fails to fulfil the basic obligations arising from this contract;
- the Client does not act in good faith towards x-tention.

There is good cause for the Client to terminate in particular if

- x-tention does not act in good faith towards the Client.

In any case, if the Client declares the contract to be terminated with immediate effect, x-tention has the right to payment for the services provided up to that point, in accordance with the contract. Any claims to compensation and/or contractual penalties and/or payment for parts of services not yet provided will remain unaffected.

An extraordinary termination must be communicated by the contracting party affected in a registered letter after the contracting party becomes aware of a reason for termination.

5 Scope of services

x-tention's scope of services shall be agreed with the Client in a separate contract (e.g. **framework agreement, schedule of services or accepted quote**). Unless agreed otherwise, x-tention will provide the services during the **usual x-tention business hours**.

The equipment and technology used by x-tention to provide services will be based on the Client's qualitative and quantitative service requirements as established by the information provided by the Client.

If **new requirements** from the Client necessitate a change to services or to the technology used, x-tention will submit a quote reflecting this at the Client's request.

x-tention has the right to **change the equipment it uses to provide the services at its own discretion**, as long as this is not expected to impair the services.

If the Client draws on x-tention's services **beyond the agreed scope**, these shall be paid for in terms of **actual staffing and material costs at x-tention's applicable rates**, which have been shared with the Client together with the relevant separate contract. In particular, this includes services outside x-tention's usual working hours, analysis and elimination of disruption and defects that have occurred due to improper handling or use by the Client, or other circumstances that are not x-tention's responsibility.

The Client specifically authorizes x-tention to outsource tasks required to fulfil the contract to suitable third parties. In such cases, there is no contractual relationship between the Client and the third party. x-tention undertakes to continue adhering to all applicable statutory data protection requirements.

Insofar as x-tention outsources **services to third parties** at the Client's request, these contracts shall be concluded solely in accordance with the third party's terms and conditions.

Changes to x-tention's obligation to provide a service or deliverable that are minor or otherwise reasonable to the Client will be considered authorized in advance.

6 The Client's duty to cooperate

The Client undertakes to **support all measures** that are necessary for x-tention to provide its services.

If the services are provided at the Client's location, the Client shall provide resources, such as network components, connections, electricity, infrastructure and a network connection, free of charge to the extent required.

If this is not specifically included in the scope of services, the Client shall provide the necessary network connection at its own risk and own expense.

The Client shall **provide all information**, workspaces, data and documents **required for the provision of services** in the form requested by x-tention, on the agreed dates and at its own expense. Upon request they shall also support x-tention by analysing problems and eliminating faults, coordinating processing requests and agreeing on services.

Before connecting or transporting IT products or installing computer programs, the Client must **adequately safeguard the existing data** on the computer system.

The Client must treat all passwords and logins required for using x-tention services as confidential.

The Client must retain the data and information passed on to x-tention at its office, so that it can be reconstructed at any time in the event of loss or damage.

The Client must comply with the relevant requirements and instructions for assembly, installation and initial and ongoing operations. The Client must also take responsibility for room and building safety and security, including protection from water, fire and unauthorized access.

The Client shall be liable for damages to equipment or technology provided by x-tention, where such damage has been caused by careless use by the Client's employees, or by third parties deployed by the Client. If damage occurs, the Client must inform the x-tention Service Desk by email or telephone without undue delay. The damage shall be rectified by x-tention or a third party that it appoints at the Client's expense.

Changes to the Client's work processes that may result in changes to the services x-tention is to provide for the Client must be agreed with x-tention in advance with regard to their technical and commercial impact. x-tention explicitly reserves the right to adjust the cost to reflect such changes.

The Client does not have the right to give instructions – of any kind – to x-tention employees and shall discuss any issues relating to the provision of services solely with the contact people named by x-tention.

The Client shall comply with all its duties to cooperate in a timely fashion so as not to hinder x-tention in its provision of services.

The Client is responsible for ensuring that its employees who are involved in fulfilling the contract, or any third parties hired by the Client, participate appropriately in fulfilling the contract.

If the Client does not perform its duty to cooperate by the agreed deadlines or to the extent stipulated, the services provided by x-tention will be considered to have been provided in compliance with the contract, despite possible restrictions. Timelines for the services to be provided by x-tention shall be postponed by a reasonable amount of time. The Client shall remunerate x-tention separately for any additional work and/or costs arising as a result of this, at x-tention's applicable rates.

Unless contractually agreed otherwise, the Client shall fulfil its duty to cooperate free of charge.

7 Delivery, place of fulfilment

The delivery or the services shall be fulfilled in accordance with the terms and times agreed in the separate contract.

Unless agreed otherwise, the delivery or service period will begin when the Client accepts x-tention's offer. If the offer by x-tention is non-binding, the period will begin when x-tention confirms the offer.

Unless agreed otherwise, the place of fulfilment is x-tention's premises.

The deliverables or services are handed over when the Client signs them off at the place of fulfilment. If it has been agreed that the deliverables will be shipped, their transfer to the carrier will constitute the handover.

If the Client has not accepted the goods as agreed (**delayed acceptance**), x-tention has the right, following an unsuccessful grace period, either to **store** the goods at its location at the Client's risk and expense, in which case the Client will be charged a **storage fee** at market rates, or to store the goods at the premises of an authorized company, at the Client's risk and expense. Moreover, x-tention has the right to either insist on fulfilment of the contract, or, after setting an appropriate grace

period of at least 14 calendar days, to withdraw from the contract and utilize the goods at the Client's expense.

8 Intellectual property rights

All copyrights for programs, methods, documentation, work results and other works (e.g. plans, sketches, specification sheets and IT concepts) belong to x-tention or its licensors.

The Client is granted the non-exclusive, non-transferable and non-sublicensable right to use the services agreed in the contract for its own purposes. This right is limited to the term of the contract.

Any agreement about the use of works that goes beyond this must be recorded in writing.

Third-party software that x-tention provides to the Client is subject to the licensing terms of the manufacturer of the software product in question. The manufacturer's terms shall take priority over the provisions in this section. The Client shall familiarize themselves with the scope of these licensing requirements.

In the case of a breach of x-tention's copyright, full amends are to be made.

9 Disruptions to services

x-tention undertakes to **provide the services in accordance with the contract**. If x-tention does not provide the services at the agreed times, or only insufficiently, i.e. with **major deviations** from the agreed quality standards, x-tention must begin to eliminate defects without undue delay and provide its services correctly and without defect within an appropriate timeframe. x-tention is not obliged to remedy the defect free of charge if the defect is a result of the Client's supplies or participation, or a breach of obligations by the Client. In such cases, the services provided by x-tention will be deemed to have been provided in accordance with the contract, in spite of possible restrictions. x-tention shall offer to remedy the defect for a fee at the Client's request.

The Client shall help x-tention remedy the defect and shall provide all necessary information. The Client must report any defects to the x-tention Service Desk without delay by email or telephone, including information required for identifying the defect. If a delay in reporting the defect results in more time being spent on eliminating it, any costs shall be borne by the Client.

10 Warranty

Unless agreed otherwise below, x-tention accepts liability for material and legal defects in accordance with the relevant statutory provisions. The limitation period for statutory claims for defects is one year. The limitation period begins with delivery of the goods. A warranty claim is only valid if the Client has reported obvious defects during the handover, or without undue delay if other defects occur later, but at the latest within 10 working days of identifying them, in writing, including information about the type and extent of the defect.

11 Limitation of liability/compensation

x-tention is only liable for slight negligence if there is a breach of fundamental obligations, i.e. obligations that enable the correct execution of the contract in the first place and compliance with which the Client regularly relies on and is entitled to rely on. If such obligations are breached, x-tention's liability is limited to such damage that is typically likely to arise in the context of the contract in question. Otherwise, liability for slight negligence is excluded. The liability of x-tention's organizations, employees and agents is excluded to the same extent as the liability of x-tention itself.

Destruction of data or software shall only be compensated insofar as the Client has fulfilled its obligations to operate its IT correctly.

Compensation for consequential damages and pecuniary loss is limited to damages typically foreseeable for the contract. Compensation for loss of profit, unrealized savings, futile expenses, intangible damage, loss of interest and for damages arising from third-party claims against the Client is excluded in all cases.

Compensation is limited to the contract value of the service in question (twelve times the monthly service charge). In any case, the amount of compensation is limited to x-tention's liability insurance amount, i.e. EUR 10,000,000 per insurance claim as of July 2020.

The aforementioned liability limitations do not apply to damages arising from a breach of warranty or from culpable damage to life, limb or health, in the case of intent or gross negligence or mandatory statutory liability for product defects.

12 Force majeure

Insofar and as long as x-tention is unable to fulfil its obligations on time or in the proper manner due to force majeure (e.g. natural disaster, fire, strike, lockout, pandemic, epidemic, power cut, transport failure, failure of telecommunications networks or data cables), due to changes in legislation after the contract was concluded which affect the provision of services, or due to other unavailability of products, this shall not be deemed a breach of contract.

13 Retention of title

x-tention reserves the right to ownership of the delivered components until it has received full payment for the one-time services. When the retention of title is exercised, a withdrawal from the contract shall only occur if it has been specifically declared. In the case of goods being returned, x-tention has the right to set off arising transport and handling costs.

In the event of third-party access to reserved goods – in particular due to a seizure of assets – **the Client undertakes to inform the third party of x-tention's ownership and to inform x-tention without undue delay. The Client shall bear the full risk for the reserved goods**, especially the risk of destruction, loss or deterioration.

14 Governing law, court of jurisdiction

All disputes between the contracting parties are subject to Swiss law. Recourse to the United Nations Convention on Contracts for the International Sale of Goods (CISG) is expressly excluded.

The court of jurisdiction is the competent court in Zurich.

15 Data protection

x-tention shall comply with statutory data protection provisions when **handling personal data** and shall take the necessary technical and organizational measures to protect data under x-tention's area of responsibility. x-tention undertakes to adhere to provisions of current data protection legislation.

x-tention is not obliged to check the lawfulness of data processing outsourced by the Client as defined by statutory data protection provisions. The Client shall ensure the lawfulness of the transmission of personal data to x-tention and the processing of such data by x-tention.

x-tention shall take all reasonable measures to protect the Client's data and information against unauthorized access by third parties while stored with x-tention. However, x-tention is not responsible if third parties manage to gain access to the data and information illegally.

By concluding this contract, the Client specifically authorizes x-tention to subcontract tasks from this contract to suitable third parties. In that case, x-tention shall undertake to adhere to all relevant provisions in current data protection legislation.

16 Confidentiality

x-tention and the Client undertake to treat as confidential all circumstances and relationships that have come to their knowledge via the other contracting party in relation to the contracts governed by these T&Cs and not to make them available to third parties, assuming they are not generally known.

In case of doubt, all facts, information and data are to be treated as confidential.

x-tention and the Client undertake to impose the same obligations on people to whom they assign activities before the assigned work commences.

x-tention's subcontractors do not count as third parties as long as they are subject to a non-disclosure obligation with the same stipulations as this section.

17 Other

The Client must **inform x-tention of any changes to its business address** for as long as the contractual transaction has not been fully fulfilled by both sides. In the **absence of such information**, any **declarations** shall be deemed to have been **delivered, even if they were sent to the last known address**.

18 Changes to T&Cs/right of modification

x-tention has the right to modify these General Terms and Conditions unilaterally, as far as this is necessary in order to eliminate imbalances that have occurred subsequently.

