

# TERMS AND CONDITIONS OF SALES

The quotation to which these Terms and Conditions of Sale are attached (the "Quote") is an offer to sell the quoted products (the "Products") and services (the "Services") to the named purchaser (the "Buyer"), conditional on the Buyer's agreement to the terms and conditions set forth below and x-dream-distribution GmbH agrees to sell the same only upon these terms and conditions. Except as specifically provided otherwise below, this document constitutes the entire agreement of the parties with respect to the purchase and sale of the Services and supersedes all prior understandings or agreements, whether written or verbal. No term or condition of Buyer's order inconsistent with the terms and conditions hereof shall be binding on x-dream-distribution GmbH. Any additional or different terms, including but not limited to those on Buyer's purchase orders (the "Purchase Orders"), are hereby rejected by x-dream-distribution GmbH and disclaimed by Buyer. Any amendment to these terms and conditions must be in writing and must be agreed on by x-dream-distribution GmbH. Unless otherwise specified in the Quote, or unless withdrawn earlier by x-dream-distribution GmbH, the Quote will expire thirty (30) days from the date issued.

## 1. Definitions

- 1.1 **"Software"** means x-dream-distribution's software products or or Affiliate's Company software products licensed to End User.
- 1.2 **"Hardware"** means any tangible and non-tangible good produced by x-dream-distribution or or or Affiliate Company to be sold to End User.
- 1.3 **"Product"** stands for Software and/or Hardware; separately or as bundle.
- 1.4 **"Service"** means the professional services as applicable for creating, deploying and maintaining the Product as well as the Software maintenance.
- 1.5 **"Affiliate Company"** means x-dream-distribution's Products and Services supplier.
- 1.6 **"End User"** means an individual or entity that purchases Products for his or its own purposes, and not for sale to others.

## 2. PRICES

- 2.1 Prices in the Quote unless otherwise stated are in Euro. They are payable as per the Quote.
- 2.2 Prices do not include any taxes, applicable value added taxes, customs duties or tariffs. When x-dream-distribution GmbH has the legal obligation to pay or collect any such taxes, duties or tariffs, the appropriate amount shall be paid by Buyer unless Buyer provides x-dream-distribution GmbH with a valid exemption certificate. Buyer agrees to indemnify and hold x-dream-distribution GmbH harmless for any liability for any tax, duty or tariff in connection with the sale, as well as the collection or withholding thereof, including penalties and interest.
- 2.3 Prices do not include any fees for packaging and transport. The Buyer will bear the transport costs ex-warehouse.
- 2.4 Prices do not included any transport insurance.

3. **ACCEPTANCE OF ORDERS:** Purchase Orders are subject to formal acceptance in writing (via email, by letter or fax) by x-dream-distribution GmbH' contractual representative even if received elsewhere by a salesperson, selling agent or other representative. x-dream-distribution GmbH will use commercially reasonable efforts to confirm or reject any Buyer Purchase Order within five (5) business days of receipt by x-dream-distribution GmbH' contractual representative.

4. **ACCEPTANCE OF SERVICES:** Acceptance of services shall occur immediately upon completion unless buyer provides written notification of non-conformity within 15 calendar days of completion.

## 5. PAYMENT TERMS

- 5.1 x-dream-distribution GmbH will invoice Buyer for each Product or Service delivery. The amount invoiced will include the price of the Products and Services plus all applicable taxes, fees, transportation, insurance, and other fees or charges. If all Products or Services in Buyer's Purchase Order are not provided at the same time, x-dream-distribution GmbH will invoice Buyer at the time of provision for the Services being provided. Payments shall be remitted to: x-dream-distribution GmbH, Höhenkirchener Straße 134, 85662 Hohenbrunn, Germany.
- 5.2 Unless otherwise specified, the payment is due and payable net without deductions within 30 days after the date of invoice. x-dream-distribution GmbH can sent the invoice by email.
- 5.3 Upon the expiration of the above-mentioned payment period, the Buyer will be in default. Any unpaid due amounts will be subject to interest at 1.5% per month, or, if less, the maximum rate allowed by law.
- 5.4 x-dream-distribution GmbH shall not be liable under any warranty stated herein if the purchase price has not been paid in full.
- 5.5 x-dream-distribution GmbH may offset amounts x-dream-distribution GmbH owes to Buyer against amounts Buyer owes to x-dream-distribution GmbH, whether under the same or a different Purchase Order. The Buyer is only entitled to offset claims or exercise rights of retention to the extent that his/her claim is undisputed or has been finally adjudicated upon by the courts.
- 5.6 Each party will bear their own banking charges.

## 6. RESERVATION OF OWNERSHIP

- 6.1 x-dream-distribution GmbH will retain ownership of the Products sold until all present and future receivables arising out of the purchase contract and ongoing business relationship (secured claims) have been paid in full.
- 6.2 The Products subject to reservation of ownership may neither be pledged to third parties nor assigned by way of security until the secured claims have been paid in full. The Purchaser must inform x-dream-distribution GmbH in writing without delay if and when the goods belonging to x-dream-distribution GmbH are seized or subject to attachment by third parties.
- 6.3 The Purchaser may not modify the goods subject to reservation of ownership in any way whatsoever.

7. **WARRANTIES EXCLUSIVE:** To the full extent allowed by law, the foregoing warranties and remedies are exclusive and are in lieu of all other remedies, warranties, terms, or conditions, express or implied, either in fact or by operation of law, statutory or otherwise. x-dream-distribution GmbH' warranties herein convey to Buyer and to the ultimate end user (the "End User"), but are not extended to any other third parties. x-dream-distribution GmbH neither assumes nor authorizes any other person to assume for it any other liability in connection with the sales, installation, maintenance or use of its Products or performance of Services. Replacement Products assume the warranty status of the Product being replaced and have no separate or independent warranty of any kind. OTHER THAN AS EXPRESSLY SET FORTH ABOVE, x-dream-distribution GmbH MAKES NO WARRANTIES, EXPRESS, STATUTORY, IMPLIED, OR OTHERWISE. x-dream-distribution GmbH SPECIFICALLY DISCLAIMS THE IMPLIED WARRANTIES AND CONDITIONS OF NON-INFRINGEMENT, MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE, TO THE MAXIMUM EXTENT PERMITTED BY LAW.
8. **LIMITATION OF LIABILITY:** x-dream-distribution GmbH', OR ITS AFFILIATES' OR ITS SUPPLIERS' TOTAL LIABILITY ARISING UNDER OR IN CONNECTION WITH THIS AGREEMENT SHALL BE LIMITED TO DIRECT, ACTUAL DAMAGES UP TO BUT NOT TO EXCEED THE PURCHASE PRICE OF THE SERVICES. IN NO EVENT SHALL x-dream-distribution GmbH BE LIABLE FOR COSTS OF SUBSTITUTE PRODUCTS OR SERVICES, LOST PROFITS OR REVENUE, BUSINESS INTERRUPTION, CLAIMS OF THIRD PARTIES, LOSS OF INFORMATION ARISING OUT OF THE USE OF OR INABILITY TO USE THE SOFTWARE, OR ANY SPECIAL, INDIRECT, RELIANCE, CONSEQUENTIAL, INCIDENTAL OR PUNITIVE DAMAGES, HOWEVER CAUSED AND ON ANY THEORY OF LIABILITY REGARDLESS OF THE REASON. THE FOREGOING LIMITATIONS SHALL APPLY REGARDLESS OF WHETHER x-dream-distribution GmbH HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES AND NOTWITHSTANDING THE FAILURE OF ESSENTIAL PURPOSE OF ANY LIMITED REMEDY. The disclaimers of warranty and limitations of liability set forth herein are an essential element in setting the product price. Because some states and jurisdictions do not allow the exclusion or limitation of liability for consequential or incidental damages, the above limitation may not apply or fully apply to Licensee.
9. **BUYER CHANGE ORDER AND CANCELLATION:** Any and all changes to Buyer's Purchase Orders must be provided by written (paper-based or electronically transmitted) notice from Buyer. Any change order increasing the purchase quantity is subject to acceptance by x-dream-distribution GmbH.
10. **CANCELLATION FOR DEFAULT:** x-dream-distribution GmbH may, upon written notice to Buyer, cancel any or all Buyer Purchase Orders effective immediately if:
- Buyer fails to perform any material obligations and such failure is not remedied within fifteen (15) calendar days after notice has been given;
  - Buyer fails to pay for purchases in accordance with the terms stated herein;
  - Buyer: ceases doing business as a going concern; makes an assignment for the benefit of creditors; is unable to pay its debts as they become due; files a voluntary petition in bankruptcy; is adjudicated to be a bankrupt or insolvent debtor; files a petition seeking for itself any reorganization; or consents or acquiesces in the appointment of a trustee, receiver or liquidator; or
- any proceeding seeking involuntary reorganization, or similar relief is filed against Buyer which is not dismissed within thirty (30) days after filing, or if any trustee, receiver or liquidator of Buyer or any substantial part of its business assets or properties is appointed without x-dream-distribution GmbH' consent or acquiescence and such appointment is not vacated within thirty (30) days after such appointment. Any cancellation pursuant to this clause will be in addition to and not in lieu of any other remedies available to x-dream-distribution GmbH at law or in equity.
11. **EXPORT COMPLIANCE:** Buyer acknowledges that the Products are subject to European Union export control laws and regulations. Buyer shall comply strictly with all European Union export laws and regulations and assumes sole responsibility for obtaining required export or re-export licenses at Buyer's sole risk, cost and expense. Buyer shall not directly or indirectly export, re-export or transmit any Products to any country or foreign national thereof to which such export, re-export, or transmission is restricted or prohibited. Buyer shall indemnify and hold x-dream-distribution GmbH harmless against any liabilities suffered by x-dream-distribution GmbH for any violation of this provision. Buyer agrees to furnish an End User Statement or End User Certificate for any Product if requested by x-dream-distribution GmbH prior to the date of shipment.
12. **GOVERNING LAW, VENUE, LANGUAGE AND EXPENSES:** The transactions contemplated herein shall be governed in all respects by the laws of the Federal Republic of Germany. In the event that a dispute arises, Buyer and x-dream-distribution GmbH hereby submit to the exclusive jurisdiction and venue of the state and federal courts located in Munich, Germany. The United Nations Convention on the International Sale of Goods shall not apply. The parties hereby confirm that the English language shall be the governing language of these terms and conditions. The parties also hereby confirm that, in the case of any conflict or claim that results in litigation between the parties related to the sale of x-dream-distribution GmbH Products and Services, that all costs associated with said litigation, including legal fees, incurred by the prevailing party, shall be paid by the opposing party.
13. **FORCE MAJEURE:** x-dream-distribution GmbH will be excused from any obligation to the extent performance thereof is prevented by acts of God, fire, flood, riots, material shortages, strikes, governmental acts, disasters, earthquakes, inability to obtain labor or materials through its regular sources, or any other cause beyond x-dream-distribution GmbH' reasonable control.
14. **LICENSE AGREEMENTS:** Notwithstanding anything to the contrary herein, to the extent the Services are delivered with a x-dream-distribution GmbH or Third Party Product license agreement(s) (the "License Agreement(s)"), the terms and conditions of such License Agreement(s) shall apply in addition to the terms and conditions set forth herein. To the extent there is a conflict between the terms and conditions of such License Agreement(s) and those set forth herein, the term or condition set forth in the License Agreement(s) shall govern in all cases. Nothing herein shall be construed to grant any rights or license to use any Product or other intellectual property in any manner or for any purpose not expressly permitted by the License Agreement.

15. **CONFIDENTIAL INFORMATION:** Buyer acknowledges that Services and Products contain a combination of trade secret, know-how, patent, proprietary, and confidential information of a commercial or technical nature ("Confidential Information"), and are valuable property of x-dream-distribution GmbH and its suppliers (*Supplier Intellectual Property*). Buyer acknowledges that any prices stated in the Quote are a trade secret. Buyer agrees to protect Confidential Information with the same confidentiality protections as are used, or should be used, for its own confidential information, and in any case, shall make the best commercial effort to protect such Confidential Information. Confidential Information is and remains the sole property of x-dream-distribution GmbH (or its licensors, if any). Buyer shall not reverse engineer any Products.
16. **PUBLICITY AND USE OF x-dream-distribution GmbH MARKS:** Buyer shall not release any publicity, advertisement, or news release regarding any contract, subcontract or purchase order with x-dream-distribution GmbH without x-dream-distribution GmbH' express written consent. Buyer shall not use any x-dream-distribution GmbH or Affiliate Company trade/service marks or trade names ("collectively "marks") for any purpose whatsoever without the express written consent of x-dream-distribution GmbH, except as expressly permitted by the rules of use set forth in x-dream-distribution GmbH' website.
17. **REFERENCE:** x-dream-distribution GmbH may name Buyer as reference. x-dream-distribution GmbH may describe Buyers use case of acquired Products. x-dream-distribution GmbH will not disclose any project details without Buyers explicit written consens.
18. **ASSIGNMENT:** x-dream-distribution GmbH may freely assign or pledge the payments due (and the documentation supporting such payment obligation) from Buyer under the applicable Purchase Order, and may assign all of its other rights and obligations by giving Buyer written notice thereof but without being obligated to obtain Buyer's consent prior thereto. In the event of an assignment, x-dream-distribution GmbH shall be discharged of any further liability pursuant to the affected Purchase Orders. Buyer may not assign its rights or delegate its obligations under any or all of its Purchase Orders unless x-dream-distribution GmbH' written consent is obtained prior thereto and any such assignment without such consent shall be void.
19. **SEVERABILITY:** If any provision of these terms and conditions is held by a court, government agency or other legal authority of competent jurisdiction to be invalid, illegal or unenforceable, such invalidity, illegality or unenforceability shall not invalidate, void or render unenforceable any other portion of these terms and conditions.
20. **SURVIVAL OF TERMS:** The termination or cancellation of any Buyer Purchase Order shall not affect the parties' obligations and rights hereunder which by their nature should be understood to survive such termination or cancellation.