

# TERMS AND CONDITIONS OF SOURCING

The purchase order to which these Terms and Conditions of Sale are attached (the "PO") is a request of x-dream-distribution GmbH ("x-dream-distribution") to buy the listed products (the "Products") and services (the "Services") from the named supplier (the "Supplier"), conditional on the Supplier's agreement to the terms and conditions set forth below. 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 Supplier inconsistent with the terms and conditions hereof shall be binding on x-dream-distribution. Any additional or different terms, including but not limited to those on Supplier's quotations (the "Quote") or terms and conditions, are hereby rejected and disclaimed by x-dream-distribution. Any amendment to these terms and conditions must be in writing and must be agreed on by x-dream-distribution.

## 1. DEFINITIONS

- 1.1 **"Software"** means Supplier's software products licensed to End Customer via Sales Channel.
- 1.2 **"Hardware"** means any tangible and non-tangible good produced by Supplier to be sold to End Customer via Sales Channel.
- 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 **"End Customer"** means an individual or entity that purchases Products for his or its own purposes, and not for sale to others.
- 1.6 **"Sales Channel"** means – but not limited to - x-dream-distribution's network of value added resellers, system integrators, agents and dealers.

## 2. PRICES

- 2.1 Prices in the PO unless otherwise stated are in Euro.
  - 2.2 Prices do include known applicable value added taxes. They do not include customs duties or tariffs. When x-dream-distribution has the legal obligation to pay any such taxes, duties or tariffs, the appropriate amount shall be paid by x-dream-distribution to Supplier or legal collection entity. Supplier agrees to hold x-dream-distribution harmless from any liability to any tax, duty or tariff in connection with the purchase, as well as the collection or withholding thereof, if legally possible by following the applicable procedures. If Supplier fails to do so x-dream-distribution can deduct such tax, duty or tariff from the purchase price.
  - 2.3 Prices do include any fees for packaging, transport and transport insurance. If Supplier intends to charge separately for such services prices have to be stated in the Quote that this PO is based on. Consequently x-dream-distribution will order such services. In any other event x-dream-distribution does refuse to pay for such services.
3. **ACCEPTANCE OF ORDERS:** POs shall be formally accepted in writing (via email, by letter or fax) by Supplier's contractual representative even if received elsewhere by a salesperson, selling agent or other representative. Supplier shall use commercially reasonable efforts to confirm or reject x-dream-distribution's PO within five (5) business days of receipt by Supplier's contractual representative, salesperson, selling agent or other representative. If Supplier fails to accept or reject x-dream-distribution's PO within five (5) business days of receipt in time by Supplier's contractual representative, salesperson, selling agent or other representative x-dream-distribution reserves the right to draw back from the

4. **ACCEPTANCE OF SERVICES:** Acceptance of services shall occur x-dream-distribution within 15 calendar days of Supplier provides written notification about completion.

## 5. INVOICING AND PAYMENT TERMS

- 5.1 Supplier must invoice x-dream-distribution according to payment schedule proposed by Supplier's Quote and agreed on by x-dream-distribution's PO. The amount invoiced will match the price of the Products and Services within the PO. The invoice will include all applicable taxes, fees, transportation, insurance, and other fees or charges insofar Supplier can invoice and handle such duties. If not all Products or Services in x-dream-distribution's PO are provided at the same time, Supplier will invoice x-dream-distribution at the time of provision for the Services being provided. Invoices shall be addressed to: x-dream-distribution, Höhenkirchener Straße 134, 85662 Hohenbrunn, Germany.
- 5.2 Unless otherwise specified, the payment is due and payable within 45 days after the date of invoice receipt.
- 5.3 x-dream-distribution may offset amounts x-dream-distribution owes to Supplier against amounts Supplier owes to x-dream-distribution, whether under the same or a different PO 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.
- 5.4 Each party will bear their own banking charges.

6. **WARRANTIES:** At least but not limited to the full extent required by law applicable to transactions with End Customer, Supplier warrants back-to-back to x-dream-distribution, if applicable its Sales Channel and its ultimate End Customer the fitness of Products and performance of Services according to Vendors product specifications, insofar applicable End Customers project specifications, End Customers sourcing contract, End Customers sourcing terms and conditions as well as Vendors solution proposal. Named documents are integral part of x-dream-distribution's PO. Any exclusions of warranties require x-dream-distribution's written consent. Additional warranties may be given by Vendors Licensing or Maintenance Agreement, Quote, solution proposal or other documents.

7. **LIMITATION OF LIABILITY:** At least but not limited to the full extent required by law applicable to transactions with End Customer, Supplier takes on back-to-back to x-dream-distribution's liability obligations for transactions with the ultimate End Customer if applicable via x-dream-distribution's Sale Channel related to Vendor supplies Products and performs Services. Additional liabilities might arise from Vendors Licensing or Maintenance Agreement,

# x-dream-distribution

## Distribution & Direct Sales of Media-IT Products

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End Customer's or Sales Channel's sourcing contract, sourcing terms and conditions or other project related documents. Named documents are integral part of x-dream-distribution's PO. Any exclusions of liabilities require x-dream-distribution's written consens. Additional liabilities may be given by Vendors Licensing or Maintenance Agreement, Quote, solution proposal or other documents.

8. **CHANGES TO PURCHASE ORDER:** Any change to x-dream-distribution's PO increasing the purchase quantity is subject to acceptance by x-dream-distribution. All changes to PO must be provided by written (paper-based or electronically transmitted) notice by x-dream-distribution. Thus if Supplier desires to charge for additional Products or Services to accomplish the End Customers project goals Supplier shall issue a writing change request and seek for x-dream-distribution's formal acceptance of change to existing PO or separate PO for additional Products or Services to be delivered.
9. **CANCELLATION FOR DEFAULT:** x-dream-distribution may, upon written notice to Supplier, cancel any or all Supplier POs effective immediately if:
  - a. Supplier fails to perform any material obligations and such failure is not remedied within fifteen (15) calendar days after notice has been given;
  - b. Supplier: 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
  - c. any proceeding seeking involuntary reorganization, or similar relief is filed against Supplier which is not dismissed within thirty (30) days after filing, or if any trustee, receiver or liquidator of Supplier or any substantial part of its business assets or properties is appointed without x-dream-distribution's 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 at law or in equity.
10. **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, Supplier and x-dream-distribution 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 Supplier's 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.
11. **FORCE MAJEURE:** x-dream-distribution 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's reasonable control.
12. **LICENSE AND MAINTENACE AGREEMENTS:** Notwithstanding anything to the contrary herein, to the extent the Products and Services are delivered with a Supplier or Third Party Product license or maintenance agreement(s), the terms and conditions of such 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 agreement(s) and those set forth herein, the term or condition set forth herein shall govern in all cases.
13. **CONFIDENTIAL INFORMATION:** x-dream-distribution acknowledges that Products and Services contain a combination of know-how, patent, proprietary and confidential information of a commercial or technical nature ("Confidential Information"), and are valuable property of Supplier. Supplier acknowledges that End Customer has provided proprietary and confidential information of a commercial or technical nature related but not limited to his sourcing requirements, and are valuable property of End Customer. Supplier acknowledges ultimate solution proposed to End Customer contain a combination of trade secret, know-how, proprietary and confidential information of a commercial or technical nature, and are valuable property of x-dream-distribution and if applicable its Sales Channel. Supplier acknowledges that any prices stated in the PO are a trade secret. x-dream-distribution and Supplier agree 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 named owners.
14. **PUBLICITY AND USE OF x-dream-distribution MARKS:** Supplier shall not release any publicity, advertisement, or news release regarding any contract, subcontract or purchase order with x-dream-distribution without x-dream-distribution's express written consent. Supplier shall not use any x-dream-distribution or End Customer trade/service marks or trade names ("collectively "marks") for any purpose whatsoever without the express written consent of x-dream-distribution.
15. **ASSIGNMENT:** x-dream-distribution may freely assign or pledge the payments due (and the documentation supporting such payment obligation) to Supplier under the applicable PO, and may assign all of its other rights and obligations by giving Supplier written notice thereof but without being obligated to obtain Supplier's consent prior thereto. In the event of an assignment, x-dream-distribution shall be discharged of any further liability pursuant to the affected POs. Supplier may not assign its rights or delegate its obligations under any or all of its POs unless x-dream-distribution's written consent is obtained prior thereto and any such assignment without such consent shall be void.
16. **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.
17. **SURVIVAL OF TERMS:** The termination or cancellation of any x-dream-distribution's PO shall not affect the parties' obligations and rights hereunder which by their nature should be understood to survive such termination or cancellation.