

# GENERAL CONDITIONS OF BUSINESS

October 2014

**x-tention Informationstechnologie GmbH (Inc.)**

**Römerstrasse 80A  
A-4600 Wels, Austria**

Reg. No.: FN 208008w, Wels Provincial Court Registry, Austria

## 1 General information

The **deliveries, services and offers** of x-tention Informationstechnologie GmbH (hereinafter referred to as "**x-tention**") are subject to these General Conditions of Business (hereinafter referred to as the "**GCBs**"). These GCBs apply to all business transactions between x-tention and the customer, unless other arrangements were specified in the contracts between x-tention and the customer.

The general terms and conditions of the customer shall not apply unless x-tention would have expressly agreed that they were valid. Any conflicting or deviating conditions shall not be accepted unless x-tention expressly agrees that they are valid in writing. The following terms and conditions shall apply exclusively even if x-tention unconditionally performs a delivery and performance in the knowledge that certain conditions exist which conflict and/or deviate from the general terms below.

## 2 Remuneration

All **prices**, unless otherwise specifically noted, are **exclusive of value added tax** and specified in Euros.

The time and quantity details expressed in any separate contract are based on estimates made by x-tention. Settlement – in so far as no other agreement has been specifically made – shall be according to actual cost and/or usage.

**Travelling time** for x-tention staff shall be deemed to be working time and charged at the agreed hourly rate. Additional expenses, such as for example accommodation costs, shall be charged to the customer at actual cost.

The charges for **travel, board and lodging** will be invoiced in addition by x-tention. The amount of the relative rates is to be determined by the agreed prices. The **travel time** of workforce members of x-tention are to be deemed working hours. Any side charges such as overnight lodgings will be charged to the customer as per actual expenditure outlaid.

All prices are valid ex-location of x-tention and without installation or erection.

Assembly, installation and erection work shall be charged at the agreed hourly rate on the basis of the time involved.

**Current remuneration for services and provision of services** is subject to an **annual indexation** on the basis of the 2010 'Statistik Austria' consumer price index. The reference figure for adjustments is the published index value for the month in which the contract was concluded. x-tention is entitled hereunder to adjust these remunerations on 01 January of any one year.

Should the labour costs alter due to a collective bargaining agreement (IT collective bargaining agreement) or internal agreements, or should other calculations of relevant cost centres or necessary costs incurred in order to provide the service, such as those for materials, energy, transport, subcontracted work, finance, etc., alter, then x-tention shall be entitled to **increase** or **reduce** the prices accordingly. The increases shall be deemed to be accepted by the Customer if they do not exceed 10% of the annual contract value.

All fees and taxes (in particular value added tax) resulting from the contractual relationship shall be charged on the basis of the applicable legislation. Should x-tention become responsible for such charges and taxes, the customer shall in this context indemnify and hold x-tention harmless.

x-tention is entitled at any time to make the provision of services dependent on the advance payments or other sureties provided by the customer at an appropriate level.

## 3 Terms of payment, arrears interest

Unless otherwise contractually agreed, remuneration is to be charged as follows:

- remuneration for supplies is due for payment upon delivery or partial delivery;
- all-inclusive remuneration is to be charged quarterly in advance;
- remuneration based upon expenditure outlay is to be charged monthly in arrears;
- remuneration is to be paid promptly, at the latest 8 to 14 calendar days after receipt of invoice, without any deductions and free of bank charges.

Payments by the customer shall only be considered to have been paid after the point in time that they are entered on the business account of x-tention. For part invoices, the payment terms agreed for the whole contract shall apply.

Where the customer is in arrears of payment, x-tention shall be entitled at its discretion as of the due date to demand the actually incurred damages or arrears interest according to Art.

456 of the Austrian Federal 'UGB – Unternehmensgesetzbuch' (the so-called Customer Law).

In this event x-tention shall be further entitled to demand compound interest at the level of the default interest according to Art. 456 of the forementioned 'UGB'.

In cases of payments in arrears, the customer is liable to pay x-tention arrears interest, even without culpability on its part, under Art. 456 of the forementioned 'UGB', as well as the reimbursement of reminder charges and the cost of the out-of-court sequestration of financial claims.

If the customer is in arrears of payment for more than 28 days, x-tention shall be entitled to suspend all deliveries and services or to require prepayment or provision of securities by the customer. x-tention shall be furthermore entitled to require settlement for all services already provided with immediate effect, irrespective of any other payment deadlines.

**Offsetting** by the customer shall only be permitted on the basis of a counterclaim recognised by x-tention or judicially determined.

The customer has no right of retention.

In the event of arrears, the customer undertakes to reimburse x-tention for the reminder charges and collection expenses arising.

#### 4 Termination of contract

Unless agreed otherwise, contracts may be concluded for indefinite periods of time subject to a 3-month notice period from either party in writing by registered postal mail as of 31 December of any one calendar year. Definitive for complying with a time period of notice is the date of posting.

Both the contractual parties shall be entitled to terminate the contract prematurely with immediate effect in the event of a material cause. Such a material cause shall exist for x-tention in particular when:

- bankruptcy proceedings are opened over the assets of the customer or one of its stockholders and/or shareholders, or the opening of bankruptcy proceedings is rejected on the grounds of insufficient assets;
- the customer is more than 60 days in arrears with due payments despite reminders and/or days of grace;
- the customer makes it impossible to provide the service due to its persistent non-fulfilment of its obligation to cooperate;
- circumstances exist which appear to make it impossible to comply with the timely or continued provision of the contracted services, insofar as the customer is responsible therefor;
- the Customer repeatedly breaches the important duties entered into under this present agreement;
- the Customer acts in bad faith towards x-tention.

A material cause exists for the customer in particular when:

- Insolvency proceedings are opened over the assets of x-tention or the opening of insolvency proceedings is rejected on the grounds of insufficient assets;
- x-tention acts in bad faith toward the Customer

If the contract is terminated with immediate effect by the customer, x-tention shall in any case be entitled to remuneration for the services contractually provided by it until that date. Possible claims for the recovery of damages and/or liquidated damages and/or compensation for parts of the services not yet carried out, remain unaffected by such.

Notice of an extraordinary termination is, upon the occurrence of the grounds for the relative termination and knowledge thereof by the contractual party entitled to give notice, to be given in writing by registered postal mail.

#### 5 Scope of the services rendered

The scope of services by x-tention is defined in a separate contract with the customer (e.g. an **overriding framework agreement, completion certificate or requested offering or tender** with the customer). Unless agreed otherwise, x-tention shall provide the services during the **normal business hours of x-tention**.

The basis for the provision of the services by facilities and technology used by x-tention is the qualitative and quantitative service requirement of the customer ascertained on the basis of the information made available by the customer.

Should **new requirements** of the customer necessitate a change to the services or the technology, x-tention shall at the request of the customer make a corresponding offering or tender.

x-tention shall be entitled to **change at its own discretion the facilities** which it uses to provide the services if no detriment to the service provision is to be anticipated.

Services by x-tention, which are used by the customer in excess of the **agreed scope of the respective service**, shall be **remunerated according to the actual personnel and material costs at the current rates in use by x-tention**. This shall include, in particular, services outside the normal hours of business of x-tention, the analysis and rectification of faults and downtime which are the result of improper handling or operation by the customer or other circumstances for which x-tention cannot be held responsible.

The customer hereby expressly authorises x-tention to use the services of third parties (subcontractors). This shall not form any contractual agreement between the third party and the customer. x-tention also binds itself hereunder in such a case, to comply with all the applicable statutory requirements of the Austrian Federal Data Protection Legislation 2000 ('DSG 2000').

Where x-tention arranges **services of a third party** at the request of the Customer, these contracts shall be exclusively in accordance with the terms and conditions of the third party.

Minor or other reasonable modifications made by the customer to the service provisions of x-tention and obligation to deliver, shall be considered to be accepted in advance.

#### 6 Obligation of the Customer to collaborate

The Customer undertakes to **support all measures** which are necessary for x-tention to provide the services.

Inasmuch as the services are provided on-site at the customer, the customer shall provide the necessary network components, connections, power supply as well as the infrastructure, network connections and similar, of the necessary scope free of charge.

When such is not expressly included in the specifications of the services, the customer is, at its own risk and at its own expense, to ensure the necessary network connection itself.

The customer is to provide, upon the due-date deadlines at its own expense, **all required information for the rendering of the services**, to include data and documentation in the form required by x-tention, and is to lend x-tention backup support as required and requested concerning problem analyses and disruption rectifications, the coordination of processing orders and the coordination of the services.

Before connection or transport of EDP technical products and/or before the installation of computer programs, the customer undertakes to **adequately back up the stored data which already exists on the computer system**.

The customer is under a contractual duty hereby to keep necessary passwords and log-ins of x-tention confidential for the exploitation of the services.

The customer is to maintain the data and information provided to x-tention in safety, so that such can be reconstructed at all times in case of loss or damage.

The customer undertakes to comply with the respective assembly, installation and commissioning instructions. The customer also undertakes to take responsibility for room and building security, including protection against water, fire and access by unauthorised persons.

The customer is to be liable for all loss or damage attributable to a failure of the customer to treat the installations or technologies provided by the workforce members of x-tention or by third parties retained by the customer, with all due care. In case of any loss or damage, the customer is under a contractual duty hereby to report such to x-tention with immediate effect by email or telephone. The rectification of the loss or damage is to be undertaken for the account of the customer by x-tention or by a third party retained by x-tention.

The Customer shall not be entitled to give the personnel of x-tention instructions – of any nature whatsoever – and shall exclusively bring to the attention of the contact person appointed by x-tention all wishes concerning the provision of the services.

The Customer shall make available at the agreed time and at its own cost **all information required to implement the contract**, data and documents as requested by x-tention and support x-tention upon request in analysing problems and rectifying faults, coordinating process inputs and agreeing service provision.

Modifications or changes to the processes at the customer, which might or could bring about changes to the provision of the services for the customer by x-tention, require prior agreement with x-tention regarding their technical and

commercial effects. The right is hereby expressly reserved to make adjustments to the costs.

The Customer is to store all data and information provided by x-tention in addition in its business so that any loss or damage can be reconstructed at all times.

The customer is not entitled hereunder to give instructions to the workforce members of x-tention, of whatsoever nature, and is only to address the contact persons appointed by x-tention concerning the services to be rendered.

The customer shall in good time perform all co-operation obligations for which it is responsible in good time so that x-tention is in no way hindered in providing its services.

The Customer shall be responsible for ensuring that its personnel and third parties contracted to it cooperate appropriately in fulfilling the contract.

Should the customer fail to carry out its duties to collaborate as of the agreed due date deadlines or to the anticipated extent, then the services provided by x-tention shall deemed to have been contractually completed despite any such possible restrictions.

Time schedules for the services to be rendered by x-tention shall be rescheduled to the appropriate extent. The customer shall remunerate x-tention separately for the additional expenses and/or costs at the valid rates applied by x-tention at the time.

The customer shall be liable for faults arising from its personnel or third parties which have been engaged not treating equipment or technologies provided by x-tention with due care and attention. In the event of loss or damage, the customer undertakes to report this immediately in writing by e-mail or telephone via hotline to x-tention. The fault shall be rectified by x-tention or a third party contracted by it at the expense of the customer.

Unless agreed otherwise, the duty of collaboration by the customer shall be free of charge.

## **7 Supply and place of performance**

The deliveries or service provision shall be carried out according to the terms and conditions and times agreed in the separate contract.

Unless agreed otherwise, the supply shall begin or the provision period commence with the acceptance of an offering from x-tention by the customer or in the event of an offer without commitment by x-tention with the order confirmation by x-tention. The place of performance shall be the corporate domicile or registered office of x-tention, unless agreed otherwise.

Unless otherwise agreed, the place of performance is the place of the registered office or corporate domicile of x-tention.

The transfer of deliveries or service provision shall commence on acceptance by the customer at the place of performance. In the event of an agreed consignment of supplies on acceptance of the supplies by the carrier.

Should the customer not accept the goods as agreed (**arrears of acceptance**), then x-tention shall be entitled after unsuccessfully granting a time period of grace at the risk and cost of the customer to **store** the goods either at its business premises, for which the customer shall be invoiced 0.1% of the gross invoice value per commenced calendar day, or the goods shall be stored at the risk and cost of the customer at the premises of an authorised bailee. At the same time, x-tention shall be entitled to demand that the contract be fulfilled or, after setting a reasonable time period of grace of at least 2 weeks, to withdraw from the contract and to dispose of the goods at the cost of the customer.

## 8 Intangible property rights

x-tention or its licensor shall be entitled exclusively to all copyrights on programs, methods, documentation, work results and other works (e.g. plans, drawings, specification sheets, IT concepts) also in the event that the customer has co-operated in their development.

The customer shall be granted the non-exclusive non-transferable not sub-licensable right to use the agreed services in the agreed scope for its own purposes limited to the period of the contract.

Every agreement on the permission to use the work supplied or rendered must be made in writing in order to use the software products in unaltered form.

For **Third-party software products** handed over to the customer by x-tention, the respective licence conditions of the respective producer of these software products shall take precedence over the provisions of such software products. It is the responsibility of the Customer to obtain knowledge of the scope and content of these licence conditions.

In the event that the copyrights of x-tention are breached, then x-tention shall be granted full satisfaction.

## 9 Service disruptions by ASP and operator services

x-tention undertakes to **fulfil the contractual services**. Should x-tention not provide the services within the specified period or only deficiently, i.e. with **substantial deviations** from the agreed standards of quality, the x-tention undertakes to rectify the faults immediately and to provide its services in a proper manner within a reasonable period and without any defects. Should the provisions and co-operation of the customer or a breach of the obligations of the customer have a bearing on the deficiencies, any obligation on the part of x-tention to rectify the deficiencies shall be ruled out. In these events, despite possible limitations, the services provided by x-tention shall nevertheless be considered to have been carried out according to the contract. x-tention will at the request of the Customer and at its cost undertake to rectify the deficiency.

The customer shall support x-tention in rectifying the deficiency and make all necessary information available. Deficiencies which occur are to be reported by the customer to x-tention immediately by email or by telephone, reporting useful information concerning the apparent defect to the service desk of x-tention. Late reporting will cause the

customer to have to bear the costs for the additional expense and time in rectifying the deficiency.

## 10 Warranty

Warranty claims by the customer shall in all cases be fulfilled **at the discretion of x-tention**, either by improvement or exchange within a reasonable period of time or diminution in price. Repudiation of contract (termination of a contract) may be requested by the customer only if the deficiency is neither minor nor rectifiable by improvement or exchange and a reduction in price is unreasonable for the customer.

The period of warranty shall be six months from the acceptance of the delivery or approval of the service. This is also to apply for items permanently attached to buildings, floors or the ground.

**Warranty claims by the customer which are intended to be settled by rectification of the deficiency by improvement or exchange can only be asserted if x-tention is in arrears in the fulfilment of the warranty.**

It is incumbent on the Customer to prove deficiency at the time of accepting the delivery or service.

The customer undertakes to inspect the delivery or service in accordance with Art. 377, Para. 1 of the Austrian Federal 'UGB – Unternehmensgesetzbuch' (the so-called Company Law) within a period of 7 calendar days of delivery.

A warranty claim can only be asserted when the customer recognises obvious defects during acceptance, and reports any other later discovered defects with immediate effect, at the most within 10 calendar days of discovery, and indicates the type and extent of the defect in writing.

The application of Art. 933b of the Austrian 'Allgemeines Buergerliches Gesetzbuch' (Civil Law Code) is excluded hereunder.

## 11 Liabilities and Indemnities for Loss or Damage

Indemnity claims for loss or damage become statute barred after 12 months, of which the customer had knowledge thereof and the party causing such loss or damage.

x-tention is to be liable for any loss or damage due to premeditation or gross negligence within the scope of statutory requirements. Any liability for slight negligence is hereby excluded except in cases of death or bodily injury.

Indemnities for destruction or damage to data and software will only be adopted as long as the customer has complied with its duties to conduct regular and proper EDP operations.

Any compensation shall be limited to the order value of the particular performance (twelve times the monthly invoiced sum for the performance). In any case the size of the compensation shall be limited to the liability insurance sum of x-tention, namely EUR 5,000,000.00 per insurance case, as at September 2014.

Indemnities for loss or damage are in any event excluded hereunder for consequential losses, loss or damage to assets,

loss of profits, unobtained savings, frustrated applications, intangible loss or damage, loss of interest and loss or damage originating from the claims of third parties, and also claims asserted under product liabilities.

x-tention is to be liable for loss or damage occasioned by its associates and/or subcontractors, pursuant to Art. 1313a of the Austrian 'ABGB – Allgemeines Buergerliches Gesetzbuch' (Civil Law Code), but only insofar as loss or damage is caused by grossly negligent activities, which were unavoidably necessary for completing the contractual duties.

The existence of culpability must be proved by the damaged party.

## 12 Force majeure (Act of God)

Inasmuch as, and so long as the duties of x-tention cannot be fulfilled properly in due time as a result of force majeure (e.g. natural catastrophes, fire, strikes, lock-outs, breakdown of power supply, breakdown of transport, breakdown of the telecommunications network or data transmission lines) as a result of amendments to legislation after conclusion of the contract, the results of which affect the provision of the services, or as a result of the non-availability of products, this shall not constitute a breach of contract.

## 13 Retention of ownership rights

**x-tention hereby reserves its ownership rights in all components supplied** up to complete payment. In asserting ownership, a withdrawal from the contract only exists if is expressly declared. When goods are returned, x-tention shall be entitled to charge for the transport and manipulation costs incurred.

In the event of seizures by third parties of goods under retention of ownership rights – in particular by mortgaging – **the customer undertakes to point out the retention of the ownership rights of x-tention and to inform x-tention immediately. The Customer shall bear the full risk for goods subject to retention of ownership rights**, particularly for the danger of destruction, loss or deterioration.

## 14 Applicable law and place of jurisdiction

The Austrian law is applicable to all disputes between the contractual parties. The application of the United Nations 'CISG - Convention on Contracts for the International Sale of Goods' (UNCITRAL - United Nations Commission on International Trade Law') is hereby excluded.

The place of jurisdiction is the materially competent court of law at Wels, Austria.

## 15 Data Protection

In its **handling of personally referred data**, x-tention will observe the statutory requirements of the Austrian Federal Data Protection Legislation 2000 ('DSG 2000'), and the Austrian Federal Telecommunications Legislation 2003

('TKG 2003'), and undertake the requisite technical and organisational measures to address data protection in the areas of responsibility of x-tention. x-tention binds itself hereunder to comply with the statutory requirements of the foregoing Data protection Legislation 2000.

x-tention is not under any obligation hereunder to verify the permissibility of the data processing on behalf of the customer within the meaning of the data protection legislation. The permissibility of passing on personally referred data to x-tention as well as the processing of such data by x-tention, is to be ensured by the customer.

x-tention will undertake all reasonable measures to protect the data and the information of the customer stored with x-tention, against the unauthorised access of third parties. x-tention is however not liable hereunder for third parties illegally succeeding in obtaining access to such data and information.

Upon the conclusion of any contract subject to this present agreement of general conditions of business, the customer hereby expressly authorises x-tention to subcontract assignments to suitable third parties for contracts subject to this present agreement of general conditions of business. In such cases, x-tention binds itself hereunder to comply with all current statutory requirements of the foregoing Data Protection Legislation 2000.

## 16 Confidentiality

The customer and x-tention undertake to treat as confidential and not to disclose to third parties all information or circumstances and relationships as disclosed by the other contractual party in connection with the execution of these contracts subject to these present GCBs, insofar as such are not in the public domain.

In cases of doubt, all affairs, information and data are to be considered as confidential and secret.

The customer and x-tention bind themselves hereunder to commit persons authorised by them for the carrying out of the activities, similarly with such obligations before commencing any activities.

Subcontractors of x-tention shall not be considered third parties, inasmuch as they are under a duty of confidentiality in the sense of the content of this paragraph.

## 17 Sundries

The Customer undertakes to inform x-tention of any **changes in its business address** for as long as any contractual legal business is not entirely mutually completed. Should a **notice not thus be delivered**, then all declarations **shall be considered as having been received when sent to the last known postal address of the contractual party concerned**.