

GENERAL CONDITIONS OF SALE, DELIVERY, USE AND INVOICING

1. Scope:

- 1.1. These general terms and conditions apply to all offers and agreements whereby Xpower NV delivers goods and/or services, of whatever nature and however described, to the customer.
- 1.2. The customer recognises that Xpower NV's general terms and conditions will, to the exclusion of the customer's own terms and conditions, govern the contractual relationship between Xpower NV and the customer.
- 1.3. The applicability of the customer's general terms and conditions is expressly rejected.
- 1.4. The current general terms and conditions can be legally deviated from subject to a prior written agreement between Xpower NV and the customer.
- 1.5. If any provision of these general terms and conditions is null and void or is voided, the other provisions of these general terms and conditions will remain in full force.

2. Price and Payment

- 2.1. With regard to the services provided by Xpower NV and the amounts which the customer is liable to pay for these services, the information from Xpower NV's records will constitute conclusive evidence, without prejudice to the customer's right to provide proof to the contrary.
- 2.2. All prices are exclusive of taxes, levies and travel and accommodation expenses.
- 2.3. All invoices are payable net, without discount, and in euros to Xpower NV's registered office.
- 2.4. A protest must be lodged in writing within 8 days of receiving an invoice.
- 2.5. If payment is not received within 14 calendar days of the due date, specified on the invoice, the customer will, *ipso jure* and without a warning or notice of default being required, be liable to pay a default interest of 10% per year, or, if this interest is higher, equal to the interest referred to in the Act on combating late payment in commercial transactions of 2 August 2002 (Belgian Official Journal 7 August 2002), from the due date of the invoice. By way of compensation for the extrajudicial costs, loss of time, additional administrative costs and correspondence, the invoice amount which has not been paid within 14 calendar days of the due date will be increased *ipso jure* by 10%, the minimum increase being EUR 250. This compensation will be payable by law and without a warning or notice of default being required, and does not affect the principal amount, interest and court costs. If payment is not received within 14 calendar days of the due date of one invoice, all invoices will become immediately payable by law and Xpower will not be obliged to provide further services under any agreement until all outstanding invoices have been paid in full. Moreover, Xpower NV cannot be held liable for any damage which may occur as a result.
- 2.6. Xpower NV can adjust the current prices and rates in writing, subject to at least 3 (three) months' notice. If the customer does not agree to the adjustments, he has the right to terminate the agreement in writing within thirty (30) days of the notice of adjustment effective from the day on which the new prices and/or rates would become effective.
- 2.7. The customer will pay the outstanding amounts according to the agreed payment conditions or to the payment conditions specified on the invoice. The customer does not have the right to suspend payments or to offset outstanding amounts.
- 2.8. If the customer accepts the quotation/offer, he/she must give Xpower a written confirmation. In its turn, Xpower will confirm the order and asked the customer to fulfill an advance payment of 30% of the total amount of the offer, unless otherwise agreed.
- 2.9. If the invoices relating to hardware material remain unpaid, Xpower NV reserves the right to collect the delivered material.
- 2.10. This payment is linked to the annual variation in the consumer price index figure and will be revised every year on 1 January. For example each 1/1/2019.
- 2.11. An annual indexation will be applied to all Xpower NV's products and services, using the following formula:
$$\text{New price} = (\text{previous price}) / (\text{previous index figure} \times \text{new index figure})$$

For example: consumer price index figure for December 2018 = 108,22; the price is adjusted on 1/1/2019; the new index figure = 107.90; if, on the basis hereof, we must adjust a price: e.g. old consultancy fee = 800 -> the new price = $(800) / (108.22 \times 107.90) = 797.63$

3. Term

- 3.1. If the agreement which the parties concluded is a continuing performance agreement, the agreement is entered into for the term agreed upon by the parties, failing which the term is set at 1 (one) year.
- 3.2. Unless the customer and Xpower NV agreed otherwise, the term of the agreement will be automatically extended for 1-year periods, unless the customer or Xpower NV terminates the agreement in writing subject to three (3) months' notice before the end of the period concerned.

4. Confidentiality and Taking Over Staff

- 4.1. The customer and Xpower NV will ensure that any information received from the other party which is known or should reasonably be known to be of a confidential nature will remain confidential, both during and after the expiry of the term of the agreement. This prohibition does not apply if and in so far as submission of the information concerned to a third party is necessary pursuant to a court decision, statutory provisions or for the proper execution of the agreement. The party which receives confidential information should only use it for the purpose for which it was provided.
- 4.2. The customer recognises that the software provided by Xpower NV is always of a confidential nature and that it contains business secrets of Xpower NV, its suppliers or the manufacturer of the software.
- 4.3. The customer undertakes to refrain from the following during the execution of the agreement and for up to three (3) years following the termination of the agreement with Xpower NV:
 - approaching staff members of Xpower NV or an affiliated company in order to recruit them or have them recruited through its intermediation or the actions of third parties, either by means of an employment agreement or in the form of independent cooperation and/or recruiting staff of Xpower NV or an affiliated company, either by means of an employment agreement or in the form of independent cooperation, even if the customer was approached by the staff members themselves.
 - For each established violation of the above clause regarding ex-employees of Xpower NV, the customer will be liable to pay Xpower NV a fixed compensation equal to twice the last annual gross salary paid by Xpower NV to the (ex-)employee;
 - Engaging in any direct or indirect competition with Xpower NV (also through the intermediary of another person or entity) by undertaking activities, manufacturing, importing, selling, transporting, dispatching or stocking products or carrying out work which compete(s) with the products and activities of Xpower NV, by directly contracting or accepting assignments from the customers or suppliers of Xpower NV, by acting as a director, employee, service provider or otherwise for a competitor of Xpower NV.
 - For each established violation of the above-mentioned prohibition to compete, the customer will be liable to pay Xpower NV a fixed compensation of EUR 100,000, without prejudice to Xpower NV's right to prove more extensive damage.

5. Intellectual property rights:

- 5.1. All models, works, software and/or inventions developed for the customer by Xpower are, and will remain, the property of Xpower. This includes all intellectual property rights, including, but not limited to, copyrights, design rights and/or patents.
- 5.2. Hardware and/or other materials supplied by Xpower will remain the property of Xpower until they have been paid in full. If payment is not made in full, Xpower can claim the benefit of Section 20, subsection 5 of the Mortgages Act.

The system and/or application software will remain the property of Xpower, even after the cost has been paid for in full. The customer will receive only a right of use limited to a single central processing unit as well as to the system, the number of files and the number of users described in the appendices to the agreement. The XDMS licences are always "named users". This includes that each user of the system must identify themselves with their personal login details linked to their own licence. You only pay for the users you have used (pay per use system). The actual number of named users of the past month will be charged.
- 5.3. The following will also remain the exclusive property of Xpower: any (developed) systems, analyses, programmes, working methods, applied procedures, programming techniques, ideas and know-how.

- 5.4. If the customer has gone into liquidation or has been placed under a judicial reorganisation procedure, the customer should inform the liquidator about the content of these terms and conditions and clauses. The customer or the liquidator must return the software and documentation to Xpower NV.
- 5.5. Programmes may not be copied or brought into the public domain by means of printed material, photocopies, magnetic data carriers or in any other way without Xpower's prior written permission. If the above-mentioned prohibition on reproduction and disclosure is violated, the customer will be liable to pay Xpower a fixed compensation of EUR 50,000 for each established violation, without prejudice to Xpower's right to prove more extensive damage.

6. Obligations of the customer:

- 6.1. In case of On Premise use of the application The customer guarantees the security of the system provided by Xpower as a minimum by making physical copies of the programmes and data and storing them separately.
- 6.2. The customer will ensure at all times (before, during and after the delivery and/or installation of the products) a perfectly modified environment in which the products will be used. The customer can ask Xpower NV for instructions but remains responsible for their use.
- 6.3. If Xpower NV carries out work on the customer's premises, the customer will arrange the necessary facilities in time and at no cost, such as a work space with a computer and network facilities. Xpower NV is not liable for any damage or costs resulting from transmission errors, failures or the non-availability of these facilities.
- 6.4. The customer guarantees the correctness and completeness of the data submitted to Xpower NV.

7. Obligations of Xpower NV:

- 7.1. Xpower is not responsible for the supplied products if the customer does not use them according to the instructions in a modified environment.
- 7.2. The responsibility of Xpower NV and any recourse of the customer will be determined and limited as follows:
 - Whenever the programmes or hardware fail to function, the customer only has the right to request improvement.
 - If, based on the current conditions, Xpower NV is obliged to make improvements but, after several attempts, fails to get the programmes to function in accordance with the agreed specifications, the customer is entitled to compensation for actually sustained and proven damage, with the following limitations:
- 7.3. The following is not refundable:
 - Damage resulting from the improper use of the products by the customer or third parties;
 - Consequential damage, such as financial and commercial losses which are not the direct consequence of Xpower's error, including, but not limited to, an increase in overheads, a disruption to the schedule, the inability to deliver the customer's own products, the loss of expected profits (or savings) or clients.
- 7.4. Irrespective of the form, size, object or cause of a claim based on Xpower's contractual liability, this liability will be limited to 10% of the stipulated price of Xpower's products.

8. Delivery dates and terms:

- 8.1. Delivery dates are always approximate and merely indicative and are in no way binding on Xpower. A delivery term is only binding if it has been agreed as such explicitly and in writing.
- 8.2. Overrunning a delivery term, for whatever reason, does not entitle the customer to compensation or to refuse compliance with any obligation on the part of the customer arising from the agreement, nor does it give grounds for cancelling the agreement.
- 8.3. Xpower reserves the right to postpone delivery until the agreed advance payments have been received.
- 8.4. If a term is exceeded, the customer will give Xpower NV written notice of default, giving Xpower NV a reasonable period to remedy the breach. In order to give Xpower NV the opportunity to respond adequately, the description of the breach in the notice of default must be as accurate as possible.
- 8.5. Xpower NV is not bound by a term if the parties have agreed to amend the agreement, or if the customer fails to fulfil his obligations under the agreement in time or in full. The customer cannot terminate the agreement on account of additional work during the execution of the agreement.

9. Force majeure:

- 9.1. Neither party will be held liable for any shortcoming or delay in the execution of the agreement if this shortcoming or delay can be attributed to *force majeure*.
- 9.2. *Force majeure* includes, but is not limited to, strikes, lock-outs, business conflicts or disturbances, civil disturbances, third-party acts, war, terrorism, insurrections, blockades, the impossibility to insure work or certain materials as a result of government-imposed rationing, epidemics, natural disasters, landslides, earthquakes, lightning strikes, fire, storms and flooding.
- 9.3. In the event of *force majeure*, the affected party will take any measures which are reasonably necessary to deal with the *force majeure* situation as quickly as possible in order to limit the damage for the other party.
- 9.4. If one of the parties pleads *force majeure*, it will inform the other party about this orally as soon as possible, at most within 15 days of the occurrence of the *force majeure* situation. This oral notification must be followed up within 24 hours by a written notification. This notification must contain all the essential facts so that the other party can ascertain the existence of the *force majeure* situation. From that moment onwards, the parties' obligations will be suspended for the duration of the *force majeure* situation and in proportion to its consequences.
- 9.5. The parties undertake to take, in consultation, any measures which will limit the consequences of the *force majeure* situation. If the *force majeure* situation lasts for 60 days or more, the unaffected party has the right to terminate the agreement without the parties being obliged to pay each other any compensation. In the event of *force majeure*, the customer cannot claim back any amounts paid.

10. Cancellation – Termination:

- 10.1. A customer who wishes to cancel an order or terminate the agreement is liable to pay compensation to Xpower NV. Xpower NV has the right to estimate the amount of this compensation which includes, but is not limited to, the following components: lost profit, supplied materials, services provided and costs incurred (including servers and hardware specific to the project).
- 10.2. The compensation for cancelling an order which Xpower has not yet carried out or for terminating the agreement which Xpower has not yet executed is automatically estimated at 30% of the contract amount, without prejudice to Xpower's right to prove more extensive damage. Xpower is in any case entitled to retain advance payments by way of compensation (also if these are in excess of 30% of the agreed contract amount).
- 10.3. If Xpower's confidence in the customer's creditworthiness is compromised by legal proceedings against the customer and/or events which compromise the confidence in the proper fulfilment of the obligations assumed by the customer, Xpower reserves the right to suspend the entire order or part thereof and to demand appropriate guarantees from the customer, even if the products have already been shipped or delivered, wholly or in part. If the customer refuses to provide these guarantees, Xpower reserves the right to cancel the entire order or part thereof, without prejudice to Xpower's right to compensation.

11. Applicable law and jurisdiction:

- 11.1. The legal relationship between Xpower and the customer and any dispute in which Xpower might be involved are governed by Belgian law, irrespective of the nature of or reason for the dispute.
- 11.2. If the meanings of the terms used in the translation of the Dutch general terms and conditions differ in the language and country of the customer from those in the Dutch terms and conditions, these must be given the effect and/or meaning which accord with the laws of the country where Xpower has its registered office, i.e. Belgian law.
- 11.3. If one or more provisions of the current general terms and conditions or a part thereof are void or unenforceable on account of legal or regulatory provisions which have obligatory force or relate to public order, this will not affect the other provisions of these terms and conditions. The parties will undertake, as far as legally possible, to adopt a valid replacement provision or an alternative interpretation of the provision in question that is as close as possible to the parties' original intention.
- 11.4. In the event of a dispute between Xpower and the customer, the Court of First Instance of East-Flanders (Ghent division) and the Commercial Court of Gent (Ghent division) have exclusive jurisdiction.