

# **GENERAL TERMS OF SALE FOR SERVICES PROVIDED BY INDUSTRIES EXCELLENCE SASU**

## **1. GENERAL PROVISIONS**

These general terms (hereinafter the “**General Terms**”) apply to all sales of services provided for the Client by the company, Industries eXcellence SASU (the “**Service Provider**”), for a sales proposal issued by the Service Provider (hereinafter the “**Sales Proposal**”).

**Acceptance and enforceability of the General Terms.** The Client declares it has read and understood the General Terms and accepts them unreservedly. Relations between the Service Provider and the Client are governed exclusively by the General Terms and the Sales Proposal signed by the Parties, which together constitute the agreement (hereinafter the “**Agreement**”). The General Terms apply even if the Client and the Service Provider do not formalise their agreement.

Any exemption to the General Terms (in particular due to the Client’s General Terms of Purchase) may only apply if previously agreed by the Parties.

**Contractual documents.** The contractual documents between the Service Provider and the Client are ranked in the following order of priority:

- 1/ The Sales Proposal,
- 2/ The General Terms.

In the event of a contradiction between one or more stipulations in either of these documents, the higher ranked document shall prevail.

## **2. DEFINITIONS**

The terms listed below shall have the following meaning in all contractual documents:

**Client:** any legal entity that has signed an agreement with the Service Provider for the performance of Services.

**Development:** Any computer program or portion thereof, together with its source code and compiled versions, created by Industries eXcellence under the Agreement.

**Sales Proposal:** the document issued by the Service Provider setting out all the services to be performed by the Service Provider under the Agreement, together with all the terms and deadlines for performing said Services.

**Confidential information:** data and information of any type (especially financial, technical and commercial), written, printed or provided orally or by any other method, presented as confidential by one of the Parties and communicated to the other Party within the framework of the Agreement.

**Deliverables:** any documents, product or software development delivered by the Service Provider to the Client under performance of the Services and created specifically for the client, with the exception of Industries eXcellence Deliverables.

**Industries eXcellence Deliverables:** any product or software development for which the rights belong to Industries eXcellence and for which use is subject to a licence issued by the Service Provider.

**Parties:** The Service Provider and the Client referred to jointly.

**Service provider :** Industries eXcellence, a single shareholder company (SASU) registered in Lyon Trade & Companies Register under no. 799 604 590 and with headquarters located at 9 Rue Juliette Récamier - 69006 Lyon, France.

**Service(s):** any IT consultancy, IT development and assistance or any products agreed between the Parties in the Special Terms.

## **3. SERVICE PROVIDER OBLIGATIONS**

**3.1** The Service Provider shall make every effort and take every care in its performance of the Services. It expressly undertakes to act in the best interests of the Client and solely in the interest thereof.

**3.2** The Service Provider retains full control and responsibility for its choices for performing the Services. The Service Provider is not bound to verify the documents provided by the Client for performance of the Services, or to ensure they are complete or accurate.

**3.3** The Service Provider shall allocate a sufficient number of competent and available personnel to perform the Services within the scheduled time frame. This personnel shall act exclusively on the sole instructions and under the sole responsibility of the Service Provider.

**3.4** The Service Provider (and its employees) has no capacity as an agent and has no power to commit to the Client with respect to third parties. It shall, therefore, formally refrain from dealing with third parties in the name and on behalf of the Client, except if expressly agreed otherwise by the Parties.

**3.5** The Service Provider shall remain at the disposal of the Client to provide any useful advice or information regarding the Services, but the Client remains responsible for verifying the suitability of the Services, especially any Development, in respect of its own requirements.

**3.6** The Service Provider shall supply the ordered Services on the date and in the place agreed in the Sales Proposal. The agreed deadline for Services may be extended by period(s) of fifteen (15) days, without exceeding two extensions, providing the Service Provider fully explains the cause of the delay to the Client.

## **4. CLIENT OBLIGATIONS**

The Client is aware that IT projects are complex and likely to call into question its current organisation and working methods. Close collaboration is required between the Parties, involving an ongoing dialogue in a spirit of trust and mutual respect.

The Client undertakes to collaborate as fully as possible with the Service Provider in order to ensure the smooth running of the Services, in particular to provide all useful documents and resources to this effect and perform acceptance and validation operations without delay and/or within the timeframes agreed between the Parties, in order not to delay performance of the Services.

From the start of the Service, the Client must spontaneously provide the Service Provider, without exceptions or reservations, any information that may prove useful. The Client must likewise issue its employees with the necessary instructions to ensure they also collaborate with the Service Provider. The Client undertakes to provide the Service Provider with all the equipment necessary for its performance and to permit the Service Provider’s personnel to access the facilities, hardware and software required for performing the Services, especially all systems required for use by the Service Provider, and render them accessible remotely and 24/24 without any interruption. All permissions required for the effective conduct of the assignment of Industries eXcellence consultants must have been obtained.

The Client is bound to an obligation of payment under the terms stipulated below, subject to the related penalties.

## 5. DELIVERY

The acceptance terms of the Deliverables are agreed between the Parties in the Sales Proposal, based on the requirements and specifications defined therein.

As of delivery by the Service Provider onto the Client's servers or onto a remote storage solution, depending on the situation, the Client shall have the period of time specified in the Sales Proposal, except if agreed otherwise between the Parties, to test the Deliverables. In the event of one or more anomalies being detected, the Client must notify the Service Provider in writing immediately following the discovery, and in all cases, within the period of time specified to this effect in the Sales Proposal.

This rule applies to all Deliverables, irrespective of their nature.

The Parties shall then jointly agree, depending on the severity of the anomaly, on the time period required to correct said anomalies and on setting a new delivery date.

If no notification is received from the Client during this time period, or if the Deliverables are used without reservations by the Client during this time period, the Deliverables shall be deemed to have been accepted without reservations by the Client.

No claims shall be validly accepted in the event of the Client failing to comply with these formalities and deadlines.

## 6. PRICE AND PAYMENT TERMS

**6.1** The price of the Services is set in the Sales Proposal and excludes VAT. The price may only be modified on the basis of an express agreement between the Parties.

**6.2** Invoices shall be paid in euros no later than thirty (30) days after their date of issue.

Any late payment shall result in the application of late payment penalties equalling three times the legal interest rate in force, together with a fixed forty (40) euro recovery fee, due automatically without a reminder being required and without prejudice to any other claims for compensation.

In addition, and in all cases, in the event of failure to pay before the aforementioned deadline, the Service Provider reserves the right to suspend performance of any ongoing Services or to rescind the Contract ipso jure, and to retain any deposit paid with the Order as compensation.

**6.3** In the event of the Client cancelling the Order, except in cases of force majeure, the Service Provider reserves the option of retaining or claiming an amount equal to the losses suffered due to cancellation of the Order.

## 7. SERVICE PROVIDER LIABILITY

**7.1** The Service Provider cannot under any circumstances be deemed liable:

- in the event of losses resulting from errors originating from documents or information provided by the Client, particularly if the Service Provider previously issued reservations;

- in the event of losses inherent to use of the Internet network, especially a service breakdown, an outside intrusion or the presence of a computer virus;
- in the event of losses resulting from a fault or negligence on the part of the Client, or that could have been avoided by seeking advice from the Service Provider;
- if programs are used that were not supplied or endorsed by the Service Provider, and which could potentially affect the Services or Client data;
- concerning the actions of the Client based on or related to the Deliverables and Industries eXcellence Deliverables or on the Client failing to follow up or take measures following these Deliverables and Industries eXcellence Deliverables;
- if the Deliverables and Industries eXcellence Deliverables are used in a manner not specified in the user documentation or in a way that was not expressly authorised by the Service Provider;
- if the Deliverables and Industries eXcellence Deliverables are used in an environment or configuration that does not comply with the technical prerequisites of the Service Provider, or in connection with third-party programs or data that has not been expressly endorsed by the Service Provider.

**7.2** The Service Provider may only be deemed liable in the event of fault or negligence proved by the Client, and the said liability is limited to direct tangible losses and does not include any indirect losses whatsoever.

**7.3** Furthermore, under no circumstances shall the Service Provider be bound to compensate for any intangible losses directly or indirectly subsequent to tangible losses, including operating losses, production losses, lost revenue, loss of profit, loss of contracts, damage to image, loss of opportunity, commercial losses, additional production costs, the mobilisation of personnel or equipment and any indirect losses.

**7.4** In all events, the liability of the Service Provider and its subcontractors is limited to the amount of the Services concerned.

## 8. CONFIDENTIALITY

**8.1** Each Party undertakes not to disclose any Confidential Information received from the other Party.

The Service Provider is prohibited from directly or indirectly communicating all or part of any Confidential Information that may have been communicated to it by the Client, or of which it may have become aware during performance of the Agreement.

The Service Provider recognises that any disclosure would harm the interests of the other Party and incur its liability.

For its part, the Client undertakes not to disclose information regarding the know-how of the Service Provider.

This mutual undertaking shall continue to apply for a period of five (5) years after the end of the Agreement.

**8.2** Each Party undertakes to ensure that Confidential Information media are not copied, reproduced or duplicated, partially or in whole, without prior written authorisation from the issuing Party.

**8.3** All Confidential Information communicated by one of the Parties to the other shall remain the property of the

communicating Party, and the media used for communication must be immediately returned at first request together with any copies, reproductions or duplicates of said media.

**8.4** The above-mentioned obligations do not apply to Confidential Information in the public domain, or which has been freely acquired prior to signing the Agreement or which needs to be disclosed on legal or regulatory grounds.

## **9. INTELLECTUAL PROPERTY**

**9.1** The Deliverables and Industries eXcellence Deliverables are protected by intellectual property rights under article 111-1 of the French Intellectual Property Code and remain the property of Service Provider.

On payment of the price and subject to full payment for the corresponding Deliverables, the Service Provider shall transfer all intellectual property rights relating to Deliverables, except Industries eXcellence Deliverables, to the Client.

These rights specifically include, pursuant to article L. 131-3 of the French Intellectual Property Code, rights of use, commercialisation, representation, reproduction and adaptation.

These rights are transferred on a fixed and final basis, worldwide and for the duration of the intellectual property rights affecting the Deliverables, excluding Industries eXcellence Deliverables.

The Service Provider undertakes to deliver the source codes corresponding to the Deliverables to the Client as and when they are produced, together with related documentation.

**9.2** In the event of use of the Deliverables requiring the acquisition of an SAP user license or any other proprietary software license, the Client undertakes to acquire said license and comply with the terms thereof.

**9.3** Industries eXcellence Deliverables shall remain the property of the Service Provider. The terms of their use by the Client, together with terms of maintenance, shall be set out in a sales proposal acting as a licence and maintenance agreement.

## **10. TERMINATION**

In the event of one of the Parties failing to perform its contractual obligations, in particular obligations with respect to confidentiality and intellectual property, together with the obligations stipulated in article 6 for the Client and article 4 for the Service Provider, the other Party may terminate the Agreement fifteen (15) days after formal notification served on the other Party remains unheeded. Termination shall take effect ipso jure, without prejudice to any compensation due to the invoking Party on expiry of this period.

Any use of documents provided by the Service Provider must end immediately.

## **11. FORCE MAJEURE**

The Parties cannot be held responsible if the non-performance or late performance of any of their obligations as set out in the Agreement results from a case of force majeure under article 1218 of the French Civil Code.

The obligations of the Parties shall then be suspended following the sending of a registered letter with acknowledgement of receipt by the Party invoking force majeure.

The Party reporting a case of force majeure event must immediately notify the other Party of its inability to perform its obligation(s) and provide proof thereof.

However, once the cause for suspending their mutual obligations has ended, the Parties shall make every effort to resume normal performance of their contractual obligations without delay. To this effect, the hindered Party shall notify the other Party of resumption of its obligations in a registered letter with acknowledgement of receipt.

## **12. TRANSFERABILITY**

The contractual rights and obligations resulting from the Agreement may not be transferred or assigned in any way to any party, without the prior written consent of the Parties.

## **13. MISCELLANEOUS PROVISIONS**

**13.1** No waiver to invoke the clauses of this Agreement or failure to perform the obligations resulting therefrom can be presumed, except if the waiving Party has informed the other Party in writing of its consent or waiver.

**13.2** Should one of the clauses of the General Terms prove to be invalid or unenforceable due to a law or regulation or following an enforceable decision by a court or competent administrative authority, only the clauses in question shall be cancelled, with all other clauses of the Agreement remaining valid. The Parties shall negotiate in good faith to draw up a new clause to replace the nullified clause.

**13.3** Any amendments to the General Terms must be the subject of a written agreement between the Parties.

**13.4** Any stipulations of the General Terms which, by their nature, are designed to apply beyond the due date or end of the Services shall survive said due date or end.

**13.5** Any notifications made by virtue of this Agreement must be sent by recommended letter with acknowledgement of receipt to the headquarters of the Parties, unless stipulated otherwise.

**13.6** The purpose of the performance of the Services is not to create any agency relationship or de facto partnership between the Client and the Service Provider. Neither Party is authorised to commit or bind the other Party.

## **14. APPLICABLE LAW – DISPUTES**

**14.1** The Agreement is governed and interpreted in accordance with French law.

**14.2** Any disputes that may arise between the Parties as regards their relationship shall be brought exclusively before Lyon Commercial Court, to which the Parties award jurisdiction, including petitions, summary proceedings, third-party claims and multiple defendants.