General terms and conditions

1. Scope

1.1. These General Terms and Conditions (GTC) apply to the business relationship of Xelon AG (hereinafter referred to as Xelon) with customers, in particular for services, for orders related to the products, information and advice.

1.2. Unless otherwise agreed, the GTC in the version valid at the time of the customer's order, alternatively in any case in the version last notified to the customer in text form, shall apply as a framework agreement also for similar future contracts without Xelon having to refer to them again in each individual case.

1.3. These GTC shall apply in place of any general terms and conditions of the customer - such as terms and conditions of purchase - even if, according to these, the acceptance of the order is intended as unconditional acceptance of the general terms and conditions. By placing an order, the customer expressly acknowledges that they waive their legal objection derived from their own general terms and conditions.

1.4. In addition to these GTC, Service Level Agreements (SLA) for individual products or individual product parts shall only apply if they are agreed separately. Individual agreements made with the customer in individual cases (including other ancillary agreements, supplements and amendments), in particular terms and conditions stated when the order is placed, must form part of the offer and shall in any case take precedence over these GTC. Subject to proof to the contrary, an agreement in writing or by e-mail (correspondence) or our express confirmation (in writing or by e-mail) shall be authoritative for the content of such agreements. Any changes after the conclusion of the contract require a written agreement between the parties, e-mail is not sufficient.

1.5. If the Customer purchases third-party products via Xelon, which Xelon distributes and offers as a partner or as part of a partner programme of the third-party manufacturer, additional contractual terms of the third-party manufacturer may apply (such as customer contracts, product use rights, end user licence agreements, SLAs, data processing agreements, acceptable use policies). The customer shall be informed of the applicable contractual terms and conditions of the third-party manufacturer as part of the order. These become an integral part of the contract and the customer agrees to comply with the contractual terms and conditions of the third-party manufacturer applicable to the individual products without restriction. The customer recognises that the third-party manufacturers can generally adapt the contractual terms and conditions applicable to their products at any time.

1.6. Legally relevant declarations and notifications to be made by the customer to Xelon after conclusion of the contract (e.g. setting of deadlines, notifications of defects, declaration of withdrawal or reduction) require text form to be effective.

1.7. References to the applicability of statutory provisions shall only have clarifying significance. Even without such clarification, the statutory provisions shall therefore apply unless they are directly amended or expressly excluded in these GTC.

2. Information, properties, performance determination

2.1. Information and advice as well as other services by Xelon are provided exclusively on the basis of previous experience. The values stated here are to be regarded as average values. All information about products and services, in particular the illustrations, content and performance information and other information available in offers and on the website of Xelon are to be regarded as approximate average values.

2.2. A reference to standards, similar technical regulations as well as technical information, descriptions and illustrations in offers, on the website in advertisements of Xelon only constitute a property statement if the quality has been expressly declared as a property; otherwise they are non-binding general descriptions of performance.

2.3. A guarantee is only deemed to have been assumed by Xelon if Xelon has designated a property or service as "guaranteed" in writing. Xelon does not warrant that third-party products are suitable for a specific purpose or have specific functionalities, unless this is expressly promised to the same extent in the contractual conditions of the third-party manufacturer. In the event of performance failures in connection with Third Party Products purchased through Xelon, Xelon expressly warrants only to the extent and extent that the Third Party Manufacturer grants to Xelon and/or the End User in its contractual terms and conditions for the affected product.

2.4. All services and products of Xelon and also products from third-party manufacturers are constantly updated and adapted to a progressing state of the art. Xelon therefore reserves the right to make changes to the services and products at its reasonable discretion even after the order or conclusion of the contract and points out that the third-party manufacturers can also adjust their contractual conditions at any time with regard to products that the Customer has purchased via Xelon.

2.5. Xelon does not assume any liability for the usability of the services and products of Xelon for the purpose envisaged by the customer outside of the legally mandatory liability, unless otherwise agreed with the customer in writing.

2.6. Xelon reserves the property rights and copyrights to illustrations, performance and other property descriptions as well as other documents on products and services of Xelon. The customer undertakes not to make the information and documents referred to in the preceding sentence available to third parties unless Xelon gives its prior express written consent.

3. Conclusion of contract, start of contract, scope of services

3.1. Xelon's offers are subject to change and non-binding.

3.2. The order placed by the customer shall be deemed to be a binding offer of contract. Unless otherwise stated in the order, Xelon is entitled to accept this contract offer within 7 days after receipt by Xelon.

3.3. Acceptance by Xelon can be declared either in writing or by e-mail by order confirmation or implied by providing the service or product to the customer.

3.4. If a test account (so-called "trial account") is set up for customers, this can be converted into a full account by entering a valid means of payment that can be selected in our online customer area. The customer assures Xelon of the availability of the required charges on the specified means of payment at the time of the contract offer. Only with a full access the customer is entitled to order payable services and products from Xelon.

3.5. The customer configures his individual services via the website provided by us or alternatively via the programming interface provided (so-called API). In certain cases, services are provided in accordance with a prior offer (in writing or by e-mail). When configuring the individual IaaS solution, the client submits an offer for the contractual service desired by him in the sense of section 3.2. Unless otherwise agreed, the performance data, terms and conditions and prices applicable at the time of conclusion of the contract, which are indicated in the corresponding portal of Xelon, shall apply. Further details can optionally be regulated in an SLA.

3.6. The specific data and prices for the scope of services requested by the customer are stored at Xelon. The service data can be called up at any time in the online customer area and adjusted by the customer. Furthermore, the customer can contact Xelon's customer service via a contact form or by e-mail to support@xelon.ch.

3.7. Unless otherwise agreed, Xelon shall provide the contractual services for the period specified by the customer (on demand).

4. Duties and obligations of the client

4.1. The customer assures that the data provided by them are correct and complete. They undertake to reconfirm the correctness and completeness of the data to Xelon upon Xelon's request within 10 days of receipt (in writing or by e-mail).

4.2. The customer shall provide Xelon with reasonable support in the performance of the service.

4.3. If the Customer wishes to make use of one of the "Bring your own licence" (BYOL) options offered by Xelon, the Customer shall be responsible for the correct ordering, migration, licensing and administration of the product licences itself and shall directly address the transfer steps provided for this purpose by the manufacturer with the manufacturer and go through them in a legally valid manner. With regard to such BYOL licences, the Customer warrants that it has been granted sufficient rights of use by the respective manufacturer to enable Xelon to operate the relevant programs. The Customer shall indemnify Xelon in accordance with clauses 4.7 and 4.8 against any claims asserted by the manufacturers or other third parties against Xelon as a result of the use of the Customer's BYOL licences.

4.4. The customer shall retrieve the incoming messages from Xelon to its e-mail boxes, which it has deposited with us as a communication address, at regular intervals of no more than three working days.

4.5. The customer undertakes measures to keep passwords received from Xelon for the purpose of accessing its services strictly secret, to inform Xelon immediately (by e-mail) as soon as they become aware that the password is known to unauthorised third parties and to change it immediately or have it changed by Xelon if they have reason to suspect that unauthorised third parties have become aware of it. If, due to the fault of the customer, third parties use Xelon's services by misusing the passwords, the customer is liable to Xelon for, among other things, the fees to be paid for the account as well as claims for damages arising therefrom.

4.6. The Customer warrants to Xelon by way of an independent guarantee that the measures taken by the Customer in connection with the provision of services by Xelon, in particular with regard to the use and content of the infrastructure, do not violate legal prohibitions, morality and the rights of third parties (e.g. trademark, name, copyright, data protection rights) and, if applicable, will also comply with the contractual conditions of the third-party manufacturers applicable to the use of the respective products (including the provisions regarding BYOL).

4.7. If claims are asserted against Xelon by third parties due to any infringements of rights they may claim on account of the customer, in particular due to the customer's infrastructure use and content, the customer shall immediately indemnify Xelon, provide Xelon with the necessary support in its legal defence and indemnify Xelon against the costs of the legal defence. The prerequisite for this is that Xelon informs the customer immediately about asserted claims, does not make any concessions or acknowledgements or declarations equivalent to these and enables the customer to conduct all judicial and extrajudicial negotiations about the claims at its own expense.

4.8. If a claim is made against Xelon by a third party on account of the customer, in particular on account of the customer's infrastructure use and content, for injunctive relief and/or damages on account of a violation of legal provisions, the customer shall immediately and unconditionally indemnify Xelon against damages (regulatory remedies, contractual penalties, costs of an out-of-court dispute resolution, etc.) on account of a violation of legal provisions, unless the customer proves that the violation is not based on its own conduct or conduct attributable to it.

4.9. In the case of products without limited data transfer volume, the customer shall refrain from operating or even directly or indirectly promoting so-called adult and download sites or content, sound streams, etc. Exceptions are only possible with Xelon's consent, which can be revoked at any time. Furthermore, the customer refrains from executing programmes or scripts or from operating sites which impair the system and network resources to the detriment of other customers. Furthermore, the customer is obliged to comply with the storage space limit.

4.10. Xelon may discontinue the provision of Services and access to the Network if any act or omission by the customer endangers or appears to endanger the normal functioning or security of the Network over which Xelon provides the Services, or if the customer breaches the Contract (including this Policy) with Xelon. The customer will be charged for the time and expense associated with investigating such breaches. The customer acknowledges that Xelon may have to disclose the customer's identity to third parties (e.g. law enforcement authorities) in the event of a violation of these guidelines.

5. Prices and payment

5.1. The fee owed by the customer is determined according to Xelon's price quotations valid at the time of the conclusion of the contract. The price quotations can be viewed in the respective portal of Xelon. In principle, usage-dependent prices are charged in the specified unit (e.g. time) plus the statutory value added tax.

5.2. Billing and invoicing shall take place monthly in arrears, depending on the billing model, at the earliest on the first day of the month following the billing month, or in advance.

5.3. Xelon is entitled to issue a separate invoice also within one month if the current claim exceeds the usual invoice amount.

5.4. Xelon issues an electronic invoice on the customer data provided by the customer in the online customer area. The invoices can be accessed via the customer area and will be sent to the invoice email address provided by the customer upon request. Sending the invoice by post requires a supplementary agreement.

5.5. The payment of the fees can be made via the means of payment offered at the time (usually Paypal, credit card and bank transfer). The customer authorises Xelon to collect incurred fees via the specified means of payment. They have to reimburse all costs incurred by non-executable payment transactions (so-called chargebacks), unless the customer has observed due diligence or the damage would have occurred even if he had observed such diligence.

5.6. All claims are due and payable upon invoicing, unless Xelon specifies a payment period in the invoice. If the customer does not pay within the payment period stated in the invoice, he will be in default without further reminder. If the customer does not comply with a further request for payment, Xelon reserves the right to charge interest on arrears in the amount of 10%.

5.7. For products with limited data transfer volume, if the respective limit is exceeded during a calendar month, the customer will be charged for the additional traffic incurred in the following month in accordance with the published price.

6. Contract period, termination

6.1. A contractual relationship between the parties shall in principle be deemed to be concluded for an indefinite period.

6.2. Unless otherwise defined, the customer may terminate the contractual relationship as a whole or individually ordered contractual components at any time without notice with effect from the next working day.

6.3. If no minimum contract period is defined, Xelon can terminate the contractual relationship as a whole or individually ordered contract components by giving 4 weeks' notice to the end of the month.

6.4. The right of both parties to terminate without notice for good cause remains unaffected.

6.5. An important reason for termination exists for Xelon in particular if the customer is in default with the payment of the fees owed or a not insignificant part thereof (at least 50%) for a further 30 days despite a payment reminder. Furthermore, an important reason exists if an application for the opening of insolvency proceedings has been filed against the customer's assets or if such an application has been rejected due to lack of assets, if enforcements against the customer have remained unsuccessful or if enforcement measures have been taken and have not been withdrawn within one month.

6.6. Any notice of termination must be given in writing or by email to be effective.

6.7. The application of Art. 266 para. 2 CO (Code of Obligations) is explicitly excluded.

6.8. If the regulatory content of individual provisions extends beyond the term of the contract (e.g. exemptions from liability, limitations of liability, copyrights, data protection), these provisions shall also remain effective beyond the term of the contract.

6.9. Upon termination of the contract - irrespective of the legal reason - any rights of use or licences granted by Xelon or third parties within the scope of the provision of services shall lapse.

6.10. Notwithstanding any existing right of termination, Xelon is entitled to withhold the execution of contractual performance obligations or several, temporally and factually interconnected contracts partially or completely, if the customer is in default with the payment of the owed fees or a not insignificant part thereof (at least 50%) for another 10 days despite a payment reminder and/or if there are concrete indications of a deterioration of the customer's financial situation. In this case, Xelon can demand payment or partial payment concurrently against performance, even if an obligation to perform in advance was or is contractually agreed. Further claims for damages remain unaffected by this.

7. Third party rights

7.1. If a third-party asserts claims against the customer due to the infringement of an industrial property right or copyright by the use of the services owed by Xelon in Switzerland and if their use is impaired or prohibited as a result, the following provisions shall apply.

7.2. Xelon shall, at its option and expense, either modify or replace the agreed services in such a way that the property right is not infringed, but essentially corresponds to the agreed service in a way that is reasonable for the customer, or indemnify the customer from licence fees vis-à-vis the property right holder or third parties.

7.3. Prerequisites for Xelon's liability according to clause 7.2 are that the customer immediately notifies Xelon of the assertion of claims by third parties, does not acknowledge the alleged infringement of property rights and leaves any dispute including any out-of-court settlements to Xelon or only conducts them in agreement with the latter. If the customer discontinues the use for reasons of mitigation of damages or other important reasons, they are obliged to point out to the third party that the discontinuation of use does not imply an acknowledgement of the alleged infringement of property rights.

7.4. Insofar as the customer is responsible for the infringement of property rights, the claim of third parties is based on the fact that the service content owed by Xelon was changed without their knowledge, processed in another way and not used with services provided by Xelon, claims against Xelon of the customer are excluded according to this clause 7.

7.5. With regard to third party products, Xelon only assumes a legal warranty to the extent that the third party manufacturer grants it to Xelon and/or the End User in its contractual terms for the product concerned.

7.6. Insofar as applicable, legally binding liability regulations or the regulations in section 8 remain unaffected by this.

8. Liability

8.1. Xelon shall not be liable to the customer for damages or reimbursement of expenses, irrespective of the legal grounds.

8.2. The above exclusion of liability shall not apply in cases where liability is mandatory by law, such as

- for Xelon's own intentional or grossly negligent breaches of duty or intentional or grossly negligent breaches of duty by legal representatives or vicarious agents of Xelon;

- for the breach of essential contractual obligations; "Material contractual obligations" are obligations that protect the customer's legal positions material to the contract, which this contract is specifically intended to grant him according to its content and purpose; furthermore, material contractual obligations are contractual obligations whose fulfilment makes the proper performance of this contract possible in the first place and on whose compliance the customer has regularly relied and may rely;

- in case of injury to life, limb and health, also by legal representatives and vicarious agents of Xelon;

- in the event of default, insofar as a fixed delivery date was agreed;

- insofar as Xelon has assumed a guarantee for the quality of the services and products or for the existence of a performance success, or a procurement risk;

- in the event of liability under the Product Liability Act or other legally binding liability circumstances

8.3. In the event that Xelon, its legal representatives or its vicarious agents are only guilty of slight negligence and no case of the aforementioned clause 8.2 exists, Xelon shall only be liable for the contract-typical and foreseeable damage, even in the event of a breach of essential contractual obligations.

8.4. Insofar as Xelon is liable pursuant to this clause 8, its liability is limited in amount to a maximum liability sum of CHF 100,000.00 for each individual case of damage. This does not apply if Xelon is guilty of

malice, intent or gross negligence, for claims due to injury to life, limb or health, as well as in the case of a claim based on a tortious act or an explicit, additional guarantee or the assumption of a procurement risk by Xelon or in cases of legally compelling, deviating, higher liability sums. Any further liability of Xelon is excluded.

8.5. Xelon's liability for indirect damages (in particular in the form of lost profit) is excluded. Clause 8.4 above shall apply accordingly.

8.6. For the loss of data or programs, Xelon is liable, irrespective of the cases mentioned in 8.1 to 8.5, only up to the amount of damage that would have occurred even with regular data backups. The aforementioned limitation of liability therefore applies in particular if the damage is based on the fact that the customer has failed to carry out regular data backups himself, which may not be stored in the Xelon data centre itself, and thus to ensure that lost data can be restored with reasonable effort. This does not apply if Xelon has contractually taken over the data backup for the customer.

8.7. Xelon uses TLS/SSL encryption for certain security-relevant data transmissions and connections. Despite this, data communication via the Internet cannot be guaranteed to be error-free and/or available at all times according to the current state of the art. Liability for constant and uninterrupted availability is therefore excluded, notwithstanding the cases mentioned in 8.1 to 8.5, unless there is a separate contractual agreement with the customer.

8.8. Xelon's liability for third party products purchased by the Customer through Xelon is in any case limited to the same extent as the liability of the third party manufacturer under its relevant contractual terms and conditions for the respective product (including agreements regarding order processing).

8.9. A reversal of the burden of proof is not associated with the above provisions.

9. Information and audit rights

9.1. The Customer and Xelon mutually undertake to treat all confidential information and business secrets of the respective other contractual partner, which the other party makes accessible to the other party due to the initiation and fulfilment of the contract, confidentially for an unlimited period of time and to use them only within the scope of the agreed purpose and to comply with the applicable provisions of data protection and data security. The processing of personal data by Xelon is also governed by Xelon's "Privacy Policy" and the "Agreement on commissioned data processing" concluded between the parties for commissioned data processing, including its appendix "TOM - Technical and organisational security measures", which take precedence over the provisions under § 9 in the event of any ambiguities or contradictions.
With regard to third-party products that the Customer purchases from Xelon, the relevant provisions in the contractual terms and conditions of the third-party manufacturer shall apply instead of this Section 9 with regard to the handling and processing of data.

9.2. All personal data provided (such as title, name, address, date of birth, e-mail address, telephone number, fax number, bank details) will be collected, processed or used exclusively in accordance with the applicable data protection conditions.

9.3. Insofar as personal data is required for the establishment, content or amendment of the contractual relationship (inventory data), it shall be used exclusively for the processing of the concluded contracts. Any further contractually required use of inventory data for the purposes of advertising or market research requires the express consent of the customer. It is possible to give consent before declaring registration or the use of services. The declaration of consent is voluntary and can be revoked at any time.

9.4. Personal data which are necessary to enable the use of the services and to bill for them (traffic/usage data) are used to process the contracts concluded. Such traffic data are in particular the characteristics for identifying the customer as a user, information about the beginning and end as well as the scope of the respective use of services.

9.5. Furthermore, subscriber-related traffic data can be used for purposes of advertising, market research, for the demand-oriented design of Xelon's offer as well as for the creation of user profiles using pseudonyms, provided that the customer has consented to this use. The customer is entitled to object to this use of the data at any time.

9.6. Xelon expressly points out to the customer that data protection for data transmissions in open networks, such as the Internet, cannot be fully guaranteed according to the current state of the art.

9.7. The customer is aware that the provision of services may involve commissioned data processing. In this case, the customer is responsible for compliance with the statutory data protection provisions and is deemed to be the "responsible party". Likewise, Xelon declares that the technical and organisational measures according to § 9 are complied with on the merits.

9.8. If the customer collects, processes or uses personal data, it shall be liable to Xelon by way of an independent guarantee that this is done in accordance with the provisions of data protection law and shall fully indemnify Xelon against claims of third parties in the event of a breach. Clause 4.6 and clause 4.7 apply accordingly.

9.9. Xelon will forward complaints as well as claims for information, correction, deletion and blocking to the customer. The customer is obliged to comply with data protection information obligations by immediately notifying Xelon in writing.

10. Limitation, Place of Performance, Miscellaneous

10.1. The limitation period for all contractual and legal claims against Xelon is one year.

10.2. The shortening of the limitation period pursuant to clause 10.1 shall not apply if a longer limitation period is prescribed by law. In this case, the longer limitation period shall apply.

10.3. In accordance with the statutory provisions, claims based on an intentional or grossly negligent act of Xelon, a legal representative or vicarious agent of Xelon as well as claims for damages from injury to life, body or health based on an intentional or negligent breach of duty by Xelon, a legal representative or vicarious agent shall also be time-barred.

10.4. Xelon may transfer its rights and/or obligations from the contractual relationship to one or more third parties (e.g. assumption of contract and/or debt, assignment). In this case and the simultaneous impairment of its interests, the customer has the right to terminate the contract extraordinarily (in writing or by e-mail).

10.5. Any waiver by Xelon (such as, for example, for the enforcement of contractual penalties) must be expressly declared in writing or by e-mail. Xelon's failure to insist on full and/or partial compliance with any of the terms or provisions of these T&Cs and the Supplementary Rules shall not be construed as an acknowledgement of the breach or a waiver of any future application of the relevant term, provision, option, right or remedy.

10.6. The customer may only offset claims for remuneration of Xelon against claims that have been legally established or recognised by Xelon.

10.7. The assignment or pledging of claims or rights to which the customer is entitled against Xelon is excluded without the prior written consent of Xelon.

10.8. The transfer of use (in whole or in part) to third parties is only permitted with the prior written consent of Xelon.

10.9. Swiss law shall apply exclusively to the exclusion of the UN Convention on Contracts for the International Sale of Goods (CISG) and the conflict of laws. The contractual languages are German and English.

10.10. Place of performance as well as place of jurisdiction for all disputes arising from or in connection with this contract is the registered office of Xelon. Xelon is furthermore entitled to sue the customer at his general place of jurisdiction. Any exclusive place of jurisdiction remains unaffected.

10.11. Xelon and the customer are entitled, in the event of a dispute arising from the contractual relationship, to resort to arbitration before conducting legal proceedings. The arbitration shall serve to settle the dispute in whole or in part, provisionally or finally.

11. Reservations of right of modification

11.1. We are entitled to amend these GTC and the other contractual conditions with a notice period of 6 weeks in advance. We will notify the customer of the respective amendment by e-mail or in other text form. At the same time, the customer is expressly informed that the respective amendment will become the subject matter of the contract existing between the contracting parties if the customer does not object to this amendment in text form within a period of 4 weeks from the notification of the amendment. If the customer objects, each party shall

have the right to terminate the contract with the notice period applicable to ordinary termination.

11.2. Insofar as the amendment pursuant to clause 11.1 above relates to the promised services of the contractual relationship, an amendment of the GTC is permissible if the agreement of the amendment, taking into account the interests of Xelon for the customer is reasonable. The same applies if Xelon reserves the right to unilaterally change a service at any time in these GTC.

11.3. By continuing to use a service or product after notification and implementation of a change without notice of termination being given by the customer, the customer declares his or her agreement with the contractual terms and conditions and general terms and conditions valid at that time, which are currently available at https://xelon.ch/gtc.

In other words: We may change these terms and conditions. We will communicate these changes to you in good time so that you can inform yourself about the changed contents. If you continue to use Xelon after a change to the TOS, you automatically accept the new TOS.

12. Final provision (severability clause)

If any provision of this contract is or becomes invalid/void or unenforceable or incomplete in whole or in part, this shall not affect the validity of the remaining provisions of this contract. The parties shall replace the ineffective/void/impracticable provision or gap requiring filling by a valid provision which corresponds in its legal and economic content to the invalid/void/impracticable/gap provision and the overall purpose of the contract.

Zug, February 2024