

# GENERAL TERMS AND CONDITIONS OF XEROX AG

## SERVICES

*These general terms and conditions are for information only. The Xerox AG General Terms and Conditions in German or French apply.*

### 1. SCOPE AND APPLICATION

- 1.1 These Terms and Conditions ("Terms") govern the conclusion, content and execution of service contracts between Xerox AG ("Xerox") and the "Customer".
- 1.2 Xerox acts both in its own name and in the name and on behalf of Xerox Finance GmbH.
- 1.3 Xerox's Terms Purchase of Items is applicable to the purchase of items, while the Terms Rental and Licensing of Software and the provision of Software-as-a-Service services are subject to the Terms Software&SaaS.
- 1.4 Xerox maintenance services are governed by separate Terms.
- 1.5 These Terms apply unless written agreements to the contrary are made in the individual case in the contract. The Customer's general terms and conditions of business or delivery do not apply, even if reference is made to them in their offer or in other associated documents.

### 2. CONTENT OF THE SERVICES

- 2.1 The services to be provided by Xerox are separately and conclusively recorded in writing. In the absence of such a regulation, no service agreement is validly concluded.

### 3. PRICES, TERMS OF PAYMENT AND PRICE CHANGES

- 3.1 The price for the services is exclusive of the statutory value added tax.
- 3.2 All claims are payable net within thirty (30) days from the date of invoice.
- 3.3 Upon the due date, the customer shall be in default without further notice. A default interest of 5% per year will be charged for late payment. In addition, a further CHF 25.00 per reminder and a further CHF 35.00 per registered letter will be charged. Collection fees will be charged additionally according to expenditure, whereby they will in any case amount to at least CHF 150.00. We reserve the right to assert any further damage caused by delay.
- 3.4 **Ordinary Price Adjustment:** The prices agreed between the parties may be increased by 5% after the expiry of 12 months from the commencement of the Contract at the beginning of each subsequent Contract Year. However, if the Swiss Consumer Price Index (*schweizerischer Konsumentenpreisindex*) ("CPI") has increased by more than 5% during the same period, Xerox shall be entitled to increase the agreed Service Fee and other agreed remuneration in line with the increase in the CPI. No prior notice of the price increase shall be required and such price increase shall not constitute grounds for early termination of the Contract by the Customer.
- 3.5 **Extraordinary Price Increases:** Xerox further reserves the additional right, independent of the ordinary price adjustments, to change the charges agreed in this Agreement upon three months' prior notice, commencing on the first day of the following month. If Xerox announces such a price change, the Customer may object to such price change in writing by registered letter giving one month's

notice. The period shall commence on the date of delivery of the relevant communication from Xerox. In the event of a timely objection, no such extraordinary price adjustment will be made. If no such objection is made, the new prices will apply to this Agreement as of the effective date specified in the notice, and Xerox will indicate this in the notice. Such notification shall not constitute grounds for early termination of the Contract by the Customer.

### 4. PROPERTY

- 4.1 If the transfer of ownership forms part of the service, the item purchased remains the property of Xerox until payment is made in full. Xerox may record the retention of title in the retention of title register. Claims of the Customer against third parties arising from any unauthorized disposal of the item purchased are transferred to Xerox. In the event of a seizure or other impairment of Xerox's rights by third parties, the Customer is obligated to point out the retention of title and to inform Xerox immediately in writing.
- 4.2 Furthermore, the General Terms and Conditions of Purchase apply.

### 5. INTELLECTUAL PROPERTY

- 5.1 Except as provided herein, neither Party shall acquire any right, title or interest in the Intellectual Property of the other Party or its licensors.
- 5.2 The licensing of Software is governed by separate Xerox Terms and Conditions.
- 5.3 Third-party Software, as well as third-party Cloud services, are subject to the terms of use and maintenance provided by the respective provider.

### 6. ACCEPTANCE

- 6.1 The agreed service shall be deemed to have been accepted by the purchaser as soon as the agreed scope of delivery has been fulfilled and when all essential functions are performed in accordance with the specifications. The commencement of operations shall in any case be considered as acceptance.
- 6.3 **Notice of Defects:** If defects are found during acceptance that do not significantly impair or make impossible the functionality and/or proper operation of the service provided by Xerox, the service is considered accepted without any claim to reduction, but subject to the reservation that the defect be repaired in a timely manner.

### 7. WARRANTY OF QUALITY

- 7.1 Xerox warrants the Service for the agreed duration, or in the absence thereof, for a maximum of three (3) months from the date of delivery, that the Service will meet the warranted characteristics and will not have defects that cancel or significantly reduce its value and fitness for its intended use.
- 7.2 Warranty claims are limited to the right to free repair.

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### 8. LEGAL WARRANTY

- 8.1 Xerox warrants that its services do not violate any third-party property rights.
- 8.2 As soon as the Customer becomes aware of a possible infringement of property rights, he will inform Xerox. Customer will leave it to Xerox, within the scope of the applicable procedural law, to independently defend against the claim and settle it, provide Xerox with all available information and grant Xerox all support and authority to defend against such a claim, as well as not settling such legal disputes by way of settlement without Xerox's prior consent.
- 8.3 Xerox's liability for third party claims resulting from breaches of legal warranty is limited to claims arising from legally enforceable court or arbitration awards, settled by Customer with Xerox's consent or whose existence has been acknowledged by Xerox. Xerox will not contest claims that are obviously justified. Xerox will also reimburse Customer for reasonable attorneys' fees arising from the aforementioned court or arbitration proceedings. The prerequisite for this is that Customer immediately notifies Xerox of the assertion of such a claim, grants Xerox the authority to independently defend against the claim and to settle it, provides all available information at Customer's expense and grants Xerox all support and authority to defend against such a claim and has not settled such litigation by way of settlement without Xerox's prior consent.
- 8.4 If the third party has obtained or threatens to obtain a prohibition against Customer from obtaining or using some or all of the Services, Xerox will, at its option, terminate the Agreement:
- a) replace the Services with other non-infringing Services; or
  - b) adapt the services so that they no longer infringe the rights of third parties,

This is, however, always provided that the contractually essential functionalities of the services are maintained and such replacement or adaptation is carried out without significant impairment of the customer's operational processes.

- 8.5 If neither a replacement nor an adjustment can be effected, the customer may extraordinarily terminate the corresponding service or partial service.
- 8.6 In addition, Xerox is not liable for infringement actions or claims resulting from the use of a computer system in conjunction with other systems, software or data not provided by Xerox.
- 8.7 Warranty for third-party Cloud Services: Only the warranty provisions agreed between Customer and the third party apply to third-party Cloud Services. Xerox excludes all warranties of title and non-infringement.

### 9. LIABILITY

- 9.1 Each party shall be liable to the other party for the direct damage caused to the other party by culpable violation of this contract.

- 9.2 The liability for damages of the other party caused by intentional or grossly negligent breach of contract is unlimited. In all other cases the liability for damages caused by or in connection with this contract is (a) unlimited for personal injury and (b) for other damages in total limited to the purchase price paid by the customer.
- 9.3 Notwithstanding the foregoing paragraphs, any liability arising out of or in connection with this Agreement for indirect or consequential damages, such as loss of profit, business interruption or loss of data, shall be excluded to the extent permitted by law.
- 9.4 The Customer is liable for all damages caused to Xerox as a result of the use of the provided Software in a manner contrary to care or instructions. The Customer is liable for such damages in accordance with the statutory provisions and without application of sections 9.2 and 9.3 of these Terms.
- 9.5 In the case of cloud services of third parties, only the liability provisions agreed between the Customer and the third party shall apply. Xerox excludes all liability for third-party cloud services.

### 10. EXPORT CONTROL

- 10.1 The Customer undertakes to comply with all applicable export control regulations in connection with the import, export and re-export of pressure equipment, software or other services under this contract, in particular the relevant regulations of the US Department of Commerce, the US Department of Treasury and the US Department of State.

### 11. PROVISION OF SERVICES BY THIRD PARTIES

- 11.1 Xerox is entitled to have services performed by third parties (subcontractors or auxiliary persons). It is responsible for the selection, instruction and supervision of the subcontractors.

### 12. DATA PROTECTION

- 12.1 Within the framework of the contractual relationship, each party processes personal data about customers, employees and other auxiliary persons of the other party. This includes, for example, name, postal/email/IP address, telephone number, profession/function, means of identification, copies of identity documents, etc. For the purposes of contract execution and maintenance of the contractual relationship (e.g. communication, access control, fault reports, orders, invoicing, satisfaction analyses, information on new products, invitations to events, etc.), the parties shall process this personal data on their own systems under their respective responsibility and using appropriate technical and organisational measures to protect the data.
- 12.2 Xerox shall also process data of end customers, employees and other auxiliary persons of the Customer on the use of the Services provided by Xerox for the purpose of quality assurance, product development and for tailor-made offers. Xerox shall inform the Customer in advance of any other purposes for which the Data may be processed.

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12.3 Each party shall comply with the Data Protection Act when processing personal data of end customers, employees and other auxiliary persons of the other party (in particular when using contract data processors and transferring data abroad). Each party shall inform its customers, employees and other auxiliary persons about the processing by the other party, shall be the first point of contact for their data subject rights and shall comply with its reporting and notification obligations vis-à-vis the supervisory authority and the persons affected by a breach. The parties shall inform each other in this respect.

12.4 In addition, depending on the Service, Xerox shall process Personal Data only on behalf of the Customer. Such Personal Data entrusted to Xerox by the Customer shall be processed by Xerox solely for the purpose of fulfilling the purpose of the Data Processing Agreement ("DPA") entered into with the Customer. The version of the DPA currently available at [www.xerox.com/ch\\_agb](http://www.xerox.com/ch_agb) including the Processing Purpose described therein in Annex 1 and the Technical and Organisational Measures set out in Annex 2 shall be deemed to have been concluded under the conditions regulated therein.

## 13. WRITTEN FORM

13.1 Amendments and supplements to the contract require written agreement.

13.2 Xerox may enable the possibility of digital signature and shall separately specify the necessary technical requirements for this purpose.

## 14. APPLICABLE LAW AND PLACE OF JURISDICTION

14.1 Swiss substantive law shall apply, excluding the United Nations Convention on Contracts for the International Sale of Goods of 11 April 1980.

14.2 Exclusive place of jurisdiction is Zurich ZH, Switzerland. Xerox reserves the right to bring proceedings before other competent courts.

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