

## General Terms and Conditions for Companies of the XU Group GmbH

This English translation is for information purposes only. The original German text is the legally binding version in all respects. **Original version:** <https://xu.de/geschaeftsbedingungen/>

### 1. Scope of application

- 1.1. These General Terms and Conditions (hereinafter "**GTC**") apply to all contractual relationships between XU Group GmbH (hereinafter "**Contractor**") and the contractual partner (hereinafter "**Client**").  
These GTC apply analogously to subsidiaries of XU Group GmbH, such as XU Exponential Game Changers GmbH.
- 1.2. In addition to these GTC, the special contractual terms and conditions of the Contractor applicable to the respective subject matter of the contractual relationship in question (such terms and conditions hereinafter also referred to as "**special contractual terms and conditions**") shall apply to a contractual relationship between the Contractor and the Client in addition to individual agreements.  
The special contractual terms and conditions include in particular the contractual terms and conditions for the production of learning content or other multimedia products as well as the general terms and conditions of use and licence for online education and exchange platform. The applicable special contractual terms and conditions are all available on the Contractor's website at the URLs <https://xu.de/geschaeftsbedingungen/> or <https://xu.de/en/legal/> and will be sent to the Client by the Contractor at the Client's request. These GTC and the special terms and conditions of contract are hereinafter also referred to together as the "**General Terms and Conditions of Contract of XU Group GmbH**".
- 1.3. Deliveries, services and offers of the Contractor - including future ones - are made exclusively on the basis of the General Terms and Conditions of Contract of XU Group GmbH. Deviating, conflicting or supplementary general terms and conditions of the Client shall only become part of the contract if and to the extent that the Contractor has expressly agreed to their validity. The General Terms and Conditions of Contract of XU Group GmbH shall also apply exclusively if the Contractor provides deliveries and services to the Client without reservation in the knowledge of conflicting, supplementary or deviating general terms and conditions of the Client. Any individual agreements made with the Client in individual cases (including collateral agreements, supplements and amendments) shall take precedence.
- 1.4. Insofar as the Contractor's special contractual terms and conditions contain provisions that deviate from or contradict these GTC, the respective provisions in the special contractual terms and conditions shall take precedence.

### 2. Order placement, agencies, assignment

- 2.1. The Contractor shall be bound by offers submitted by him for thirty (30) days.
- 2.2. A contract is then upon informal acceptance of the Contractor's offer by the Client.
- 2.3. If the Client submits an offer, the contract shall be concluded upon acceptance by the Contractor.
- 2.4. Orders from agencies or intermediaries shall only be accepted if the agency's customer is named precisely and only if the order is clearly placed by the agency on behalf of the customer so named. The Contractor is entitled to demand proof of the order from the agency as well as written authorisation of the agency by the customer. The contract is only concluded with the agency or the agent, who is liable for the claim to remuneration and is the contractual partner of XU. Invoices shall be issued to the agency. In the case of agency bookings, the Contractor may demand that the customer places a corresponding order with the agency itself instead of the agency. If the Contractor accepts an order from an agency in his own name, but for a precisely specified customer of the agency, the agency shall assign any payment claims against the customer to the Contractor by way of security upon conclusion of a contract between the agency and The Contractor. The Contractor hereby accepts this assignment. The Contractor is authorized to collect the assigned claim if the agency has not paid the secured claim within 30 days of the due date to the

Contractor. The agency is not permitted to transfer services booked for a specific customer to another customer or to third parties without the express written consent of the Contractor.

### **3. Remuneration**

- 3.1. All prices are subject to the applicable statutory value added tax. Insofar as prices and other remuneration are not agreed individually, the Contractor's current price lists at the time of conclusion of the contract shall apply.

### **4. Acceptance of work performance**

- 4.1. Insofar as the object of the provision of services by the Contractor is the creation of a work, this work shall be accepted by the Client in accordance with the provisions of this Section 4 of these GTC and otherwise in accordance with the applicable statutory provisions, unless otherwise stipulated in the Contractor's special contractual terms and conditions.
- 4.2. The Contractor shall notify the Client that the work is ready for acceptance, if necessary after successfully carrying out a test run agreed in the individual contract. The Client shall commence the inspection of readiness for acceptance within 5 working days and then accept the work.
- 4.3. If acceptance fails, the Client shall provide the Contractor with a written list of all defects preventing acceptance. After the expiry of a reasonable period of time, the Contractor shall provide a defect-free version of the work that is ready for acceptance. During the subsequent inspection, only the recorded defects shall be inspected insofar as they can be the subject of an isolated inspection in terms of their function.
- 4.4. After successful inspection, the Client must declare acceptance of the work to the Contractor within 3 days.
- 4.5. The Client may not refuse acceptance due to insignificant defects.

### **5. Terms of payment, default**

- 5.1. The invoice amount is the sum of the prices of the individual services in the billing period and other components agreed for the price calculation.
- 5.2. Unless otherwise agreed, invoices shall be paid within 14 days of the date of the invoice to the Client, provided that the invoice has been received by the Client within this period, otherwise immediately after receipt of the invoice by the Client, without deductions to the account specified by the Contractor in the invoice. The date of receipt of payment by the Contractor shall apply. If payment is not credited on time, the Client shall be in default of payment without the need for the Contractor to issue a reminder and/or set a deadline.
- 5.3. If the Client is in default of payment, the Contractor shall be entitled to withhold further performance until the Client has made all outstanding payments or provided appropriate security. The Contractor shall also be entitled to withhold performance if it becomes apparent after conclusion of the contract that the Contractor's claim for payment is jeopardised by the Client's inability to pay. Any rights transferred by the Contractor to the Client or rights of use granted to the Client shall be deemed not to have been transferred or granted for the period of default; the effects of any transfer of rights/granting of rights of use to the Client shall be suspended in this respect.
- 5.4. Bank charges shall be borne by the Client. Unless expressly agreed otherwise, payments shall be made by bank transfer in euro.
- 5.5. Unless otherwise agreed in writing, title to the items to be delivered shall remain reserved until full fulfilment of all current and future claims of the Contractor arising from the contract and an ongoing business relationship; the transfer of rights or granting of rights of use shall be subject to a condition precedent until full payment of the remuneration.

### **6. Liability of the Contractor, statute of limitations**

- 6.1. In the event of wilful or grossly negligent breaches of duty and in the event of any culpable injury to life, limb or health, the Contractor shall be liable without limitation for all damages attributable thereto.
- 6.2. In the event of gross negligence on the part of non-executive employees, the Contractor's liability for property damage and financial loss shall be limited to the foreseeable damage typical of the contract. This

shall not apply in the event of a breach of material contractual obligations. Essential contractual obligations are those obligations whose fulfilment is essential for the proper execution of the contract, whose breach jeopardises the achievement of the purpose of the contract and on whose compliance the contractual partner regularly relies and may rely.

- 6.3. In the event of slight negligence, the Contractor shall only be liable for property damage and financial loss in the event of a breach of material contractual obligations; liability shall be limited to the foreseeable damage typical of the contract. This also applies to loss of profit and loss of savings.
- 6.4. In the event of loss of data, the Contractor shall only be liable for the expenditure that would have been necessary to restore the data if the Client had backed up the data properly and regularly. This limitation shall not apply if and insofar as the data backup is part of the services to be provided by the Contractor on the basis of a corresponding individual contractual agreement between the parties.
- 6.5. The Contractor's strict liability for damages in accordance with § 536 a BGB for defects existing at the time of conclusion of the contract is excluded.
- 6.6. Any further liability for damages is excluded, regardless of the legal nature of the claim asserted. This applies in particular to unauthorized actions in accordance with §§ 823, 831 BGB.
- 6.7. However, any unrestricted liability of the Contractor under the provisions of the German Product Liability Act or due to fraudulent intent, absence of a warranted characteristic, due to the assumption of a guarantee or otherwise due to mandatory statutory provisions shall remain unaffected.
- 6.8. The limitation period for warranty claims for defects, including claims for damages, is one year, unless a longer limitation period is prescribed by law. The statutory limitation periods shall apply exclusively to claims for damages that are not based on defects. The mandatory limitation periods of the Product Liability Act remain unaffected in any case.

## **7. Force majeure, cancellation, termination and cooperation**

- 7.1. In the event of force majeure, neither party shall be obliged to fulfil its contractual obligations for the duration of the force majeure. Cases of force majeure include, in particular, riots, fire, power failure, storm damage, strike and lockout, damage caused by construction work, technical problems with the Internet that cannot be influenced by one of the parties and other circumstances for which the parties are not responsible. Each party must inform the other party immediately in writing of the occurrence of a case of force majeure.
- 7.2. The right of the parties to terminate the contract without notice for good cause remains unaffected in any case. In particular, the Contractor may terminate a contract without notice for good cause if the Client (in the case of a continuing obligation) is in arrears with payment of the remuneration or a not insignificant part of the remuneration for 2 consecutive months or, in a period extending over more than 2 months, with payment of the remuneration in an amount equal to the remuneration for 2 months.
- 7.3. Withdrawal from the contract or cancellation by the Client is excluded, subject to an express provision in the General Terms and Conditions of Contract, an individual contractual agreement to the contrary and the mandatory statutory grounds for withdrawal. Should the Contractor exceptionally agree to a request for cancellation, the Client shall be obliged to pay a cancellation fee of 30% to the Contractor in the event of a request for cancellation up to 4 weeks before the planned start of performance. If the Client's cancellation request is made after this date, the Client shall be obliged to pay the full contractual remuneration. The Client reserves the right to prove higher saved expenses or lower services on the part of the Contractor.
- 7.4. The Client is obliged to provide the Contractor with all information and instructions that are necessary for the provision of the contractually agreed service.
- 7.5. Insofar as the object of the service provision by the Contractor is the transfer for use or provision of software ("**Contractor Software**"), the Customer is obliged to create, set up and maintain a secure and functional hardware and software environment on the computer systems of its operating area for the period of installation and use of the Contractor Software, which corresponds to the requirements agreed with the Contractor (in particular the contractually agreed system requirements), so that neither the security, integrity nor availability of the Contractor Software is impaired. The Customer also undertakes not to install any software or uninstall any software from the computer systems of its operating area that impairs the

functionality of the Contractor Software or, in conjunction with the Contractor Software, leads to impairment or damage to other software or stored data used or installed by the Customer. In addition, the Client shall be obliged to take all reasonable measures at regular intervals to secure his data and computer systems, in particular regular data backups and the installation and maintenance of sufficiently up-to-date software to protect against viruses and other malware, in accordance with the current state of the art.

- 7.6. Insofar as the provision of contractually owed services requires the cooperation of the Client, the Contractor shall first endeavour to agree a time or period of cooperation with the Client that is so far in advance of the date of the Contractor's owed service provision that the Contractor can provide his service on time. If, for reasons for which the Contractor is not responsible, an agreement on such a time or period of cooperation is not reached in good time and in any case not within 4 weeks of conclusion of the contract, the Contractor shall propose 3 dates to the Client, together with a request to the Client to accept one of the proposed dates within a reasonable period of no more than 2 weeks. If the Client does not accept any of the proposed dates within this period, this shall be deemed a breach of duty on the part of the Client. After expiry of this period, the contract shall be deemed to have been terminated upon expiry of the period in accordance with § 643 sentence 2 BGB, the contract shall be deemed to have been terminated upon expiry of the deadline with the consequence that the Contractor shall be entitled to demand the agreed remuneration after deduction of saved expenses or crediting of other income in accordance with § 649 sentence 2 BGB.
- 7.7. The Client shall immediately notify the Contractor in writing of any defects or faults in the Contractor's contractual services.
- 7.8. If the Client fails to fulfil his contractual or statutory duties or obligations to cooperate or if the Client fails to notify the Contractor immediately of defects or disruptions to the Contractor's contractual services for reasons for which he is responsible, contrary to his obligation under Section 7.7. of these GTC, this shall constitute contributory causation or contributory negligence. Insofar as the Contractor is unable to fulfil his obligations as a result of a breach of an obligation to cooperate or if the Contractor was unable to remedy the defect as a result of the Client's breach of a duty or obligation to cooperate or as a result of failure to notify or delay in notification, the Client shall not be entitled to reduce the remuneration for the affected services of the Contractor in whole or in part and/or to demand compensation for the damage caused by the defect or to terminate the contract for good cause due to the defect without observing a notice period. The Client must demonstrate that he is not responsible for the failure to notify the Contractor or for the action otherwise to be taken in accordance with the Client's duty or obligation to cooperate.

## 8. Rights of use and exemption

- 8.1. Rights or rights of use on the part of the Contractor shall only be transferred or granted to the Client - if at all - to the extent that this is essential for the respective fulfilment of the contract. The Contractor recognizes that he does not acquire any rights of his own with the temporary use of the contractor's brands or trademarks. The Client is not authorized to change or remove brands or trademarks used by the Contractor in the course of the performance of the contract. The above shall not apply if otherwise agreed in the licence agreement or the contractual conditions for the production of learning content or other multimedia products.
- 8.2. Insofar as the Client uses or contributes his own or third party materials, contributions, data or other content such as, in particular, videos, graphics, logos, texts, music, etc. (hereinafter also referred to as "**content**") within the scope of the fulfilment of the contract, he shall indemnify the Contractor against all direct and indirect damages, claims, costs (including the costs of reasonable legal defence), expenses and other disadvantages incurred by the Contractor as a result of third parties asserting claims against the Contractor due to an infringement of third party rights or a violation of statutory provisions in connection with the use of the services, in particular the dissemination of content (such claims hereinafter also referred to as "**third party claims**"). The Client shall support the Contractor in any judicial and extrajudicial assertion of third party claims and shall provide the Contractor immediately upon request with all data, documents and other materials that the Contractor deems necessary or helpful in the context of the dispute with third party claims. In addition, in the event of the justified assertion of third party claims, the Contractor shall be entitled to withdraw from the contract or to terminate the contract without notice.

## **9. Consent to be named as a reference customer**

- 9.1. The possibility of naming the contractual partner in the context of advertising measures always depends on the express consent of the other party to the contract in each individual case and is never granted implicitly. In this case, the Client also gives his express consent for the technical solution found and provided for the Client - regardless of whether it is a cloud-based SaaS solution or an on-premises solution - to be shown as an example solution in information and advertising materials for new customers of the Contractor. At the express request of the Client, the presentation shall be made without reference to the Client.
- 9.2. The Client is also entitled to revoke the consent granted in accordance with the above Section 9.1. of these GTC at any time, in whole or in part, for individual or all information and advertising materials or in relation to a specific representation of the Client's logos or trademarks, with effect for the future. If the Client declares such a cancellation to the Contractor, the Contractor is obliged to destroy or irretrievably delete the information and advertising materials affected by the cancellation and to confirm the destruction or deletion to the Client.

## **10. Other provisions**

- 10.1. The Client may only transfer the rights and obligations arising from or in connection with the General Terms and Conditions of Contract of XU Group GmbH, including these GTC or the contracts subject to them, to third parties with the prior written consent of the Contractor.
- 10.2. Legally relevant declarations and notifications to be made by the Client to the Contractor after conclusion of the contract (e.g. setting of deadlines, notifications of defects, declarations of cancellation or reduction) must be made in writing to be effective.
- 10.3. Amendments and additions to the General Terms and Conditions of Contract of XU Group GmbH, including these GTC or the contracts subject to them, shall be made in writing, unless a stricter form is prescribed by law. This also applies to amendments or the cancellation of this agreement regarding the written form. The provisions of Section 10.4. of these GTC below remain unaffected.
- 10.4. The Contractor is authorised to amend the content of the General Terms and Conditions of Contract of XU Group GmbH, including these GTC, with the consent of the Client, provided that the amendment is reasonable for the Client, taking into account the interests of the Contractor. Consent to the amendment is deemed to have been granted if the Client does not object to the amendment within 4 weeks of receipt of the notification of amendment. The Contractor undertakes to draw the Client's attention to the consequences of failing to object in the notification of change.
- 10.5. Unless otherwise expressly stipulated in the General Terms and Conditions of Contract of XU Group GmbH, including these GTC, or a stricter form is prescribed by law, declarations by XU Group GmbH and the contractual partner shall be deemed to be in writing within the meaning of the General Terms and Conditions of Contract of XU Group GmbH, including these GTC, if documents signed by hand are sent and received by fax or in scanned form by e-mail.
- 10.6. If the Client is an entrepreneur, the General Terms and Conditions of Contract of XU Group GmbH, including these GTC, and the contracts subject to them, including all legal disputes concerning or in connection with their conclusion, validity and performance, shall be governed exclusively by the substantive law of the Federal Republic of Germany, to the exclusion of the United Nations Vienna Convention on Contracts for the International Sale of Goods of 11 April 1980.
- 10.7. If the Client is an entrepreneur, the exclusive - also international - place of jurisdiction for all disputes arising from or in connection with the General Terms and Conditions of Contract of XU Group GmbH, including these GTC, or the contracts subject to them, including all legal disputes concerning or in connection with their conclusion, effectiveness and implementation, is Berlin. However, the Contractor is also entitled to take legal action at any other legally competent court.
- 10.8. Should any provision of the General Terms and Conditions of Contract of XU Group GmbH, including these GTC, or the contracts subject to them be or become invalid or unenforceable, the remaining provisions shall remain unaffected. The parties undertake to replace ineffective or unenforceable provisions with such enforceable and effective provisions that come closest to the economic purpose of the provisions to be replaced. The above provision shall apply accordingly to unintended loopholes.

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