

# General Terms and Conditions – IXON B.V.

Version: 1 May 2017

These General Terms and Conditions apply to all proposals, quotations, agreements and services provided by IXON B.V., established in Overloon and registered with the Chamber of Commerce under registration number 62729918, hereafter referred to as 'IXON'.

## Article 1. Definitions

Capitalized terms in the Agreement, both singular and plural, are considered to have the meaning as described in this article.

1. **Agreement:** the Quotation, the terms in this document and any attachments.
2. **Customer:** a legal entity or natural person acting in the exercise of a profession (or business) that concludes an Agreement with IXON in order to use the Services.
3. **Customer Data:** all data, works and materials uploaded to or stored on the Service by Customer; transmitted to the Service at the instigation of Customer; supplied by Customer to IXON for uploading to, transmission by or storage on the Service; or generated by the Service as a result of the use of the Service by Customer.
4. **Documentation:** documentation made available by IXON to Customer relating to the Hardware or Services.
5. **Hardware:** physical goods provided by IXON to be used in conjunction with the Service. Including but not limited to the Hardware, antennas and other hardware.
6. **Intellectual Property Rights:** all intellectual property rights wherever in the world, whether registrable or non-registrable, registered or unregistered, including any application or right of application for such rights (including copyright and related rights, database rights, confidential information, trade secrets, know-how, business names, trade names, domain names, trademarks, service marks, passing off rights, unfair competition rights, patents, petty patents, utility models, semi-conductor topography rights and rights in designs).
7. **Office Hours:** 09:00 – 17:00 CET.
8. **Personal Data:** any information relating to an identified or identifiable natural person.
9. **Service:** the Service(s) provided by IXON, such as the Software-as-a-service platform branded IXplatform and any of IXON's services related thereto.

## Article 2. Conclusion and scope of the Agreement

1. A quotation can be requested from IXON through online and offline channels, including IXON's website, by or on behalf of Customer. If IXON determines that it is able to provide the requested Services or Hardware, IXON will provide Customer with a quotation specifying the scope, price and other terms. Quotations are obligation free and valid for 30 days.
2. The Agreement is deemed to have come into effect on the date and time when: (i) IXON confirms Customer's

acceptance notification of the quotation; or (ii) when IXON has started with the execution of the Agreement.

3. Any terms and conditions put forward by Customer that deviate from or that are not included in this document will not be considered part of the Agreement, unless IXON has expressly agreed to these in writing.
4. The following ranking will apply in the event of inconsistencies between the provisions of the quotation, these General Terms and Conditions and any other applicable documents:
  - i). the quotation;
  - ii). a potential service level agreement;
  - iii). these General Terms and Conditions;
  - iv). any other applicable documents.

## Article 3. The Service and Hardware

1. After the Agreement has been formed, IXON will use its best efforts to execute the Agreement in accordance with the offer, taking into account Customers reasonable wishes. Customer will do and/or omit all that is reasonably necessary and desirable to enable timely and correct performance of the Agreement.
2. The use of the Service is at Customers own expense and risk. Customer is responsible for meeting the technical and functional requirements of the Service and using the electronic communication facilities that are necessary to be able to access and use the Service.
3. The Hardware and the Service are not suited for use in situations or environments where inaccuracies, delay or failure could lead to death, personal injury, environmental damage or severe monetary damages. In case Customer uses the Hardware and the Service in such situations, IXON will under no circumstance be liable for any damages resulting from this use.
4. Customer will not use IXON's Service in violation of anyone's legal right, the Agreement or in violation of applicable law. Customer shall indemnify and hold IXON harmless from and against all claims, damages or losses resulting from Customers breach of the Agreement.
5. IXON will use its best efforts to realize uninterrupted availability of the Service, but offers no guarantees in this respect, unless the parties have agreed otherwise in a service level agreement.
6. IXON reserves the right to stop the Service temporarily for maintenance, modification or improvement of the Service and IXON's servers. IXON will use its best efforts to manage

this period of inactivity in a manner which will result in the least possible inconvenience to its customers.

7. IXON may from time to time incorporate changes into the Service. Customers feedback and suggestions are welcome but ultimately IXON decides which changes to carry out (or not).
8. IXON provides support on a best effort basis on weekdays during Office Hours. Customer is requested to check any Documentation first before asking IXON for support.

#### **Article 4. Warranty**

1. The Hardware is covered by a warranty from IXON against defects in material and workmanship under normal use and service and IXON shall repair or replace any defective Hardware, subject to the terms hereunder. The aforementioned warranty shall apply for two years following the delivery of the Hardware to Customer.
2. The aforementioned warranty does not cover minor imperfections that do not have an impact on the functionality of the Hardware. Defects as a result from actions of Customer are excluded from the warranty.
3. IXON's warranty service shall not be provided on location of Customer. To make use of the warranty, Customer shall send the concerning Hardware to IXON. Costs of shipping and handling, including any applicable customs, duties or taxes, pertaining to the warranty claim, shall be borne by Customer. IXON shall bear the costs of shipping the repaired Hardware back to Customer. Before Customer can make use of the warranty, Customer shall contact IXON for a Return Merchandise Authorization Number (RMA Number) and the return address.
4. Customer is responsible for ensuring that the concerning Hardware is properly packaged and will bear the risk of loss or damage for any Hardware that Customer sends back to IXON.

#### **Article 5. Retention of title**

1. Any Hardware or other goods delivered by IXON remain the property of IXON until Customer has fulfilled all its payment obligations under the Agreement. The Hardware or other goods that fall within the scope of this article shall not be transferred, resold, pledged or encumbered in any other way until Customer has fulfilled all its payment obligations under the Agreement.
2. Customer is prohibited from handling the goods that fall within the scope of this article in such a way that they become a constituent part of an installation by accession.

#### **Article 6. Intellectual property**

1. Nothing in the Agreement shall be interpreted or construed so as to transfer any right, title, or interest in any Intellectual Property Rights of a party to the other Party.
2. IXON, its licensors or its suppliers retain all rights, titles and interests (including any Intellectual Property Rights) to or in the Hardware, Service and any other software or materials provided or made available by IXON. Customer shall only have the non-exclusive and non-transferable rights of use expressly granted under the Agreement. IXON will not make any source codes available to Customer.
3. Customer Data is and remains Customer's property (or the property of Customer's suppliers or licensors). IXON receives a perpetual, unlimited license to use this information in order to provide the Service, including any future aspects thereof.

4. Customer will not perform any act that could infringe the Intellectual Property Rights of IXON or its licensors, including but not limited to disclosing, reproducing, selling or licensing any software made available by IXON without approval.

#### **Article 7. Privacy**

1. If the Customer processes Personal Data using the Service, then Customer may be subject to certain privacy and data protection legislation, such as the Dutch Personal Data Protection Act. In respect thereof, Customer guarantees that it will only process Personal Data in a manner that is fully compliant with such privacy and data protection legislation.
2. IXON will use its best efforts to provide an appropriate level of security concerning the risks involved in the usage of the Service and the nature of the processed Personal Data. If IXON suspects that Personal Data is processed unlawfully, then IXON will use its best efforts to notify Customer thereof as soon as reasonably possible.
3. Customer indemnifies IXON against claims of third parties whose Personal Data is processed by Customer in any way that does not correspond with applicable law.

#### **Article 8. Prices and payment**

1. Unless otherwise stated in a quotation, all prices communicated by IXON are in euros (EUR) and are exclusive of value added tax (VAT) and other applicable taxes or levies imposed by the government.
2. IXON may send any invoices electronically, including through email. The standard payment term for IXON's invoices is thirty days after the date stated thereon.
3. If Customer doesn't pay an invoice within the stated or agreed upon payment term, then Customer shall be in default by operation of law without any notification of default being required. If an amount due is not paid within the payment term, the legal interest for commercial transactions shall be due on the outstanding invoice amount without any further notification of default by IXON being required.
4. If Customer doesn't pay an invoice within the stated or agreed upon payment term then IXON is entitled to limit or block access to the Service or withhold other deliveries until all outstanding invoices (including interest etc.) have been paid in full. IXON is not liable for any damage resulting from such limitation or blocking of access.
5. Once per calendar year in the month January, IXON is authorized to adjust the applicable prices based on inflation and increases in supplier costs.
6. If Customer fails to pay the amount due after a demand for payment or a notice of default has been issued, IXON shall be entitled to refer the debt for collection, in which case Customer must pay all judicial and extrajudicial costs, including all costs charged by external experts. The foregoing shall be without prejudice to the other legal and contractual rights of IXON.

#### Article 9. Liability

1. The liability of IXON for damages sustained by Customer on any ground whatsoever is limited per event (whereby a series of related events counts as one event) to compensation of only the direct damages with a maximum of the amounts paid by Customer to IXON during the three months prior to the event that caused the damage. If Customer hasn't paid any amounts to IXON during the aforementioned three months, then the liability of IXON is limited to EUR 1.000,- (one thousand euros) per event. The liability of IXON on a yearly basis is always limited to a maximum of EUR 10.000,- (ten thousand euros) exclusive of VAT.
2. Direct damages only include:
  - i). reasonable costs for determining the cause and extent of the damages;
  - ii). reasonable costs to repair any shortcomings of IXON in the performance of the Agreement;
  - iii). reasonable costs for the prevention or restriction of damages.

Liability on the part of IXON for any other damages is explicitly excluded.

3. Any limitations of liability will not be applicable insofar the liability cannot be limited or excluded by applicable law or in the event that the damages are a result of deliberate recklessness or fraud on the side of IXON executives.
4. IXON shall only be liable due to an attributable failure in the performance of an Agreement if Customer declares IXON to be in default in writing without delay and grants IXON a reasonable term to remedy the failure, and IXON culpably fails to remedy the failure within the reasonable term. The notice of default must describe the breach as comprehensively and in as much detail as possible in order to give IXON the opportunity to respond adequately.
5. For there to be any right to compensation, Customer must always report the damages to IXON in writing as soon as possible after the loss has occurred. Each claim for compensation from Customer to IXON shall be barred by the mere expiry of a period of six months following the inception of the claim.
6. IXON shall not be liable whatsoever if IXON is prevented from or delayed in performing its obligations under the Agreement, or from carrying on its business, by acts, events, omissions or accidents beyond its reasonable control, i.e. by force majeure. On the part of IXON, this includes, among other things: force majeure on the part of suppliers of IXON, the failure to properly fulfil obligations on the part of suppliers that were prescribed to IXON by Customer, defects in equipment or software of third parties, government measures, power failures, internet, data network or telecommunication facilities failures, hacker or network attacks (e.g. denial of service attacks), changes to the law and war.

#### Article 10. Confidentiality

1. Parties commit that they will observe confidentiality concerning all confidential information they receive from the other party, including the contents of the Agreement. Information is considered confidential in any event if it has been designated as such by one of the parties.
2. The obligations of confidentiality hereunder shall not apply to the extent that the party under the relevant obligation can demonstrate that the relevant information is required to be disclosed by: (i) law; (ii) any regulatory authority to

which the relevant party is subject; or (iii) any court of competent jurisdiction.

3. The obligation to treat confidential information as confidential will not be applicable if the recipient of such information can prove that this information:
  - i). was obtained from sources available to the general public such as newspapers, patent databases or informative websites;
  - ii). was already in possession of the recipient prior to the date on which it was issued or made available by the other party;
  - iii). is available from a third party without this party being in default towards either party arising from a confidentiality clause by distributing the information to the recipient.

#### Article 11. Changes to the General Terms and Conditions

1. IXON reserves the right to amend or supplement these General Terms and Conditions.
2. Amendments will also apply to Agreements concluded prior to the amendment. An amendment will not take effect until 30 days after IXON has informed Customer about the amendment. Among other ways, IXON may inform Customer about the amendment: through email (newsletter), by traditional mail or by disclosing the amendment on its website. Minor changes can be implemented at any time.
3. If Customer refuses to accept an amendment to these General Terms and Conditions, it may terminate the Agreement and stop using the Service by the date on which the amendment would take effect. Use of the Service after the date of effect, shall constitute acceptance of the amendments to these General Terms and Conditions.

#### Article 12. Miscellaneous

1. The Agreement is governed by Dutch law, excluding any conflict of law provisions contained in Dutch law.
2. To the extent not otherwise provided for in mandatory law, all disputes related to the Service or the Agreement will be submitted to the competent Dutch court in the jurisdiction where IXON has its registered office.
3. The version of the communication as recorded by IXON shall be deemed to be authentic, unless Customer supplies proof to the contrary.
4. If any provision of the Agreement will be held to be invalid or unenforceable for any reason, the remaining provisions will continue to be valid and enforceable. If a court finds that any provision of the Agreement is invalid or unenforceable, but that by limiting such provision, it would become valid and enforceable, then such provision will be deemed to be written, construed, and enforced as so limited. If a court finds that any provision of the Agreement is invalid or unenforceable, IXON and Customer shall turn to each other for the purpose of agreeing on a new provision to replace the invalid or unenforceable provision. This new provision shall be as similar to the invalid or unenforceable provision as is legally possible.
5. Changes to management or legal form will not affect the Agreement. IXON may transfer the Agreement or any rights and obligations resulting from the Agreement to third parties.