

# General terms and conditions (GTC)

from 12<sup>th</sup> December 2011

## 1. x-app

These terms and conditions (hereinafter GTC) of x-fund global ag (hereinafter x-app) apply to all services of x-app if not a more extensive or other agreement has been made with the customer in writing. Customer refers to any natural or legal person, who maintains a business relationship with x-app.

x-app is an online platform for creating mobile applications (hereinafter "Apps" ) for iPhone, iPod, iPad and Android devices.

x-app is a service of x-fund global ag based in CH-6314 Unterägeri.

## 2. Services of x-app

x-app offers the following services: app generator for the independent creation of native apps with monthly or one-time payment. The prices are transparently listed on the homepage. In addition, x-app develops apps for customers. For this individual offers are made, which must be confirmed by the customer in writing. This may include special conditions deviating from these general terms and conditions.

## 3. Modification of terms and conditions (GTC)

x-app reserves the right, to update the terms and conditions. The most current and binding version is published under <http://www.x-app.eu/terms.aspx> . Customers will be informed about the changes.

## 4. Registration and account

- a) In order to take advantage of the x-app generator, you must create an account. It can only be established by competent natural or legal persons. There is no entitlement of acceptance of the registration.
- b) When you register you must specify your full and correct name or the registered company as well as a valid email address. Accounts with invalid information can be removed by x-app.
- c) The customer is obliged, to keep the data in the account up-to-date.
- d) The customer is responsible for ensuring that the account is not made available to any third party and that username and password are protected from being accessed by third parties.
- e) For all actions that are made by using username and password the customer himself is responsible.
- f) The customer is obliged to inform x-app immediately, if there was an improper use of his account. The customer can also modify his password in his own account at any time. If this is no longer possible as a result of abuse, the customer must contact x-app immediately and the password will be reset.

## 5. Responsibility for content or ban of illegal use

- a) Each customer is responsible, to respect the rights of third parties.
- b) For the content of the apps the customer is the sole responsible.
- c) Any use of x-app for illegal purposes is prohibited. By using x-app, laws in force, in particular copyright, competition law, data protection law, criminal law, etc. must be followed. Any infringement may lead to immediate termination.
- d) It is not allowed to set or use contents, which are obscene, offensive, defamatory, violating, glorifying violence, racist, xenophobic, pornographic or clearly sexually or be so understood.
- e) It is explicitly forbidden to upload viruses, worms or other malicious code on x-app.eu or send email with such contents.

## 6. Exemption from claims of third parties, external links

- a) You are required to indemnify x-app against any third parties claims, which are claimed due to your use of the online platform for breach of copyright, trademark, other intellectual property rights or other rights.
- b) If third parties claim against x-app due to possible breaches of the law, x-app will contact to you and is also entitled to remove or, where appropriate, delete content from the Internet until final clarification,
- c) The online platform can link to external Websites, which do not belong to x-app, nor are managed by x-app. x-app is not responsible for these external contents. You hereby liberate x-app explicitly from the responsibility for these external contents.

## 7. Object of the contract, services of x-app

- a) With setting up the account you have the option to test the online platform for free. Furthermore x-app offers a preview app with which you can immediately test your designs on your iPhone, iPad, iPod or Android device.
- b) Once satisfied with your result and if you decide to publish your first app you choose a plan with monthly or one-time payment.
- c) Your app is prepared for the release in the AppStore or Android market by x-app. If you have your own developer account you can create your app under your own name. If you have no account your app will be released under x-app's developer account.
- d) The decision about publishing your app in the AppStore is made by Apple. x-app has no influence on this decision. With submitting your app in AppStore or Android market, the app is subject to the terms and conditions applicable to the respective store. Before submitting your app, x-app will check it and will give you if necessary advice with improvement notices in order to counteract to refusals.
- e) Your app is delivered in the executable code and without documentation. You are not entitled to get the source code. An exception is the developer plan. There you are entitled to get the XCode or Eclipse project and can add own libraries and developments and create the executable code yourself.
- f) The precise scope of each individual plan is described in detail on [www.x-app.eu](http://www.x-app.eu), but x-app has at any time the right to change, expand or restrict the services. Already purchased plans are still available. x-app is however entitled to terminate individual services, respecting the period of notice regulated in § 9.

## 8. Rights of use, release of native apps

- a) One time fee:  
With paying a one-time fee you acquire the right to create one app on the online platform and publish it in the desired store. Updates and services that need x-app servers

like for example push notifications or inApp purchases are not possible and must be paid separately on request.

- b) Monthly fee:  
With the payment of monthly fees, you get the services in accordance with the chosen plan.
- c) The rights of the content posted by you remain with you. x-app is entitled to display your app on its own Website. However you have the possibility to exclude this option in the design section of the respective app.

## 9. Conclusion of the contract, term of contract, termination

- a) With purchasing and paying a plan a contract is concluded. Either party can terminate it at the end of the current billing month. You have also the right to modify your plan at the end of the billing month.
- b) Termination of an active plan: the plan can be cancelled at any time at the end of the current billing month. Your app(s) will then no longer be functional. If the app(s) should remain active in the AppStore or Android market you have the possibility to pay the difference of the one-time fee and the previously paid amounts. Tell us if you want to choose this solution and we will send you a statement of the open amount.
- c) At the end of the contract, regardless of the reason the account and its contents remain active. You can reactivate the contract at any time. On request, the account and all its contents are deleted.
- d) If you terminate the contract, the app(s) has/have to remain active and you have paid the necessary remaining amount and the app(s) has/have been published under x-app developer account, the property rights can be assigned to a new owner. Therefore the rules in force of AppStores or Android market at that time are applicable.
- e) If you request the deletion of the app(s) with your cancellation of the contract, x-app can only take this over for you, if the app(s) has/have been published under x-app's developer account.
- f) Even after removal of the contents of the account, the AppStore or Android market, copies of it beyond the control of x-app can still exist.

## 10. Payment, due date, debit and termination

- a) Fees are due immediately and can be paid via PayPal or Google Checkout. For prices, see our price list under <http://x-app.eu/prices.aspx>. The price includes the legal VAT where applicable.
- b) The billing month begins on the day on which the contract is concluded and the amount will be charged monthly on the same day except when the contract has been made after the 28<sup>th</sup> of the respective month. In that case the following amounts will be charged on the 28<sup>th</sup> of each month.
- c) For the collection of the monthly amount due you must provide sufficient funds. All costs not caused by x-app, in particular for returns due to missing cover shall be covered entirely by you. You agree to a minimum of € 20 for the extra overhead and permit x-app to charge that amount directly in addition to the open amount.
- d) If a different method of payment was agreed or special services are purchased the payment deadlines and means marked in the invoice are applicable.
- e) If your payments are due for more than fourteen days despite of reminders, this is regarded as a termination following § 9.
- f) x-app grants a 15-day money back guarantee for all apps created on the online platform should you be dissatisfied with the service. The refund includes the setup fee and the monthly fee. The refund is made not later than within 30 days after demanding the money back guarantee in writing. Should you make use of this right, a previously published app is no longer functional.
- g) Individual services provided by x-app, however, are excluded from the refund. Except if your app is not accepted by the AppStore and x-app is not able to publish your app successfully in the AppStore within a maximum of 60 days. In that case x-app would refund

- h) even custom developments.
- h) x-app can change the prices of all offers and services at any time. The new fees apply immediately after the release. For existing customers, prices are adapted only 3 months after the announcement of the change on the next billing month.

## 11. Copyright

- a) The online platform, the user interface, the templates and the elements of x-app are copyright protected.
- b) You may freely use the templates of x-app, you are however responsible to use only content for which you own the rights. This is related in particular to the images, feeds, texts, etc.
- c) You may not use the templates, parts of the online platform or user interface otherwise, without having obtained the consent of x-app for this. In particular the re-use for commercial purposes is prohibited.
- d) All rights to the software and documentation, in particular the execution of all property rights, shall only be entitled to x-app. You get only the rights of use regulated in this agreement.

## 12. Warranty for material defects and defects

- a) x-app guarantees for the agreed quality of ordered offers and services and for the fact that you can use them without infringement of third party rights.
- b) If at delivery there is a defect of the executable code, the XCode or Eclipse projects, x-app will fix it as soon as possible.
- c) If x-app is unable to fix a defect within a maximum of 60 days or if a correction of the defect or a new delivery is impossible for other reasons, the paid fee will be refund.
- d) If the contractual use of the apps delivered by x-app or other services lead to violation of copyright or other intellectual property rights, x-app at its own expense and discretion either obtain the right for further contractual use or the apps or other services will be modified or replaced in a reasonable manner in order to eliminate that violation of rights of third parties. This is only valid if you immediately inform x-app of the copyright infringement claim against you, if you assist reasonably in the defence of the claims and if the infringement is not based on a statement given by you and is not based on unauthorized content provided by.
- e) If this is not possible under commercially reasonable terms or within reasonable time, both you and x-app can cancel the contract. x-app will exempt you from undisputed or legally ascertained claims of the owner.

## 13. Customer service

- a) x-app client service answers support tickets in the order of their receipt. Support tickets are processed usually within 24 hours (Monday to Friday without holidays).
- b) Priority is given to paying customers. There is no right to get an answer to forum questions. Therefore, paying customers should always choose the way of the support ticket if there is an emergency.

## 14. Liability

- a) Hereby you confirm that you use the online platform at your own risk. The webpage is offered to you as seen, as available and with all its bugs, where x-app tries its best, to resolve any errors as soon as possible and make the platform available with as few outages as possible.
- b) Help through the forum or through the ticket system has no legally binding effect and is

- not part of the contract. x-app can't be made liable for incorrect information or misunderstanding.
- c) x-app's liability is limited to the amounts paid by you and is equal to the money back guarantee.
  - d) Any further liability of x-app for damages or compensation of wasted expenses is excluded.
  - e) x-app will make regular backups of all data. Nevertheless, you are responsible for a regular backup of your data. In case of loss of data x-app is going to restore the last state saved through them and can't be made liable for a further loss.

#### 15. Data protection, data transfer

- a) x-app will use your data only within the scope of this contractual relationship and will in particular respect the data protection regulations. x-app obligates its employees and subcontractors to comply with the privacy pledge.
- b) The execution of the contract, in particular the transfer of content, data processing and service can be carried out unencrypted over the Internet.
- c) x-app is entitled, to contract subcontractors and to transfer the content posted by you and all personal data collected under this contract to these subcontractors respectively to make it accessible for them.
- d) x-app in particular is entitled, to pass the personal data for payment and also for credit check to the appropriate service providers.

#### 16. Place of fulfilment, applicable law, place of jurisdiction, miscellaneous

- a) All disputes should be solved first out of court. Only if there is no agreement the way to the courts shall be open for the parties.
- b) Place of fulfilment and exclusive place of jurisdiction for any disputes arising from or as a result of the terms or an individual written agreement is the domicile of x-fund global ag.
- c) The contractual relations between the parties are subject solely to Swiss substantive law.
- d) Should regulations of the present general terms and conditions be void or invalid, the remaining regulations apply further. In this case, void or invalid regulations are replaced by legally effective regulations whose economic effects are as close as possible to the invalid regulations.

*This is a translation from the German document  
"Allgemeine Geschäftsbedingungen (AGB) vom 12. Dezember 2011"*

*The German version is to be considered as the legally binding document.*