

A. GENERAL PROVISIONS

§ 1 Validity, protection clause, severability clause

- (1) These terms and conditions apply exclusively and only to entrepreneurs within the meaning of Sec. 310 para. 1 of the German Civil Code (BGB).
- (2) For this contractual relationship, as well as for all legal relationships and all deliveries and services, as well as for all legal transaction-like obligations within the meaning of Sec. 311 para. 2 and 3 BGB, our following general terms and conditions shall exclusively apply. Our general terms and conditions, in their respective version, shall be deemed to be a framework agreement also for future contracts for the sale and/or delivery of movable property with the same buyer, without us having to refer to them again in each individual case.
- (3) Conditions of the customer in conflict with or differing from our terms and conditions, even if they are the subject of an order confirmation, shall not form the subject of this contract, even if this is not expressly objected, unless we agree to the validity of these terms and conditions in writing; our terms and conditions shall apply in place thereof. This shall even apply if we deliver unconditionally in the knowledge of deviating general terms and conditions.
- (4) By accepting our services and deliveries, the customer acknowledges the liability of our general terms and conditions except in the case of deviating, prior written individual agreements.
- (5) Amendments or supplements to this contract are to be made in writing. This shall also apply to the abolition of this requirement for the written form. The priority of individual agreements within the meaning of Sec. 305b BGB shall remain unaffected.
- (6) The data of our customers are electronically stored and processed by computer, insofar as permitted by law, in particular the Federal Data Protection Act.
- (7) Should individual conditions, parts thereof or parts of these general terms and conditions be ineffective, then the contract shall, to this extent, be based on statutory provisions. The validity of the other provisions of these general terms and conditions shall otherwise remain intact.
- (8) References to the validity of statutory provisions shall only be for the purpose of clarification. Even without such clarification, the statutory provisions shall thus apply, unless they are amended or excluded under these general terms and conditions.

B. TERMS AND CONDITIONS OF SALE AND SUPPLY

§ 1 Offer and conclusion of contract

- (1) The offers made by the customer shall be binding regardless of their form.
- (2) Our offers are always non-binding.
- (3) If an order by the customer is to be regarded as an offer according to Sec. 145 BGB, we can accept it within two weeks of receipt. Acceptance can also be made in particular by means of an order confirmation or by sending the ordered goods.
- (4) Our sales representatives are only authorized to arrange orders. An order shall only be deemed accepted if it has been confirmed in writing or if the goods have been delivered.
- (5) Acceptance of our offers must be declared within two weeks of receipt by the future contracting party, provided they are binding without exception.

§ 2 Submitted documents

- (1) We reserve all proprietary rights and copyrights to all documents provided to the customer in connection with placing the order, such as calculations, drawings, catalogues, brochures and other sales documents.
- (2) Such documents may not be disclosed to third parties unless we give our express written permission to the customer.
- (3) Reproduction, especially photocopying, except for purposes of fulfilling the contract, shall not be permitted and is punishable by law. In the case of infringement, a criminal complaint shall be lodged.
- (4) Insofar as an offer is not accepted within the deadlines of B. Terms and Conditions of Sale and Supply, § 1, clauses (3.) and (5.), documents provided to us must be returned without delay.

§ 3 Prices, payment, payment arrears

- (1) Our list or catalogue prices shall apply. Our prices quoted are in euro. Catalogues and price lists can be viewed at our premises or requested from us free of charge. Unless otherwise agreed in writing, our prices shall apply ex works or warehouse in Graz, Austria, including loading at the plant or warehouse. Costs for packaging, freight, postage and insurance are not included, nor are installation, commissioning and assembly costs. These costs shall be invoiced separately. Similarly, any customs duties, fees, taxes and other charges shall be borne by the Purchaser. VAT shall be added to the prices in the applicable amount. We do not take back transport and other packaging as per the Packaging Ordinance. They shall become the property of the Purchaser with the exception of pallets.
- (2) The right to make reasonable price changes due to cost increases, in particular due to changes in wage, personnel, material and distribution costs for deliveries made four months or later after conclusion of the contract shall be reserved. If the increase amounts to more than five percent, the customer shall be entitled to cancel the order.
- (3) Unless otherwise agreed, the purchase price shall be due within 21 days of the invoice date and delivery of the goods and payable without deduction or within ten days from the invoice date and delivery of the goods with a two percent discount being deducted from the invoice amount including VAT. We shall reserve the rights to require different conditions (advance payment, third payment, etc.) in individual cases.

Payment must be made exclusively to our account.

- (4) In case of deliveries abroad, we may require an irrevocable and confirmed letter of credit payable to a bank specified by us or other equivalent collateral.
- (5) Cheques and money orders shall only be accepted by us on account of performance; payment shall only be considered made once the amount has been credited to the account. Bills of exchange shall not be accepted as payment.
- (6) From the 22nd day after the invoice date and delivery of the goods, the

customer shall be deemed in payment arrears without the need for a reminder. From this point in time, at the latest from the beginning of the payment arrears, we shall be entitled to require the payment of interest on arrears in the amount of eight percentage points above the respective base interest rate p.a. of the German Central Bank. The right to claim greater damages caused by arrears shall remain reserved, as far as this is specifically proven.

We shall be entitled to charge a EUR 5.00 reminder fee per reminder from the second reminder. The contracting parties shall be at liberty to prove lower or higher damages.

- (7) Discounts shall not be granted if the contracting party is in arrears with previous invoices. Granted discounts shall not apply if the customer files for bankruptcy or is in payment arrears.
- (8) The contracting party shall only be entitled to offset rights if its counterclaims have been legally established or are undisputed. The contractual partner shall only be authorized to exercise a right of retention to the extent that its counterclaim is based on the same contractual relationship and the counterclaim has been legally established or is undisputed. In the event of defects in the delivery, the counterclaims of the Purchaser shall remain unaffected.
- (9) We shall be entitled to assign the claims arising out of our business relationship.

§ 4 Retention of title

- (1) The goods shall remain our property until payment of all claims arising from the business relationship with the customer, regardless of the legal grounds, even if the purchase price for specially designated claims has been paid. In case of current accounts, the retention of ownership property shall be considered as security for our balance claim.
 - (2) We shall be entitled to insure the delivery item, at the expense of the customer, against theft, breakage, fire, water and other damage, unless the customer himself provides evidence of corresponding insurance.
 - (3) In the event of combining, mixing or blending the goods delivered by us with other goods, we shall acquire co-ownership in proportion of the value of the goods to the value of the other combined, mixed or blended goods. Insofar as the ownership of the goods is destroyed by the fact that it becomes an essential part of another item, the customer shall grant us co-ownership of the main item in advance, in the amount of the proportion of the value of the delivered goods to the value of the main item. Co-ownership shall be transferred to us in advance here. Said transfer shall be replaced by the agreement of a custodial relationship, on the basis of which the customer keeps the main item on our behalf at his expense. Upon payment of the claim, the co-ownership granted in this way shall pass to the customer.
 - (4) Any treatment or processing shall take place on our behalf, free of charge and without obligation for us, in such a way that we are to be seen as the manufacturer as per Sec. 950 BGB, i.e. retaining ownership of the products at every stage and degree of processing. In the event of processing by the customer with other goods not belonging to us, we shall be entitled to co-ownership of the new item in proportion of the invoice value of the reserved goods to the other processed goods at the time of processing. The same shall apply to the new item resulting from the processing as for the reserved goods. It shall be reserved goods within the meaning of these conditions.
 - (5) The customer shall be permitted to resell the goods in the ordinary course of business as part of his business operations. Said authorization may be revoked by us in the event of payment arrears, at the latest when the customer is in crisis, i.e. when facing insolvency, in particular in the event of payments ceasing, or an application being made to open insolvency proceedings. Said authorization shall not apply if the customer excludes assignment of the claim from the sale of the goods to us. The customer shall not be entitled to other dispositions concerning the reserved goods.
 - (6) The customer's claims from the resale of the reserved goods shall be assigned to us in advance here so as to secure all our claims from the business relationship.
 - (7) The customer shall be entitled to collect this claim, but not to assign it to third parties. Said authorization may be revoked by us in the event of payment arrears, at the latest when the customer is in crisis, i.e. when facing insolvency, in particular in the event of payments ceasing, or an application being made to open insolvency proceedings. Upon request, the customer shall be obliged to announce the assignment to the third-party purchaser for payment to us.
 - (8) At the request of the customer, we undertake to release the claims to which we are entitled to the extent that the realizable value of the receivables, taking into account the costs of administration and realization, exceeds 110 percent of the secured claims.
 - (9) XAL GmbH shall be entitled to withdraw from the contract as soon as the requirements of Sec. 323 BGB or Sec. 324 BGB in conjunction with Sec. 241 para. 2 BGB are present.
 - (10) If we are entitled to take back the goods, the customer or an authorized representative must enable us to create an inventory of the existing reserved goods.
 - (11) In the event of pledges or other third-party rights, the customer must inform us immediately thereof in writing. The third party must be immediately informed of our rights. If the third party is not in a position to reimburse the costs of proceedings according to Sec. 771 of the Code of Civil Procedure (ZPO), the customer shall be liable therefor, provided that he has culpably failed to make the specified notifications.
- ### **§ 5 Delivery delay and performance period, delay**
- (1) Our delivery time shall be calculated from the date of our order confirmation. Delivery times and dates shall not be binding without a written individual agreement.
 - (2) All delivery dates shall be subject to timely, complete and correct self-delivery.
 - (3) In any case, the commencement and the adherence to the delivery time shall presuppose the final clarification of all technical details, the receipt of all documents to be supplied by the Purchaser, the necessary permits and plans, the observance of the agreed terms of payment and other obligations, as well as agreement on all technical questions, the clarification of which the parties reserved upon conclusion of the contract.
 - (4) If these requirements are not met, the delivery time for the duration of the delay, including a reasonable lead time, shall be extended. This shall not apply if we are responsible for the delay.
 - (5) Delivery and service delays due to force majeure, such as mobilization, war, riots, terrorist attacks or similar events that make delivery substantially difficult or impossible for us, such as breakdowns, strikes or lockouts, or the failure of key

manufacturing equipment/machines, delays in the delivery of essential raw and construction materials, transport delays, official orders, etc., shall result in the delivery time being extended for the duration of the delay plus a reasonable lead time period, or us being entitled to withdraw from the contract because of the unfulfilled part, unless we did not inform the customer immediately about the unavailability and any consideration already made by the customer refunded without delay. The prior provision shall not apply if it is our responsibility. This shall also apply if the circumstances mentioned occur with our suppliers or their subcontractors.

The above shall also apply if the aforementioned circumstances occur during an already existing delivery delay.

(6.) Especially in the case of larger orders, we can make partial deliveries to an extent that is reasonable for the customer.

(7.) If the delivery time is exceeded, the customer shall be entitled to withdraw from the contract if he has unsuccessfully determined a reasonable period of at least ten working days, or if the deadline stipulated in the statutory provisions is dispensable.

The right of withdrawal shall – with the exception of special circumstances, which justifies the withdrawal in consideration of the interests of both parties – be excluded if the impediment to performance is caused by circumstances for which we are not responsible, including delays in timely and correct self-delivery for which we are not responsible. The due date of the claim to delivery shall shift accordingly.

(8.) Customers may withdraw from the contract with our express consent within 45 days of the date of issue of the delivery note against payment of a cancellation fee of 20 percent of the order value recorded by the withdrawal. Upon expiration of this 45-day period, customers may withdraw from the contract within another 45 days against payment of a cancellation fee of 40 percent of the order value recorded by the withdrawal. Due to the administrative expenses, the cancellation fee shall be at least EUR 20.00. After expiry of 90 days from the date of issue of the delivery note, withdrawal shall be excluded in all cases. Insofar as it concerns a custom-made product of XAL GmbH for the customer (including cuts), merchandise, NANO articles (including STADIO, PICO, MICRO, JUST, etc.) or items specifically marked as non-returnable goods in the catalogue, withdrawal under this provision shall also be excluded. In any case, the customer shall be obliged to return the goods to XAL GmbH at his expense in the event of withdrawal. The difference between the cancellation fee and order amount shall only be credited to the customer upon return of the undamaged goods that were the subject of the order. The right to claim higher costs than were actually incurred as damages shall remain reserved to us.

(9.) Our liability according to B. § 8 hereunder and our rights in case of exclusion of the obligation to perform (for example due to impossibility of performance) shall remain unaffected.

(10.) If the customer is in payment arrears or his financial circumstances are subject to a substantial deterioration endangering the processing of the contract, we shall be entitled to make the delivery dependent on the full payment of the purchase price or the provision of appropriate collateral.

(11.) The customer shall accept the goods on the agreed delivery or completion date. If he is in arrears, the agreed purchase price shall be due immediately. We shall be entitled to deposit the goods, to charge additional expenses (for example storage costs) and to have the goods auctioned to the public and to offset the proceeds against the purchase price.

§ 6 Transfer of risk

(1.) The risk of accidental loss, accidental deterioration and the risk of delay shall pass to the Purchaser upon delivery of the goods to the Purchaser or his agent. If the goods are shipped to the Purchaser at the latter's request, the aforementioned risk shall be transferred as soon as the consignment has been handed over to the person carrying out the transport (the carrier, the freight forwarder or the person otherwise responsible for carrying out the shipment). This shall not apply in the event of the transport being carried out by us.

(2.) Unless otherwise agreed, the route and means of delivery shall be left to our conscientious choice. Shipping shall be ex works or from our warehouse in Graz, Austria; this is thus the place of performance.

(3.) If shipment is delayed as a result of circumstances for which the customer is responsible, the risk shall pass to the customer from the date of notification of readiness for shipment.

(4.) At the customer's request, we shall arrange transport insurance at his own expense.

(5.) The above regulations shall also apply to partial deliveries.

§ 7 Rights in respect of defects

For material and legal defects, we shall be liable as follows, however, in all cases, the statutory special provisions for final delivery of the goods to a consumer (Secs. 478, 479 BGB) shall remain unaffected):

(1.) For defects resulting from poor assembly, faulty installation, poor maintenance, faulty or negligent treatment or storage, improper repairs not carried out by us, changes without our written consent, natural wear, excessive use, unsuitable operating conditions and equipment, as well as chemical, electrochemical or electrical influences that are beyond our control, as well as weather or other nature influences, the warranty shall be void as far as these circumstances were not without influence on the emergence of a material defect.

(2.) In the case of parts used by the purchaser for completion, refurbishment or reworking, we shall assume no liability for how they behave during heat treatment and during processing. If the material is damaged here, we must be reimbursed for the costs already incurred for processing.

(3.) Warranty claims of the customer stipulate that the latter has duly fulfilled his obligations to inspect and notify under Sec. 377 of the German Commercial Code (HGB). Obvious defects must be reported in writing immediately upon receipt of the goods. Concealed defects must be reported in writing immediately upon being discovered. In the event of a breach of the obligation to inspect and notify, the goods shall be deemed to have been approved in respect of the defect in question. Regardless of this statutory obligation to inspect and to give notice of defects, the Purchaser must notify us in writing of obvious defects (including wrong and underdeliveries) within two weeks of delivery. The timely sending of such notification shall be sufficient here. If this deadline is missed, our liability for the non-notified defect shall also be excluded.

The parts in question shall be sent to us at our request.

(4.) The expenses necessary for the purpose of testing and supplementary performance, in particular transport, travel, labour and material costs (not dismantling and installation costs, cf. Sec. 7 (6.)) shall be borne by us if a defect actually exists. If the notification of a defect was wrongly made, we shall be entitled to require compensation to be paid by the customer for expenses incurred.

(5.) The warranty period shall extend for a period of 12 months. This shall not apply insofar as the law pursuant to Secs. 438 (1) nos. 1 and 2 (buildings and property for buildings), Sec. 479 (1) (right of recourse) and Sec. 634a (1) no. 2 (construction defects) BGB prescribes longer periods and in cases of injury to life, body or health, of intentional or grossly negligent breach of duty on our part and of fraudulent concealment of a defect. The statutory provisions on the suspension, interruption and recommencement of the running of time shall remain unaffected. The aforementioned period of limitation shall also apply to contractual or non-contractual claims for damages of the Purchaser, which are based on a defect of the goods, unless the regular statutory period of limitation results in a shorter period. The limitation periods of the Product Liability Act and other claims for damages shall remain unaffected.

(6.) If the purchased item is defective, then we shall have the option of remedying the defect as a supplementary performance or delivering a defect-free item. However, the supplementary performance shall not include the removal of the defective item or reinstallation, unless we were originally obliged to install it. We shall be entitled to make the subsequent performance owed dependent on the Purchaser paying the purchase price due. The latter shall be entitled to retain part of the purchase price that is reasonable in relation to the defect.

(7.) If a reasonable period for supplementary performance was unsuccessfully determined for us by the customer, or if a deadline is legally dispensable, or if the supplementary performance is refused by us, or this has failed, or if the type of supplementary performance chosen by us is unreasonable for the customer, or if the defect cannot be remedied within a reasonable period of time, the customer shall be limited to the rights to a reduction of the remuneration (decrease) or to withdrawal from the contract. The right to compensation in accordance with Sec. 437 no. 3 BGB shall be excluded within the limits of B. § 8, as far as it is not based on the breach of essential contractual obligations (cardinal obligations, i.e. obligations that need to be fulfilled for the proper execution of the contract in the first place, and that the contracting party must regularly rely on to be complied with).

§ 8 General liability clause, other liability

This provision shall apply to all cases of our liability arising for any legal reason vis-à-vis our customers, unless otherwise stipulated hereunder or other agreements.

(1.) Any liability on our part for slightly negligent breaches of duty shall be excluded, as far as these do not concern essential contractual obligations (cardinal obligations), damages resulting from injury to life, body or health or guarantees, or claims under the Product Liability Act. In these cases, liability shall be neither excluded nor limited. The aforementioned liability regulations shall also apply to breaches of duty by our vicarious agents and legal representatives.

(2.) If we are liable in accordance with § 8, clause (1.) as a result of slight negligence due to the breach of essential contractual obligations, the damages shall, however, be limited to damages typical for the contract and foreseeable upon conclusion of the contract and not indirect damages.

(3.) This regulation shall not apply to the fraudulent concealment of a defect or to the assumption of a quality guarantee.

(4.) As regards a breach of duty that does not relate to a defect, the Purchaser may only withdraw or cancel if we are responsible for said breach of duty. A free right of cancellation of the Purchaser shall be excluded. The legal requirements and legal consequences shall also apply.

C. FINAL PROVISIONS

§ 1 Applicable law

The law of the Federal Republic of Germany shall apply exclusively. The validity of the Vienna UN Convention on Contracts for the International Sale of Goods of 11.04.1980 (CISG) shall be excluded.

§ 2 Place of fulfilment, jurisdiction

Place of fulfilment (unless specifically regulated in these terms and conditions) shall be our registered office in Markt Indersdorf. The exclusive place of jurisdiction shall be our registered office in Markt Indersdorf.

D. DATA PROTECTION

§ 1 Data Protection

(1) The protection and safety of the customers' data is important to the Seller. The seller processes customer data only according to data protection law, with legal basis and for adequate purposes, especially to fulfil contracts and other legal obligations. Details are contained in the Data Protection Information of the Seller, which constitutes an integrated part of these Terms and Conditions.

(2) Customers enjoy data protection rights, especially the rights to access information, rectification, erasure, restriction of processing, data portability, to object and lodge complaints. Further information is contained in the Sellers [Data Protection](#) Information.