



# General Terms and Conditions of Business and Delivery

(as of September 2023)

## § 1 Scope of validity

(1) The following General Terms and Conditions (hereinafter called 'GTC') apply to all business relationships between XAL SRL, Via Amedei 15, 20123 Milano, Italy, (hereinafter called 'Seller') and its Customers. The version valid at the time of the conclusion of the contract is applicable.

(2) Customers are:

- Consumers as defined by the Consumer Protection Law (either an individual or a single entity) not Businesses or
- Businesses, whether natural persons or entities having legal personality, legally responsible private companies, operating within the framework of their activities. An enterprise is defined as every organisation of independent economic activity designed for continued operation, even if it is not for profit.

Hereafter, if necessary, Consumers and Businesses will be referred to separately, otherwise the following provisions apply to all Customers.

(3) Even if acknowledged, variant, opposing or supplementary general business conditions will not become an integral part of the contract, unless their validity is expressly agreed to in writing by the Seller.

## § 2 Conclusion of Contract

(1) All Seller's quotations are without obligation and subject to confirmation.

(2) A contract is only concluded when the Seller issues a confirmation of order or makes a delivery or a service after receiving an order from the Customer. An order from the Customer always represents a binding offer. The Seller reserves the right to decline an order, for example upon evaluation of the Customer's creditworthiness. For Consumers the Seller reserves the right to accept the order within one week; for Businesses the Seller reserves the right to accept the order within a suitable acceptance period. The confirmation of receipt does not however constitute a binding acceptance of the order.

(3) Specific Customer's instructions, i.e. with regard to delivery dates, discounts or the like, shall not be binding until explicitly confirmed by the Seller in the confirmation of order.

(4) The Seller creates catalogues on- and offline and any other sales documents, lists and drawings, as well as weights and measurements with the utmost care, but reserves the right to subsequently correct any obvious errors.

(5) The Seller shall expressly agree with any changes or additions to the order made by the Customer after the conclusion of the contract and reserves the right to indemnification.

(6) The Seller reserves the right to partial or non-performance of a contract with Businesses in case of the Seller's incorrect or improper deliveries by suppliers. In this case, the Seller undertakes to inform the Businesses without delay and any compensation will be reimbursed partially or fully.

## § 3 Reservation of title

(1) The Seller shall retain title to all goods delivered until complete payment of the purchase price plus any interest or charges arising.

(2) Customers must treat the supplied products with due care for the duration of the retention of title and must perform necessary maintenance and inspection at their own expense. Customers are obliged to notify the Seller immediately on any seizure of the goods by a third party, such as levy of execution and any damage or loss of the goods. The same applies to any change in possession of the goods or any change of the Customer's address. Customers are liable to pay compensation for any damage or costs caused by a breach of the above obligations and for any necessary interventions against access to the goods by third parties.

(3) In order to inspect the goods which are delivered under the retention of title Customers shall provide the Seller with the access to their premises. If Customers violate the contract, in particular by delays in payment, the Seller is hereby entitled to withdraw from the contract and to reclaim the goods. This shall also apply if Customers breach obligations according to §3 (2) to such an extent that the adherence to the contract becomes unacceptable for the Seller.

(4) Businesses are entitled to resell to third parties the goods which are delivered under the retention of title as part of their ordinary course of business. Upon conclusion of a contract Businesses shall assign to the Seller any receivables arising from the resale of the goods to third parties. Businesses must endorse the assignment in their own account books and invoices. After the transfer Businesses are authorized for the collection of the demands. The

Seller reserves the right to collect the receivables himself in case Businesses do not meet their payment obligations and are in default of payment. In this case Businesses undertake to provide the Seller with all documents and data necessary to collect receivables.

(5) In cases where the purchased goods are processed, combined or mixed by Businesses with other items that are their own property or the property of a third party, they must act in the name and on behalf of the Seller. The Seller acquires a co-ownership share corresponding to the ratio of the value of the goods. If co-ownership cannot be established, §3 (4) shall apply mutatis mutandis.

(6) If the Seller and the Customer agreed on foreign law according to which the reservation of title is no longer effective, so the existing securities deriving from the other law shall be deemed as agreed upon. To the extent the cooperation of Customers shall be required, they must take all necessary measures that are required for substantiating and upholding such rights.

## § 4 Prices and Terms of Payment

(1) The prices and the terms of payment stated in the Seller's order confirmation shall apply. To all prices quoted and all extra expenses, the Seller adds the legally applicable value added taxes.

The gross price will be reported on the invoice. The customer agrees to the sending of invoices by electronic means. Should the Seller's costs increase by the time of delivery, the prices can be recalculated on a pro rata basis. Unless otherwise agreed, for Businesses the prices stated shall apply net ex works. The countries where national and international shipment to Consumers is possible are provided in the Seller's 'List of shipment flat rates for consumers' along with the corresponding shipping flat rates.

(2) Payment agreements apply only as conditionally agreed. We reserve the right to deliver only against advance payment or submission of a bank guarantee, if we become aware of circumstances which are likely to reduce the creditworthiness of the Customer.

(3) Customers are committed to paying the invoice amount within 14 days with no deductions after the date of the invoice. Payments shall be made free of charge to the Seller's payment office in the agreed upon currency (EURO unless otherwise stated). Differing terms and conditions of payment have to be agreed to in writing by the Seller. After expiry of the payment period, the Customer will be in default and shall pay interest of 5% or the respective applicable statutory interest rates as a Consumer and of 8% above the base rate as a Business. If however the Business is in subjective debtor's default (i.e. due to action or shortcomings within their responsibility), the interest rate is 9.2 percentage points above the base rate. Furthermore, Customers undertake to reimburse any amount paid or expenditure arising from the collection of receivable, e.g. the dunning fees and collection charges or other costs incurred for any necessary legal measures.

(4) The Seller may accept bills of exchange but is not obliged to do so. If paying by cheque or bill of exchange, payment shall only be deemed effected after the account has been credited. After the debt has become due, discounting and collection charges are to be paid immediately by the person on whom the letter of credit is drawn.

(5) Consumers shall be entitled to a right of set-off in case of the Seller's inability to pay or provided that their counter claims are legally related to the debt or provided that the counter claims have been judicially determined, or are uncontested and acknowledged by the Seller. Businesses shall only be entitled to a right of set-off provided that their counter claims have been judicially determined or are uncontested and acknowledged by the Seller. The retention of payments by Businesses for counter claims shall be excluded.

(6) All and any claims shall become due immediately, should the Customer default payment or if the Seller becomes aware of circumstances suitable to reduce the Customer's creditworthiness. In this case the Seller shall be entitled to make any outstanding deliveries only against advance payment or to withdraw from the contract after setting a reasonable extension period.

(7) Should the time of payment be dependent on the completion of the assembly or due before the commissioning and should this deadline be delayed without the Seller being at fault, payment shall be made, notwithstanding that, no later than 6 weeks after notification of delivery readiness or after delivery.

(8) In the event that goods are to be delivered in a third country, the Seller expressly reserves the right to retrospective invoicing of VAT, if the Customer defaults on its obligation of proper export documentation.

(9) In the absence of express agreement to the contrary, credits issued by

the Seller are valid for a period of 36 months from date of issue. A transfer of credits to third parties is excluded. The Seller is entitled to offset credits with other claims against the Customer.

(10) Customer is obliged to check the invoice data stated in the offer or in the order confirmation carefully, as issued invoices cannot be amended afterwards. If the Seller agrees to issue a new invoice, the Customer shall be charged a lump-sum administration fee of 0.2% of the net invoice amount for each new invoice issued, but not less than € 25,00 and not more than € 150,00.

(11) Consumers explicitly agree to transfer all energy efficiency measures attributable to this purchase and having effect within the Italian territory to the Seller.

#### **§ 5 Delivery and Transfer of Risk**

(1) As far as the scope of delivery is concerned, the Seller reserves the right to change the design and equipment of the goods delivered due to technical reasons or in compliance with legal or official requirements.

(2) Unless otherwise agreed in writing with the Seller, the terms and dates of delivery are provided to the Customer as a point of reference only and are not binding. The delivery terms and dates will begin from the date of the order confirmation, however not before a total clarification of all details of the contract and the procurement of required technical information, e.g. plans, drawings, and not before the fulfilment of all other requirements of the Customer or before the receiving of a deposit payment or a guarantee required from the Customer. Delivery terms and dates are understood to be ex works. If the goods fail to be delivered or despatched at the agreed time for reasons not attributable to the Seller, the agreed delivery time shall be considered to have been met at the day on which the goods are notified to be ready for dispatch.

(3) The Seller shall have the right to make partial or advance deliveries and to settle payments.

(4) Goods ready for shipment must be called off immediately, otherwise after 14 days following the notification for the readiness for dispatch, the Seller is entitled to either store them at the risk and cost of the Purchaser and at his discretion and charge them as delivered.

(5) Failing express agreement, the place of performance for the delivery of goods shall always be the Seller's place of business. The risk of damage or loss of the goods passes to the Customer upon notification to the Customer that the Goods are ready for collection or upon handing over the Goods to the carrier or any other person or company charged with transporting the goods.

(6) Customers shall notify the carrier or any other person or company charged with transporting the goods immediately upon delivery of apparent transport damages or faults and receive a confirmation for doing so. Hidden transport damages or faults shall be reported to the carrier or any other person or company charged with transporting the goods within 7 days after the delivery of the goods. If the Seller's order confirmation derogates from §5

(5) and expressly affirms a place of performance other than the Seller's place of business, customers shall additionally notify the Seller of the transportation damage or fault within 4 days after the delivery of the goods; otherwise the Seller is entitled to exclude a settlement of transportation damages or faults.

#### **§ 6 Further Delivery Conditions**

(1) If the Seller is responsible for the non-fulfillment of a delivery date expressly confirmed in the order confirmation, as far as Customers satisfactorily prove that they have suffered damage therefrom, they shall be entitled to claim compensation for delayed delivery at 0.5% per week of the purchase price up to a total of 5% of the net contract value of the deliveries affected by the delay.

(2) If the Seller's performance is delayed in case of an agreed penalty and due to a delay in delivering purchased parts of the sub-suppliers despite the sub-supplier's binding confirmation of delivery date, the penalty shall come into effect at any later date by the period by which the delivery is delayed. Furthermore, a penalty shall become invalid if deposits are not paid in due time or if a performance is delayed because of the Customer's behavior.

(3) In case of circumstances which are unforeseeable or not dependent on a party's will, as for events of force majeure on the part of the Seller or of the sub-supplier, the Seller is entitled to postpone the delivery and/or service for the duration of these circumstances and an adequate initial period. These circumstances include primarily, but are not limited to, armed conflicts, orders by public authorities, pandemics, transport and customs delay, transport damages, shortage of energy or raw materials, strike and lock-out.

#### **§ 7 Warranties**

(1) Any existing warranty is void for defects caused by poor and/or incorrect installation if not carried out by the Seller, faulty maintenance, incorrect or negligent handling or storage, improper repairs we have not carried out, modifications without our written consent, natural wear and tear, excessive strain, unsuitable operating conditions and utilities, as well as chemical, electro-chemical or electrical influences we are not responsible for, as well as climatic or other naturally caused influences.

Lamps and degradable electronic components are excluded from any guarantee, as far as legally permissible. Colour point shift that takes place over

the product life is to be considered as wear. Failure of single LED light points is not a defect, provided a substantial impairment of the total light flux does not take place or the single point of light loss is only slight in relation to the total points of light.

Warranted properties are only those that are expressly designated as such in the product information. An express warranty is valid only until the expiration of the warranty period. Technical or formal changes to the products, which serve improvement or result from a change in statutory regulations, can be performed by the Seller without further publications.

(2) In the case of material defects, the Consumer has the right to choose between the rectification of such defects and replacement delivery. The Seller may refuse to offer the remedy of choice if it is impossible or if, in relation to the other remedy, it would require a disproportionate effort. If a rectification is not possible or feasible, the Consumer has the right to choose whether to reduce payments or, provided that defects are not minor, to rescind the contract. For Consumers the period of warranty is 2 years as of the delivery of the goods or acceptance of the services.

(3) Seller's warranty obligation towards Businesses shall only apply to defects that appear when observing the applicable operating conditions and putting the item to normal use. In particular, the warranty does not apply to defects resulting from any circumstances for which the Businesses or third parties are responsible. No warranty is granted by the Seller for wear and tear or minor defects of the surface. Any warranty obligation of the Seller shall come into effect only if the installation was carried out by an electrical installation company. For parts that the Seller purchased from sub-suppliers upon the instructions of Businesses or their representatives and contrary to the Seller's recommendation, the Seller is liable only to the extent to which there guarantee claims against the sub-supplier can be brought forward. If an order or a service is carried out by the Seller according to design specifications, drawings or models that were made available by the Businesses, the Seller's liability does not extend to the correctness of design but only to the conformity of the design to the Businesses' specifications. The Seller is herein not obliged to examine the information provided by the Businesses. Light devices and parts subject to wear as well as used products shall not be covered by the warranty. Similarly, the Seller shall not accept any warranty, when accepting repair jobs or reworking or modifying old as well as third-party goods.

(4) Businesses are obliged to examine the delivered goods or the services carried out with regards to defects without undue delay and with professional care and shall report obvious defects to the Seller in writing within a week of receiving the goods or acceptance of the services by Businesses; otherwise the assertion of warranty is excluded. Hidden faults must be reported in writing within a week of discovery. Businesses bear the full burden of proof that all the conditions for a claim are met, especially for the defect itself, for the point in time when the defect is established and that the defect is reported in time. For those defects covered by the Seller's warranty obligations, the Seller shall be entitled to choose to offer either to rectify the defect or provide a replacement. The Seller shall be given the time necessary to examine and remedy the defects or supply replacement parts or equipment, as applicable. The costs for disassembly and assembly incurred in connection with the rectification of a defect or a replacement are to be borne by the Businesses. The costs and risks of transporting the good to and from the repair center must be borne by the Businesses. For the rectification of defects on the Businesses' premises, any travel costs are borne by the Businesses. If the Seller has been commissioned with the assembly of the goods, the Seller shall bear the disassembly and assembly costs incurred in connection with the rectification of the defect or replacement insofar as the defect is the result of faulty installation by the Seller. Any removal of a defect or other warranty remedy shall not result in a renewal of the warranty period. The Seller shall only refund costs for remedying a defect, undertaken by the Businesses themselves or by a third party, if the Seller has given his written consent. For Businesses the period of warranty is one year as of the delivery of the goods or acceptance of the services by Businesses. Even within this period, the seller has no warranty obligations if businesses are in arrears with payments.

(5) Any costs incurring in the course of rectifying any defects, but which would have arisen anyways even if a defect-free work had been carried out ("business-as-usual costs"), shall be borne by the customer.

(6) Insofar as the Seller expressly agrees in writing to provide spare parts for a certain period of time, it is expressly pointed out that the replacement of LED luminaires and/or individual LED modules may lead to deviations in the light characteristics compared to the original product due to technical progress and the use-related change in luminous flux. Spare parts of a mechanical nature are provided in the form of identical or equivalent products.

#### **§ 8 Termination**

(1) Should the Seller fall behind with deliveries or services through gross culpability, Customers are entitled to declare their withdrawal from the contract in writing by a registered letter addressed to the Seller after expiry of a reasonable period of grace of at least 30 days.

(2) The Consumer is entitled to withdraw from a Distance Sales Contract within a period of 14 working days with effect from the date of receipt of the

goods by the Consumer or, in the case of works and/or service contracts, from the date on which the contract is concluded. The notice of termination of the contract shall be given in writing and without an explanation. The punctual dispatch of the notification suffices to comply with the time limit. The right of cancellation does not apply to the supply of goods made according to Customer's specifications. If Consumers exercise their right of withdrawal, they are obliged to return the goods at their own expenses. In the event of withdrawal from the contract, services already carried out or partial services shall in any case be invoiced and shall be paid by the Consumer in accordance with the contract.

(3) Businesses and Consumers, provided that for the latter no right of withdrawal applies according to § 9 (2), are entitled to withdraw from a contract with the Seller's explicit consent within 45 days from the issue date of the order confirmation against payment of a cancellation fee of 20 % of the order value. After this 45 days period, Customers have the right to withdraw from a contract within another 45 days against payment of a cancellation fee of 40 % of the order value. Because of the administrative effort the cancellation fee amounts at least EUR 20.--. After the expiration of 90 days from the issue date of the order confirmation, withdrawal from a contract is not admissible. Withdrawal is excluded for NANO-Articles (including STADIO, PICO, MICRO, JUST, etc.), trade goods, for articles, which are explicitly marked as excluded from withdrawal in the catalogue, and if a customised product (including customised cuts) was manufactured by the Seller for the Customer. Customers are obliged to return any deliveries on their own costs to the Seller. The difference between cancellation charge and order value will only be credited to the Customer if the goods are returned in undamaged condition. The right to assert a claim for actual damage in a larger amount is reserved. In the event of withdrawal from the contract services already carried out or partial services shall in any case be invoiced and shall be paid by the Customer in accordance with the contract, notwithstanding any cancellation fees and any claims for damages.

(4) Without prejudice to the legal rights of rescission in compliance with §3 (3) and §4 (6) laid down in these General Terms and Conditions, the Seller shall be entitled to rescind the contract in particular (a) if either, after the conclusion of the contract, some circumstances occur whereby the fulfilment of the contract is no longer cost-effective or even impossible under the terms agreed upon, or (b) in case the delivery or the start or the continuation of the services, for reasons that are the responsibility of the Customer, cannot be carried out or is further delayed even after a reasonable period of grace set by the Seller. The Seller reserves the right to claim further damages.

#### **§ 9 Liability**

(1) Outside of the scope of product liability law, the Seller's liability towards customers is limited to malicious intent or gross negligence. Excluded from this liability limitation are culpably caused personal injuries.

(2) Liability for slight negligence, compensation for consequential and financial losses, savings not achieved, loss of profits, lost data, losses of interest, and for damages resulting from claims made by third parties against Businesses are ruled out.

#### **§ 10 Intellectual Property Rights and Copyright**

(1) Whenever goods are supplied by the Seller according to plans, drawings, models, analytical specifications, or any other Customer information and this infringes on third-party rights, especially intellectual property rights, the Customer undertakes to indemnify and hold harmless the Seller.

(2) All documents and sales information such as catalogues, brochures, documents and drawings as well as offers, projects, and any other technical documents, e.g. plans or models, remain the intellectual property of the Seller. The Seller is entitled to ask to return documents. Any processing, copying, circulation and/or public reproduction other than for private use shall be deemed illegal and prohibited.

#### **§ 11 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.

#### **§ 12 Final provisions**

(1) Italian law is applicable. The provisions of the UN Convention on Contracts for the International Sales of Goods shall not be applicable. This does not apply to Consumers if it would deprive them of relative protections granted by mandatory legal provisions under the laws of the State where they have their permanent residence.

(2) For all disputes arising from legal transactions which are directly or indirectly subject to these General Terms and Conditions, the Italian court in Milan having exclusive local and subject-matter jurisdiction for the Seller is agreed upon. For Consumers, this is applicable only if they have their residence, usual place of living or place of employment in this area in Italy. In all instances, however, we reserve the right to claim for damages at the general place of jurisdiction of the Customer.

(3) If any provisions of the contract with the Customer, including these General Terms and Conditions, are or become ineffective, in full or in parts thereof, the validity of the other provisions shall not be affected. In this event the parties are obliged to replace a completely or partially invalid provision with one that most closely corresponds to the intended purpose of the original provision.