



# General Terms and Conditions of Business and Delivery

(as of September 2024)

## A. GENERAL

### § 1 Scope – protective clause– severability clause

(1) The General Terms and Conditions of Business govern the rights and obligations of the relationship between ourselves, XAL Schweiz GmbH, Hohlstraße 517, CH – 8048 Zurich and our business and private customers (jointly: „Customers“). Business customers means natural or legal persons or partnerships with legal capacity that purchase merchandise from us for commercial, independent or freelance purposes. Private customers are natural persons who purchase merchandise from us for personal or family use.

(2) The contractual relationship and all legal relationships, deliveries and services as well as all obligations of any kind whatsoever between ourselves and our Customers shall be governed exclusively by our General Terms and Conditions of Business below. Our General Terms and Conditions of Business also apply to all future legal relationships and obligations by way of or similar to legal transactions.

(3) Terms and conditions of the Customer that conflict with or differ from our General Terms and Conditions of Business, even if they are part of an order confirmation, are not part of this contract, even if they are not explicitly objected to, unless we explicitly consent in writing to the application of these terms and conditions; instead, our General Terms and Conditions of Business shall apply. This shall apply even if we deliver unconditionally in full knowledge of differing General Terms and Conditions of Business.

(4) By placing the order, the Customer acknowledges our General Terms and Conditions of Business as binding, unless there is a prior written individual agreement otherwise.

(5) Amendments or additions to this contract must be in written form. This also applies to cancellation of this written form agreement itself.

(6) Our customers' data shall be stored and processed by computer insofar as permitted by statutory regulations, especially the applicable data protection regulations.

(7) If individual conditions, parts thereof or parts of these General Terms and Conditions of Business should be ineffective, the contract shall follow statutory regulations in this respect. Otherwise, the other provisions of these General Terms and Conditions of Business shall continue to apply.

## B. SALES AND DELIVERY CONDITIONS

### § 1 Offer and conclusion of contract

(1) Our offers are always without obligation. They are subject to confirmation and not to be understood as a binding offer.

(2) A contract shall only be concluded once we have received the order, which is considered a binding offer of contract of the Customer, and explicitly accepted it in a written order confirmation or by carrying out the delivery. We have the right to accept this offer within two weeks of receipt by us. We have the right to refuse to accept the offer, for example, after checking the Customer's credit history. In any case, confirmation of receipt of an order does not constitute a binding acceptance of the order.

(3) Our field workers are only authorised to broker orders. An order shall only be considered accepted if it is confirmed in writing or if the merchandise is delivered.

(4) If, in an exceptional case, a binding offer is made by us, acceptance thereof must be declared within two weeks of receipt by the future contract partner.

### § 2 Surrendered documents

(1) We reserve the titles and copyrights to all documents surrendered to the Customer in connection with the order placement, such as calculations, drawings, catalogues, brochures and other sales documents, etc.

(2) Documents of this kind may not be made accessible to third parties unless we grant the Customer explicit written permission to do so.

(3) Reproduction, especially photocopying, is not permitted and is actionable except for purposes of contract performance. A demand for prosecution will be filed in case of non-compliance.

(4) If an offer is not accepted by the time limits of B. Sales and delivery conditions, § 1 para 2 and para 4, surrendered documents shall be sent back to us without delay.

### § 3 Prices – payments – late payment

(1) Our list/catalogue prices apply. Our prices are in CHF. Catalogues and price lists can be viewed at our location or requested from us free of charge.

Unless agreed otherwise in writing, our prices are ex factory or ex warehouse and inclusive of loading at the factory or warehouse. Costs of packaging and disposal, freight and postage and insurance costs are not included, nor are installation, start-up or assembly costs. These costs will be billed separately. The applicable amount of value-added tax will be added to the prices. Light fixture prices do not include lamps such as filament bulbs, halogen bulbs, discharge tubes and fluorescent tubes in the available types.

(2) Our stated prices are exclusive of value-added tax. Unless agreed otherwise, the purchase price shall be due and payable without discount within 30 days of the billing date. We reserve the right to make conditions that differ from this (advance payment, payments in thirds, etc.) in individual cases. Payment must be made exclusively to our account.

(3) For deliveries abroad, we may require the opening of an irrevocable and confirmed letter of credit, payable at a bank identified by us, or other equivalent securities.

(4) We only accept cheques and money orders for processing; payment is only considered made when credited to the account. Bills of exchange are not accepted in payment.

(5) Starting on the 31st day after receipt of our bill, the Customer's payment shall be considered late without a warning being required. Starting at this point in time, at the latest at the time the payment is late, we have the right to require interest for late payment of 8 percentage points above the relevant base interest rate p.a. The right to claim higher damages caused by delay if such are concretely proven remains reserved. Starting from the second warning, we have the right to require a CHF 5.00 warning fee per warning. The contract partners shall remain free to prove lower or higher damages.

(6) Cash discounts will not be granted if the Customer is late in paying earlier bills. Rebates that have been granted shall not apply if the Customer submits a declaration of insolvency, is late in payment, is bankrupt, concludes a debt restructuring agreement or petitions for a provisional or definitive debt restructuring moratorium.

(7) The Customer can only claim set-off if the Customer's counter-claims have been established without further legal recourse or are undisputed. The contract partner is only authorised to exercise a right of retention if the Customer's counter-claim is based on the same contractual relationship and the counter-claim has been established without further legal recourse or is undisputed. In all other cases, the Customer waives the right to set the Customer's claims off against ours.

(8) We have the right to assign the claims from our business relationship.

### § 4 Reservation of title

(1) The merchandise shall remain our property until full payment of all claims from the business relationship with the Customer, regardless of legal basis, even if the purchase price for separately identified claims is paid. We have the right to enter the reservation of title into the reservation of title register at the Customer's cost. In case of a running account, the reserved title shall be security for our balance claims.

(2) We have the right to insure the goods subject to reservation of title against theft, breakage, fire, water and other damage at the Customer's cost if the Customer does not provide proof of such insurance of own accord.

(3) If the goods subject to reservation of title delivered by us are connected, combined or mixed with other objects, we acquire co-ownership equal to the ratio of the value of the goods subject to reservation of title to the value of the other connected, combined or mixed merchandise. If ownership of the goods subject to reservation of title is lost because they become an essential part of another object, the Customer grants as effective as of now co-ownership of the main object in the proportion of the ratio of the value of the delivered goods subject to reservation of title to the value of the main object. Co-ownership is transferred to us effective as of now; instead of transfer of possession, a custodianship relationship is agreed upon on the basis of which the Customer shall hold the main object in custody for us at the Customer's cost. When the claim is paid, the co-ownership granted in this way shall be transferred to the Customer.

(4) Any handling or processing shall be done on our behalf, free of charge and without obligation for us in such a way that we are considered the manufacturer and retain title to the products at every point in time and degree of processing. If the Customer processes the goods with other merchandise that does not belong to us, we shall be entitled to co-ownership of the new object in the ratio of the invoice value of the goods subject to reservation of

title to the other processed goods at the time of the processing. Otherwise, the new object created by the processing is subject to the same provisions as the goods subject to reservation of title. It shall be considered a good subject to retention of title as defined by these provisions.

(5) The Customer may resell the goods subject to reservation of title through the Customer's business establishment in the normal course of business operations. We can revoke this authorisation if the Customer is late in payment, the requirements for bankruptcy proceedings have been met, the Customer discontinues payments, submits a declaration of insolvency, concludes a debt restructuring agreement or petitions for a provisional or definitive debt restructuring moratorium. This authorisation does not apply if the Customer debars assignment to us of the claim from sale of the merchandise. The Customer has no right to engage in further acts of disposal over the goods subject to reservation of title.

(6) The Customer's claims from resale of the goods subject to reservation of title shall be assigned to us upon conclusion of the contract between ourselves and the Customer as security for all our claims from the business relationship.

(7) The Customer is authorised to collect the aforementioned claim, but not to assign it to third parties. We can revoke this authorisation if the Customer is late in payment, the requirements for bankruptcy proceedings have been met, the Customer discontinues payments, submits a declaration of insolvency, concludes a debt restructuring agreement or petitions for a provisional or definitive debt restructuring moratorium. If requested, the Customer is obligated to notify the third-party orderer of the assignment for payment to us.

(8) We undertake, if requested by the Customer, to clear the claims to which we are entitled to the extent that the realisable value of the claims exceeds 110% of the secured claims if costs of administration and realisation are taken into account.

(9) We have the right to withdraw from the contract if these provisions are violated.

(10) If we are entitled to take back the goods, the Customer or an agent must make it possible for us to inventory the available goods subject to reservation of title.

(11) The Customer must notify us in writing without delay of levies of execution or other interference by third parties. The third party shall be informed of our rights without delay. If the third party is not in a position to reimburse the costs of proceedings against him, the Customer shall be liable for them if the Customer culpably failed to issue the specified notices.

#### **§ 5 Delay in delivery and time of performance – default**

(1) Our delivery time is calculated from the date of our order confirmation. Delivery periods and dates are non-binding without a written individual agreement.

(2) All delivery dates are subject to timely, complete and correct obtaining of supplies ourselves.

(3) In all cases, the beginning of and compliance with the delivery period requires conclusive clarification of all technical details, receipt of all documents to be delivered by the buyer, necessary permits and plans, compliance with the agreed payment conditions and other obligations and agreement on all technical questions the parties reserved the clarification of at conclusion of contract.

(4) If these requirements are not met, the delivery period shall be extended by the length of the delay, plus a reasonable run-up period. This shall not apply if we are responsible for the delay.

(5) In the event of force majeure on the part of the Seller or their subcontractors, the Seller is entitled to postpone the delivery for the duration of the circumstances and a reasonable lead time and, in the event of longer-term delays, to withdraw from the contract either partially or entirely, without any claims being able to be derived against the Seller or the Seller being in default. Force majeure includes all events unforeseeable by the Seller, or events which – even if they were foreseeable – are beyond the Seller's control and whose effect on the fulfillment of the contract cannot be prevented by reasonable efforts from the Seller. Events of force majeure particularly include, but are not limited to: armed conflicts, government interventions and prohibitions, delays in transport and customs clearance, transport damages, shortages of energy and raw materials, strikes and lockouts, extraordinary (natural) events, epidemics, pandemics, and cyber-attacks. If the Seller is or becomes unable to fulfill any of their contractual obligations due to force majeure, they will inform the Customer of the event or circumstances constituting force majeure within 14 days, indicating the obligations they are prevented from fulfilling, provided the circumstances of force majeure do not prevent this notification.

(6) We can make partial deliveries to an extent reasonable for the Customer, especially for large orders.

(7) If the delivery period is exceeded, the Customer has the right to withdraw from the contract if the Customer has unsuccessfully set a reasonable time limit of at least 10 working days or setting a time limit is unnecessary because of statutory regulations. With the exception of special circumstances that justify withdrawal when the interests of both sides are weighted, there is no right to withdraw if the obstacle to performance is caused by circumstances for which we are not responsible, including delays in timely and correct obtaining of own

supplies for which we are not responsible. The due date of the claim to delivery shall be pushed back proportionately.

(8) If the Customer is late in payment or if the Customer's financial circumstances experience a significant worsening that endangers the performance of the contract, we have the right to make delivery dependent on full payment of the purchase price or the provision of an appropriate security.

(9) The Customer must accept the merchandise on the agreed delivery or completion date. If the time limit for acceptance is exceeded by three months, we have a right to invoice and charge warehouse rent.

(10) If CPT has been agreed in the XAL order confirmation, delivery takes place CPT (unloaded) to the address specified in the order confirmation.

#### **§ 6 Sample consignments**

As an exception, standard light fixtures (without lamps) shall be made available for lighting tests for a maximum of one month. Unreturned material shall be billed without discount. Samples of custom products will only be provided against payment. In every case, light fixtures damaged or modified by the recipient shall be charged at the full list or catalogue price.

#### **§ 7 Transfer of risk**

(1) Risk shall transfer to the buyer when possession is transferred to the buyer or the buyer's agent. Otherwise, it shall transfer as soon as the consignment is given to the persons carrying out transport (the forwarding agent, the carrier, or another person appointed to carry out the shipment). This shall not apply if we perform the transport.

(2) Unless agreed otherwise, the route and means of shipping shall be left to our due choice.

(3) If shipment is delayed because of circumstances for which the Customer is responsible, risk shall be transferred to the Customer from the date of notice of readiness for shipping.

(4) If the Customer requests it, we shall take out transport insurance at the Customer's cost.

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

#### **§ 8 Rights in case of defects**

We shall be liable as follows for defects of quality and title:

(1) There is no statutory warranty for defects caused by poor set-up, incorrect installation, poor maintenance, incorrect or negligent handling or storage, incorrect repairs not performed by us, modifications without our written consent, natural wear and tear, excessive strain, inappropriate operating conditions and operating supplies, chemical, electrochemical or electrical influences for which we are not responsible, or weather or other influences of nature, insofar as these circumstances were not without influence on the occurrence of a defect of quality. Lamps, electronic wearing parts and used merchandise are exempt from any statutory warranty insofar as legally permissible. Wear and tear also includes minor fluctuations of colour caused by production tolerances of light-emitting diodes that are state of the art and the displacement of light colour points that occurs over the service life. Properties are only guaranteed if identified as such in the product information. A guarantee is valid at the maximum until the end of the statutory warranty period. The seller may make technical or formal changes to the products that improve them or accommodate changed statutory regulations without further publication.

(2) If the buyer sends us parts used for manufacturing, set-up or reprocessing, we do not assume liability for the performance thereof in heat treatment or processing. If the material becomes damaged herein, we must be reimbursed for the costs already incurred for processing.

(3) The Customer must correctly fulfil the Customer's due obligations of inspection and objection as a prerequisite for any warranty claims of the Customer. Patent defects or short or incorrect deliveries must be reported in writing without delay after receipt of the merchandise, but at the latest within eight days of transfer of possession. Hidden defects must be reported in writing without delay after discovery. The affected parts shall be sent back to us at our request and at the customers expense.

(4) If the duties of inspection and objection are breached, the merchandise shall be considered approved in view of the defect in question.

(5) If the notice of defects was in error, we have the right to require reimbursement from the Customer of the expenses incurred by us.

(6) Unless the law compulsorily prescribes longer time limits, the time limit for filing warranty claims shall be 12 months for business customers and 24 months for private customers.

(7) If the purchase item is defective, it is at our sole discretion whether we remedy the defect or reduce the price or deliver an object free of defects as our supplementary performance.

(8) If the Customer unsuccessfully sets us a time limit for supplementary performance or the law makes setting a time limit unnecessary or if we refuse supplementary performance or if the supplementary performance has failed or if the type of supplementary performance chosen by us is unreasonable for the Customer or if the defect cannot be remedied by a reasonable deadline, the Customer is limited to the rights to lower the compensation (reduction) or withdraw from the contract. The right to compensation for damages is

excluded within the limits of B. Sales and delivery conditions § 8 and § 9 insofar as legally permissible.

(9) The reimbursement of removal and installation costs and additional claims, e.g. for consequential damage caused by deficiency, such as lost profit including calculated profit surcharges, operating loss costs or additional costs for replacement purchases is - as far as legally permissible - excluded.

#### **§ 9 Liability**

This provision shall apply to all cases of our liability on any legal basis whatsoever to our Customers, except where these General Terms and Conditions of Business or other agreements stipulate otherwise.

(1) In case of breach of our contractual duties under these General Terms and Conditions of Business, we shall be liable to Customers for direct, proven damages that were foreseeable at the time of conclusion of contract and that have been caused by us through illegal intent or gross negligence. Further liability is explicitly excluded. Under no circumstances shall we be liable for average or slight negligence or for indirect or consequential damages. Consequential damages especially include lost profit, business, income, goodwill or expected savings, as well as damage to reputation. All liability for breaches of duty by our assistants (vicarious agents and legal representatives) is excluded insofar as legally permissible.

(2) This regulation shall not apply if a guarantee of quality is made, we directly and culpably cause harm to life, body or health or if compulsory statutory regulations state otherwise, including the regulations of the Produkthaftpflichtgesetz (Product Liability Act).

#### **§ 10 Termination**

Business and private customer, provided that for the latter no further legal right of withdrawal applies, are entitled to withdraw from a contract with the Seller's explicit consent within 45 days from the issue date of the delivery note 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 CHF 25.--. After the expiration of 90 days from the issue date of the delivery note, withdrawal from a contract is not admissible. Withdrawal is excluded for NANO-Articles (including STADIO, PICO, MICRO, JUST, etc.), trade good, 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. Only undamaged goods in original packaging can be returned. 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.

#### **§ 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 and is available at <https://xal.com/en/data-protection-declaration>.

(2) Customers enjoy data protection rights, especially the rights to access information, rectification and data portability. Further information is contained in the Sellers Data Protection Information, which is available at <https://xal.com/en/data-protection-declaration>.

#### **§ 12 No re-export to Russia and Belarus clause**

(1) The Customer shall not sell, export or re-export, directly or indirectly, to the Russian Federation or to the Republic of Belarus for use in the Russian Federation or in the Republic of Belarus any goods supplied under or in connection with the contract that fall under the scope of Article 12g of Council Regulation (EU) No 833/2014 and Article 8g of Council Regulation (EU) No 765/2006.

(2) The Customer shall undertake its best efforts to ensure that the purpose of paragraph §12 (1) is not frustrated by any third parties further down the commercial chain, including by possible resellers.

(3) The Customer shall set up and maintain an adequate monitoring mechanism to detect conduct by any third parties further down the commercial chain, including by possible resellers, that would frustrate the purpose of paragraph § 12 (1).

(4) Any violation of paragraphs §§12 (1), (2) or (3) shall constitute a material breach of an essential element of the contract, and the Seller shall be entitled to seek appropriate remedies, including, but not limited to:

- (i) termination of the contract and
- (ii) a penalty of 15 % of the total value of the contract, but at least CHF 5.000,00 or price of the goods exported, whichever is higher.

(5) The Customer shall immediately inform the Seller about any problems in applying paragraphs §§12 (1), (2) or (3), including any relevant activities by third parties that could frustrate the purpose of paragraph § 12 (1). The Customer

shall make available to the Seller information concerning compliance with the obligations under paragraph §§12 (1), (2) and (3) within two weeks of the simple request of such information.

### **C. FINAL PROVISIONS**

#### **§ 1 Applicable law**

These General Terms and Conditions of Business and any disputes arising from or in connection with the relationship between ourselves and our Customers shall be governed exclusively by Swiss law. The Vienna UN Convention on Contracts for the International Sale of Goods of 11/04/1980 (CISG) shall not apply.

#### **§ 2 Place of performance – place of jurisdiction**

The place of performance and the sole place of jurisdiction shall be our registered office in Zurich/CH.