

I. General

In addition to the contractual agreements, only these general purchasing terms and conditions apply for the whole business connections with suppliers or other contractors (hereinafter referred to as "supplier"). These terms and conditions are valid in case of permanent business relations or framework agreements for further supply relations until the validity of our new purchasing terms and conditions. The supplier agrees to our conditions through the consignment of its products at the latest. Other business conditions or terms of delivery will neither get subject matter of the contract through the confirmation of the supplier nor through the acceptance of the consignment without reservation or through payment. The current version of our general purchasing terms and conditions is available on our websites www.xbag.aero. Only the German version of our terms and conditions is valid. The translated version is only to give a better comprehension for the supplier.

II. Offer

The supplier has to indicate any difference in his offer according to our enquiry. The enquiry has to be firm for at least 30 days. All offers of the supplier are free of charge. The prices are to be quoted in EUR plus VAT, carriage paid including packing and insurance (DDP). On our demand, the prices can be quoted in other currencies plus VAT, carriage paid including packing and insurance (DDP). For Documents, samples, tools etc. which we have given to the supplier to submit an offer, we reserve all intellectual property rights and the supplier has to send back this Documents, samples, tools etc. immediately and free of charge after submitting the offer or handling the order.

III. Order

1. The acceptance of our order has to be acknowledged within 7 days through a written confirmation with binding prices and delivery time. Only written orders are legally binding. All agreements which are made between the parties have to be written in the order and if applicable by an additional written agreement. There are no verbal agreements. All modifications or amendments must be arranged with our management or with an authorized person. Therefore, all agreements with other persons need a written confirmation of our management or authorized person to be valid.
2. Delivery schedules will be firm, if the supplier does not disagree within one week. Framework agreements authorize only to buy enough raw-material. The Production of articles is not allowed until the receipt of an order according to this framework agreement. In case that the supplier changes the drawing or the shape, the supplier will bear the risk of a non-acceptance as well as all defects and damages caused through this action.
3. Differences in quantity or quality compared to our order and contract amendments will not apply until our written acknowledgement.
4. Before placing the order we are authorized, in prior consultation with the supplier, to change the construction, quantity and delivery time. The effect of these changes has to be settled adequate and with mutual consent. If we cannot reach an agreement, we will have the right to cancel the order. In this case the supplier will receive an adequate reimbursement of expenses.
5. The supplier is not allowed to change the production process or method, or to use other raw material to produce the parts ordered according to previous or similar consignments without prior agreement and written approval.
6. Drawings, tools, samples, models, brands and designs as well as finished products and semi-finished products which are in the possession of the supplier or which have been produced according to our order remain or will become our property. They may only be delivered to a third party after a written approval. Except as otherwise provided, in particular cases they have to be given back after handling the order and without any request. Goods and services which are produced especially for us may only be delivered to a third party with our written approval.

IV. Delivery dates and periods, delay

1. Delivery dates and deadlines which are listed in our orders are firm. The receipt of the consignment is relevant for the adherence of deadlines. A part delivery is only acceptable with a prior written agreement. The supplier has to inform us about difficulties to deliver in time and in the prescribed quality. Further he has to give us the reasons for this delay as well as the expected delay in written form. Consequently he has to wait for our decision according to the continuity of the order. He will be liable for late or no information.
2. In case of a delay in delivery we will be entitled to legal claims. A further deadline is dispensable when the fulfilment of the order will become no interest because this deadline is necessary to hold our delivery deadlines and therefore we must expect a refusal of the order through our customer. A disclaimer or a limitation of liability for the supplier is impossible. In case of a rescission we can retain part-deliveries with partial paying. With a repeated or durable delay in delivery we reserve the right to cancel the contract. If the delay is not the fault of the supplier, we will have a exceeding right to cancel the contract, if the delay will be substantial and this will affect our own delivery deadline.
3. In case of a delay through the supplier we have the right of a penalty after a reminder. This penalty amounts to 0,5% of the net order value for each week started, maximum 5% of the net order value and/or we can demand the delivery and/or we can order the articles from a third party after the deadline (covering purchase) and/or we can withdraw from the contract. The penalty paid will be credited against the claim.
4. Up to two days before the deadline we are not obligated to accept the consignment.
5. If the delivery cannot take place because of force majeure as well as other unexpected events which we cannot control the term of acceptance will be extended and no default of acceptance will arise. If we have slight negligence according to the acceptance we will only be liable for the typical, foreseeable damages. Furthermore, claims through the supplier are excluded.

V. Transportation and transfer of risks

1. Basically delivery free domicile (DDP) is agreed. The supplier has to note our order details on shipping documents and on delivery notes. Delays, additional costs and damages which occur through non-observance of our shipping conditions will be at the expense of the supplier. The supplier has to use packaging which is specified and has to take care that the consignment is protected from damages. If there is no demand according to the packaging the supplier has to use standard packaging. The supplier is liable for losses or damages which occur during the whole transport (including the unloading) until the acceptance. Therefore the supplier has to contract suitable transport insurance. If we will bear the costs for transportation the supplier has to choose the cheapest type of dispatch under consideration of the transport safety.
2. The risk will be transferred with handover of the consignment or with installation and acceptance by the XBAG GmbH. The keeping of the goods is free of charge and at the expense of the supplier.

VI. Prices, Payment

1. The prices which are mentioned in the order are to be understood as maximum price. The price could be lower but not higher than in our order. The prices are to be understood free domicile including packaging (DDP). If something other will be agreed, the packaging can be charged at the cost price. In case of a return consignment there must be credited at least two-thirds of the value.
2. The supplier will not give us higher prices and conditions than other clients, if they can give him the same conditions.
3. The supplier must draw up an invoice for each order. Payment will be effected after receipt of the whole consignment and free from defect respectively and after receipt of the invoice. In case of agreed part deliveries this condition applies accordingly. A delay in time which occurs through wrong or incomplete invoices does not influence the periods of cash discounts. In case of a cash discount the payment will be effected

under indication of the cash discount noted in the order and acceptance of the consignment free of defects. Relevant for this period is the date of delivery or the receipt of the invoice, whichever occurs at last. A delay in payment is in case of a slight negligence excepted. Claims will be limited through typical damages.

4. Outstanding debits can only be assigned to a third person with an agreement. Payments will be effected only to suppliers.

VII. Documentation

1. An official copy of the delivery note has to be attached to the consignment. The invoice has to be sent by separate post at the same time. The documents must include the following: the suppliers document number, our order number, date, department and/or name of purchaser, quantity, quantity unit, description of the article, our article number and remaining quantity, if it was a part delivery. If there is any information missing the document will not be deemed valid.
2. Upon shipment, the supplier has to send us the advice of dispatch immediately.

VIII. Quality, Quality management

1. The supplier has to comply with the engineering rules and the technical data agreed, in particular acceptance standards as well as protective law and other conditions according to the security. All consignments have to conform to the latest standards (DIN, EN, ISO, LN, VDE, EU, etc.), company standards as well as customary and trade standards, unless otherwise agreed in written form. The supplier is obligated to maintain a quality management system related to the international standards ISO 9000 ff or EN 9100 ff, with the obligation of the zero-defect-aim and the permanent improvement of his processes and service. The supplier is obligated to inform his subcontractor that he has to maintain a similar quality management system to ensure that the purchased articles or processed goods are free from defects. All further agreements will be arranged in written form between the parties. The supplier has to sign a quality agreement (Purchasing Guide Line) with the XBAG GmbH if requested by the XBAG GmbH.
2. In case of deviations of specified property values, the supplier is not allowed to deliver the goods without a written special release (Concession) of the XBAG GmbH. Therefore the supplier has to apply the special release in good time. He has to write this application immediately with identification of the deviation. The supplier must ensure that these articles with deviation are indicated on the packaging as well as on the delivery note of the whole consignment. If such deviations are detected by the supplier after delivery, the supplier has to inform the purchasing department and the quality management from the XBAG GmbH immediately in written form, so that further actions can be initiated. Further the supplier has to ensure, that he will produce articles which meet our specifications, after the agreed and limited special release. The supplier has to record data from the whole process and has to present the data (identification, sourcing, correction, examination of efficiency) on demand of the XBAG GmbH. All suggestions to change the specification of an article will be analyzed and if so all necessary changes and amendments of the documentation will be launched by the XBAG GmbH. The supplier is not allowed to change any processes concerning the realization of the product without the written release by the XBAG GmbH.
3. The XBAG GmbH, their clients and the relevant authorities will be given the opportunity to review the quality system of the supplier. The scale of the visit will be arranged with the supplier in advance.

IX. Non-contractual delivery/service, analyses of defects, statute of limitation, regress

1. If the supplier does not comply with the agreements arranged or the legal provisions, we will be authorized to the legal claims. This applies in particular if the supplier has effected the performed work not, not in time or defective.
2. The supplier has to transfer the goods free of defects in title and quality. In case of an existence of defects in title and quality the legal regulations will apply unless otherwise agreed. We are entitled to claim supplementary performance, to cancel the contract, to reduce the purchasing price and to claim damages or the reimbursement of futile expenditure in compliance with legal regulations. In the context of supplementary performance we are entitled to demand remedy or replacement from the supplier. The supplier is obliged to bear all additional costs which are necessary to rectify the defects, to deliver the replacement, in particular transport costs, labour costs and material costs. If the supplier does not rectify the defects or the replacement in time, or do these actions fail, we reserve the right to withdraw from the contract or to claim damages instead of the delivery. In urgent cases, in particular if there is the risk to get in delay or to avoid larger damage, we are entitled to remove the defects by our employees in our company or through a third person at the expense of the supplier.
3. If there are agreements according to the quality assurance missing, we have to check the supplied parts within a reasonable period on apparent deviations in quality or quantity. A claim is in time if the supplier will receive the claim within 7 working days from the receipt of the consignment or after discovery of hidden defects. Insofar the supplier will disclaim to an objection of a late notification of defects. In the case of transit business, account should be taken of the complaint of the accepting party. We reserve the right to charge the supplier with the costs which are occurred by a complaint. The supplier will bear all costs and risks of a return delivery.
4. For all produced or delivered goods and for all realized orders concerning the XBAG GmbH all claims will prescribe after the expiration of 36 months after delivery and using the according delivery note and certificates, but not later than 5 years after the delivery to the members of the XBAG GmbH. The supplier has to agree with his public liability insurance that this limitation period will be included.
5. In case of defects of title, the supplier shall moreover indemnify us against claims of a third party. According to defects of title a limitation period of 10 years will apply.
6. For parts which were repaired within the limited period the limited period will begin again after fulfilment of the supplementary deliveries.
7. If we take back articles which were produced or sold by us due to a faultiness of the object of agreement from the supplier or if therefore the purchasing price of our product was reduced or is there another claim because of this fault we reserve the right to forward this claim to our supplier. This warranty right will not be limited by any further limitation period.
8. We are entitled to claim the compensation from the supplier which we had to absorb by cost transfer from our customer because the customer claimed compensation according to the supplementary performance in particular transport costs, labour costs and material costs.
9. Without prejudice to the provision in cipher 4 the limitation period will begin according to cipher 6 and 7 at the earliest two months after we had meet all claims of our customer. This limitation period will begin at the latest 5 years after delivery through the supplier.
10. If a defect will be found out within 6 months after the transfer of risk, there will be assumed, that the defect has already existed before the transfer of risk, unless this assumption will be inconsistent with the type of the defect.

X. Product liability, insurance coverage

1. The supplier will indemnify us from all claims from other parties for product- and manufacturer's liability if the damages are due to the supplier's sphere of control and organization and he is liable to third parties. In this cases, the supplier will be liable for costs according to a product recall and this claims (including all costs of the legal proceedings) for whose provision we had provided – under well-understood consideration to the interests of the supplier - to a third person. Other legal conditions will remain unaffected. Further the supplier will bear all costs of actions which are originated for (also preventative) correction of defects, in particular through our product monitoring obligation. The supplier has to arrange with his insurer that this indemnity will be included to his commercial third party liability insurance.
2. The supplier is obligated to have product liability insurance with an amount covered minimum with 2 million Euros per personal injury / damage to property. The covering has to differ from § 4 paragraph 1 cipher 3 AHB and should be valid for damages in all countries. The supplier has to inform us, if there is an exclusion from covering in the USA or Canada. The coverage of this insurance must have the so called enlarged product liability insurance including the following: personal injury and property damage because of a nonexistence feature of the consignment (cipher 4.1 product liability insurance); connecting with an assembly group, mixing from parts, and further treatment of the goods (cipher 4.2); further processing (cipher 4.3), assembly and disassembly costs (cipher 4.4), rejects due to machines (cipher 4.5) as well as provisions for control and sorting (cipher 4.6). The covering for damages according cipher 4.1 – 4.6 Product Liability Insurance must cover claims from 2 million Euros at least. On demand the supplier will give us a confirmation of the insurance (certificate of insurance).

XI. Trade mark rights, indemnity

The supplier has to provide guarantee that the delivery item and its design are conform to the conditions which exist in particular for the usage of such items regardless if this conditions reference to the conditions of European law, acts, administrative regulations or commercial practice. He indemnifies us from all claims of public and private law of this condition. The supplier will be responsible that through his consignment the trade mark right of a third person will not be violated. If there will be a claim against us concerning trade mark rights the supplier is obligated to indemnify us on first demand. In case of using trade mark rights of a third person because the supplier has a license agreement he has to ensure that it is allowed to distribute these articles in all countries abroad, in which these trade mark rights are needed. On the trade mark rights of the supplier concerning the delivered goods and the usage of these delivered goods in an assembly, we have a right of using it free of charge. The obligation to indemnify us from claims through a third person regards to all expenses which are due to the usage or in connection with the trade mark rights.

XII. Force majeure

War, civil war, restrictions on exports or trade restrictions because of a change in political circumstances as well as strikes, lock-outs, breakdowns, reservations or the like which will make it impossible to fulfil the contract, applies to force majeure and disburden us from the acceptance in time while occurring. All business partners are obligated to adapt the obligations in good faith. As far as the force majeure will last at least 2 weeks without any break, we are entitled to cancel the order if this matter will signify a decrease of our needs. This will be the case, if the needs are decreased by more than 30%. The supplier has no right for a claim for damages which are caused by force majeure.

XIII. Provision of tools and materials

If the order includes absorption of tool- or model costs through us, the supplier has to purchase them so that we will have an unencumbered and sole property. The tools or models will be allocated to the supplier for the execution of the order. The supplier is obligated to use these things only for the production of the articles we have ordered. The Supplier shall cover the goods at replacement value by an insurance against fire, water, storm, burglary and damages caused by vandalism. At the same time the supplier has to abandon his claim for compensation now to us. Herewith we will accept the abandonment. The supplier is obligated to accomplish all maintenance at his own expense. If we provide things we reserve the right of property. Processing or alteration of the products through the supplier is made for us. If our goods will be processed, assembled or mixed with things which are not our property we acquire the property of the new thing proportional to the value of our good at this time. In case that the processing, assembling or mixing has made the new product of the supplier the main thing, it is agreed that the supplier will transfer the property proportional. This condition will apply too, if we refuse the acceptance of the consignment because of delay or faulty consignment or desist from further orders. In these cases, the provided things have to be placed at our disposal free of charge. Balancing of costs is excluded.

XIV. Business secrets

1. The contract partners are obligated to keep all information according to the business relationship and in the context of this contract a strictly secret, unless they are public, lawful bought from a third person or it was worked out independent from a third person and only used to fulfil the contract. In particular these proprietary information's are secrets according to technical data, quantities, prices as well as information's about products and product development, current and further research- and development projects and all corporate data of the other party.
2. The supplier is obligated to keep all drawings, calculations, samples and other documentation strictly secret and is allowed to disclose to a third person only with a written approval, unless the information's contained are publicly.
3. The supplier has to inform and contract his subcontractor accordingly.

XV. Transfer of order

A transfer of the order or parts of the order is not allowed without prior written approval. In this case we are entitled to cancel part or the whole of the contract as well as claim damages.

XVI. Right of withdrawal in case of deterioration in financial properties

Should an essential deterioration in financial properties of the supplier occur after signing the contracts and therefore our contractual and legal rights are endangered, we are entitled to cancel the order complete or partially. The deterioration in financial properties is given if the supplier is in execution, the bank refuses a credit to the supplier, payments will be stopped or a bankruptcy is applied.

XVII. Jurisdiction, place of delivery, miscellaneous

1. Jurisdiction is – if permitted by law – Empingen. The same is valid if the supplier has not a general domestic jurisdiction, if the supplier has his main residence abroad or his main residence is not known at the time of the legal action. We can sue the supplier at his court having jurisdiction.
2. If there is no other place of delivery mentioned in the order, the business location of XBAG GmbH is the place of delivery.
3. For all legal matters between the supplier and us, equal his business location is abroad, German law applies, with the exclusion of the conflict of laws and the UN Convention on Contracts for the International Sale of Goods.
4. If and to the extent to which any provisions of this contract or future contract provisions should be void or infeasible or should lose their validity or feasibility, this shall not affect the validity of the other provisions of this contract. The same shall apply if the provisions of the contract are found to be incomplete. The invalid, infeasible, or incomplete provision or provisions shall be replaced with appropriate provisions that, insofar as legally possible, come closest to what the Parties intended or would have intended in accordance with the spirit and purpose of the contract if they had taken the point into consideration when they concluded the contract or had contemplated such a provision at a later time. If the invalidity is based on a condition or arrangement with a level of time or service (period or date), a legally allowed level shall replace it. The parties are obligated to define an official modification wording of a letter.