

I. General

In addition to the contractual agreements, only these general terms of delivery and sale apply for the whole business connections with customers or other contractors (hereinafter referred to as "purchaser"). These terms of delivery and sale are valid in case of permanent business relations or framework agreements for further supply relations until the validity of our new terms of delivery and sale. The purchaser agrees to our conditions through the acceptance of our consignment at the latest. Other terms or conditions of purchase will not be accepted as subject matter of the contract even if our consignment is executed unconditionally. The current version of our general terms of delivery and sale 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 purchaser.

II. Advice

We will give any kind of advice, equal in spoken, written or data form, to the best of our knowledge based on our respective experiences. Details and information, verbally or written according to the applicability or use of our goods are without obligation and will not prevent the purchaser approving and testing the goods on its own. The purchaser is responsible to adhere to all legal and governmental instructions/regulations using our articles.

III. Quotation, Documents

1. We can accept orders within 6 weeks. Our offers are subject to change without notice unless something else is noted in the order confirmation. Stock is subject to prior sale.
2. All agreements which are made between the purchaser and us until the conclusion of the contract have to be written in the order. All modifications or amendments must be arranged with our management or with a specifically authorized person. Therefore, all agreements with other persons need a written confirmation of our management or specifically authorized person to be valid.
3. For all documents issued we will reserve the right of property as well as the copyright. The disclosure or transmission to a third party must have our prior written agreement. In case of not placing the order, all documents have to be returned on demand. Documents and samples of the purchaser might be made available to a third party to whom we want to transfer consignments or services.
4. Generally all orders have to be placed in written form.

IV. Prices, Changes in prices

1. Our prices are to be understood in EUR „ex works“, plus the current legal VAT, customs duty, freight and packing costs as well as insurance fees. The VAT will be shown separately in the invoice. The prices are valid for each individual order not backdated or for further orders. Repeat orders are new orders.
2. We reserve the right to raise the agreed prices adequately if after conclusion of the contract an increase of costs particularly due to labour contracts, market cost prices, rising material costs, fluctuations of currencies or changed requirements for goods will occur. This will be demonstrated to the purchaser on demand.

V. Scope of delivery, blanket orders, call orders, measurement methods, trademark rights, data protection

1. Our order confirmation is decisive for content and volume of the contract. A partial delivery is allowed after agreement, unless disadvantages in use result from this. They are regarded as a fulfilment of an independent contract and have to be paid separately. In case of a delay in payment of a partial delivery we have the right to refuse the further delivery of the order in question. We are entitled to produce the whole amount ordered in one lot in case of a blanket order or call order. As well as for individual orders incoming changes of drawings are only considered for goods which have not been produced at that time. Emerging tool and programming costs are invoiced separately. The purchaser is obligated to accept the goods already produced at the delivery time agreed. For technical reasons in production we reserve the right to make a short or over delivery to a maximum of 10% of the agreed order volume. Technical changes which are due to the production, maintenance, legal requirements or other reasons necessary, are acceptable in agreement with the purchaser. If the purchaser receives knowledge of necessary changes he has to inform us immediately. For quality tests in which specific temperatures, periods or other measure and standard data should be applied, these measurement methods have to be defined and accepted by both parties prior to delivery. If no other definition has been stipulated, our measurement methods are valid.
2. Initial samples are only produced by written agreement. The purchaser is obligated to inform us in written form about his report within two working days. If the purchaser does not inform us in due time, all costs which are caused by a machine break are at the expense of the purchaser and parts which have been produced meanwhile must be taken by the purchaser. Orders resulting from drawings, drafts, samples and other specifications of the purchaser are fulfilled at the risk of the purchaser. If we encroach upon a foreign property right fulfilling these orders, the purchaser has to exempt us on first demand from the entitlements of a third person. The purchaser will pay for all further damages. This is also valid if a third party enjoins us from manufacturing or delivering products or services under reference to property rights. At this we are entitled to discontinue any further action without obligation to prior proof of the legal situation and to ask for damages in case of a fault caused by the purchaser. We are entitled to process data as defined by the Federal Data Protection Law.

VI. Date of delivery and –terms, delay

1. The lead-time begins with the sending of the order confirmation at the earliest, but not before the receipt of the following documents which have to be provided by the purchaser: drawings, permissions, approvals as well as clarification and permissions of plans and test constructions, information and the clarification of commercial and technical questions between the parties, the delivery of provided things as well as the fulfilment of obligations to cooperate as well as not before the possibly agreed deposit. This applies accordingly to the adherence of the lead-time, which will be prolonged accordingly due to delays caused by the purchaser.
2. The delivery dates and lead-time mentioned are approximate terms. Although the required care is taken to arrange congruent cover transactions, the delivery dates are specified subject to correct and punctual supply to ourselves. We will immediately inform the purchaser about any anticipated delays. The compliance with our delivery commitment requires the timely attention and co-operation of the purchaser.
3. The delivery date is considered to be kept when the goods are ready for dispatch within the lead-time or put on readiness for dispatch. If delivery is delayed for reasons for which the purchaser is responsible, the delivery date is considered to be kept when notification of readiness for dispatch is given within the agreed period.

VII. 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, cutbacks or the like which make it impossible or unacceptable to fulfil the contract, are considered as force majeure and prevent us from delivering in time. In this case we are entitled either to prolong the lead-time for the duration of the force majeure or to withdraw from the contract in part or as a whole. In all cases the purchaser is obligated to accept the goods. The purchaser is not entitled to claim for compensation for damages due to this.

VIII. Cancellation Charge

If the purchaser cancels a placed order, we are entitled to claim compensation for damages of a minimum of 10% of the order value to cover the handling and processing costs of the order and lost profit.

IX. Packaging

In so far as no other agreement is made we fix type and scope of the packaging. The choice of packaging is made with necessary diligence and in all conscience. Disposing of the packing becomes the responsibility of the purchaser.

X. Transportation and transfer of risks

Basically delivery "ex works" is agreed. The risk is transferred to the purchaser as soon as the consignment has been handed over to the person undertaking the transport or when it has left our depot for dispatch. If nothing has been agreed to the contrary in writing, we will specify the means and route of transportation. If goods are damaged or lost during transportation, preparation of a status report must be arranged immediately or within 5 days at the latest and we must be notified immediately. The return of goods is only allowed after written instruction by us. In case of a non-conformance we reserve the right to pass all additional costs on to the purchaser.

XI. Terms of payment and delay in payment

1. Invoices for consignments are payable within 10 days less a 2% cash discount or within 30 days net. No cash discount can be given on drafts. All payments must be effected exempt from charges. If payment is effected by cheque or bill of exchange, the purchaser must pay discount charges, collection fees and any other bank charges, even if this has not been expressly agreed before. Payments are first settled for costs mentioned above, then for interest and subsequently, for the respectively oldest main principal claim.
2. In the event of late payment, we shall be entitled to charge penalty interest to the amount of 8% per year above the respective base interest rate (accordingly § 247 BGB). We reserve the right to assert claims for further damages due to delay. The purchaser only holds rights to offset our claim or can enforce a lien if his counter-claim is undisputed or has been legally established in a final form.
3. If we learn that the purchaser's bill of exchange has not been accepted, compulsory execution measures have been instigated against the purchaser or that some other deterioration in his assets has occurred, we may require immediate payment of debt claims not due and of receivables for which a bill of exchange or cheque has been presented. If the creditworthiness or ability of the buyer to deliver deteriorates to an extent which puts the performance of the contract at risk, or if the buyer suspends his payments or if insolvency proceedings are instituted against his assets, then we have the right of cancellation, which we are also allowed to exercise in part. In this case we are also entitled to demand immediate payment of our goods delivered.
4. In such cases and if due invoices are not settled despite reminders being sent, we may demand prepayment or security for future deliveries.

XII. Warranty

1. On defects of quality and title of the goods to the exclusion of further rights and subject to XIII 2 we give a warranty as described in the following clauses.
2. Warranty claims asserted by the purchaser (Buyer) shall be subject to him having properly fulfilled the inspection and notification obligations in accordance with § 377 HGB. Obvious defects must be notified in written form within 5 days upon receipt of the goods. For concealed defects, this deadline is valid from the detection of the defect. A notice of defects does not release the purchaser from his obligation to meet his payment obligations. Defects of partial deliveries do not entitle the purchaser to reject the whole delivery.
3. In the case of a material defect, we are authorised at our discretion, to either remedy the defect or supply a replacement, this to be within a reasonable time period to be specified by the purchaser. If we decide to remedy the defect, we will only pay costs amounting to the remuneration agreed for the consignment. Without obtaining our prior written consent, the purchaser is not authorised to remedy the defect himself, even in urgent cases. If the defect is not successfully remedied or the goods replaced, the purchaser has, at his discretion, the right to cancel the contract or reduce the price. If the defect is not serious the purchaser is only entitled to an abatement of the purchase price.
4. For the nature of the goods only the product description of the manufacturer is considered as agreed upon. Claims arising for a defect shall not exist on irrelevant discrepancies in agreed characteristics. Public statements, claims or advertising made by the manufacturer shall not constitute complementary contractual information on the quality. The purchaser does not receive guarantees from us in the legal sense. Data in product descriptions and product specifications does not represent a guarantee for the nature of the product or a guarantee that the product retains a certain quality for a certain time, unless such data has been identified as describing the nature of goods as defined under Section 434 of the German Civil Code.
5. The purchaser's right of recourse against us pursuant to Section 478 BGB is limited to cases where the purchaser has not concluded an agreement with its customers exceeding the scope of the statutory provisions.

XIII. Contractual claim, joint liability, cancellation

1. The contract shall be adjusted if unforeseen events lead to a major change in the economic importance or content of the delivery or service or have a major effect on our operations. If such an adjustment is not economically feasible, we have the right to withdraw from the contract.
2. We are liable for any damage whatever the nature, whatever legal basis, exclusively in case of deliberate intention, gross negligence, culpable violation of life, body and health, as well as essential contractual duties, maliciously concealed defects, as well as defects, whose absence was guaranteed, as well as for defects insofar as injury to persons or materials for privately used things according to the product liability law are concerned. In case of an act of gross negligence, as well as for minor negligent breach of contractually essential duties, we are exclusively liable for the predictable, typically occurring defect. If the purchaser does not demand a higher limit of indemnity, our liability is limited to the predictable, typically occurring defect to the extent of our product liability insurance, as well as for the costs of a callback of our product, to the extent of our product callback costs insurance.

For the rest the liability for defects shall be excluded, as far as these conditions do not contain differing regulations.

3. The purchaser is allowed to withdraw from the contract within the legal conditions, if we are responsible for the breach of duty authorizing for the withdrawal.

XIV. Limitation

All claims of the buyer regardless of the legal basis shall be time barred after the expiry of 12 months. The statutory limitations apply to deliberate or fraudulent conduct as well as to claims under the German Product Liability Act.

XV. Tools, provided things

1. Tools and special equipment manufactured by us and paid by the purchaser are property of the purchaser but remain in our possession. We are allowed to use these tools and special equipment or to scrap them if the purchaser has not ordered the goods produced with them within the last two years. Insofar the purchaser waives to claim for compensation.
2. For claims by the purchaser due to damages or destruction of provided things or things which are left to us for use by the purchaser we are only liable for deliberate intention and gross negligence, liability for single negligence is excluded. Normal wear and tear is exempted from liability. The purchaser is obligated to contract a policy for the provided things of the necessary volume.

XVI. Extended reservation of title

1. We reserve the ownership of the goods delivered until the settlement of all obligations arising from the business relationship with the purchaser at the date of contract conclusion including all obligations arising from further orders, repeat orders or orders for spare parts at this time. Acceptances, bills of exchange and checks are only valid as acquittal after their redemption. If the value of all the security interests which we hold exceeds the total of all secured claims by more than 20%, we will release an equivalent part of the security interests at the purchaser's request.
2. If the customer violates the contract, in particular in case of delays in payment, we shall be entitled to withdraw the delivery. Withdrawal or seizure of the delivery by us does not constitute rescission of the contract, unless we make an expressly written statement to this effect. We are authorized to sell the delivery; the proceeds must be credited to the customer's liabilities, net of reasonable costs. The purchaser is obligated to handle the consignment with care. In particular he is obligated to assure it against damages due to fire, water, storm and burglary on his own expense and in adequate value. In the case of damage security claims must be assigned to us. Insofar as maintenance and inspection work is necessary, the purchaser must carry this out at its own expense in due time.
3. The purchaser must neither pledge the supplied products nor assign them as a security. In the event of seizures or other acts of possession by third parties, the purchaser must notify us in writing immediately so that we can file legal action under Section 771 of the Civil Procedure Code and he must provide us with all the information and written material that we require to safeguard our interests. Enforcement officers or third parties shall be informed of our title. If a third party is not able to pay us court and out of court costs for legal action under Section 771 of the Civil Procedure Code, the purchaser shall be liable for any losses we incur, subject to reservation of the right to assert further claims for reason of damage to the product itself or alteration or destruction of the same.
4. The purchaser is allowed to sell the items of sale in the normal course of business or process them. He cedes to us already now all claims in the amount of the final invoice amount including Value Added Tax which accrue to him from re-sale to his customer or a third party, independent of whether the retained goods were sold before or after further processing. We hereby accept the assignment. If the purchaser and his customer have an open account relationship, the claim assigned to us in advance by the purchaser also relates to the recognised balance or, in the event of bankruptcy of the customer, to the then existing "causal" balance. The purchaser still has the right to collect the claim after assigning it. Our authorisation to collect the claim ourselves remains unaffected by this. We will not collect the claim ourselves for as long as the purchaser meets his payment obligations from the proceeds he obtains, and he is not in default on payment and an application for the opening of insolvency proceedings has not been filed.
5. Processing or transformation of the delivered goods by the purchaser is in each case performed for us. If the delivered item will be inextricably combined with items that are not our items, we reserve the right of co-ownership concerning the new item: the value of the delivered item proportional to the value of the other combined items at the time of amalgamation. The same applies to the items created by processing. If the processing, mixing or combination is carried out in a way that the purchaser's item is to be considered as the main item, it is considered as agreed that the purchaser assigns proportional co-ownership. In this way, the purchaser stores the sole property or joint property for us.

XVII. Jurisdiction, place of delivery, miscellaneous

1. Jurisdiction is – if permitted by law – Empfinger. The same is valid if the purchaser has not a general domestic jurisdiction, if the purchaser has his main residence abroad or his main residence is not known at the time of the legal action. We can sue the purchaser at his court having jurisdiction.
2. If there is no other mentioned in the contract or the order confirmation, the business location of the respective company of the XBAG GmbH is the place of fulfilment.
3. For all legal matters between the purchaser and us, even if the purchaser's business location is abroad, German law applies exclusively, with the exclusion of the conflict of laws and the UN Convention on Contracts for the International Sale of Goods.
4. If individual provisions or rules of this contract or future contract provisions or rules should be or become fully or partially legally invalid, unenforceable or infeasible this shall not affect the validity of the other provisions and rules 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 or rules that, insofar as legally possible, come closest to what the Parties 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 of a provision or rule is based on a condition or arrangement with a level of time or service, a legally allowed level shall replace it. The contracting parties are obligated to define by means of a formal amendment to the wording of the contract any necessary amendment.

XBAG GmbH, 08.05.2020