

General Purchasing Terms and Conditions (05/2018)

1. General and Scope

- 1.1 These purchasing conditions shall apply to all supplies and services provided to us by the supplier (hereafter:supplies).
- 1.2 Any terms of the supplier that are contrary to or vary from our purchasing terms and conditions will not be accepted by us unless explicitly agreed to in writing. Our purchasing terms and conditions shall also apply even if we accept the supplier's delivery without reservation although we are fully aware of the supplier's terms being contrary to or varying from our purchasing terms and conditions.
- 1.3 Alterations of these purchasing terms and conditions need to be done in writing; this shall also apply for the abolition of the written form. However the parties are free to make altering arrangements afterwards.
- 1.4 Our purchasing terms and conditions only apply to entrepreneurs (according to § 14 of the German Civil Code).

2. Offer, Order, Quotation Documents

- 2.1 If the supplier submits an offer based on an enquiry by us, the offer shall follow the enquiry in every respect, especially concerning amount and condition of the goods; any deviations have to be pointed out expressly and explicitly. Additional alternative offers are requested in so far as they are free of charge and without obligation for us; but they must be marked as such and they must disclose in detail, where the deviations from the specifications of our enquiry are; for the rest, we assume that also the alternative offer completely corresponds to our enquiry.
- 2.2 Illustrations, drawings, calculations and other documents, which we provide for enquiry purposes, are subject to our property and copy rights; the supplier must not make them accessible to third parties without our express written approval. They are to be used exclusively for the production on grounds of our order; the supplier shall return the documents to us, upon completion of the order, unrequested and free of cost.
- 2.3 Our orders are only binding if they are submitted in writing. If they are explicitly marked as printed automatically, they don't require a signature.
- 2.4 The offered supplies must comply with the requirements of any relevant rules of law and other standards, technical standards and occupational health and safety regulations in particular, which apply at the time and at the place of the first use known to the supplier (otherwise at place of delivery at delivery time), even if not expressly announced by us.
- 2.5 The supplier can accept an order in writing only if the supplier fails to accept the order later than one week as of the date of our order, we have the right to reject the acceptance.

3. Prices, Billing, Terms of Payment

- 3.1 The price stated in the order is binding. Prices are fixed prices unless otherwise agreed. Unless otherwise agreed in writing, the price includes delivery "free buyer's address", including packaging. A return of the packaging material requires a separate agreement. An unconditional acceptance of the delivery can not be interpreted as agreeing to a higher price.
- 3.2 Prices include all services the supplier has to carry out in order to fulfil his commitment at the place of delivery. The applicable VAT is not included in the price.
- 3.3 The supplier's claim for payment will not due before receipt of an auditable invoice.
- 3.4 Invoices must always be issued in duplicate. For any delivery, an invoice has to be sent to the billing address. Invoices have to be identical in wording to our order descriptions; they have to show our order number, the exact denomination of the ordering department and the date of the order. Invoices not containing these details clearly and distinctly are not due. Such invoices will be regarded as not issued. As soon as they will have been returned by us, the supplier has to ensure that any claims concerned will be exempted from his dunning procedure.
- 3.5 The supplier is liable for any consequences arising from his non-compliance with no. 3.4 in this paragraph, unless he can prove not being accountable.

3.6 We will pay the purchase price, notwithstanding other agreements in written form, 14 days after delivery and invoice receipt, minus 3% discount or net, 60 days after invoice receipt.

3.7 The payment period counts from the first working day after receipt of an invoice in proper form (no. 3.4) and our acceptance of the delivery. Payment will be effected, at the next weekly payment transaction after the payment date, by the means of payment chosen by us.

3.8 We are entitled to the statutory rights of offsetting and retention. Any entitlements to discounts, rebates, volume-based or other, or any other payment relief will not be affected by our claiming the regulatory rights.

3.9 In case of a down payment being made, we are, at any time, entitled to require a down payment guarantee by a bank approved by us and/or security transfer of supplier's items to an adequate scale, particularly of the items ordered and being processed.

4. Delivery, acceptance, approval

- 4.1 Delivery time as indicated in the purchase order is binding, in doubt it counts from date of purchase order.
- 4.2 Delivery is made "free buyer's address", notwithstanding any other agreement in writing. Therefore, the passing point of risk is at goods and services duly delivered.
- 4.3 The supplier is bound to inform us without delay and in writing if any circumstances arise or become recognisable to him, indicating that the delivery time agreed can not be met. He has to immediately communicate the new date of delivery and the reasons for the delay.
- 4.4 In case of delay in delivery we are, irrespective of a delay notice, entitled to claim our statutory rights. In particular we are entitled to claim compensation and cancellation instead of delivery after effect less lapse of an appropriate period of time. In case we claim amends, the supplier is responsible unless he can prove that he is not accountable for the delay.
- 4.5 In case of shipping documents lacking, a delivery other than to the address indicated, incomplete or faulty data at delivery can cause internal delays for us. The supplier is responsible for any consequences arising hereof if he can not prove that he is not accountable for these cases. In particular, the beginning of all time limits depending on the time of delivery will be postponed by the time necessary for clarification and correction.
- 4.6 Early deliveries can only be accepted after mutual agreement. If a delivery is early, the delivery date in connection with all terms will continue to be the originally agreed first possible delivery date.
- 4.7 The supplier is responsible for sufficient insurance of the shipment; insurance costs are only paid by us, if this is separately agreed.
- 4.8 The supplier is responsible for return of the packaging materials and he pays for disposal by third parties if such disposal is agreed.
- 4.9 In so far as an approval of goods and services (in total or in parts) is agreed, it has to be carried out explicitly and in written form.
- ### 5. Shipping
- 5.1 All letters, shipping notices, invoices etc. have to show *department, ciphers, number and day of the purchase order*. Any correspondence (letters, shipping notices, invoices etc.) has to be carried out separately for each purchase order.
- 5.2 On the back of a bill of lading (the section of express parcel address or mailing address), department, ciphers, number and day of the purchase order have to also be included. The address on the bill of lading given by the ordering party must be adhered to precisely.
- 5.3 In case of conventional cargo, express parcel and goods sent by post as well as for consolidated consignments, each item shipped has to carry a sticker or attached slip showing department, ciphers, number and day of the purchase order.
- 5.4 If the delivery was agreed free freight, the freight has to be paid for by the sender at the dispatching location.
- 5.5 For any consequences arising from the supplier's non-compliance with his above mentioned obligations he shall be liable, unless he can prove that he is not accountable for these circumstances. This is connected in particular, but not exclusively, to fees for wagon positioning, special shunting fees, repositioning fees; deliveries that can not be made for the above reasons will be stored at the supplier's expense until an assignment is possible.

5.6 In case the supplier commissions sub-suppliers, he has to obligate them accordingly; in addition, each sub-supplier has to clearly indicate on any documents in whose assignment he is working.

6. Defect control – defect liability

6.1 We are bound to check the goods within an adequate period for quality and quantity deficiencies. The complaint about any noticeable deficiency is in any case timely, if it reaches the supplier within a period of five working days, disregarding the form. This period begins at goods receipt at our site of application known by or communicated to the supplier. In case of non-compliance, § 377 HGB will not apply.

6.2 We are entitled to the statutory defect claims to the full extent. In any case we are entitled to claim defect remedies or delivery of new goods. The right to claim compensation, in particular compensation instead of the delivery, is explicitly reserved.

6.3 We are entitled to remedy ourselves any defects that the supplier is responsible for at the supplier's expense if we are unable to notify the supplier of the defect and potential damages emanating there from and to grant to him a time limit, however short, to remedy the defect if such notification and setting of term is impossible due to a special urgency.

6.4 The supplier undertakes to indemnify us from any third-party claims for defects as to quality or defects of title that the supplier is responsible for. In this case we shall not enter into any agreement with such third party, including but not limited to settlements, without the consent of the supplier. This obligation to indemnify shall include any expenses reasonably incurred by us due to the third-party claim, including but not limited to reasonable attorneys fees.

6.5 Unless otherwise agreed upon any claims for defects as to quality and defects in title shall be time barred after 36 months commencing with passage of risk..

7. Product liability, release from liability, product liability insurance

7.1 In so far as the supplier is responsible for a product defect, he is bound to release us from compensation claims of third parties at first request, as the cause is set within his own authority and organisational area and he is liable in relation to any third party.

7.2 Within this liability, the supplier is also bound to refund any expenses that should arise from a necessary recall carried out by us. We will inform the supplier –as far as possible and feasible- about content and scope of the recall being implemented and give him the opportunity for comments. Other statutory rights will remain unaffected.

7.3 The supplier commits to maintain product liability insurance with adequate cover and to document its existence on request; further claims will remain unaffected.

8. Retention of title, provision of material, tools

8.1 In so far as we provide parts to the supplier, we reserve the title hereto. Processing or remodelling by the supplier shall be on our behalf. If our goods reserved are processed with other items which are not of our property, we acquire joint ownership of the new item in the ratio of the value of our item (purchase price plus VAT) to the other items processed at handling time.

8.2 In the case of non-detachable connection with other items which are not of our property, we acquire joint ownership of the new item in the ratio of the value of the respective material provision (purchase price plus VAT) to the other connected items at the time of connection. If the connection takes place in such a manner that the item belonging to the supplier has to be considered to be the principal item, it is agreed that the supplier assigns to us the proportionate joint title; the supplier keeps the item which is of our sole or joint ownership for us.

8.3 In so far as the liens we are entitled to exceed the purchase price of all our material provision by more than 10%, we are obliged to release the liens at our choice on request by the supplier.

8.4 If the supplier agreed with us reservation of title in his favour, any processing of goods passed into our possession and carried out by ourselves, will be effectuated for ourselves.

9. Assignment, offset, retention by the supplier

9.1 9.1 Without our explicit consent in written form, the supplier may not assign any obligations to nor claims on us partly or entirely to a third party. Should we consent, the supplier continues to be at least a

joint debtor. Any transfer of statutory rights (and any change of name) must be communicated to us by the supplier immediately.

9.2 The supplier can only offset claims with undisputed claims or claim that have become legally binding by court decision. Rights of retention are only applicable from the same contract.

10. Revocation

In case of illiquidity, stoppage of payment, imminent or already occurred insolvency, over-indebtedness, nomination of a provisional insolvency administrator, opening or rejection of insolvency proceedings or, if we have any other good reason to reasonably doubt the supplier's creditworthiness, we are entitled to cancel the contract in total or partly. In this case the supplier is not entitled to compensation for performance not yet rendered according to the terms of the contract.

11. Confidentiality

The supplier is obliged to keep all illustrations, drawings, calculations and other documents and information received strictly confidential. They may only be made accessible to third parties after our explicit consent. The obligation to confidentiality remains in vigour after completion of this contract. It will be void if and so far as the construction knowledge contained in the illustrations, drawings, calculations and other documents received becomes generally known without the supplier's responsibility. The supplier is liable for any damage that arises to us because of his violation of the confidentiality. The quantum of damages corresponds to at least the total of all benefit that others then ourselves will gain through obtaining the confidential information.

12. Xella Supplier Code of Conduct

Supplier undertakes to acknowledge and comply with all requirements and principles laid out in the Xella Supplier Code of Conduct, above and beyond any other contractual obligations that Supplier might have entered into with Xella or any Xella affiliates. The Xella Supplier Code of Conduct can be consulted at <http://www.xella.com>.

13. Governing law, place of jurisdiction, place of delivery, use of data

13.1 German substantive law, excluding the UN Convention on Contracts for the International Sale of Goods shall apply to this contract.

13.2 In the case of the supplier being a merchant (*Kaufmann*), the place of jurisdiction shall be our registered office; we shall however also be entitled to bring proceedings against the supplier to the court at his place of business.

13.3 Unless the purchase order indicates otherwise, our registered office is the place of delivery.

13.4 Data occurring in connection with the business relationship can be recorded by us and can be communicated to our affiliated companies. The supplier shall not use the business relationship with us as a reference for the purpose of advertising, if consent has not been given by us in advance explicitly and in written form.

14. Data protection

We guarantee the protection of your personal data.

For detailed information and the treatment of your data at Xella, please visit

https://www.xella.com/en/privacy_policy.php