

General Terms and Conditions of Sale and Service 01/2015

1.0 General – Scope

1.1 Scope

These terms and conditions of sale and service apply for the legal relationship between the customer and ourselves relating to the goods and/or services provided by us, unless we stipulate special general terms and conditions.

1.2 Other general terms and conditions

The general terms and conditions of customers apply only to the extent that we have expressly approved these in writing.

1.3 Requirement of the written form, receipt of declarations

Amendments and additions to all agreements between the parties need to be made in writing, even if they have already been agreed verbally. Automatically-generated confirmations of receipt (e.g. e-mail or fax) are not proof of our receipt of a declaration.

1.4 Entrepreneurs, consumers

These general terms and conditions of sale and service apply to all customers, unless a distinction is made between entrepreneurs and consumers.

2.0 Conclusion of contract

2.1 Offer documents, samples, analysis values etc.

The information, drawings, illustrations, technical data, weights, dimensions, performance descriptions etc. contained in the pricelists, brochures or any other general information are only approximately, within reasonable tolerances customary in the industry, authoritative and only if we are responsible for them, unless they have been confirmed by a separate declaration. Samples are for inspection purposes and without obligation; they remain our property. The analysis values stated are average values; they are only binding for a delivery if this has been agreed separately. We retain our right of ownership and copyright to cost estimates, drawings and other documents; they may not be made available to third parties without our express consent.

2.2 Acceptance of orders

We may tacitly declare acceptance of orders with performance within four weeks.

2.3 Procurement risk

We only assume procurement risk on the strength of a separate agreement in writing in which the phrase "we assume the procurement risk ..." is used.

3.0 Prices

3.1 Sales prices

Sales prices quoted by us are binding if they are communicated in writing. The prices include the loading of the goods onto truck at the place of despatch, but do not include packaging, transport, any incidental costs and the costs for the return of the packaging material. If a price has not been expressly agreed, the list prices published on the date of the delivery or alternatively prices that are set at our discretion and are in line with market prices will apply.

3.2 Price adjustments

We reserve the right to adjust our prices if, after the conclusion of the contract, unforeseeable changes in costs, in particular due to wage agreements and changes in the cost of materials or energy prices, occur and do not cancel each other out and the time between the conclusion of the contract and delivery is longer than four months. The prices will be adjusted by the same amount as the change in costs; we will provide proof of the reason and extent of the change in costs upon request.

3.3 Right to withdraw/terminate in the event of price adjustments

In the event of a price increase of more than five per cent, the consumer will have the right to withdraw from the contract or terminate the contract. If our contract partner is an entrepreneur and reseller, he will only have the right to withdraw or terminate if the resaleability of our products is affected significantly by the price adjustment.

3.4 VAT

The statutory VAT will be invoiced additionally at the rate applicable on the date of the delivery or performance. Prices for consumers include VAT.

4.0 Payment terms

4.1 Time for payment

The purchase price will be due for payment upon delivery or, if the invoice is issued before the delivery, upon receipt of the invoice. If a payment period is granted, this needs to be agreed in writing. Any other claims will be payable as they arise.

4.2 Early-payment discount, discount

Discounts need to be agreed separately in writing. The period within which the early-payment discount is granted in accordance with the agreement does not affect the due date for payment of the claim, but it does affect the occurrence of default (see. number 4.3). For any entitlement to an early-payment discount, the invoice amounts relating to other goods and services will have to have been paid. The granting of early-payment discounts, discounts or other reductions relates only to the net value of the goods to be paid, not including in particular VAT, freight and packaging.

4.3 Occurrence of default

The customer will be in default at the latest if he does not pay within 30 days of the due date and receipt of an invoice or equivalent payment statement and he is responsible for this. He will enter into default at the earliest when an agreed date for an early-payment discount has passed (see number 4.2). If our customer is an entrepreneur and the date of the receipt of the invoice or payment statement is not certain, he will be in default at the latest 30 days after the due date and receipt of the counterperformance. Default will also occur if a reminder is issued or if a contractually-agreed payment date or a contractually-agreed payment period passes.

4.4 Consequences of default

In the event of default, we will have the right to charge for contracts with consumers interest in the amount of five percentage points above the base rate, and for contracts with entrepreneurs interest in the amount of eight percentage points above the base rate. We can also make claims for further damages.

4.5 Repayment, withdrawal

A significant deterioration in the asset position of the customer, which we only become aware of after the conclusion of the contract and which puts at risk our

claim for counterperformance, will entitle us, notwithstanding any agreed advance payment, to demand immediate settlement for deliveries that have not yet been made if the counterperformance to which we are entitled is not yet guaranteed, and to demand the immediate payment of all claims. We will then have the right to demand advance payment for other services due and/or, for contracts with entrepreneurs, to withdraw from the contract without notice or, for contracts with consumers, to withdraw from the contract after a reasonable period of grace has passed without success.

4.6 Refunds

If agreements are made in which a party other than the customer is the beneficiary, we may withhold the amounts due until the payment of all of the claims which form the basis for this performance for the third party, or demand them back until the settlement or such an overdue claim and/or offset it against such an overdue claim.

4.7 Counterclaims of the customer

The customer may only offset counterclaims if these are undisputed, are due for judgement in a legal dispute or are established in law. The customer only has right of retention in relation to the individual contractual relationship.

5.0 Delivery (including collection)

5.1 Partial deliveries

We have the right to make partial deliveries, unless otherwise is agreed.

5.2 Delivery dates

Binding delivery dates require an agreement in writing. If the customer has not performed the duties of cooperation required for the delivery in time, and we are not responsible for this, we will have the right to change agreed delivery dates. If a customer requests a delivery on a date earlier than previously agreed, we will have the right to charge an appropriate express delivery surcharge, if we meet the request.

5.3 Meeting of delivery dates

5.3.1 Timeliness

For delivery deadlines to be considered to have been met, the time of the despatch from the plant or warehouse is relevant. If the goods cannot be despatched in time and we are not responsible for this, the delivery deadlines will be considered to have been met with the notification of the goods' readiness for despatch. We have the right to make the delivery to an entrepreneur before the agreed delivery deadline, unless the entrepreneur is disadvantaged unreasonably by this. It is also the case for an entrepreneur that an agreed deadline for the delivery or the readiness for collection of the goods will be considered to have been met if we deliver the goods or make them available for collection within a reasonable period of grace after this deadline, unless otherwise is expressly agreed.

5.3.2. Force majeure

If, for reasons for which we are not responsible, we do not receive goods or services from our suppliers or subcontractors, or if we do not receive the correct goods or services from our suppliers or subcontractors, or if we do not receive the goods or services in time from our suppliers or subcontractors despite proper and congruent reordering (in terms of quantity and quality based on the delivery agreed with the customer), or if force majeure events occur, i.e. events that prevent our performance for which we are not responsible and that last more than 14 calendar days, we will inform our customers in good time in writing. In this case we have the right to delay the delivery or performance by the duration of the hindrance or withdraw in whole or in part from the contract due to the part not yet performed, providing we have met our above duty of information and have not assumed the procurement risk or production risk and the event preventing performance is not just of a temporary nature. Strikes, lockouts, interventions by the authorities, energy and raw materials shortages, transport bottlenecks for which we are not responsible, disruptions to operations for which we are not responsible, e.g. due to fire, water, damage to machinery and any other hindrances which, viewed objectively, we were not responsible for, will also be treated as force majeure.

5.3.3 Customer's right to withdraw

If a delivery or performance date or a delivery or performance deadline is bindingly agreed and if, due to the events of the above number 5.3.2, the agreed delivery or performance date or the agreed delivery or performance deadline is not met or if it is objectively unreasonable for the customer to adhere to the contract with a non-binding delivery or performance deadline the, the customer will have the right to withdraw from the contract due to the part not yet performed. The customer will have no further rights; he will in particular not have the right to claim compensation.

5.4 Basis for invoicing

The invoicing will be based solely on the volumes, weights or quantities determined at despatch. Shaking losses, water losses and the like will be at the expense of the customer.

5.5 Return deliveries

A separate agreement is required for the voluntary taking back of goods.

5.6 Default of acceptance, late collection, accessibility, waiting time

In the event of default of acceptance, we will have the right, following a reasonable period of grace, to declare our withdrawal and demand compensation due to non-performance. Reasonable additional expenditure after the default of acceptance has occurred and damages after the period of grace has passed will be at the expense of the customer. Additional expenditure includes the costs of shipment or, if we choose, storage, if the customer is in default with the agreed collection.

The default of acceptance also applies if the customer has failed to ensure that the delivery can reach him (e.g. roads are suitably fit for traffic) or that a delivery can be unloaded within a reasonable period of time.

6.0 Transfer of risk and shipping

6.1 Transfer of risk

For contracts with entrepreneurs, the risk will also be transferred in the case of delivery free station, free warehouse and the like with the transfer of the goods to the goods department of the shipping station or the haulier at the loading

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location. For contracts with consumers, the risk will be transferred with the handover of the item.

6.2 Insurance

Insurance will only be taken out by agreement and at the cost of the customer.

7.0 Retention of title and assignment in advance

7.1 Principle

For contracts with consumers, we retain the title to the goods until the full payment of the purchase price including additional costs e.g. for freight or packaging, and for contracts with entrepreneurs until the payment of all of the claims that have already arisen in relation to the current business relationship or additional claims yet to arise and closely related to the delivered goods such as interest for use, compensation for default etc., as well as balance claims (hereinafter referred to as "goods subject to retention of title"). This also applies if the entrepreneur has expressly paid for these goods subject to retention of title.

7.2 Processing, combining, mixing

The customer has the right in the ordinary course of business to process, assemble or use the goods subject to retention of title in any other way; it will do so as a manufacturer in accordance with § 950 of the German Civil Code (BGB). The processed goods will be considered to be goods subject to retention of title in accordance with number 7.1.

7.3 Assignment of claim if the goods are built into property

If the goods subject to retention of title are built as an integral part into property, the customer assigns to us now its resulting claims against third parties in the amount of the value of the goods subject to retention of title with all ancillary rights including a right to grant a claim-securing mortgage (§ 648 BGB).

7.4 Joint ownership in other cases

If the goods subject to retention of title are mixed, combined or processed with other objects, we will acquire joint ownership of the new object on a proportionate basis based on the value of the goods subject to retention of title relative to the value of the other goods at the time of the combining, mixing or processing. In addition, the customer assigns now its ownership and joint ownership rights to the mixed stock or the new object to us and will store this for us.

7.5 Disposal of the goods subject to retention of title

The customer has the right to resell or utilise in any other way the goods subject to retention of title in the ordinary course of business, providing the claim related to the resale or utilisation against its buyers is assigned to us in accordance with number 7.6. Otherwise any disposal of the goods, including pledging and assignment as security, is expressly prohibited.

7.6 Assignment in advance

If the customer sells the goods subject to retention of title, in whatever condition, or utilises the goods in any other way, he hereby assigns to us now, until the full payment of all of our claims relating to the delivery of goods, the claims against his buyers relating to this sale or other utilisation (including lump-sum remuneration) in the amount of our sales price for the goods, i.e. without any salary component, with all ancillary rights, in particular the right to grant a claim-securing mortgage (§ 648 BGB).

7.7 Authorisation to collect

The customer has the authority to collect claims for our account and dispose of the amounts obtained in the collection, so long as and insofar as he meets his payment obligations towards us. He does not have the right to dispose of the claims in any other way, e.g. by assignments or pledging. If the customer fails to meet his payment obligations, we will have the right to revoke this authority to collect at any time. Upon our request, the customer has to inform the third party of the assignment and provide us with the information and documents required to assert our rights against the third party.

7.8 Entitlement to release

If the realisable value of the existing securities exceed the secured receivables by 10 % or the estimated value of the secured receivables by 50 %, at the request of the customer we will have to release or transfer back securities as we choose.

7.9 Impairment of rights by a third party

The customer has to inform us immediately of any seizure or any other impairment of our rights by a third party and provide us with all of the information and documents required to protect our rights. Executory officers and third parties are to be advised of our ownership.

7.10 Return or taking back of the goods subject to retention of title

We may demand the return of or take back the goods subject to retention of title.

8.0 Claims for defects

8.1 Obligation to inspect and give notice of defects

For a commercial transaction between the parties, the warranty rights of the customer require that these defects are notified immediately in writing as part of its obligation to inspect and give notice of defects in accordance with § 377 of the German Commercial Code (HGB) as soon as they are detected, and with recognisable defects no later than 5 days after delivery of the goods. We have the right to inspect, examine and carry out tests on goods that are the subject of a notification of defects.

8.2 Supplementary performance

The warranty rights of the customer are limited to supplementary performance, i.e. the rectification of the defect or the delivery of a defect-free item, as we choose.

8.3 Failure of supplementary performance

The supplementary performance will have failed in the event of the objective and subjective impossibility, inadequacy, unjustified refusal, unreasonable delay and failure of the second attempt at rework. The supplementary performance will also be considered to have failed if the rework is no longer reasonable for the customer, e.g. due to unreliability. If our supplementary performance fails, the customer will have the right either to reduce the price or withdraw from the contract, as he chooses. Compensation cannot be claimed for defects; this does not apply for consequential damage caused by a defect.

In the event of a replacement delivery, the customer has to, as we choose, either return the defective item to us or dispose of the defective item at our cost as agreed with us.

8.4 Costs of supplementary performance

The necessary costs of supplementary performance, in particular transport, travel, labour and material costs, will be assumed by us. This will only be the case for entrepreneurs if the costs are not excessive; for this purpose costs will be assumed to be excessive if they are based on the goods being delivered to a place that we were not expressly and separately advised of as being the destination at the time the contract was concluded.

8.5 Declaration of withdrawal

If our customer is an entrepreneur and he has a right to withdraw or if he has set a deadline, after which he has the right to withdraw, we may set him a reasonable deadline before which he may declare his withdrawal; after the deadline the right to withdraw will expire.

8.6 Limitation period for claims for defects

Claims for defects in construction materials and components which have been used for a building and caused the building to be defective are subject to a limitation period of five years. Otherwise the claims for defects by entrepreneurs under the contract of sale are subject to a limitation period of one year. The limitation period starts with the handover.

8.7 Form of notifications and declarations by the customer

Notifications and declarations by the customer, i.e. all statements, whether they are of a contractual, business-like or purely factual nature, which are of relevance for the establishment or exercising of a right, in particular notifications of termination, withdrawal, price reductions and rescission, reminders, deadlines for periods of grace, requests for supplementary performance and claims for compensation have to be made in writing.

9.0 Liability, contract penalties

9.1 Limitation of liability

We are liable for damages

- if there has been a grossly negligent breach of an obligation by us or a deliberate or grossly negligent breach of an obligation by a legal representative or one of our vicarious agents, as well as if we have fraudulently concealed a defect;
- if any injury to life, body or health is based on a negligent breach of an obligation by us or a deliberate or negligent breach of an obligation by one of our legal representatives or vicarious agents;
- in the event of default if a fixed delivery date was agreed;
- if we have to bear the procurement risk;
- if we have assumed a guarantee;
- if there is no successful performance;
- if there is a liability under the German Product Liability Act (Produkthaftungsgesetz) or any other mandatory legal basis for liability;
- if we are responsible for the breach of a significant contractual obligation; significant contractual obligations are those obligations which make it possible for the contract to be duly performed at all and which the customer relies on and may rely on.

Any liability for damages beyond this is excluded.

Furthermore, our liability in the event of a breach of significant contractual obligations is limited to compensation for damage foreseeable and typical for this type of contract at the time the contract was concluded.

9.2 Personal liability

As far as our liability is excluded or limited, this will also apply for the personal liability of our legal representatives, employees and vicarious agents.

9.3 Flat-rate compensation, contract penalties

Flat-rate compensation or contract penalties need to be agreed separately in writing.

10.0 Other provisions

10.1 Place of fulfilment

The place of fulfilment for our deliveries and services is our registered office. If it is known beforehand by the customer or if it is noticeable for our customer that the delivery will be made from some other specific place or the service will be performed at some other specific place, this place will be considered to be the place of fulfilment. The place of fulfilment for payments by the customer is our registered office.

10.2 Place of jurisdiction

The sole place of jurisdiction for all disputes related directly or indirectly to the contractual relationship is, if the customer is a trader, a legal person under public law or a special asset under public law, the location of our registered office. We may, if we choose, also take legal action in the court that is responsible for the location of the customer's registered office or place of residence.

10.3 Customer data

We have the right to collect, process and use the personal data obtained about the customer in connection with the business relationship, regardless of whether this data comes from the customer himself or from a third party, in accordance with the German Data Protection Act (Bundesdatenschutzgesetz) for the purpose of the contractual relationship. All personal data will be treated confidentially. The data will only be passed on within the Xella Group and for collection and credit assessment purposes.

10.4 Applicable law

This contract, including its interpretation, is subject to the substantive law of the Federal Republic of Germany. The provisions of the United Nations Convention on Contracts for the International Sale of Goods (CISG) do not apply.

10.5 Partial invalidity

Any invalidity of individual aspects of these provisions will not affect the validity of the remaining provisions. The contract parties will replace the invalid parts in a way that is as close as possible to the economic content of the invalid provision.