

General Terms and Conditions of Sale and Delivery

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1. Application

1.1 Under these General Terms and Conditions of Sale and Delivery (hereinafter “**General Terms and Conditions**”), the “**Contractor**” is XELIS GmbH and the “**Customer**” is the respective ordering party.

1.2 The General Terms and Conditions shall be part of the contract between the Contractor and the Customer, unless otherwise agreed upon in individual cases. They shall apply to all offers, supplies and services (hereinafter “Supplies”) and to all future business relations, even if not expressly agreed upon again.

1.3 All agreements, assurances and collateral agreements made by the Contractor’s sales personnel shall be valid only if these are confirmed in writing by the Contractor’s management, or by authorised representatives of the Contractor’s management, promptly after having been agreed upon verbally.

1.4 General terms and conditions of business or purchase of the Customer that conflict with these General Terms and Conditions shall not apply, even if not expressly objected to by the Contractor.

1.5 This terms and conditions shall only apply, if the Customer is a businessman or entrepreneur under German law or a legal entity or special fund under public law.

2. Offer / Purchase Order / Order Confirmation

2.1 These General Terms and Conditions shall apply exclusively for our offers, deliveries and services. Conflicting Customer purchasing terms and conditions are hereby opposed. Such terms and conditions are not recognised even if we do not oppose them again on receipt thereof at our premises.

2.2 Contracts are to be concluded in writing. All agreements which are reached between us and the purchaser for the purpose of performance of this contract are recorded in writing in this contract. Except as otherwise expressly provided, or referred to, in this contract we have made no commitments to the purchaser.

3. Prices

3.1 Our prices are given in euros ex-factory excluding VAT. Prices do not include packaging or transport. Discounts must be agreed separately for each individual order and shall only apply if payment is made within the specified time.

3.2 If, at the Customer’s request, the Contractor is to provide the Supplies later than agreed upon, this shall be subject to the reimbursement of the cost of any intermediate storage. In this respect, however, the payments for the Supplies shall be made at the time originally agreed upon.

3.3 In the event of any changes to the material procurement costs, wage and non-wage labour costs or energy costs, we are entitled to take these into account in our pricing, provided the changes occurred after the conclusion of the contract and there is a period of at least 6 weeks between the conclusion of the contract and the delivery of the ordered goods.

4. Terms of payment, set-off and the right of retention

4.1 Our invoices are payable within 30 days of the invoice date, free of charges and without deductions.

4.2 In the event of default of payment on the part of the Customer, we shall have the right to charge default interest of nine percentage points above the respective base interest rate pursuant to section 247 of the German Civil Code (BGB). The right to assert a claim for further damage caused by default is reserved. Furthermore, in the event of default, all granted reductions, discounts, sales, transport and other allowances/rebates will no longer apply. Section 321 BGB shall apply.

4.3 We are not obliged to accept bills of exchange.

4.4 The Customer shall only be entitled to offset if its counterclaims have been finally established in law, are undisputed or recognized by us in writing. It is only authorised to exercise its right of retention insofar as its counterclaim is based on the same contractual relationship.

5. Scope of delivery, delivery times and default in delivery

5.1 The scope of delivery is determined according to the content of our written acknowledgement. Illustrations of the delivery item in offers and brochures merely represent approximate performance specifications and are not an assurance or a warranty, nor do they represent a characteristic of the item. Deviations from offers and brochures therefore do not constitute a defect. The same applies to references to standards, any special technical information or technical rules, descriptions or the like. These too are purely informative, descriptive details and on no account characteristics of the item that substantiate a quality defect. Assurances or warranties for the characteristics of the products only apply if we have expressly confirmed them in writing.

5.2 The observance of our delivery and performance obligations shall always be subject to correct and punctual deliveries to us by our suppliers.

5.3 Delivery times are subject to change. Fixed-date transactions must be expressly confirmed as such by us in writing. Our delivery periods begin with the receipt of our order acknowledgement by the Customer, provided that all the unresolved points of the order execution have been clarified between the Customer and us and any other conditions which have to be fulfilled by our Customer have been met. Otherwise the delivery period shall only commence once the aforementioned conditions have been met. The same applies to the agreement of delivery dates. In the event that delivery times have been agreed, we expressly reserve the right to deliver before the agreed period of time expires. If a specific day of delivery is specified, this means the day of notification of readiness for dispatch or the day when the goods are actually sent to the Customer.

5.4 In the event of force majeure or if unforeseen extraordinary events occur which we could not prevent despite taking the necessary care according to the circumstances of the individual case (also if they occurred at our supplier), e.g. strikes, lockouts, operational disruptions, subsequently occurring difficulties with procuring materials, scrapping of an important work item, official directives, etc., the period of delivery shall be extended for the duration of the events causing the delay plus a reasonable start-up time that meets our operational requirements. If the hindrance persists for longer than 2 months or if the delivery or service becomes impossible through no fault of our own, both parties are entitled to withdraw from the contract.

In the event that the necessary official import or export licences are not granted or if it is impossible to execute the contract due to official import or export bans for which none of us is responsible, we are then entitled to withdraw from the contract even if we took responsibility for applying for the import or export licence. In these cases the Customer has no claims against us.

5.5 If, exceptionally, we default with delivery, the Customer is only entitled to withdraw from the contract if it has first set us a reasonable extension period of at least 2 weeks in writing without success. Claims for compensation, no matter on what grounds, due to delayed delivery or non-fulfilment shall exist only subject to the provisions contained in clause 6.

5.6 The occurrence of our default with delivery shall require in each case a written reminder by the Customer. For the rest, the statutory provisions shall apply.

6. Shipping

6.1 The selection of the transportation means and routing is at our sole discretion. Shipping is at the cost and risk of the Customer. In cases where the shipping is delayed because we exercised our right of retention as a result of the Customer's default of payment, the risk shall pass to the Customer at the latest as from notification that the products are ready for shipment. The same applies to cases where another reason exists for which the Customer is responsible that causes a delay in delivery.

6.2 We have the right to make partial deliveries to a reasonable extent if delivery of the outstanding goods is secured.

6.3 Goods ready for shipment and goods due for delivery have to be called by the Customer immediately. If the Customer fails to call up the order immediately, we shall be entitled to dispatch the goods or place them in storage at the Customer's expense and at our discretion. Where goods are sold on a call-off order basis, we shall store the goods if the Customer does not specify them within 6 months and then call them. However, this only applies if no contrary agreement has been reached. We are also entitled to store the goods if the shipment cannot be carried out through no fault of ours.

6.4 In the event of delayed acceptance or call by the Customer or a delay in shipment due to circumstances for which the Customer is responsible, we can, after setting an extension period of 14 days, either immediately demand the purchase price, withdraw from the contract, refuse to fulfil the contract or demand damages.

7. Rights arising from product defects

7.1 The time of delivery shall be decisive for determining whether the state of the Supplies conforms with the contract. The Supplies delivered shall be inspected immediately upon receipt according to clause 7.2.

7.2 The Customer is obliged to diligently examine the supplied goods for defects and notify us of any obvious and/or recognised defects in writing within 10 working days after delivery. Any defects which only become visible later must be reported to us in writing without delay, at the latest within 10 working days after they are discovered. In the absence of notification of defects, the goods shall be deemed to be approved. The notice of defects is deemed to have been given in due time if it has been dispatched on time.

7.3 A prerequisite for the Contractor's obligation to honour the warranty is that the Supplies delivered have been faultlessly installed by a recognised and authorised specialist company following the relevant standards and recognised technical rules and must have been used in strict compliance with the directives/instructions issued by the Contractor (technical documentation etc.). The warranty right shall lapse, if the defect arisen was caused by improper alteration, improper processing or any other improper treatment. The Contractor shall not be liable for damage resulting from usage-related depreciation, normal wear and tear, excessive use, defective servicing, damage caused by force, non-adherence to the Contractor's technical documentation, incorrect use or operation as well as unsuitable operating materials.

7.4 In the event that the goods we supply have been produced according to the Customer's specifications, especially on the basis of drawings or other construction requirements, these specifications shall be deemed the contractually agreed specified quality of the goods; the goods are therefore free of defects if they have been produced according to the Customer's specifications. In such cases, under contract for work and services, the Contractor shall not be liable for the functionality of the goods.

7.5 An insignificant deviation of the supplied goods from the agreed or customary quality does not justify any claims for defects on the part of the Customer. No warranty is given for wear and tear or for defects caused by inappropriate or improper operation, handling, storage or use or due to non-observance of usage and application instructions. The Customer shall bear the risk of suitability for the intended purpose. The Customer uses the products we supply on its own responsibility.

7.6 If the delivered item is faulty, we have to, at our discretion, rectify the defect or deliver an item which is free of defects (subsequent performance). The subsequent performance may be made dependent upon payment of the purchase price. The Customer has the right to retain a portion of the purchase price appropriate in relation to the defect; as a rule, the cost reasonably required to remedy the defect shall be deemed appropriate. Goods that are the subject of a complaint shall be surrendered to us by the Customer for inspection purposes. In the event of a replacement delivery, the defective item shall be returned to us. Otherwise, the right to refuse subsequent performance according to the statutory provisions shall remain in effect.

7.7 We shall only bear the reasonable costs of subsequent performance up to the amount of the purchase price, at the maximum. Costs of subsequent performance arising from the fact that the supplied goods are taken to a place other than the Customer's business address shall be borne by the Customer. Subsequent performance includes neither the deinstallation of the defective item nor the installation of a defect-free item if we were not originally obliged to carry out installation. We shall bear the expenses which are necessary for the purpose of inspection and subsequent performance, in particular the cost of transport, tolls, labour and materials (not deinstallation and installation costs), if there is actually a defect. Should the Customer's request for remedy of a defect turn out to be unjustified, we are entitled to demand a refund from the Customer for costs incurred if the Customer has recognised or negligently failed to recognise that no defect exists.

7.8 If we are not willing or not able to rectify the defect or make a substitute delivery, or if we delay doing so beyond a reasonable time limit set by the Customer of at least two weeks, or if the remedy of the defect or delivery of a replacement is otherwise unsuccessful or is unacceptable for us, the Customer shall be entitled to either withdraw from the contract or reduce the purchase price accordingly, at its discretion. Clause 8.1 of these General Terms and Conditions applies to claims for damages.

7.9 If the Customer asserts claims in respect of defects against us based on public statements by us, our suppliers or their vicarious agents, especially in advertising or in the labelling of the item to indicate particular properties (section 434 (1) sentence 3 of the German Civil Code (BGB)), the Customer will bear the burden of proving that the statement concerned was a reason for its decision to purchase. We are not liable for third-party statements or advertisements.

7.10 If the subsequent performance fails or a reasonable time period to be set by the Customer for the subsequent performance has expired without success, or if no such period of grace is required according to the statutory provisions, the Customer will be entitled to withdraw from the purchase agreement or reduce the purchase price; in the case of insignificant defects the right of withdrawal is excluded. If the defect has not been remedied despite two rectification attempts or two replacement deliveries, the subsequent performance shall be deemed failed. Claims by the

Customer for damages and compensation for futile expenses only apply in accordance with section 8 and are otherwise excluded.

7.11 The Customer's right to assert claims arising from defects shall not be assignable.

8. Compensation, withdrawal, statute of limitation, refusal of performance

8.1 Claims for damages by the Customer against us and against our vicarious agents are excluded. Excluded from this exclusion are claims for damages by the Customer against us or our vicarious agents based on injury to life, body, or health, or from the breach of essential contractual obligations (cardinal obligations), or from caused by intent or gross negligence on our part or on the part of our vicarious agents. Essential contractual obligations are those whose fulfillment is essential for the proper execution of the contract and on whose compliance the contractual partner regularly relies and may rely. In the event of a breach of essential contractual obligations, we or our vicarious agents shall only be liable for typical, foreseeable damage if this damage was caused by simple negligence, unless it concerns claims for damages arising from injury to life, limb, or health. The limitations of liability do not apply to defects if we or our vicarious agents have fraudulently concealed the defect or have assumed a guarantee for the quality of the goods, as well as to claims under the Product Liability Act (Produkthaftungsgesetz).. Any liability under the provisions of section 478 et seqq. BGB shall remain unaffected thereby.

8.2 We do not, however, accept any liability for claims or damage caused by an error in the Customer's specifications, especially in drawings or other construction requirements. Should a claim be made against us by a third party for damage caused by such an error in the Customer's specifications, the Customer shall indemnify us against any claims made in this respect.

8.3 The liability exclusions and exceptions or restrictions specified in Clauses 8.1 also apply in the event of culpability in regard to contractual negotiations or in the case of reimbursement of expenses, with the exception of reimbursement of expenses in accordance with sections 439 (2) and 635 (2) BGB. The liability exclusions relating to our liability also apply to our legal representatives and vicarious agents.

8.4 In the case of a breach of obligation by us that does not consist in defective performance, the Customer will only be entitled to withdraw from the contract if we have been culpable.

8.5 The period of limitation for claims directed against us on account of defects of quality and title which are not based on intentional behaviour attributable to us is one year, contrary to the general provision in section 438 (1) No. 3 BGB; the period of limitation shall not be suspended by subsequent performance or subsequent delivery. Special statutory provisions for claims in rem by third parties for the restitution of property (section 438 (1) No. 1 BGB), for fraud (section 438 (3) BGB) and for claims of recourse against the supplier in the case of final supply to a consumer (section 479 BGB) remain unaffected.

8.7 The aforementioned limitation periods under the law governing the sale of goods also apply to the Customer's contractual and extra-contractual claims for compensation based on a defect in the goods, unless the application of the normal statutory limitation period (sections 195, 199 BGB) would result in a shorter limitation period in the individual case. In all cases the limitation periods of the Product Liability Law remain unaffected. Otherwise, the statutory limitation periods apply exclusively for compensation claims by the Customer.

9. Retention of title

9.1 The delivered goods remain our property until all claims to which we are entitled against the customer now or in the future have been settled, including balance claims from current accounts. In the case of payment by cheque, our reservation of title shall continue until the amount is credited to our account and the Customer has paid all the ancillary costs.

9.2 The Customer is obliged to treat the purchased item with care; in particular, it undertakes to insure the item against fire and water damage and theft at its own expense, with the insured sum being adequate to cover the replacement value. If maintenance and inspection works are required, the Customer must carry these works out at his own expense in a timely manner.

9.3 The Customer shall notify us in writing without delay if the purchased item is damaged, lost, seized or subject to other interventions by third parties. To the extent that the third party is not in a position to reimburse to us the costs of enforcing our ownership rights in and out of court, the Customer will be liable to us for the deficit.

9.4 The Customer has the right to resell and assign the purchased item in the ordinary course of business; however, the Customer shall herewith already assign to us all claims, in the amount of the invoice total (including value-added tax) of our claim, that accrue to the Customer by reason of the resale to its customer or third party, irrespective of whether the purchased item has been resold with or without further processing. If the Customer enters its claim to the purchase price in a current account maintained with its customer, it also assigns the resulting balance claim to us. We hereby accept the assignment. The Customer shall still be authorised to collect the assigned claim even after the assignment. Our authority to collect the claim ourselves shall not be affected thereby. However, we shall undertake not to collect the claim as long as the Customer meets its payment obligations arising from the collected proceeds, does not default on payment, and especially no application has been filed for the institution of insolvency proceedings and payments have not been suspended. However, if this is the case, we shall be entitled to inspect all the invoices and other documents and to obtain all the relevant information which will enable us to collect the assigned claims directly.

9.5 The processing or modification of the purchased item by the Customer shall always be carried out for us. If the purchased item is processed with other items that do not belong to us, we shall acquire joint title to the new item in proportion to the value of the purchased item (total invoiced amount, including value-added tax) compared with the other processed items at the time of processing. For the rest, the same rules that apply to the purchased item supplied subject to retention of title shall also apply to the item created by processing.

9.6 If the purchased item is inseparably blended with other items that do not belong to us, we shall acquire joint title to the new item in proportion to the value of the purchased item (total invoiced amount, including value-added tax) compared with the other blended items at the time of blending. If the blending occurs in such a way that the Customer's item has to be seen as the main item, it is agreed that the Customer will transfer joint title to us on a pro rata basis. The Customer shall hold the resultant sole property or joint property in safe custody for us. The above-mentioned provisions apply accordingly to the combination/connection of the purchased item with/to other items that do not belong to us.

9.7 To secure our claims, the Customer shall also assign to us the claims against a third party that accrue to the Customer through the connection of the purchased item to land/real estate.

9.8 We undertake to release, upon request, the security to which we are entitled according to the above-mentioned provisions to the extent that its value exceeds the secured claims by more than 20%; we shall be responsible for selecting which security to release.

10. Copyrights, other documents and drawings

10.1 Drawings, drafts and other documents which we submit to the Customer for contractual negotiation or contractual execution purposes are our intellectual property and must not, without our express written approval, be made available to third parties, nor reproduced, nor used for any other than the agreed purpose. We shall be entitled to demand the free-of-charge return of the aforementioned documents – including any reproduced copies – if the Customer no longer needs these documents or if we become aware of any misuse of these documents. A right of retention by the Customer thereto is excluded.

10.2 The Customer accepts fault-based liability for ensuring that we do not infringe the rights of third parties through the use of submitted drawings, samples and models. If a third party, citing industrial property rights, prohibits us in particular from manufacturing and delivering such items, we shall be entitled to suspend all further activity and to claim damages from the Customer without being obliged to check the legal situation. The Customer shall also indemnify us against any disadvantages that affect us as a result, in particular claims to damages by third parties.

11. Health and Safety

It is not our responsibility, that the machines in which our goods are integrated, or the objects which are fitted on our goods, are operationally safe; this applies especially to the accordance with the rules and regulations of Health and Safety. It is the responsibility and duty of the customer, to establish appropriate protection measures to ensure the operational safety of the machines and devices distributed by him. In the case, that a third party should make a claim on us for damage that was caused by the insufficient operational safety of the machines and devices distributed by the Customer, the Customer will exempt us from these claims.

12. Place of performance, place of jurisdiction, applicable law

12.1 The place of performance for both contracting parties is Herford. If the Customer is a businessman according to German law, a legal entity or special fund under public law, the place of jurisdiction for all disputes arising from this contract shall be our place of office in Herford.

12.2 The law of the Federal Republic of Germany shall apply to all legal relations with the Customer; application of the United Nations Convention on Contracts for the International Sale of Goods (CISG) is excluded.

13. Industrial Property Rights and Copyrights

13.1 The Contractor shall not be liable for claims ensuing from any infringement of industrial property rights or copyrights of third parties (hereinafter “Property Rights”), if the Property Right is, or was, owned by the Customer or a company affiliated with the Customer within the meaning of Section 15 et seq. of the German Stock Corporation Act.

13.2 The contractor shall only be liable for claims arising from infringements of property rights if the property right has been published by the European Patent Office within the framework of the family of property rights.

13.3 The Customer shall promptly inform the Contractor of (alleged) property right infringements, or other risks in this regard, that it becomes aware of and shall, on request, leave it to the Contractor – insofar as possible – to conduct legal disputes (also out of court).

13.4 The Contractor shall, at its own option, be entitled to acquire a right of use for the item delivered infringing a Property Right or modify this delivered item in such a way no more infringing the respective Property Right or replace it with a similar item that no longer infringes the Property Right.

If it is not possible for the Contractor to do so on reasonable terms or within a reasonable period, the Customer shall – insofar as it has enabled the Contractor to carry out a modification – be entitled to the statutory rights of rescission. The Customer's rescission claims in relation to the Contractor shall exist only insofar as the Customer has not made with its customers any agreements beyond the statutory claims, e.g. goodwill agreements.

13.5 The Customer shall not be entitled to any claims insofar as it is responsible for the property right infringement, or the Customer has failed to reasonably assist the Contractor in the defence against third-party claims.

13.6 Furthermore, the Customer shall not be entitled to any claims in cases where the items delivered are manufactured in accordance with the Customer's specifications or instructions, or the (alleged) property right infringement results from use in combination with another item not originating from the Contractor, or the items delivered are used in a manner that the Contractor was unable to foresee.

13.7 Further claims are hereby excluded.

14. Confidentiality

All commercial or technical information originating from the Contractor shall, insofar as this information is not provably public knowledge, or the Contractor has not earmarked this information for onselling by the Customer, be kept secret to third parties. The Customer shall make available this information only to persons within its organization who need to use this information and who are also bound to secrecy; this information shall remain exclusively the Contractor's property. Such information shall not be copied, or used commercially, without the Contractor's prior written consent. At the Contractor's request, all information originating from the Contractor (including any copies or records made) and items made available on loan shall be promptly and completely returned to the Contractor or be destroyed.

15. Data Protection

The Contractor shall be entitled to process or store the data concerning the Customer that it receives in connection with the business relationship insofar as the Contractor complies with the statutory provisions, such processing or storage is necessary for the purpose of the contract or for protecting the Contractor's justified interests, and there is no reason to assume that the Customer has no legitimate interest to prevent such processing or storing.

16. Final provisions

Should individual provisions of these Terms and Conditions of Sale and Delivery be invalid or become invalid in the future, the validity of the remaining provisions shall not be affected thereby.