

## GENERAL TERMS AND CONDITIONS OF SALE AND DELIVERY XSPLATFORMS

### Article 1 - Definitions

- 1.1 'XSPlatforms' means: XSPlatforms B.V., or its group company which is mentioned as contracting party in the agreement.
- 1.2 'Purchaser' means:  
the natural person, the legal person or the (joint) venture who/that entered into an agreement with XSPlatforms in connection with providing services and/or goods by XSPlatforms and or carrying out any other performance, including distributors of XSPlatforms; if more than one party acts as Purchaser, each of them is jointly and severally liable towards XSPlatforms.
- 1.3 'Parties' means: XSPlatforms and Purchaser.
- 1.4 In these conditions, 'agreement' means: each (distribution) agreement between Purchaser and XSPlatforms to provide services and/or goods by XSPlatforms for the benefit of Purchaser.
- 1.5 'Activities' means: all activities for which Purchaser gives an order to XSPlatforms, or which arise from or are carried out or should be carried out in direct connection in the broadest sense of the word and in each case including the activities as mentioned in the quotation.
- 1.6 'Website' means: [www.xsplatforms.com](http://www.xsplatforms.com).

### Article 2 - Applicability

- 2.1 These general terms and conditions apply to all quotations from, orders to and agreements with XSPlatforms.
- 2.2 Making these general terms and conditions known can take place, among other things, by stating them (on the back of) letterhead, quotation, order confirmation, email and on the Website.
- 2.3 Agreements that deviate from these general terms and conditions or supplement them, are only binding if they have been agreed in writing or by email, and only apply per case.
- 2.4 The possible applicability of the general terms and conditions used by the Purchaser is explicitly rejected.
- 2.5 The possible voidability or nullity or a provision of the agreement and/or these general terms and conditions leaves the validity of the other part of the agreement and/or these general terms and conditions intact. Instead of the set aside or invalid part, what applies in that case as agreed upon is what most closely resembles what would have been agreed by Parties in a statutory allowable manner, unless they were aware of the voidability or nullity.
- 2.6 If XSPlatforms does not desire the strict fulfilment of these general terms and conditions in certain cases, this does not entail that these general terms and conditions do not apply or that XSPlatforms would forfeit the right to require strict fulfilment in future or similar cases.
- 2.7 A copy of these general terms and conditions can be obtained at the office of XSPlatforms and on the Website free of charge.

### Article 3 - Offers

- 3.1 Each offer of XSPlatforms, either or not available via the Website, is revocable, also if a term of acceptance is stated in it.
- 3.2 All offers, quotations, cost budgets etcetera of XSPlatforms, which were made orally, in writing, by telephone or by telefax, via the Website or by email, are subject to contract and can therefore be revoked, even directly after the Purchaser has accepted the offer.
- 3.3 Offers are based on the information that was provided by the Purchaser upon the request. Purchaser ensures the correctness, completeness and accuracy of the information, documents and goods that were provided by and or behalf of XSPlatforms, also if they come from third parties.
- 3.4 All information, images, sizes, colours, weights, quantities and other specifications that are stated in an offer quotation etcetera, always apply by approximation and are only binding for XSPlatforms if this has been explicitly confirmed with those words.
- 3.5 If a quotation etcetera of XSPlatforms is not followed by a written unconditional acceptance within 30 days or another period indicated, it has lapsed automatically.

### Article 4 - Agreements

- 4.1 An agreement is concluded between Parties at the moment on which XSPlatforms confirms the order in writing (or by email), or, if this is earlier, at the moment on which XSPlatforms commences with the execution of the agreement.
- 4.2 If upon the delivery by XSPlatforms no (written) invoice has been concluded, the delivery note / invoice is deemed to reflect the content of the specific delivery in a correct manner. Purchaser agrees with the content of the aforementioned delivery note / invoice in advance.
- 4.3 Agreements with subordinate employees or other (interim or auxiliary) persons of XSPlatforms do not bind XSPlatforms insofar as these agreements have not been agreed by the executive board of XSPlatforms in writing.
- 4.4 The written confirmation or email of XSPlatforms is deemed to correctly and completely represent the agreement.
- 4.5 Additional agreements or changes in the agreement only bind XSPlatforms if XSPlatforms has confirmed them in writing or by email.
- 4.6 If an agreement is concluded by using electronic forms of communication, the lack of an original signature does not alter the binding force of the agreement. Purchaser will not contest the applicability of validity of these

general terms and conditions due to the fact that the offer and/or acceptance took place in an electronic manner.

- 4.7 For misunderstandings, delays or information and statements that are not properly communicated as a result of the use of any communication tool between XSPlatforms and Purchaser, or between XSPlatforms and third parties, insofar as these concern XSPlatforms and Purchaser, XSPlatforms is not liable, unless there is intent or gross negligence on the part of XSPlatforms.
- 4.8 If XSPlatforms concludes an agreement with two or more persons or legal persons, each of these (legal) persons is jointly and severally liable for the fulfilment of their obligations vis-à-vis XSPlatforms that arise from that agreement.
- 4.9 XSPlatforms maintains the right to engage third parties at the account and risk of Purchaser for the execution of the agreement concluded with the Purchaser if in all reasonableness required.
- 4.10 XSPlatforms maintains the right to wholly or partially terminate the concluded agreement without judicial intervention, if Purchaser requests to be granted a (temporary) moratorium, if the bankruptcy of the Purchaser is requested or declared, if Purchaser does not observe its obligations under this agreement, if the assignment cannot (or no longer) be completed or if the Purchaser is negligent in the provision of information and/or goods and/or services which XSPlatforms desires from Purchaser or requires in the context of the concluded agreements or if the performance of the agreement is contrary to applicable governmental regulations. If the agreement is terminated by XSPlatforms on one of the abovementioned grounds, the Purchaser will automatically be indebted a compensation to XSPlatforms for the internal costs incurred and loss of profits of 25% of the agreed remuneration with a minimum of EUR 500.--. In addition, the Purchaser will compensate all other costs made by XSPlatforms for the preparation or implementation of its performances as well as any other damage suffered by XSPlatforms. Insofar as XSPlatforms (on the basis of one of aforementioned grounds) might terminate the agreement concluded between Parties, it is not obliged to pay any compensation or compensation of damage to Purchaser by whatever virtue.
- 4.11 Purchaser cannot transfer this agreement and the rights and obligations that follow from it to a third party without prior written permission of XSPlatforms.

### Article 5 - Delivery and delivery time

- 5.1 The delivery periods indicated by XSPlatforms are based on the circumstances that apply at the time of the conclusion of the agreement in the best possible manner. They are never binding or final. XSPlatforms is allowed to deliver in parts or to suspend delivery of certain parts in order to deliver them together with other parts.
- 5.2 Failure of XSPlatforms to meet the agreed dates of delivery does not give Purchaser the right to terminate the agreement, unless XSPlatforms is in default for over 30 days.
- 5.3 Purchaser will purchase the goods and/or services as soon as XSPlatforms offers these. If Purchaser does not observe the aforementioned obligation, XSPlatforms can terminate the agreement regardless of its authority to claim fulfilment or store the goods at Purchaser's expense until Purchaser indicates to take possession of the goods.
- 5.4 The goods sold by XSPlatforms are delivered from the company or storage facilities of XSPlatforms unless indicated otherwise by XSPlatforms. The risk passes on to Purchaser as soon as the goods have left the company or storage facilities or as soon as the goods have been set apart for the benefit of Purchaser and it has been reported or notified that the purchased good is ready for delivery. The transport risk is for Purchaser.

### Article 6 - Prices

- 6.1 The agreed prices are excluding VAT and other government levies, transport costs, packing costs, insurance costs and any other costs that have to be made in the context of the delivery, unless expressly indicated otherwise.
- 6.2 Even if a certain price was agreed upon, XSPlatforms reserves the right to charge on to Purchaser the changes in cost-determining factors that have arisen after the date of the offer or order confirmation on which XSPlatforms can reasonably not exert influence, such as for instance increase or rise of purchase prices, price fluctuations in currencies, duties, social security contributions, insurance money, tolls, shipping costs, packing costs, transport costs, turnover taxes or costs as a result of Purchaser not providing correct, complete and accurate information to XSPlatforms.
- 6.3 Additional work shall mean all what XSPlatforms delivers and/or carries out in consultation with Purchaser, either or not agreed upon in writing, during the implementation of the agreement in addition to the expressly determined quantities in the agreement or the offer, or the performance of activities by XSPlatforms that exceed the activities that were expressly determined in the agreement or the offer.
- 6.4 Additional activities and costs on the part of XSPlatforms as a consequence of additional agreements or changes or external circumstances on which XSPlatforms has no influence can be charged on to Purchaser.

### Article 7 - Payment

- 7.1 Payment of the goods and/or services provided by XSPlatforms shall occur within 14 days after invoice date and on the bank account designated by

XSPlatforms, unless indicated otherwise by XSPlatforms. XSPlatforms may send its invoice by using electronic forms of communication.

- 7.2 Payments will be made in euros unless stated otherwise.
- 7.3 Purchaser will not suspend or setoff the payment of the compensation to XSPlatforms.
- 7.4 Payments of Purchaser will always first be applied to payment of the indebted interest due to delay and (extra)judicial collection costs and are subsequently deducted from the oldest outstanding claim.
- 7.5 Without notice of default being required, Purchaser is in default by the single expiry of the payment term.
- 7.6 During the period of its default, Purchaser is indebted an interest due to delay of 1.5 % per month or part of a month for the outstanding claims. Each time after the end of a year the amount for which the interest due to delay is calculated is increased by the interest that is indebted for that year.
- 7.7 In case of extrajudicial and judicial collection activities the Purchaser will owe, in addition to the principal sum and the interest due to delay, the actually incurred collection costs (those of lawyers, bailiffs, including internal costs) and the costs of the proceedings. If these costs are not paid in a timely manner, they will be paid provisionally, anticipating the determination of the actual cost, at an amount of 15% of the unpaid invoice with a minimum of EUR 250.--.
- 7.8 If Purchaser is in default in respect of any payment, XSPlatforms can suspend its performances while it can also terminate the agreement without judicial intervention.

#### **Article 8 - Advice**

- 8.1 If XSPlatforms gives advice with regard to the (technical) application in words, writing or by means of tests of samples and sampling this advice shall be provided to the best of XSPlatforms's knowledge yet these will only apply as non-committal instructions. XSPlatforms does not guarantee the accuracy of said advice.
- 8.2 The advice does not dismiss Purchaser from the obligation to verify the goods and/or services provided by XSPlatforms in respect of their suitability for the intended application. The application, use and processing of the delivered goods fall under the scope of the Purchaser or its customers, XSPlatforms assumes no liability in this respect.

#### **Article 9 - Retention of title and security**

- 9.1 XSPlatforms retains the ownership of all goods delivered and yet to be delivered to Purchaser, until the purchase price is completely paid for all these goods. Furthermore, the retained ownership applies for the claims which XSPlatforms could acquire against Purchaser due to Purchaser's failure to observe one or several of its other obligations vis-à-vis XSPlatforms, including collection costs, interests and fees. As long as the property of the delivered goods has not transferred to Purchaser, Purchaser may not use, consume, sell, pledge or grant any other right to a third party, other than within the normal business operations of Purchaser. Delivered goods that have become the property of Purchaser through payment and other goods that are at XSPlatforms's disposal, will be applied as security for the claims that XSPlatforms might have against Purchaser by whatever virtue (reserved right of pledge without ownership). On XSPlatforms's first request, Purchaser undertakes to cooperate to establish of a right of pledge on claims that Purchaser acquires or will acquire by virtue of onwards supply of goods to its own purchasers. Purchaser hereby authorises XSPlatforms to enter Purchaser's premises to take possession of the goods to which the retention of title applies.
- 9.2 The goods that have been delivered subject to retention of title will carefully be kept by Purchaser and always recognisable as the property of XSPlatforms, Purchaser will also register the specifications and provide these to XSPlatforms on the first request. Purchaser will insure the goods for the duration of the retained ownership against any customary risks. Purchaser hereby authorises XSPlatforms to (silently) pledge all its claims on the insurance companies by virtue of said insurance policies to itself within the meaning of article 3:239 Dutch Civil Code, on behalf of Purchaser as additional security of the claims of XSPlatforms vis-à-vis Purchaser.
- 9.3 If Purchaser fails vis-à-vis XSPlatforms in the performance of its payment obligations or if XSPlatforms has good reasons to believe that Purchaser will fail to perform its obligations, XSPlatforms can withdraw possibly granted supplier's credit and XSPlatforms can at all times repossess the goods that were delivered under retention of title and Purchaser will grant the free access to the place where the goods are located. After repossession, Purchaser will be credited for the market value (on the basis of the purchase price) which can in no case be higher than the original purchase price, reduced by the costs involved in the repossession.
- 9.4 At all times (also before delivery), XSPlatforms reserves the right to request a (partial) payment or a provision of security from Purchaser for the purchase price by means of a bank guarantee, an irrevocable letter of credit or any similar document, assignment of claims or otherwise. If Purchaser does not provide a certain security upon first request, Purchaser is deemed to be in default, with regard to payment of the purchase price as well as with regard to the acceptance of the delivered services and/or goods. XSPlatforms will then be entitled to (partially) terminate or suspend the agreement without judicial intervention regardless of its right to claim a full compensation of

damage.

#### **Article 10 - Permits**

- 10.1 Purchaser warrants the acquiring and retaining in a timely manner of all permits vis-à-vis XSPlatforms as well as statutory permits that are required for the activities that have to be carried out and for a normal performance thereof, as well as permission for the use of the access roads to the working area.
- 10.2 At an early stage, Purchaser will provide XSPlatforms with complete details of good quality and goods with regard to the activities mentioned in the agreement.
- 10.3 All fees and damages etcetera as a consequence of or following from non-observance of the obligations mentioned in the first and second paragraph of this article are for the account of Purchaser and Purchaser will completely indemnify XSPlatforms against any form of liability that applies vis-à-vis third parties in this context.
- 10.4 Any consequences caused by the failure of devices or goods that are made available by Purchaser or (preparatory) activities that were incorrectly carried out by Purchaser, including but not limited to the provision of accurate and complete details and (auxiliary) substances, are for the account of Purchaser.

#### **Article 11 - Intellectual Property Right**

- 11.1 Unless otherwise agreed upon in writing, XSPlatforms reserves (either or not for the benefit of its licensor) the copyrights, patents and all other intellectual property rights on the goods, services, examples, calculations, designs, methods, advices and other intellectual products made and provided by it. These rights remain the property of XSPlatforms, shall not be transferred to Purchaser and cannot be copied, reproduced or shown to third parties or used in any other manner without its express permission.
- 11.2 In case of a violation of what was provided in the first paragraph, Purchaser forfeits a fine of EUR 10,000.-- for each violation and for each day that a violation continues, including a part of the day, regardless of the other rights that XSPlatforms can make applicable (either or not for the benefit of its licensors), for instance a claim for a prohibition of the violation or for the payment of a compensation of damage.
- 11.3 Purchaser will indemnify XSPlatforms against each action of its customers based on the allegation that the goods and services developed by XSPlatforms infringe intellectual property rights of third parties.

#### **Article 12 - Complaints**

- 12.1 Immediately upon delivery, Purchaser will check the delivered goods in respect of possible deviations from what has been agreed upon.
- 12.2 Possible complaints must be submitted to XSPlatforms specifically stating the facts to which these complaints relate including a sample if possible, immediately, and within 7 days after factual delivery at the latest by fax in default whereof Purchaser is deemed to have accepted the delivered goods/performed service irrevocably and unconditionally.
- 12.3 Any right to complain lapses if and as soon as Purchaser (or a third party after onward delivery) uses the delivered goods for another purpose than for which it is suitable under objective, or for another purpose than XSPlatforms could reasonably presume it would be used for, or if Purchaser fails to follow the instructions for assembly, mounting, installation and/or use or if Purchaser tried to remedy a defect without first consulting XSPlatforms.
- 12.4 Complaints are not permitted with regard to small deviations in colours, qualities, compositions, thickness, quantities etc. that are customary in the market and the sector.
- 12.5 If a tonnage certificate and/or weighing slip and/or a certificate of analysis is available it applies subject to evidence to the contrary that the dimensions and/or weights and/or specifications as they were stated concern the delivered dimensions, quantities and specifications.
- 12.6 XSPlatforms is only obliged to take submitted complaints into consideration if Purchaser complied with all his contractual obligations vis-à-vis XSPlatforms, by whatever virtue. Purchaser cannot suspend or setoff its obligations in connection with a complaint submitted by it.
- 12.7 If the complaints of Purchaser are valid, partially observing what is provided above, after consultation with Purchaser, XSPlatforms will take care of the re-delivery of a same or similar goods or service or will repair the delivered goods within a reasonable period of time.
- 12.8 If the complaints of Purchaser are valid, partially observing what is provided above, but the re-delivery of the goods or service is not possible within a reasonable period of time, XSPlatforms is entitled to deliver a good or service of the nearest sort or a reasonable price reduction or crediting.

#### **Article 13 - Return Shipments**

- 13.1 The shipping costs in case of return shipments are payable by Purchaser.
- 13.2 Return shipments occur for the account and risk of Purchaser and Purchaser must prove that the delivered goods have been sent back.
- 13.3 XSPlatforms is authorised to refuse return shipments that were sent too late and/or which are apparently unfounded, and return shipments of which the costs have not been prepaid.
- 13.4 If XSPlatforms stores the returned goods that were sent too late or if it purchases these goods elsewhere, this happens for the account and risk of the Purchaser. An approval or acceptance of the return shipment can never be

deducted from these measures.

#### **Article 14 - Liability**

- 14.1** With regard to an imputable shortcoming of XSPlatforms, save for its intent or gross negligence is not liable for damage that may directly or indirectly arise for Purchaser and/or third parties. At most, XSPlatforms is obliged to supply the good or service again or, if the delivery is reasonably no longer possible, to apply a reasonable price reduction.
- 14.2** Any liability of XSPlatforms is limited to the damage that was foreseeable as a possible consequence of the act that warrants compensation, the maximum amount being the amount that is paid out in the specific case by virtue of the liability insurance it concluded, plus the amount of the policy excess which is not for the account of the insured according to the policy conditions. The maximum insured amount is EUR [...] per event, with a maximum of EUR [...] per year. If, for whichever reason, no distribution pursuant to the aforementioned insurance can take place, each liability is limited to the net invoice amount that was invoiced by XSPlatforms for the specific good or service.
- 14.3** Without prejudice to what has been determined elsewhere in these general terms and conditions, XSPlatforms shall never be further liable for goods and/or services it has purchased from third parties than insofar as these third parties are liable vis-à-vis third XSPlatforms and offer recourse.
- 14.4** XSPlatforms is never liable for indirect damage, including subsequently damage, lost profit, working hours spent, lost savings, loss of information and damage due to business interruption nor for death and/or personal injury.
- 14.5** XSPlatforms is not liable if Purchaser has not directly reported the damage in writing and within 5 days after it observed or was able to observe said damage. All claims vis-à-vis XSPlatforms lapse if Purchaser did not carry out a proper inspection upon delivery or if Purchaser cannot prove that it has followed the instructions for assembly, mounting, installation and/or use.
- 14.6** XSPlatforms terminates all statutory and contractual defences it can invoke in order to contest its own liability vis-à-vis Purchaser, also for the benefit of its subordinates and non-subordinates for whose actions they would be liable pursuant to the law.
- 14.7** Without prejudice to the other provisions of this article and the general terms and conditions, furthermore possible (legal) claims should have been brought before the court no later than 1 year after the delivery of the performance subject to forfeiture of rights.
- 14.8** Purchaser will fully indemnify XSPlatforms against any form of liability which could rest upon XSPlatforms vis-à-vis third parties (including customers of Purchaser) with regard to the goods delivered by XSPlatforms or services it carried out, insofar as this liability does not rest upon XSPlatforms pursuant to these conditions.

#### **Article 15 - Non-competition and confidentiality**

- 15.1** If Purchaser is appointed as distributor of XSPlatforms, Purchaser shall for the term of this agreement and 1 year after its termination, refrain from, directly or indirectly, for itself or for the benefit of other, being involved in the manufacture, sale, representation or distribution of any goods and/or services which reasonably can be deemed similar to the goods and/or services of XSPlatforms.
- 15.2** If Purchaser is appointed as distributor of XSPlatforms, Purchaser shall for the term of this agreement and thereafter keep secret and treat as confidential all information relating to the good and/or services, processes, techniques, packaging, specifications, trade secrets, strategies, financial data, costs, marketing strategies, vendor and customer relationships, methods of manufacture, operations and distribution, and other proprietary information or materials from XSPlatforms.
- 15.3** If Purchaser violates this non-competition and confidentiality clause, Purchaser shall forfeit to XSPlatforms, without any notice to that effect being required, an immediately payable penalty which is not subject to set-off, in the amount of EUR 10,000.—per event and EUR 1,000.- for every event that such violation continues, without prejudice to the right of XSPlatforms to claim full compensation of damage in addition to the penalty.

#### **Article 16 - Force majeure**

- 16.1** In this text, force majeure ('non-imputable shortcoming') means: any circumstance, which is independent of the will of the Parties and possibly unforeseeable, due to which the fulfilment of the agreement can reasonably not (or no longer) be expected from XSPlatforms by the Purchaser.
- 16.2** Force majeure of XSPlatforms means in any case: strike, excessive absenteeism of the staff of XSPlatforms, fire, sabotage, government measures, import and export limitations, computer and telephone malfunctions at XSPlatforms, unusual price increases, problems at suppliers, carriers and involuntary malfunctions or limitations due to which the execution of the agreement becomes more costly and/or objectionable, such as storm damage and/or other natural disasters, due to which XSPlatforms cannot, or no longer, fulfil its obligations vis-à-vis Purchaser (in a timely manner).
- 16.3** If a force majeure situation arises, XSPlatforms can suspend the execution of the agreement or terminate the agreement. The Purchaser can do this as well, but only after XSPlatforms has not fulfilled its obligations 30 days after the notice of default. Upon termination in case of force majeure, XSPlatforms does not owe compensation.

**16.4** XSPlatforms can claim payment for the performances that were carried out during the execution of the specific agreement before the circumstance, which results in force majeure, had arisen.

**16.5** XSPlatforms can also invoke force majeure if the circumstance which results in force majeure enters into effect after its performance should have been delivered.

#### **Article 17 - Applicable law and disputes**

- 17.1** All legal relationships between Parties are subject to Dutch law.
- 17.2** The provisions of the Vienna Sales Convention do not apply, nor does any other existing or future regulation concerning the purchase of movable tangible property that can be excluded by the Parties.
- 17.3** Except insofar as provisions of mandatory law challenge this, any disputes that may arise between parties will in first instance be settled by the Court in Rotterdam (proceedings on the merits) or the Preliminary Relief Court of the Court in Rotterdam (preliminary relief proceedings), without prejudice to XSPlatforms's right to submit a dispute to any other competent court.