

Terms & Conditions

General Terms & Conditions of Sales

Xovis Germany GmbH

Version 09/2022

1 Scope of GTCS

Any supply and performance by Xovis Germany GmbH (hereinafter referred to as “**Xovis**”) shall exclusively be regulated by these General Terms and Conditions of Sale (hereinafter referred to as “**GTCS**”). Differing terms, in particular general terms and conditions of contractual partners, shall only be effective, if Xovis explicitly and in writing has confirmed them before the conclusion of the contract. This rule also applies, if Xovis did not object the general terms and conditions of contractual partners in the individual case. The GTCS apply to all contracts between the Parties.

2 Conclusion of Contract

2.1. The contract for delivery is deemed to be concluded when Xovis delivers the goods or declares acceptance by dispatch of the order confirmation.

2.2. Orders must be made with reference to the quotation and in the quantities contained therein. If deviating quantities are ordered, Xovis reserves the right to adjust the offered price and/or to refuse the order.

2.3. Orders are usually confirmed by Xovis in writing within 14 days of receipt of the order. If Xovis does not confirm the order within 14 days, the order is deemed rejected and is therefore not binding. An order is only binding for Xovis, if an order confirmation has been issued. The scope of the contract is determined exclusively by Xovis’s written order confirmation.

3 Delivery

3.1. Terms of delivery and delivery dates are not binding, unless the parties have otherwise agreed upon in writing. Xovis shall be entitled to partial delivery.

3.2. Damage claims due to late delivery are excluded, unless Xovis, its agents or auxiliary persons did act on intention or gross negligence or the parties have otherwise agreed upon in writing. At all events, damage claims are limited to typical contractual damages and subject to the liability limitation according to Clause 3.

3.3. If Xovis is delayed in performance (default) and the Customer sets a reasonable time limit of at least 14 days within which to make performance and rejects performance after the

expiry of the time limit, the Customer shall be entitled to withdraw from the contract, if Xovis did not perform within the time limit.

3.4. In the event of default in acceptance or other culpable breach of cooperation obligations by the Customer, Xovis is entitled to compensation for the resulting damages, including any additional expenses. Xovis reserves the right to assert further claims. In this case, the risk of accidental loss or accidental deterioration of the goods shall pass to the Customer at the time of the default in acceptance or other breach of duties to cooperate.

3.5. In case the purchased goods shall be exported, the Customer shall be obligated to provide all documents necessary for the export (i.e. authorizations for export and custom etc.) at its own expense. Xovis shall not be liable for legal admissibility of the export of the goods and accordance with legal and technical provisions of the country of importation. Furthermore, Xovis shall not be liable for the standard of goods according to the technical standards required by the country of importation

4 Retention of Title

4.1. Xovis reserves the title to all delivered goods until payment is completed; in this context all deliveries are considered to be a coherent delivery transaction. In case of a running account the reserved title is considered to cover the balance of account of Xovis.

4.2. If the Customer connects the goods with other items in such a manner that the connected goods are legally considered to be a single item, and if the other item is considered to be the main item, Customer by now transfers the correspondent joint ownership to Xovis, as far as Customer is the owner of the main item.

4.3. In case the Customer sells the delivered good according to the terms of the contract, by now the Customer assigns to Xovis all claims against the third purchaser deriving from the purchase, including all subsidiary claims until complete repayment of all these claims. In case of sound cause (such as default of payment) and, if Xovis so requires, Customer shall disclose the assignment to the third purchaser and shall inform Xovis about all necessary facts and documents to assert the claims. Xovis shall release its securities, insofar as their value exceed 20 % of the secured claims.

5 Pricing and Payment

5.1. The prices are exclusive of customs, withholding tax, value added tax and other taxes applicable to such payments to Xovis. Customer shall pay all taxes and charges to ensure that Xovis will receive the price as defined in the quotation without reduction.

5.2. The prices of the quotation are based on the raw material costs applicable at the time of submission of quotation. If the purchase price of raw materials significantly increases (more than 5%) due to circumstances beyond the control of Xovis, Xovis shall be entitled to request an appropriate adjustment to the quotation price. Xovis shall have the right to withdraw from the quotation without further obligation, should the price adjustment not be accepted. Xovis reserves the right to increase the piece price due to wage increase above the normally expected level, inflation and other circumstance beyond the control of Xovis.

5.3. Xovis shall invoice the Customer after delivery, if not stated otherwise in the quotation. Invoices by Xovis are payable without deduction within 30 days from the invoice date, if not stated otherwise in the invoices submitted by Xovis.

5.4. All accounts by Xovis fall due immediately, if the Customer does not meet the conditions of payment for reasons accruing from its responsibility or if Customer stops payment. Xovis shall be entitled to demand prepayments for open deliveries and to withdraw from the contract after a reminder and an adequate period of grace. After a reminder and expiry of an adequate period of grace, Xovis may enjoin Customer from reselling the good and may return the delivered good at the expense of the Customer. Xovis is entitled to compensation for the resulting damages, including any additional expenses.

5.5. The retention of payments or the setoff with counterclaims of the Customer are excluded, unless such counterclaims are undisputed or have been acknowledged by Xovis or approved by a final court order.

5.6. After the due date, interest shall be charged at a rate of 9 points p.a. above the respective base interest rate. Xovis reserves the right to claim further damage caused by default of payment.

6 Change of Order / Cancellation

6.1. Orders confirmed by Xovis are binding. The cancellation or modification of orders by Customer that refer to individual items, quantities or the entire order is generally excluded.

6.2. For cancellations up to ten weeks before the planned delivery date, Xovis reserves the right to charge the Customer 1% of the order value. Each full or commenced calendar week after the ten weeks before the planned delivery date, such fee shall be increased by additional 1%. For cancellations in the calendar week planned for delivery, a fee of 15% will be charged. Xovis is entitled to compensation for further damages.

6.3. For postponements up to 5 weeks before the scheduled delivery date, Xovis reserves the right to charge the Customer 0.5% of the order value. Each full or commenced calendar week after the five weeks before the planned delivery date, such fee shall increase by additional 0.5%. For postponements in the calendar week planned for the delivery, a fee of 3% will be charged. Xovis is entitled to compensation for further damages.

7 Warranty

7.1. Unless otherwise agreed in these GTCS or an individual agreement, the statutory provisions on liability for defects shall apply.

7.2. Xovis gives warranty to the Customer for quality and suitability of its products within the scope of its technical specifications. Product descriptions shall not be deemed as a guarantee by Xovis.

7.3. Defects of the delivery shall be reported to Xovis in writing without undue delay – as soon as they can be detected within ordinary course of business (including evidence of such incidence). Insofar, Customer is under a duty to examine the products for completeness and transport damage immediately on receipt.

7.4. Xovis will remedy defects at its reasonable discretion within a reasonable time period following receipt of the notice of a defect by Customer.

7.5. Unless otherwise defined in the quotation, the limitation period for warranty claims shall be 24 months from the date of the delivery of the defective Products.

7.6. Claims for defects do not arise, if the defect is based on an infringement of instructions regarding operation, maintenance, or installation, improper or inappropriate use, incorrect or careless treatment, natural deterioration or improper encroachment upon the good by Customer or any third person.

8 Obsolescence

In the event of cancellation of a Product (in particular regarding electronic components), Xovis is not obliged to ensure the continuity of the Products beyond the scope of the warranty obligations.

9 Limitation of Liability

9.1. For slight/normal negligence Xovis shall only be liable for a breach of essential obligations (e.g. obligations the performance of which is fundamental to the due performance of the contract and on which the other party may typically rely). In this case, Xovis's liability shall be limited to the damage that could have reasonably been foreseen when this agreement was entered into.

9.2. The Parties agree that the foreseeable damage pursuant to Clause 2 shall be limited to remuneration payable by Customer under this agreement, and that in the cases referred to in Clause 9.2 Xovis's liability for indirect losses and lost profits shall be excluded.

9.3. The limitation of liability set out in this Clause 9 shall apply to all liability claims asserted against Xovis in relation to this Agreement, regardless of the legal grounds for such claims (e.g. breach of contract, tort).

9.4. No limitation shall apply to Xovis's statutory liability for willful intent, gross negligence, injury to life, limb or health, the breach of guarantees or under the Product Liability Act.

10 Confidentiality / Intellectual Property

10.1. Customer shall undertake not to disclose to the public or any individual third party any information, knowledge or experience received from Xovis in the quotation or in connection with this quotation, like development results based on customer's order, in writing, verbally

or in any other way (hereinafter referred to as "**Information**"). Said commitment shall not apply to Information which can be proved to have become generally known or which will become generally known at a later date without breaching the present commitment or which can be proved to have been known to the customer prior to receipt of the Information or at a later date without breaching the present agreement.

10.2. Any rights (including proprietary and copy rights) with regard to the disclosed Information shall be reserved. Disclosure of Information shall not give the customer the right to apply for industrial property rights on inventions included therein. Disclosure shall not entitle the customer to use the Information for other purpose than the evaluation of this quotation.

11 Free and Open Source Software / Third party Rights

11.1. The Products may contain free and open source components (hereinafter referred to as "**FOSS**"). FOSS is licensed exclusively in accordance with the respective license terms of the FOSS, which are listed within the documentation. For clarification, it is stated that the restrictions set out in this Agreement do not apply if and to the extent that the actions excluded by these restrictions are required by the license conditions applicable to FOSS. For clarification, the parties state that no patent license is granted to Customer under this Agreement. The rights granted under this license are limited exclusively to copyrighted rights of use.

11.2. The Products may contain software that is licensed under the LGPLv2, or FOSS license. All contained FOSS is delivered for free and is not included in the sales price of the Products. Xovis will provide everyone with the source code of those parts of the software that are covered by FOSS licenses. In order to request a copy of the source code, Customer shall write an email to info@xovis.com. In Customer's request, Customer must specify the name of the Products for which the source code is required and indicate how Xovis can contact Customer. Xovis reserves the right to charge Customer with an adequate fee for covering Xovis's handling and shipping expenses.

12 Force Majeure

12.1. If Xovis or its contractors is prevented from fulfilling its obligations under the agreement due to force majeure, Xovis shall be released from fulfilling its obligations for the duration of the hindrance and a reasonable restart period thereafter. Any deadlines for performance shall be extended by the period of the delay or the period during which

performance was not possible due to one of the above events. This shall also apply if such events occur during an ongoing delay.

12.2. If one party is unable to properly perform the contractual relationship due to such events or is no longer able to properly perform the contractual relationship due to such events and this is not only of a temporary nature, the other party is entitled to terminate the contract to withdraw authorized by the contract. The parties agree that an impediment to performance as described above is not only temporary if it lasts longer than 12 months.

12.3. Cases of force majeure or events equivalent to them shall include, among others, fire, accident, flooding, war, strike, operational failure of public supply systems or epidemics, pandemics, destruction of production facilities, insurrection or shortage of energy or other causes beyond the control of the party invoking the provision. Each party shall be obliged to inform the other party of the existence of such delays caused by force majeure.

13 Miscellaneous

13.1. This Agreement supersedes all prior and contemporaneous discussions and agreements, both written and oral, among the parties with respect to its subject matter and constitutes the sole and entire agreement among the parties with respect to such subject matter.

13.2. Customer may not assign any of its rights or obligations hereunder, whether by contract or operation of law, without prior written consent of Xovis.

13.3. This Agreement may be amended, supplemented or modified only by a written instrument duly executed by or on behalf of each party to this Agreement. The text form shall not be sufficient.

13.4. This Agreement and any disputes arising under or in connection with this Agreement or its validity shall be governed by German law excluding its conflict of law terms and the UN Convention on Contracts regarding the International Sale of Goods (UN CISG). The exclusive place of jurisdiction shall be the domicile of Xovis.

13.5. If a provision of this Agreement should be or become invalid or not contain a necessary regulation, the validity of the other provisions of this Agreement shall thereby not be affected. The invalid provision shall be replaced and the gap be filled by a legally valid arrangement which corresponds as closely as possible to the intentions of the parties or

what would have been the intention of the parties according to the aims of this Agreement, had they recognized the invalidity/gap.