

General Purchasing Terms and Conditions (04/2019)

1. General and Scope

1.1 These purchasing conditions shall apply to all supplies and services provided to us by the supplier (hereafter: supplies).

1.2 Any terms of the supplier that are contrary to or vary from our purchasing terms and conditions will not be accepted by us unless explicitly agreed to in writing. Our purchasing terms and conditions shall also apply even if we accept the supplier's delivery without reservation although we are fully aware of the supplier's terms being contrary to or varying from our purchasing terms and conditions.

1.3 Alterations of these purchasing terms and conditions need to be done in writing; this shall also apply for the abolition of the written form. However the parties are free to make altering arrangements afterwards.

1.4 Our purchasing terms and conditions only apply to entrepreneurs (according to Art. 25, paragraph 3 of the Romanian Civil Code).

2. Offer, Order, Quotation Documents

2.1 If the supplier submits an offer based on an enquiry by us, the offer shall follow the enquiry in every respect, especially concerning amount and condition of the goods; any deviations have to be pointed out expressly and explicitly by the supplier. The offer will contain the validity date and the supplier must keep offer valid within the validity date. Until full acceptance by our part the offer will be considered free of charge and without any obligations to us, according to Art 1190 from Romanian Civil Code.

2.2 Illustrations, drawings, calculations and any other documents, which we provide for enquiry purposes, are confidential and are subject to our property and copyrights; the supplier must not use them to own interest and must not make them accessible to third parties without our express written approval. They are to be used exclusively for the production on grounds of our order/contract; the supplier shall return the documents to us, upon completion of the order/contract.

2.3 Our orders are only binding if they are submitted to Supplier in writing.

2.4 The offered supplies must comply with the requirements of any relevant rules of law and other standards, technical standards and occupational health and safety regulations in particular, which apply at the time and at the place of the first use known to the supplier (otherwise at place of delivery at delivery time / service time), even if not expressly announced by us.

2.5 The supplier will send acceptance of the order in maximum 3 working days from receiving the order according to Art 2.3 above. If the supplier fails to accept the order, we have the right to reject the acceptance transmitted later than the terms.

3. Prices, Billing, Terms of Payment

3.1 The price stated in the order is binding. Prices are fixed prices unless otherwise agreed. Unless otherwise agreed in writing, the price includes delivery "free buyer's address", including packaging. The cost of the return of the packaging material requires a separate agreement. An unconditional acceptance of the delivery cannot be interpreted as agreeing to a higher price than indicated in the order.

3.2 Prices include all services the supplier has to carry out in order to fulfil his commitment at the place of delivery. The applicable VAT is not included in the price.

3.3 The supplier's claim for payment will not be due before receipt of an auditable invoice. The payment shall be done within payment term by payment methods chosen by us.

3.4 Invoices must always be issued in duplicate. For any delivery, an invoice has to be sent to our registered address. Invoices have to be identical in wording to our order descriptions; they have to show our order number, the exact denomination of the ordering department and the date of the order. Invoices not containing these details clearly and distinctly will not be honored. Such invoices will be regarded as not issued and will be sent back to supplier, to be re-issued, without any additional costs of any kind to us.

3.5 The supplier is liable for any consequences arising from his non-compliance with no. 3.4 in this paragraph, unless he can prove not being accountable.

3.6 We will pay the purchase price according to the written order.

Notwithstanding other agreements in written form, we propose payment 14 days after delivery and invoice receipt, minus 3% discount or net payment, 60 days after the invoice receipt.

3.7 The payment period counts from the first working day after receipt of an invoice in proper form (art. 3.4) and our reception of the delivery of goods or services.

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

3.9 In case of a request of a down payment, we are, at any time, entitled to require a down payment guarantee by a bank approved by us.

4. Delivery, acceptance, approval

4.1 Delivery time as indicated in the purchase order is binding, and it counts from date of acceptance of the purchase order.

Modifying the delivery term will be made upon negotiations of the contracting parts, by signing an Annex to the Order.

4.2 Delivery is made "free buyer's address", notwithstanding any other agreement in writing. Therefore, the passing point of risk is when goods and services had been duly delivered.

4.3 The supplier is bound to inform us without delay and in writing if any circumstances arise or become recognisable to him, indicating that the delivery time agreed cannot be met. He has to immediately communicate the new date of delivery and the reasons for the delay.

4.4 In case of delay in delivery we are, irrespective of a delay notice, entitled to claim compensation, irrespectively of effective losses, of 1 % for each week of delay, up to 10 % of undelivered order. In particular we are entitled to reject delayed orders, in total or partial after expiration of an appropriate period of time given to supplier and to receive compensation of 10 % of rejected order. In case we claim modifications of initial order, supplier must respect these, except the case the supplier can prove that is not responsible for the delay.

4.5 In case of shipping documents lacking, a delivery other than to the address indicated, incomplete or faulty data at delivery can cause internal delays for us. The supplier is responsible for any consequences arising hereof if he cannot prove that he is not accountable for these cases. In particular, the beginning of all time limits depending on the delivery time will be postponed by the time necessary for clarification and correction.

4.6 Early deliveries can be accepted only in case of existence of a mutual agreement. If a delivery is early, the delivery date in connection with all terms will continue to be the originally agreed first possible delivery date.

4.7 The supplier is responsible for sufficient insurance of the shipment; insurance costs are only paid by us, if this is separately agreed.

4.8 The supplier is responsible for return of the packaging materials and he pays for disposal by third parties if such disposal is agreed.

4.9 In so far as an approval of goods and services (in total or in parts) is agreed, it has to be carried out explicitly and in written form.

5. Shipping

5.1 All letters, shipping notices, invoices etc. have to show the *issuing department, ciphers, number and day of the purchase order*. Any correspondence (letters, shipping notices, invoices etc.) has to be carried out separately for each purchase order.

5.2 On the back of a bill of lading (the section of express parcel address or mailing address), department, ciphers, number and day of the purchase order have to also be included. The address on the bill of lading given by the ordering party must be adhered to precisely.

5.3 In case of conventional cargo, express parcel and goods sent by post as well as for consolidated consignments, each item shipped has to carry a sticker or attached slip showing department, ciphers, number and day of the purchase order.

5.4 If the delivery was agreed free freight, the freight has to be paid for by the sender at the dispatching location.

5.5 For any consequences arising from the supplier's non-compliance with his above mentioned obligations he shall be liable, unless he can prove that he is not accountable for these circumstances. This is connected in particular, but not exclusively, to fees for wagon positioning, special shunting fees, repositioning fees; deliveries that cannot be made for the above reasons will be stored at the supplier's expense until an assignment is possible.

5.6 In case the supplier commissions sub-suppliers, to execute the order, the supplier must assure that the sub-suppliers fully respect the requests of our order and is liable to us for the quality of products/services supplied by the third-party. Subcontracting shall be understood according to art 1769, paragraph 2 from Romanian Civil Code.

6. Defect control – defect liability

6.1 We are bound to check the goods within an adequate period for quality and quantity deficiencies. The complaint about any noticeable deficiency (visible fault) is in any case timely, if it reaches the supplier within a period of five working days, disregarding the form. This period begins at goods receipt at our site according to delivery terms mentioned in our order.

6.2 We are entitled to the statutory quality defect claims to the full extent. In any case we are entitled to claim legal remedies for quality defects, according to Art 1710 from Romanian Civil Code. The right to claim compensation, in particular compensation instead of the delivery, is explicitly reserved.

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

6.4 The supplier must replace, on his expense, within 5 days, the nonconformity products for which he has received a nonconformity notice. The supplier undertakes to indemnify us from any third-party claims for defects as to quality or defects that the supplier is responsible for. In this case, we shall not enter into any agreement with such third-party, including but not limited to settlements, without the consent of the supplier. This obligation to indemnify shall include any expenses reasonably incurred by us due to the third-party claim, including but not limited to reasonable attorneys' fees.

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

6.6 The quality of goods requested in our order, must be in accordance with the standards, specifications and/or technical conditions requested by Annex of Order. The reception of goods shall be made at Purchaser offices, but this will not release from liability the supplier, regarding the quality of goods.

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

7.1 In so far as the supplier is responsible for a product defect, he is bound to release us from any kind of compensation claims of third parties, at first request, as the supplier is and remains liable in relation to any third-party.

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

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

8. Retention of title, provision of material, tools

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

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

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

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

9. Assignment, offset, retention by the supplier

9.1 Without our explicit consent in written form, the supplier may not assign any obligations or right to us, partly or entirely to a third party. Should we consent, the supplier continues to be at least a

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

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

10. Revocation

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

11. Confidentiality

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

12. Xella Supplier Code of Conduct

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

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

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

13.2 Any patrimony dispute arising from/in regards with our order, including the disputes regarding the validity, the execution or termination of effects of our order/contract shall be resolved by relevant Court at our registered office.

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

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

14. Data protection

We guarantee the protection of your personal data.

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

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