

GENERAL BUYING CONDITIONS - XOMOX EUROPE

XOMOX Magyarország Kft.

8002 Székesfehérvár, Hungaria

XOMOX France S.A.

68350 Brunstatt-Mulhouse, France

§ 1. Standard conditions

1. The legal relationships between the supplier and the customer shall comply in accordance with these conditions. Any modifications and amendments, as well as sales conditions of the supplier, that hereafter deviate from the conditions, shall apply only if confirmed by us in writing as a supplement to our Conditions of Purchase. The acceptance of deliveries, and respectively services or payments, shall not imply consent of the sales conditions of the supplier.
2. The parties agree that the business terms and conditions of our suppliers or third parties shall not apply, even if we do not separately contradict their validity in an individual case. Even if we make reference to a letter that contains the business terms and conditions of our suppliers or third parties this shall not imply consent of the validity of those business terms and conditions.

§ 2. Orders and commissions

1. The supplies, services and offers by the supplier shall exclusively be carried out on the basis of those business terms and conditions. They shall also apply to all future business relations, even if they will not expressly be agreed again. These conditions shall be considered as agreed by the dispatch of the goods to the forwarding agent or carrier. Any acknowledgements by the supplier with reference to his own business and delivery conditions are hereby rejected.
2. Commissions and conclusions of sale contracts, as well as their modifications and amendments, shall only be binding if they have been furnished or confirmed in writing by us.
3. The parties agree that commissions shall be confirmed within 2 (two) working days and that they are automatically regarded as confirmed and binding.
4. Provided that it is reasonable to the supplier we shall be entitled to demand modifications of the object of supply in its construction and design. In such case the corresponding effects, particularly with regard to any additional or reduced costs as well as delivery date, shall reasonably be mutually agreed.
5. Remuneration or compensation for any visiting or drafting of offers, projects, etc., shall not be granted.
6. The supplier shall not be entitled to pass the order to third parties without written authorization.
7. The supplier shall be committed to examine our order specifications or order designs and to inform us in writing of possible improvements in respect of reduction of costs, increase of the tool life, etc.
8. Valves and pressure components of valves must be delivered in accordance with the PED 97/23/EG. A PED certificate is necessary. As exception is a release from Xomox purchasing necessary.

§ 3. Prices, terms of payment, invoice data

1. The parties agree that prices shall be based in accordance with our commission. However, should the supplier need to mention a different price in the confirmation note, this price shall require our express approval.
2. For lack of a divergent written agreement the price shall include delivery, transportation and packing to the forwarding address that is indicated in the agreement. The legally applicable VAT, which is not included, shall be presented separately in the invoice.
3. Unless otherwise agreed payment shall occur under reservation of invoice audit by transfer or cheque after the contractual receipt of goods and entry of the proper and auditable invoices within 14 days, at 3% discount or up to 60 days without any deductions.
4. If deliveries are accepted too early the maturity shall be observed in accordance with the agreed date of delivery. Messrs. XOMOX reserve the right to return unarranged early deliveries at the expense of the supplier.
5. It is agreed that in the event of deficient delivery we shall be entitled to proportionately retain payment in terms of value until due performance of the agreement.
6. If a manufacturer's certificate is part of the commission the payment deadlines shall only commence after its receipt.

7. The invoice shall be sent to us separately as a single copy. It shall contain the number and date of the commission, number and date of the delivery note, part number and quantity of the charged goods.
8. If we defray the expenses of packing in an individual case due to an expressed written agreement you shall charge us at the cheapest price. With a free re-consignment of the packing material you shall indemnify us at least 2/3 of the charged packing costs as we may deduct this amount from the total invoiced amount.
9. In the event of advance payments the supplier shall be committed to furnish an adequate guarantee, e.g. bank guarantee.
10. In the event of delivery delays that have been caused by the supplier we shall be entitled to deduct 2% as costs for the default of delivery per week, not to exceed 10% of the value of the goods ordered.

§ 4. Delivery

Deviations from our commissions or conclusions shall only be permitted upon our prior written consent. Any agreed schedules and deadlines shall be binding. The receipt of the goods shall be decisive for compliance with the delivery date or delivery deadline.

1. If agreed schedules cannot be kept due to the supplier's liability we are, without prejudice to extensive legal regulations and according to our option, entitled to repudiate the agreement after expiration of a reasonable extension of time without the threat of renunciation, and to procure replacements from third parties and/or claim compensation for non-performance. We shall be entitled to reimbursement of all expenditure that is caused by delayed deliveries or services for which the supplier shall be liable. The acceptance of a delayed delivery or service shall not cover the waiver of claims for damages.
2. We shall be informed immediately of any interruption of performance that would cause an alteration of the delivery time, quality or quantity. Such information shall be made in writing, even if also supplied verbally.
3. Subject to alternative proof the values established by our inspection department shall be decisive for quantities, weights and measures. We shall not be committed to accept non-agreed short part deliveries and increased part deliveries.
4. Even if dispatch has been agreed as per the Incoterm in the order, the risk and ownership of the products shall only devolve upon us if the goods had been received by us at the place of destination.
5. The acceptance of the goods is subject to inspection for correctness and qualification.
6. The goods to be delivered shall be packed as usual for transport. The supplier shall be committed to comply with the regulations of the respective transport agent, carrier or forwarding agent. The supplier shall be liable for any damage as a result of poor packing.
7. The delivery note shall contain our exact order data and be attached to the goods.
8. We reserve the right with a written agreement clause "Delivery ex-works" to stipulate the forwarding route, the mode of dispatch, the means of transportation, and the type of packing.
9. Force majeure, labour disputes, riots, administrative measures and other unpredictable, unavoidable and serious occurrences shall release the contractual partners from the obligations to render the services for the duration of the disturbances, and within the scope of its effects. We shall be entitled to withdraw from the agreement in whole or in part as far as these occurrences result in a considerable reduction in our requirements.
10. Manufacturer's certificates shall be first sent to us by e-mail and additionally be attached to the consignment.

§ 5. Protection of ownership

1. We reserve the property right or copyright on commissions and orders, as well as designs, illustrations, calculations, descriptions and other documents that have been disposed to the supplier. The supplier shall not disclose, make them public, use or reproduce them for his own benefit, or through third parties, without our expressed consent. The supplier shall be committed to return these documents and any other copies in their entirety upon our request if he no longer requires them in the ordinary course of business or if negotiations do not lead to the conclusion of an agreement.
2. Tools, mechanical devices and designs that we dispose to the supplier, or will be fabricated for contractual purposes and separately invoiced by the supplier, shall remain our property or devolve upon us. The supplier shall be committed to identify them as our property, to keep them carefully under wraps, to protect them against damage of any kind, and to use them only for the purposes of the agreement. Unless no other mutual agreement has been made any expenditure necessary to maintain and repair these items shall be mutually borne half each by the contractual partners. However, if this expenditure is attributable to defects of items that have been fabricated by the supplier, or by improper handling by the supplier, his employees or other vicarious agents, they shall be solely borne by the supplier. The supplier shall be committed to inform us immediately of any damage, irrelevant or otherwise. He shall be committed to return these items in a proper condition upon demand if they are no longer required by him to perform the agreements concluded with us.

3. The supplier shall be committed to store the materials disposed by us in a neat manner and separately as our property, and to insure them sufficiently against fire, water damage and theft. The parties agree that this expenditure shall be solely borne by him.
4. Reservations of ownership of the supplier shall only be effective if they refer to our liability to pay the respective products on which the supplier reserves the ownership. Particularly extended or prolonged reservations of ownership shall not be admissible.

§ 6. Warranty claims

1. The supplier warrants that his delivery or service has the ensured properties and is not afflicted with deficiencies. Unless otherwise provided below the guarantees of the supplier shall comply with the statutory provisions. In the event of default we shall be entitled to demand as our option remedy the goods free of charge or the delivery of faultless goods. In urgent cases we shall be entitled, after settling with the supplier, to undertake the remedy of any defects by ourselves or by a third party, or to procure a replacement elsewhere at cost to the supplier. The same shall apply if the supplier fails to complete his warranties. If a manufacturer's certification is not objected to in writing within a period of 5 (five) working days the manufacturer's certification shall be considered as accepted.
2. Unless, in a specific case, a longer deadline is otherwise provided the guarantee shall be 24 (twenty-four) months and commences at the acceptance of the article to be supplied.
3. We shall immediately inform the supplier of deficiencies as soon as they have been discovered in accordance with the circumstances of a due course of business. Insofar as this action is undertaken the supplier shall relinquish any objection to a delayed notification of defects.
4. Should a receiving inspection that exceeds the regular scope become necessary due to deficient delivery the supplier shall bear the cost. All other accruing costs that are connected with the guarantee obligation, such as assembling and disassembling, freight, packing, insurance, customs duties and other public charges, inspections and acceptances, shall be borne by the supplier.
5. Upon receipt by the supplier of our notice of defects the Statute of Limitations of warranty claims shall be suspended. The period of warranty of replaced and retouched parts shall commence again unless we assume, according to the supplier's conduct, that he found himself not obligated to such measures but that he carried out the replacement delivery or removal of defects only for reasons of courtesy or similar considerations.

§ 7. Liabilities

1. In the event that we are claimed against by a customer or other third party for personal injuries or property damage on the basis of product liability, the supplier shall be committed to exempt us from such claims inasmuch and as far as the damage has been caused by a defect of the product that has been delivered by the supplier. The supplier shall also be committed to pay any costs and expenditure that will accrue, including the costs of bringing a possible action or recall action. In all other respects, the legal provisions shall apply.
2. The supplier shall be committed, at his own expense, to maintain a comprehensive product liability insurance with a limit of indemnity of 5,000,000.00 Euros for personal/property damage. In the event that we should be entitled to larger claims for compensation they shall remain unaffected. We shall also be entitled to inspect any insurance policies.
3. Every person who carries out work on our premises to comply with the agreement shall observe the provisions of the respective company regulations, as well as the existing instructions for entering and leaving the manufacturing establishment. Our liability for accidents that happen to those persons on our premises shall be excluded unless they have been caused intentionally or through our gross negligence.

§ 8. Trade marks

The supplier shall be liable and ensure that the use of the goods that are delivered by him infringe neither local nor foreign protective rights, or any other rights that do not enjoy a legal special protection, and he shall release us and our customers from all claims that may ensue. This claim shall apply irrespective of a fault by the supplier. Beyond this the supplier shall also be liable for any other direct or indirect damage that is caused to us due to a violation of such rights. However, this shall not apply if the supplier fabricates exclusively in accordance with our drawings and models, and he is unaware that the fabrication of these goods represents an infringement of a right.

§ 9. Spare parts

1. The supplier shall be committed to keep spare parts for the products delivered to us for a period of at least 10 (ten) years after the delivery.
2. If the supplier intends to stop the production of spare parts for the products that have been delivered to us he shall inform us immediately of the decision to cease production. Subject to paragraph 1 this decision must be present with us at least 6 (six) months before the stopping of production.

§ 10. Secrecy

The supplier shall be committed to treat our commissions and any information connected therewith as strictly confidential, and also to engage his ancillary suppliers accordingly.

§ 11. Safety regulations and quality

1. The supplier shall keep the standard rules of engineering, the safety regulations and the agreed technical data for his deliveries. Provided that the order involves machines, equipment, vehicles and similar items then the performance shall comply with the prevailing regulations for the prevention of accidents, the law relating to technical work equipment, and the generally admitted safety regulations and occupational medicine regulations. According to the regulations for the prevention of accidents, and without need to highlight or provide an extra order or advice, the supplier shall also deliver the necessary safety devices.
2. The supplier shall undertake all necessary measures to deliver the ordered goods /performance in faultless quality, i.e. zero-defect method.
3. The supplier shall take care to ensure environmentally safe production. The products and the packing material shall be adjusted to the latest current environmental requirements. Components that are known as polluting and harmful shall be excluded to the greatest possible extent. Any possibilities of re-utilisation/recycling shall be fully exhausted or ensured.

§ 12. Auditing

1. XOMOX shall be entitled to carry out an audit by themselves or by their choice of expert. This comprehends an inspection of the business and the quality assurance system of the supplier and a subsequent evaluation. The gained knowledge shall become the basis of additional contract awards, as well as the internal classification (rating) of the company by XOMOX.
2. a) XOMOX shall be entitled to undertake registered inspections of the running course of the supplier's business for quality assurance measures.
3. b) If there have been quality problems in the past XOMOX shall be entitled to undertake unannounced inspections to control the quality assurance measures. XOMOX shall not be entitled to such unannounced inspections if the last complaint about the quality assurance measures of the supplier occurred more than one year ago, or if no deficiencies have been ascertained at two previous unannounced inspections.
4. c) Provided that XOMOX has a reasonably legitimate interest it shall be entitled to inspect the documents of the supplier. Such a legitimate interest particularly exists if knowledge can be gained that would allow evaluation of the necessity and scope of a revocation.

§ 13. Severability

1. If one or more provisions of this condition and of the prescribed agreements should be or become invalid or unenforceable, the balance of the agreement shall remain unaffected and thereby remain in full force and effect. The contractual parties shall substitute the invalid or unenforceable provision by a valid one which as closely as possible achieves the economic purpose of the invalid or unenforceable provision.
2. The place of performance for all deliveries and performances shall be the residence of the company. The place of jurisdiction shall be the competent court for the headquarters of our company; however, we shall also be entitled to sue in the court having jurisdiction over the supplier and the subject matter.
3. The agreements concluded between us and the supplier shall be governed by the laws of the Federal Republic of Germany under the exclusion of the right of association. The application of the standard UN Sales Convention (United Nations Convention on Contracts for the International Sale of Goods) shall be excluded.
4. In the event that a contractual partner ceases his payments, or insolvency proceedings over his property are being applied for, or an out of court composition proceeding is being applied, the other contractual party shall be entitled to withdraw from the non-fulfilled part of the contract.