

General Terms of Delivery and Payment for Industrial Contracts for Xatico

1. Scope of Application

The parties hereto agree on the exclusive application of the following terms (the **Terms and Conditions**) with respect to the execution and/or the interpretation of the contract concluded by them (the **Contract**). The Terms and Conditions will be annexed to any Contract and will be deemed as being part of it. We expressly contradict any general terms incompatible with or diverging from the Terms and Conditions unless we agreed to them in writing in a particular case.

2. Written Form Clause

Any verbal collateral agreements or undertakings altering or amending the Contract have to be made in writing for purposes of evidence.

3. Prices

The provided prices and tenders are merely approximate and not binding for the seller. He can change them at any time until the acceptance of an order. Terms of payment are included in writing in each confirmation of order. All invoices rendered by Xatico shall be settled in accordance with the agreed payment conditions irrespective of any right to file a complaint in respect of a defect of goods. We are, without the customer's prior consent or approval, entitled to adjust the prices agreed upon to the increased cost of wages, materials and raw materials should this increase of price not exceed 20% of the price initially agreed between the parties and provided there is a period of time more than 6 weeks between the conclusion of the Contract and delivery and the increase in cost occurred after conclusion of the Contract. In case the conditions set forth in the foregoing paragraph would not be respected (i.e. the increase of price would exceed 20%), the parties agree to renegotiate a new contract and/or sign a written amendment to the existing Contract. The parties shall be entitled to terminate the contract respecting a one month notice period by way of a registered letter.

4. Terms of Payment

- a. All invoices are payable cash, net and without discount, unless otherwise agreed on and confirmed in writing. The Payment is due by bank transfer within 30 days after receipt of our invoice, unless otherwise commonly agreed. The customer is in default on the 31st day after receipt of the invoice or any equivalent demand for pay. As per this day we are entitled to default interest of 8% above the actual basic interest rate of the European Central Bank, subject to proof of a higher damage.
- b. Should it emerge after conclusion of the Contract that the customer's ability to pay is not sufficiently guaranteed and our claim to payment is – according to our own estimation – endangered, we are entitled to refuse delivery, to accelerate maturity of the whole balance remaining and to withdraw from any contract entered into with the customer unless the customer offers security at our discretion within then calendar days of our demand. The same applies if the customer fails to comply with our terms of payment.

5. Prohibition of Set-off

Payment shall be made without set-off for any counterclaim other than an unchallenged one or one that has become final by a court decision or is ready for court decision. Any right of retention may also only be exercised under the aforesaid Terms and Conditions.

6. Shipment and Transfer of Risk

The risk of accidental loss or accidental deterioration of the goods passes on to the customer after they have been reported ready to dispatch. This also applies if we undertake to deliver the goods. The customer undertakes to collect the goods without delay after they have been reported ready for dispatch. In case of default it is at our discretion either to dispatch the goods or to store them at the customer's expense respectively.

7. Delay in Delivery and Warranty

In case of any delay in supplying the goods through no fault of ours due to force majeure, illegal industrial action, administrative measures, non-delivery of supplies by third parties or other events we are not liable for, the customer shall grant an extension of time adequate under the circumstances. If we fail to meet the deadline, the customer is entitled to withdraw from the Contract.

8. Liability for Defects

- a. The customer is obliged to examine the goods without delay and to give us notice in writing within ten days after receipt of the goods of such defects as are obvious and recognizable by proper examination. In case of such defects that are not obvious and recognizable by proper examination, the customer shall give us notice in writing within ten days after discovery. If the customer fails to meet the deadline for notification, he is not entitled to any claims regarding the defects concerned.
- b. If the customer gives us notice of the defect in time, it is at our discretion to rectify the defects or to replace the faulty item (subsequent performance). Should the cost of subsequent performance amount to more than 50% of the value of the goods delivered, we are entitled to refuse a subsequent performance.
- c. In case the subsequent performance fails, is not carried out in time or is refused, the customer is entitled to choose between withdrawal from the Contract, a reduction of the purchase price corresponding to the decrease in value caused by the defect (abatement) or – within the limits of the following paragraphs – claim of compensation instead of performance. In case of minor defects, the customer is not entitled to withdraw from the Contract.

- d. In case of consequential harm caused by defective goods leading to an injury of persons, to damage falling within the law dated April 21, 1989 as amended on the civil liability caused by defective goods or in case of damage caused willfully or through gross negligence, our liability is based on the legal provisions.
- e. In case of damage resulting from a negligent breach of a fundamental contractual obligation, our liability is limited to compensation for damage typical of the Contract.
- f. Any further contractual or delictious liability, especially for damage to objects other than the goods delivered to the customer, for loss of profit or other financial damage is hereby excluded.
- g. In case of any breach of pre-contractual obligations or any impediment to performance already existing at the time the Contract is concluded, our liability is limited to compensation for damage through or loss incurred by relying on the validity of a declaration.
- h. Clauses d) – g) also apply to our tortious liability and claims to damages resulting from other breaches of obligations.
- i. The aforementioned exclusions or limitations of liability also apply to the personal liability of our employees, workers, freelancers, representatives and vicarious agents.

9. Limitation of Actions

Our liability for a customer's claims based on defects is limited to 1 year after delivery, if the material is stored in appropriate conditions, (clause 8a) notwithstanding, unless we acted fraudulently.

10. Costs

The customer bears the costs of wrapping material, the fees for pallets and, in case the transport wrappings are returned to us, also the costs for packaging, loading, transport to our warehouse and unloading, in which case he has to conclude a transportation contract in his own name and for his own account. In case the transport wrappings returned to us are not reusable he also pays the costs for recycling. Foreign customers additionally pay the customs duties, charges, taxes and duties incurred.

11. Retention of Title

The goods remain our property until payment has been received in full for any claims hereunder and all future deliveries. The customer is entitled to process and resell the goods only in the ordinary course of business and on condition that the resale takes place under retention of title and without a covenant not to assign. The customer herewith assigns to us all claims resulting from a resale of goods received from us hereunder or in the future up to the amount of payment in full. He remains entitled to collect the assigned claims until revoked.

If the customer takes his claim resulting from a resale into a current account with a third party, his claim from this account agreement is herewith assigned to us in full; upon balancing the accepted balance is assigned to us up to the amount of the original claim from the account agreement. In case of a current account agreement, retention of title and assignment are deemed to be a security for our current account claim. If the customer resells goods still in our property together with other goods not in our property, he shall assign his claims resulting from this sale to us to the extent the goods supplied by us from part of the sale.

In case of intermixture or processing of goods supplied by us, the customer shall transfer to us the ownership of the respective finished or semi-finished products as security up to the amount of the value of the raw material supplied by us plus the wages and overhead expenses incurred by the customer. On the customer's request we shall release securities if and as far as the total of the securities given by the customer exceed our total claim resulting from the business connections by more than 20%.

12. Notification

Notices: All notices provided for by the Terms and Conditions shall be made in writing by hand delivery, registered or certified first-class mail, telefax or air courier guaranteeing two days delivery to the other party at the addresses and fax numbers (or at such other address or fax number as shall be given in writing by any party to the others) indicated in the Contract.

13. Place of Performance, Venue, Applicable Law and Jurisdiction

Unless otherwise stated in the confirmation of order, place of performance is at our place of business. Place of jurisdiction for any and all lawsuits, including proceedings based on a bill of exchange, is at our place of business. We are also entitled to take legal action against a partner at his place of business. This agreement shall be governed exclusively by the laws of the Grand Duchy of Luxembourg. Any dispute arising from the application of these Terms and Conditions shall be submitted exclusively to the jurisdiction of the courts of the Grand-Duchy of Luxembourg. The UN Convention on Contracts for International Sale of Goods dated 11 April, 1980 (CISG) is not applicable

14. Severability

If, at any time, any provision of these general Terms and Conditions becomes illegal or invalid, this shall not affect the legality or validity of any other provisions.