

## General Terms and Conditions of Business

XPROMA GmbH, Feldring 22, 21376 Salzhhausen

Tel.: +49 (4172) 97899 - 40  
Fax: +49 (4172) 97899 - 48  
http: [www.xproma.com](http://www.xproma.com)

### I. General

- (1) The General Terms and Conditions of Business shall apply to any and all business and contractual relationships between XPROMA GmbH (hereinafter referred to as "XPROMA") and entrepreneurs in accordance with Section 14 of the German Civil Code (BGB), legal entities under public law or special funds under public law (hereinafter collectively referred to as the "buyer"); the validity of any differing terms and conditions of purchase of the relevant buyer is hereby excluded. If XPROMA's General Terms and Conditions have been used for commercial transactions with a buyer, they shall – unless agreed otherwise – also apply to any future transactions with this buyer, even if they are not expressly agreed upon for each business transaction. All agreements, secondary agreements and amendments to the contract must be effected in writing. This shall also apply to any waiver of the written form requirement. Oral or written undertakings that diverge from XPROMA's contractual provisions and/or order confirmation require the consent of its bodies or a sufficient number of authorized officers that are authorized to represent. Apart from this, XPROMA's office and field staff are not authorized to enter into any divergent arrangement, nor may they grant special conditions. XPROMA's General Terms and Conditions are deemed to have been accepted upon delivery acceptance at the latest.
- (2) Information and consulting services provided by XPROMA in relation to supplies and services are provided on the basis of XPROMA's experience to date. The values quoted by XPROMA, including in particular performance data, represent average values determined in tests carried out under laboratory conditions. XPROMA shall not be obligated to ensure exact compliance with these values, in particular with the performance data. Any liability of XPROMA shall be governed exclusively by the stipulations in Article VI of these General Terms and Conditions. All details of XPROMA's products and services, set out in printed material and other advertising material such as weight, dimension and performance data, particularly if they are taken from figures and drawings used therein, are for the general information of interested parties and customers and are deemed to be approximate average values; they do not in any case constitute warranted properties in respect of the relevant product or services, unless expressly confirmed as such. Unless limits for permissible deviations have been expressly established and described as such in the order confirmation, the deviations customary in the industry (allowable production variations) are deemed agreed. XPROMA reserves the right to make changes to the design and form during the delivery period, unless fundamental changes are made with respect to the form and function of the delivery item and such changes are unreasonable for the buyer. For series production, the delivery item shall be deemed to have been ordered in the version of the relevant series that is applicable at the time of order placement.
- (3) XPROMA reserves the property and copyright to any cost estimates, drawings, any type of plans, technical descriptions, offers and other documents specific to performance and products which are not intended for the public, such as promotional literature. These may not be made accessible to third parties.
- (4) Samples are non-binding samples for inspection. Any purchases based on samples shall be subject to divergences that are customary in the industry or within the scope of normal production tolerances. If samples are provided, the characteristics or properties of such samples are not deemed to have been warranted or guaranteed unless expressly stipulated otherwise in the confirmation of order. Unless otherwise agreed, samples shall be returned in good

condition to XPROMA upon the lapse of the period for which the items were surrendered for use by XPROMA. If the samples are not returned on time, XPROMA shall be entitled to invoice the purchase price for the sample in accordance with the price list or, in the absence of such a list price, based on the customary purchase price.

### II. Delivery

- (1) The delivery period commences with the dispatch of the confirmation of order, but not until such time as the documents, permits and releases to be procured by the buyer have been provided and in particular not until any agreed advance payment has been received. The delivery period shall be deemed to have been met if the delivery item has left the place of dispatch or readiness for dispatch has been notified before the delivery period has lapsed. From then on XPROMA shall be entitled to invoice the buyer.
- (2) The delivery time is subject to XPROMA itself having been supplied in time by its subcontractors/suppliers and the delivery period shall be reasonably extended in the event of labor disputes, in particular strikes, lock-outs and unforeseen obstacles beyond XPROMA's control, to the extent that such events justifiably render any punctual contract performance impossible or if the contract could only be performed with disproportionate effort. The aforesaid shall apply if XPROMA's suppliers suffer the same circumstances.
- (3) With respect to any delays on the part of XPROMA or impossibility for whatever reason, XPROMA shall only be liable for claims in accordance with the stipulations set out in Article VI of these General Terms and Conditions.
- (4) The buyer is obliged, when requested by XPROMA, to declare within a reasonable time limit if, due to the delay in delivery, it rescinds the contract and/or claims damages or insists on the delivery.
- (5) The confirmed prices are quoted from the place of dispatch excluding packing, freight, postage, insurance, transport and assembly plus statutory VAT.
- (6) The goods shall be shipped on the buyer's account from the relevant place of dispatch without providing any guarantee as to the cheapest form of transport. With handover of the item to the forwarder, carrier, shipping company or other person commissioned with the dispatch or transport, any risk – including the risk of accidental loss or deterioration of the item – shall pass to the buyer insofar as the buyer is not also the user. This shall also apply in cases where the dispatch is free of charge for the buyer.
- (7) XPROMA shall take out transport insurance for the respective shipment at the usual market conditions and at the buyer's expense, unless the buyer expressly waives such insurance. Packaging material shall be invoiced at cost. The cost for the return shipment of packaging material to XPROMA or, as the case may be, the cost of any other disposal of it by the buyer shall be borne by the buyer.
- (8) If the dispatch of the goods is delayed at the request of the buyer, the buyer shall be charged, one month after receiving notification of readiness of dispatch, with the cost incurred for storage, at least, however, with 1% of the invoice amount for every month of storage. Any extra cost resulting from an additional shipment/call-out requested by the buyer shall be borne by the buyer. If items cannot be assembled upon delivery for reasons attributable to the buyer, the buyer shall bear any additional cost. Furthermore, the buyer shall bear any damages incurred by XPROMA, including any additional expenses that were attributable to the buyer's default of acceptance or infringement of any other duties to cooperate. In this case, the risk of accidental loss or deterioration of the delivery item

shall pass to the buyer as soon as it is in default of acceptance. If the buyer is in default of acceptance, XPROMA shall be entitled, after fixing a reasonable additional period of time for acceptance and after such period of time has passed without result, to otherwise dispose of the delivery item and to supply the buyer within an appropriately extended period, or to rescind the contract and/or claim damages instead of performance. In the event that damages are asserted, XPROMA shall be entitled to demand 30% of the purchase price as compensation without having to furnish evidence of any actual damage, irrespective of the right to assert any higher verified damages. The buyer shall be entitled to demonstrate that only minor damages occurred in actual fact. The buyer can only insist on adherence to the delivery period if they have fully complied with their contractual duties. Protective equipment for the delivery item shall only be delivered upon prior agreement.

### III. Payment terms

- (1) Unless otherwise agreed, the following payment terms shall apply to deliverables and services: - Invoices for the delivery of plant and stand-alone machines as well as for licenses granted for software products shall be paid net within 14 days from the invoice date. - Invoices for the delivery of spare parts as well as for after-sales or other services shall be paid immediately upon receipt. - Deductions of discounts or other deductions may only be implemented if they were expressly agreed upon.
- (2) Deliveries up to the value of EUR 50 can be dispatched by XPROMA to the buyer on a cash-on-delivery basis.
- (3) Claims of XPROMA with respect to the buyer, including those from other legal transactions with the buyer, shall be immediately due and payable in full in the case of a default in payment by the buyer in relation to a claim, regardless of the agreed payment dates and any deferrals and maturity dates of any received and credited bills of exchange. If a protest is made regarding a bill of exchange provided by the buyer, or if the buyer suspends their payments, or if other circumstances come to XPROMA's notice which give rise to justified doubts as to the buyer's solvency or creditworthiness, XPROMA shall be entitled to render any outstanding deliveries and services subject to advance payment or the provision of a security. If the buyer does not make the advance payment or provide the security within the specified period, XPROMA is authorized to withdraw from all contracts with the buyer without fixing a new period. This applies even if such circumstances already existed on the buyer's side at the time the contract was concluded, a fact that XPROMA, however, was not or could not have been aware of. The aforesaid shall not affect any further claims.
- (4) If payment in instalments has been agreed, the remainder of the purchase price shall immediately become due in full if the buyer defaults on an agreed instalment that has become due.
- (5) Should the buyer default on a payment, XPROMA shall be entitled to claim interest on arrears amounting to 8% above the valid rate of basic interest in relation to the invoice amount.
- (6) Offsetting shall only be allowed with respect to claims that are either undisputed or have been legally established. Any right of retention shall only be permitted if it is based on the same legal relationship and if the buyer's counterclaims are undisputed or legally established.
- (7) Payments with a discharging effect may only be made to XPROMA.

### IV. Reservation of title

- (1) Without prejudice to any preceding transfer of risk to the buyer, the items supplied (hereinafter referred to as "reserved goods") shall remain the property of XPROMA until such time that all claims resulting from the transaction, including all subsidiary claims, have been satisfied in full and bills of exchange and checks provided in this course have been honored and until XPROMA has been discharged from all liabilities in connection with the delivery that it has assumed for the buyer. Until such time, the buyer shall insure the delivery item at their own expense and to the benefit of XPROMA against fire, water, breakage and other damage and shall provide evidence of such insurance to XPROMA at the latter's request. Unless XPROMA was granted the right, in accordance with the insurance contracts, to assert claims directly, the buyer shall assign any claims for compensation against the insurance company for any damage/loss of the delivery item to XPROMA as of now, where the latter shall accept such assignment. The buyer shall

furthermore grant XPROMA and its officers access to the site of installation until the purchase price has been paid for in full.

- (2) The treatment or processing of the item supplied by XPROMA whilst it is still its property is always executed by the order of XPROMA without the latter accepting any liability for same; the new item becomes the property of XPROMA and is considered to be reserved in accordance with Clause 1.
- (3) If the item supplied by XPROMA is connected to or combined with other items and cannot be regarded as the main part of the new item, the buyer shall assign their rights of ownership and co-ownership of the new item at that point in time and shall keep the new item in safe custody for XPROMA with the due diligence of a responsible businessperson. The scope of the rights of ownership and co-ownership assigned to XPROMA shall be subject to the ratio between the invoice value of the items supplied by XPROMA and the invoice value of the other items connected to or combined with them. The rights of ownership or co-ownership resulting here from for XPROMA shall be deemed to be reserved goods in accordance with Clause 1.
- (4) In the due course of their business and only if there is no default in performance on their part, the buyer is entitled to sell or to treat or process the goods to which property is reserved or to combine them with other objects or to install them otherwise (hereafter collectively referred to as "resale"). Any other additional disposal of the reserved goods shall not be permitted. If the buyer grants their customer a deferral in the payment of the purchase price, the buyer shall reserve title to the reserved goods at the same terms at which XPROMA has reserved title upon the delivery of the reserved goods; however, the buyer is not obliged to reserve title to the reserved goods with respect to claims that they will have against its customer in the future.
- (5) The claims of the buyer arising from the resale of the reserved goods are herewith ceded to XPROMA. These shall serve as a security to the same extent as the reserved goods. The buyer shall only be entitled and authorized to resell items if it is guaranteed that any claims hereto due to the buyer pass to XPROMA. If the assigned claim is included in a current invoice, the buyer shall hereby assign the part of the balance which corresponds to the amount of the claim, including the final balance of the current account, to XPROMA as of now. XPROMA shall accept the aforementioned assignments. If the reserved goods are disposed of together with other goods not belonging to XPROMA, the assignment of the claims arising from the disposal shall only apply to the invoice value of the reserved goods at the time of delivery for the purpose of fulfilling the disposal transaction. The assignment shall temporarily be implicit, i.e. the buyer's customers shall not be informed. The buyer shall be entitled to collect the claims until further notice; it is, however, not entitled to otherwise dispose of claims, e.g. by assignment or pledging to the benefit of third parties. XPROMA has the right to revoke the authorization to collect claims and also the right to collect them. XPROMA shall refrain from doing so as long as the buyer duly meets their payment obligations and XPROMA does not become aware of any circumstances that could considerably reduce the buyer's creditworthiness. At the request of XPROMA, the buyer shall notify their customer of the assignment and provide all information and documents required for the assertion of assigned claims against the relevant customer to XPROMA. XPROMA shall also be entitled to notify customers of the buyer of any assignment.
- (6) If XPROMA has assumed any of the buyer's liabilities towards a third party and such third party asserts a claim arising from this against XPROMA, the buyer shall assign any claims it may have in relation to the retransfer of ownership of any security collateral, the title to which was passed to the third party, to XPROMA by way of security.
- (7) If the realizable value of the securities given to XPROMA exceeds the secured claims by a total of more than 10%, XPROMA is obliged upon demand of the buyer to release excess securities, to be selected at the discretion of XPROMA.
- (8) If the item delivered by XPROMA or any other item created out of it or any new item created in combination with it, title to which has been assigned to XPROMA, is pledged or seized, then the buyer undertakes to immediately inform XPROMA in writing. All intervention costs will be charged to the buyer if and to the extent that these cannot be collected from the third party (opponent in third-party action against execution) and such third-party action was lawfully filed.
- (9) The taking back of reserved goods and/or the assertion of the reservation of title does not require rescission of the respective

contract by XPROMA. Such actions or the pledging of the reserved items by XPROMA do not represent any rescission of the contract, unless otherwise expressly stated by XPROMA.

- (10) In case of infringement of contractual obligations by the buyer, especially if the buyer is in default with payment, XPROMA is entitled to take back the reserved item. In this case, the buyer shall authorize XPROMA to take away the delivered item and for this purpose to enter the business premises of the buyer.

#### V. Material defects and defects of title

Unless otherwise expressly agreed between XPROMA and the buyer, XPROMA shall only be liable for material defects and defects of title as defined hereinafter and to the exclusion of any further or other liability for material defects and defects of title:

- (1) The buyer shall, to the extent that these are obvious defects, promptly assert any material defects or defects in title, the absence of any characteristics of the delivery item that was guaranteed by XPROMA as well as any excess, short or incorrect deliveries (hereinafter referred to as "defects") in writing, no later than 14 days after receipt of the relevant delivery item. Defects that are not obvious must also be promptly notified by the buyer, but in any case within 14 days of their detection at the latest. If the buyer fails to give notice of existing defects to XPROMA within this period, any warranty claims against XPROMA shall be excluded.
- (2) If the delivery item is defective and said defect already existed at the time risk was transferred, XPROMA shall eliminate the defect (hereinafter referred to as "rectification") or deliver a replacement within a period of 12 months from the date the risk is transferred to the buyer at the discretion of XPROMA, provided the defect was notified in due time in accordance with the foregoing Clause 1. If, in the course of corporate business operations, the delivery item is used in multiple shift operation, XPROMA shall only be liable for defects for a period of 6 months from the date the risk is transferred to the buyer. If the risk transfer is delayed for reasons not attributable to XPROMA, any liability shall lapse no later than 12 months after readiness for dispatch was notified. Warranty for defects shall be excluded for used delivery items. The period of limitation of liability in respect to defects resulting in fatalities, physical injury or danger to human health, shall not commence until 24 months have lapsed from the date of delivery.
- (3) The buyer undertakes to grant to XPROMA, upon arrangement, sufficient time and opportunity to rectify the item or to deliver a replacement.
- (4) In the event that the notified defect was not remedied by XPROMA or no replacement was delivered, or if XPROMA unjustifiably refuses any necessary rectification or delivery of a replacement or delays it in an unacceptable manner or if the rectification would be unreasonable for the buyer as well as when the provisions of Section 281 para. 2 and Section 323 para. 2 of the German Civil Code (BGB) apply, the buyer is entitled, instead of any rectification or delivery of a replacement, to avail of the remedies provided by law such as rescission of contract and reduction of purchase price and to assert claims for damages and costs according to the provisions of Article VI of these General Terms and Conditions.
- (5) Any parts or delivery items replaced within the rectification or replacement delivery shall become the property of XPROMA.
- (6) The period of limitation for defects of any replaced item or part or any effected repair shall be 6 months; however, such warranty period does not end prior to the expiry of the original warranty period for defects of the respective item. The period of liability for defects arising in the delivery item shall be extended by the duration of the interruption in use caused by the repair measures.
- (7) Liability claims for material defects shall only be excluded in the case of insignificant deviations from the agreed properties, insignificant impairment of the usability or of natural wear and tear and use of materials for the intended purpose. Nor may liability claims in respect of material defects be asserted for damages arising after the risk has been transferred, for the following reasons: non-observance of the relevant technical instructions of XPROMA, unsuitable or improper use, incorrect assembly or commissioning by the buyer or third parties, natural resources, replacement materials, deficient construction work, absence of construction prerequisites and chemical, electrochemical or electrical influences, to the extent that they are not attributable to XPROMA.

- (8) If the buyer or a third party makes improper modifications or repairs without XPROMA's prior written consent, XPROMA's warranty for any defect resulting from such improper modification or repair and as a consequence thereof shall be void.
- (9) The buyer's claims for compensation of costs caused by measures related to the rectification of defects, especially transport, travel, labor and material costs are excluded from reimbursement to the extent that such costs are increased due to the fact that the item delivered by XPROMA was removed to a site other than the place of business of the buyer at the time of the delivery unless such removal was in accordance with the scheduled usage of the item.
- (10) The above provisions shall apply accordingly to defects in title.

#### VI. Liability

- (1) Unless otherwise expressly agreed between XPROMA and the buyer, any and all claims by the buyer for the compensation of damages, including compensation of cost and indirect damages, on whatever legal grounds, shall be excluded. This liability exclusion shall also apply to any agents in performance or vicarious agents of XPROMA.
- (2) The liability exclusion according to Clause 1 above shall not apply if XPROMA, its executives or agents acted with gross negligence or willful intent or in any cases where XPROMA, its executives or agents culpably infringed on essential contractual duties (cardinal obligations) and such infringements jeopardize the purpose of the contract as a whole.
- (3) In the event of a breach of cardinal obligations, XPROMA's liability is limited to the value of the respective order, provided that such breach was only caused by slight negligence.
- (4) If in the last mentioned case the value of the order, exceptionally, does not correspond to the typically expected damage, then the liability of XPROMA is limited to the amount of the typically foreseeable damage.
- (5) The above limitation of liability shall not apply to claims under the German product liability act (Produkthaftungsgesetz) or in the case that XPROMA undertakes a guarantee regarding a specific aspect of a delivered item and such guarantee is just given for the purpose of safeguarding the buyer against damages, which do not occur within the delivered item itself. Nor shall the liability exclusion apply to damages arising from death, physical injury or damage to the health of persons.

#### VII. Place of performance, applicable law and jurisdiction

- (1) The place of performance with respect to delivery is the relevant place of dispatch.
- (2) This contract is governed by the law of the Federal Republic of Germany, to the exclusion of the stipulations of international private law that would result in the application of any foreign law as well as of the UN Sales Convention.
- (3) Any and all legal disputes between XPROMA and the buyer in relation to supplies and services of XPROMA (if the buyer is an entrepreneur, a legal entity under public law or a special fund under public law) shall be decided by the courts having local jurisdiction for the principal place of business of XPROMA's administration. This shall also apply if the buyer does not have any general jurisdiction in Germany. XPROMA shall also be entitled to bring an action at the buyer's principal place of business. Legal provisions relating to exclusive jurisdictions shall not be affected by this.

#### VIII. Data processing

The buyer is hereby informed that XPROMA shall store any data created in connection with the business relationship on file and process this data for the purpose of the business relationship.

#### IX. Severability

If individual stipulations of these General Terms and Conditions should prove to be invalid, the validity of the remaining stipulations shall not be affected thereby. The invalid stipulations shall be replaced with valid regulations which in terms of their effect come closest to the commercial objective that XPROMA had pursued with the invalid stipulations.