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## **XSYS General Conditions of Purchase**

### **1. Definition of XSYS, scope of application**

#### **1.1. XSYS means:**

**XSYS North America Corporation** with its principal place of business at 2915 Whitehall Park Drive, Suite 600, 28273, Charlotte, North Carolina, USA.

1.2. These terms and conditions shall be a part of the order. Any different business terms and conditions of the vendor shall only be effective if and in so far as XSYS gives its written consent thereto. Orders and all associated declarations must be in the written form in order to be effective. The written form requirement may only be waived in writing.

### **2. Offers**

2.1. Offers shall be submitted at no expense to XSYS and shall not form the basis of any obligations for XSYS.

2.2. In the offer, the vendor shall keep to the inquiry. If the vendor has a solution which is technically or economically more advantageous, compared to the inquiry, it shall additionally offer this solution to XSYS.

### **3. Orders**

The vendor shall confirm each order, stating a binding price and delivery period. If XSYS does not have the confirmation within five (5) days, XSYS shall have the right to rescind the order. Oral agreements shall require mutual written confirmation. The vendor shall not assign the performance of the order to third parties except with XSYS' prior written consent.

### **4. Delivery, delivery period, partial deliveries and performance**

4.1. The vendor shall comply with the agreed delivery deadline. Partial deliveries or partial performance shall require the prior consent of XSYS.

4.2. When deliveries of raw materials are made, the number of batches specified in the order shall not be exceeded.

4.3. As soon as the vendor becomes aware that it is unable to fulfil its contractual obligations, in whole or in part, or that it is unable to do so at the proper time, it shall immediately notify XSYS thereof in writing, stating the reasons and the likely duration of the delay.

4.4. The vendor shall be obliged, at the proper time, to request the documents to be provided by XSYS which are necessary for the implementation of the order.

4.5. XSYS shall be entitled to suspend the implementation of the delivery for a reasonable period. In this event, the delivery period shall be extended by the period of the suspension.

4.6. XSYS shall be entitled to liquidated damages equal to 0.3% of the net order value for each working day by which the deadline is exceeded, unless the vendor is able to prove that it is not responsible for the delay. Liquidated damages shall be limited to a total of not more than 5% of the net order value, and the parties acknowledge and agree that the liquidated damages are a reasonable estimate of the harm that would be caused to XSYS by delayed delivery. If XSYS accepts the services rendered by the vendor as performance, XSYS shall reserve the right to claim the liquidated damages. This right need not be expressly reserved and may be asserted at any time until the final payment is made. This shall not affect any more wide-ranging claims for compensation. Irrespective of whether the claims for the liquidated damages and/or compensation are asserted, XSYS shall have the right to withdraw from the contract.

4.7. The parties acknowledge and agree that any delay in the vendor's performance may foreseeably result in damages to XSYS, and that no waiver by the vendor of consequential damages shall be effective unless expressly agreed to by XSYS in writing.

### **5. Quality assurance**

5.1. The vendor shall establish and maintain an effective quality assurance system and shall provide evidence thereof to XSYS on request. The vendor shall, at XSYS' request, use a quality assurance system in accordance with DIN ISO 9000 ff. or of an equivalent nature. XSYS shall be entitled to inspect this quality assurance system.

5.2. If the vendor changes the manufacturing process, it shall notify XSYS of this in all cases, even if the change has no effect on the specification of the goods to be supplied. The vendor shall inform XSYS of the composition and/or origin of the goods supplied, and shall provide proof thereof as soon as XSYS requires such information and/or such proof for forwarding to the authorities, public institutions, works medical officer etc.

### **6. Inspections, certificates**

6.1. XSYS shall be entitled to inspect the performance of the work by the vendor. For this purpose, XSYS shall be entitled to enter the vendor's works during normal business hours after notification. The vendor and XSYS shall each bear the expenses incurred by them as a result of the inspection.

6.2. If special inspections are agreed, the vendor shall notify its readiness for the inspection at least one week in advance and shall agree upon an inspection date with XSYS. If, for reasons for which the vendor is responsible, the contractual item is not ready for inspection by the agreed inspection date or if defects in the contractual item make repeated or

further inspections necessary, the vendor shall refund the expenses incurred by XSYS in this respect.

6.3. If the vendor has to provide material certificates and/or inspection certificates, it shall bear the costs thereof. The material certificates and/or inspection certificates must be provided at the time of delivery.

6.4. Inspections and the provision of certificates shall not affect XSYS' contractual or statutory purchase and guarantee rights.

### **7. Passing of risk, shipment and packaging**

7.1. The arrangements with regard to the cost and passing of risk on shipment shall comply with the agreed terms of supply in accordance with the Incoterms (2020). The delivery note and packing slip must accompany the delivery in duplicate. The vendor number, order number, material designation and material number, batch number, gross and net weight in kilos, quantity and type of packaging (disposable/reusable) and details of the place of discharge, recipient of the goods and the building where they are to be installed shall be listed in full in all dispatch documents and on the external packaging. Individual containers are to be labelled with the material designation, material number, batch number, date of manufacture and net weight. If XSYS so requests of the vendor when ordering, the vendor must use pallets that comply with the IPPC standard.

7.2. If, in accordance with the terms of supply, a type of delivery is agreed in which XSYS does not engage the carrier, the shipment shall be sent at the lowest respective transport cost with packaging which is secure for shipment. The vendor shall bear any additional costs resulting from a failure to comply with any shipment provision or resulting from any more rapid transport in order to comply with the agreed date. XSYS has taken out transportation insurance for such deliveries. Any additional transportation insurance taken out by the vendor shall not be paid for by XSYS.

7.3. The vendor shall package, mark and dispatch hazardous goods in accordance with the requirements of the legal provisions applicable on the date of delivery.

7.4. When duty is payable on third country deliveries, this shall be noted in the dispatch papers and the customs documents necessary for this purpose (freight papers, customs declaration, preference certificates) shall be submitted.

### **8. Work undertaken on site at XSYS**

For all work undertaken on site at XSYS, XSYS' safety guidelines shall be notified to and complied with by the vendor and its subcontractors.

### **9. Complaints about defects**

The acceptance of the goods is subject to further inspection and verification, in particular with respect to completeness and accuracy so far as and as soon as such are possible according to due course of business at XSYS. XSYS shall notify the vendor of any externally visible defects no later than 14 days after delivery and shall notify any other defects immediately after they are discovered; *provided, however*, that a delay in notification shall not avail the vendor of any claim of breach or bar any claim of defect by XSYS.

### **10. Rights in the event of defects, product liability**

10.1. The vendor shall be responsible for its goods and services being free from defects and for the warranted characteristics being present. The vendor guarantees, in particular, that its goods and services are in accordance with the state of the art, the generally recognized technical and industrial medical safety provisions made by the authorities and technical associations, and that they accord with the relevant legal provisions. If machinery, apparatus or equipment is supplied, it must be in accordance with the requirements of the special safety provisions for machinery, apparatus and equipment in force on the date when the contract is performed and it must have a CE mark. Vendor guarantees that the goods correspond to the European regulations No 1907/2006 (REACH-Regulation) regarding the registration, validation, authorization and limitation of chemicals.

10.2. If a defect becomes apparent within the statutory limitation period for claims in respect of defects, it shall be assumed that this defect already existed at the time when risk passed, unless this assumption is inconsistent with the nature of the defect. In the event of defects, XSYS shall be entitled to demand subsequent performance such as replacement delivery of required goods free of defects or to remedy in accordance with the statutory provisions, the choice of the nature of the subsequent performance being a matter reserved solely for XSYS' discretion. The vendor shall bear the expense necessary for the purpose of subsequent performance. In dealing with the subsequent performance, the vendor shall be guided by XSYS' operational requirements. If the subsequent performance has not taken place within a reasonable deadline, or if it has been unsuccessful or if the setting of a deadline was unnecessary, XSYS shall be entitled to claim the additional rights provided by statute in the event of defects such as but not limited to reduce the purchase price or withdraw the contract. In all cases, XSYS may ask for compensation of damages or compensation of expenditures. XSYS' rights arising from any guarantees shall remain unaffected.

10.3. If the vendor fails to comply with its obligation of subsequent performance within the reasonable period which has been set and is not entitled to refuse subsequent performance, XSYS shall be entitled to remedy the



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- defect itself or have it remedied by third parties at the vendor's cost and risk. XSYS shall be entitled to demand an advance payment from the vendor in respect of the expenditure necessary for remedying the defect.
- 10.4. The vendor shall hold XSYS harmless from any third party claims arising from non-contractual product liability which are attributable to a fault in the good supplied by the vendor.
  - 10.5. The vendor shall reimburse XSYS in respect of expenditure and costs incurred by XSYS as a result of precautionary measures which are necessary to avert a claim arising from non-contractual product liability, e.g. by means of public warnings or recall campaigns, in accordance with the nature and extent thereof. XSYS shall immediately notify the vendor when such measures are being carried out.

#### 11. Insurance

- 11.1. The vendor shall maintain, at its own expense, sufficient liability insurance in respect of losses for which it or its agents or vicarious agents are responsible. The level of cover for each loss shall be disclosed to XSYS on request. The contractual or legal liability of the vendor shall remain unaffected by the extent and level of its insurance cover.
- 11.2. XSYS shall insure any items lent or leased to it by the vendor against fire and explosion damage.
- 11.3. The vendor shall immediately inform XSYS of any insurance it has taken out with regard to the services to be rendered by it, in particular of erection all risks insurance, contractor's all risks insurance and/or builder's risk insurance.

#### 12. Documents, secrecy

- 12.1. The vendor shall submit the required plans, calculations or other documents to XSYS in the agreed number of copies at the correct time in such a manner that the contractual performance deadlines can be complied with.
- 12.2. The release of the documents by XSYS shall not affect the vendor's responsibility.
- 12.3. Any models, samples, drawings and other documents which XSYS makes available to the vendor shall be and remain the property of XSYS and shall be deemed to be confidential information. The vendor shall keep them secret, as well as all other knowledge of XSYS' operational and business processes acquired in connection with the contractual cooperation, and shall comply with XSYS' copyright. The documents shall only be used for the contractually agreed purpose.
- 12.4. Any documents prepared by the vendor in accordance with particular data from XSYS may be used without restriction by XSYS for the contractual purposes. The vendor shall also only use these documents for the contractual purposes and shall not make them available to third parties without XSYS' consent.
- 12.5. The vendor shall hand over to XSYS all documents supplied to it, as well as documents prepared by it in accordance with particular data from XSYS, together with copies or duplicates, if XSYS requires them to be handed over or if the documents are no longer required for the purpose of carrying out the work.

#### 13. Invoice, payment

- 13.1. XSYS' full order number and the vendor's delivery note number must be stated on the invoice. Invoices must be in accordance with the details in the order with regard to the designation of the goods, price, quantities, order of the items and item numbers.
- 13.2. Invoices for deliveries or other services to be issued and sent to XSYS have to be in accordance with the provisions for invoices as set forth in the applicable value added tax / sales tax / turnover tax regulations of the state whose value added tax / sales tax / turnover tax is imposed on the deliveries or other services charged. In case that the invoices do not meet such requirements, XSYS shall have the right to reject such invoices.
- 13.3. Payment deadlines shall run from the date on which the invoice, in accordance with the above requirements, is received at XSYS' Accounts Department, or, if the credit note procedure is used, from the date on which the receipt of the goods is recorded. Payment shall be conditional upon the delivery or service being found to be correct.
- 13.4. Payment shall not be inferred as any acknowledgement by XSYS of terms and conditions and prices and shall not have any effect upon XSYS rights in the event of defects.

#### 14. Infringement of industrial property rights

The vendor shall ensure that no third party property rights are infringed by XSYS as a result of use of the goods and services in accordance with the contract. The vendor shall indemnify and hold XSYS harmless from all claims made by third parties against XSYS on the grounds of infringement of industrial property rights. Any licence fees, expenditure or costs incurred by XSYS in order to avoid or to rectify any infringements of property rights shall be borne by the vendor.

#### 15. Compliance, sustainability

- 15.1. XSYS conducts its business in a sustainable and ethical way and adheres to internationally recognized fundamental standards for occupational health and safety, environmental protection, labor and human rights as well as responsible corporate governance.

- 15.2. XSYS expects the vendor complies at all times with the principles contained in the **XSYS Supplier Code of Conduct**, which is available at <https://xsysglobal.com/about-us/code-of-conduct/>

- 15.3. The vendor shall ensure that, at all times, (i) it has and maintains **all licences**, permissions, authorisations, consents and permits that it needs to carry out its obligations with regard to contractual relationship; (ii) **all products and/or services are in compliance with all applicable laws** and regulations relevant for the intended use of the products/services; and (iii) to the extent it processes personal data, it shall comply with its obligations under the **General Data Protection Regulation (EU 2016/679)** or equivalent applicable legislation relating to the processing of personal data.

- 15.4. The vendor is responsible for compliance with all **applicable laws**, rules, regulations and administrative requirements with respect to its activities pursuant to this contractual relationship, including those governing trans-border sales, importation, storage, shipment, transfers of products, economic sanctions, and export controls. The foregoing expressly includes all applicable anti-bribery and corrupt practices laws, including without limitation the Bribery Act 2010 (U.K.), the U.S. Foreign Corrupt Practices Act 1977, and any additional anti-bribery, corruption, commercial bribery, money laundering, or terrorist financing laws applicable to the vendor. The foregoing also includes all applicable export control and economic sanctions laws. The vendor shall take no action which would subject XSYS to penalties under the aforementioned laws, rules, regulations, or administrative requirements, including laws, rules, regulations, or administrative requirements of the United States, the United Kingdom, the European Union and in the countries where the vendor operates.

#### 16. Publicity

The vendor shall not publicly refer to the existing business relations without XSYS' prior written consent.

#### 17. General provisions

- 17.1. The contractual relationship is made subject to and shall be construed under the laws of the State of North Carolina without giving effect to the principles of conflicts of law thereof. The parties agree that if, and only if, any disputes cannot be resolved through mediation, the state and federal courts situated in the State of North Carolina shall have exclusive jurisdiction to resolve any disputes with respect to the contractual relationship with each party irrevocably consenting to the jurisdiction thereof for any actions, suits or proceedings arising out of or relating to the contractual relationship. The parties hereto irrevocably waive trial by jury.
- 17.2. In the event of any breach of these terms by vendor, XSYS shall be entitled to equitable relief, including in the form of injunctions and orders for specific performance, where the applicable legal standards for such relief in such courts are met, in addition to all other remedies available to XSYS and its affiliates with respect thereto at law or in equity.
- 17.3. If a provision of the contract and/or these General Conditions of Purchase is invalid, in whole or in part, the validity of the remaining provisions shall remain unaffected thereby.

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