

XSYS' General Conditions of Sale ("the General Conditions")



These General Conditions apply to all offers, sales, and deliveries of goods or services by **XSYS Flexo (India) Private Limited**, a limited liability company established under the laws of the Republic of India, having its registered address at 28, 3rd Cross street, R.K. Nagar, R... Chennai City Corporation Chennai, 600028 Tamil Nadu, India ("**XSYS**" or the "**Seller**"), unless otherwise agreed in writing.

1. Definition of Seller and Scope of Application

- 1.1 Seller means XSYS' subsidiaries or affiliated legal entities incorporated and registered in Indonesia that is signing or performing the contract or purchase order for sale of goods under these General Conditions in its own name: **XSYS Flexo (India) Private Limited**, a limited liability company established under the laws of the Republic of India, having its registered address at 28, 3rd Cross street, R.K. Nagar, R. Chennai City Corporation Chennai, 600028 Tamil Nadu, India.
- 1.2 All sales and deliveries by Seller of the goods to be delivered ("Goods"), shall be made exclusively on the basis of these General Conditions. These General Conditions are deemed accepted by Buyer upon placing an order or accepting delivery of the Goods. Any conflicting or additional terms from the Buyer shall not apply unless expressly agreed in writing by the Seller. Deviations from these General Conditions require the prior written approval of the Seller.

2. Conclusion of Contract

- 2.1 Seller's quotations are not binding offers but must be seen as invitations to Buyer to submit a binding offer. The contract is concluded by Buyer's order (offer) and Seller' written acceptance thereof or in case there is no such written acceptance, at the latest with the delivery of the goods. The contract terms shall be governed exclusively by the contents of the Seller's acceptance of the order, if available, and these General Conditions. In case the acceptance differs from the offer, such acceptance constitutes a new non-binding offer of Seller. Any further verbal agreements or promises shall only be valid if an authorized employee of Seller has confirmed them in writing.
- 2.2 Seller retains all rights in the sales documentation (in particular pictures, drawings, data on weight and size) and samples. These items must not be made available to third parties and must be returned to Seller without undue delay on demand.
- 2.3 The field staff of Seller is not authorized to represent Seller. In particular, the field staff cannot conclude contracts and make binding promises concerning the Goods to be delivered or other conditions.
- 2.4 It is expressly agreed that the relationship between the parties established under these General Conditions is solely that of a customer and seller. It is understood that nothing in these General Conditions constitutes the Customer or Supplier as each other's agent, partner, legal representative or joint-venture partner (or of their respective affiliates), for any purpose whatsoever.

3. Product Quality, Specimens and Samples; Guarantees

- 3.1 Unless otherwise agreed, the quality of the Goods is exclusively determined by Seller's product specifications.
- 3.2 The properties of specimens and samples are binding only insofar as they have been explicitly agreed by the Seller to define the quality of the Goods.
- 3.3 Information provided in sales catalogues, price lists and any other informative literature provided by Seller or any other descriptions of the Goods (such as shelf-life data) shall under no circumstances constitute a guarantee for any specific quality of the Goods; unless such specific quality or durability guarantees are expressly made by the Seller in writing.

4. Advice

Any advice rendered by Seller is given to the best of his knowledge. Any advice and information with respect to suitability and application of the Goods shall not relieve Buyer from undertaking his own investigations and tests.

5. Prices

- 5.1 Unless the parties have agreed upon a certain price, the price shall be determined by the price list of Seller as applicable at the date of the conclusion of the contract for the sale of Goods.
- 5.2 If, after the conclusion of the contract, Seller has incurred unforeseeable cost increases with regard to the Goods for which it does not bear responsibility, Seller shall be entitled to pass on such higher costs by increasing the agreed price on a pro rata basis.

6. Delivery

- 6.1 Delivery shall be effected as agreed in the contract. Delivery dates and delivery periods agreed in the contract are only binding if they have been agreed as binding and Buyer has provided Supplier in a timely manner with all of the information or documentation

required for the performance of such delivery and Buyer has made any advance payments in the manner and amount as agreed upon by the parties. Delivery periods agreed upon by the parties shall begin on the date of the confirmation of order. In the event of additional or supplementary contracts entered into at a later date, the delivery periods and delivery dates shall be extended or rescheduled accordingly, as applicable.

- 6.2 With regard to Goods that Seller does not produce itself, the obligation to deliver shall be subject to Seller's correct and timely receipt of such Goods from its suppliers.
- 6.3 If deliveries by Seller are delayed, Buyer shall only be entitled to rescind the contract if (i) Seller is responsible for the delay and (ii) a reasonable grace period set by Buyer has expired.
- 6.4 Should Buyer be in default of the acceptance of delivery or should he be in breach of any other obligations to cooperate with Seller, Seller shall be entitled, without prejudice to its other rights, (i) to reasonably store the Goods at Buyer's risk and expense or (ii) to rescind the contract in accordance with the statutory provisions.
- 6.5 Seller may make partial deliveries for good reason if and to the extent this is reasonable for Buyer.

7. Shipment, Packaging, Passage of Risk

- 7.1 In the absence of any other instruction by Buyer, shipment shall be made using a reasonable method of shipment in standardized packing material.
- 7.2 If the Goods are delivered in returnable containers, these containers must be emptied and returned carriage-free within 30 days of receipt of the products. Buyer shall be liable for any loss and damage to the returnable containers for which he is responsible. Returnable containers must not be used for other purposes or other products. They are to be used exclusively for the transit of the products delivered. Labeling must not be removed.
- 7.3 Unless otherwise agreed by the parties in writing, the risk shall pass to Buyer (i) upon delivery of the Goods to the carrier commissioned by Seller in case of a contract of sale involving the shipment of goods, (ii) upon handover to Buyer if Buyer collects the Goods himself, or (iii) upon handover to a third party if a third party authorized by Buyer collects the Goods. Should Buyer be in default of acceptance, risk shall pass to Buyer upon default. If, in case the Goods shall be collected by Buyer or a third party authorized by Buyer, and delivery is delayed on grounds for which Buyer is responsible, risk shall pass to Buyer on the date Buyer is notified of the readiness of the Goods for shipment.

8. Compliance Obligations

- 8.1 The Buyer is responsible for compliance with all applicable laws, rules, regulations and administrative requirements with respect to its activities pursuant to the contract, 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 antibribery, corruption, commercial bribery, money laundering, or terrorist financing laws applicable to the Buyer.
- 8.2 Without limiting the foregoing, the Buyer agrees to comply with all applicable export control and economic sanctions laws (hereinafter referred to as "Trade Rules") and agrees that it will not ship or divert any Goods:
- a) for use in any country or countries subject to comprehensive US or EU sanctions;
 - b) to a customer for use in connection with the proliferation of weapons of mass destruction, including missiles, nuclear, chemical or biological weapons, or any military end-use or military intelligence end-use;
 - c) to any country where exports from India are restricted or prohibited by the Director General of Foreign Trade, India or the respective governments of those countries;
 - d) to any person or entity (collectively "Sanctioned Persons"):

(1) listed on any list (or any successor thereof) maintained by the US Department of the Treasury's Office of Foreign Assets Control, including but not limited to, the Specially Designated National and Blocked Persons List and the Sectoral Sanctions Identification List;

(2) listed on any list (or any successor thereof) maintained by the US Department of Commerce's Bureau of Industry and Security, including but not limited to, the Entity List, the Denied Persons List, the Unverified List, or the Military EndUser List;

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(3) designated on the Consolidated List of Persons, Groups and Entities Subject to EU Financial Sanctions maintained by the European Commission, or the Consolidated List of Asset Freeze Targets maintained by Her Majesty's Treasury;

(4) otherwise listed on an applicable restricted party list under Trade Rules;

(5) that is 50% or more owned or controlled (directly or indirectly) by Sanctioned Persons; or

(6) that is otherwise prohibited by law from receiving the Goods.

The Buyer shall take no action which would subject the Seller 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, and the European Union.

9. Terms of Payment

- 9.1 Each invoice of Seller shall be due for payment without any deductions within 30 days from the date of invoice; if this period for payment lapses unsuccessfully, Buyer shall be in default. Payments by Buyer shall not be deemed to have been made until Supplier has received such payment. The Buyer shall be responsible for obtaining all approvals and for making any filings, including under the Indian Foreign Exchange Management Act, 2000, in relation to payments to be made to the Seller for the Goods.
- 9.2 Failure to pay the purchase price by the due date constitutes a fundamental breach of contractual obligations.
- 9.3 In the event of a default in payment by Buyer, Seller is entitled to charge default interest on the amount outstanding at the rate of 9 percentage points above the base interest rate announced by the Reserve Bank of India at the time payment is due. Any claims for further damages due to the default shall remain unaffected.
- 9.4 Bills of exchange and checks shall only be taken on account of performance upon special arrangement and without any bank charges or other costs for Seller.
- 9.5 Seller is entitled to issue partial invoices for partial deliveries as defined in section 6.5 hereof.

10. Buyer's Rights regarding Defective Goods

- 10.1 Upon passing of the risk the Goods shall be of the agreed quality (see section 3.1 above).
- 10.2 Buyer's rights in case of defects of the Goods shall require that he inspects the Goods upon delivery without undue delay and notifies Seller of any defects without undue delay but no later than two weeks following receipt of the Goods; hidden defects must be notified to Seller without undue delay but no later than two weeks after they are discovered. Notification must be in writing and must precisely describe the nature and extent of the defects.
- 10.3 In the event of a notification of a defect, Seller shall have the right to inspect and test the Goods to which objection was made. Buyer will grant Seller the required period of time and opportunity to exercise such right. Seller may also demand from Buyer that he returns to Seller at Seller's expense the Goods to which objection was made. Should Buyer's notification of the defect prove to be unjustified and provided Buyer has realized this prior to the notification of the defect or has not realized it in a negligent manner, Buyer shall be obliged to reimburse Seller for all costs incurred in this respect, e.g. travel expenses or shipping costs.
- 10.4 If the Goods are defective and Buyer has duly notified Seller in accordance with section 10.2:
 - a) Seller has the right to choose whether to remedy the defect or supply Buyer with non-defective replacement goods.
 - b) Seller may make two attempts according to lit. a) above. Should these fail or be unacceptable to Buyer, Buyer may either rescind the contract in accordance with the statutory provisions or demand a reduction in the purchase price and/or claim either damages pursuant to section 11 or the reimbursement of its expenses.
- 10.5 Buyer's rights in case of defects shall be excluded in the following events: (i) natural wear and tear, (ii) defects of the Goods due to reasons for which Buyer bears responsibility, such as inappropriate or improper use, the non-observance of the operational instructions or faulty treatment, (iii) incorrect assembly and/or installation by Buyer or a third party commissioned by Buyer, and (iv) the use of unsuitable accessories or unsuitable spare parts or the performance of inappropriate repair works by Buyer or a third party commissioned by Buyer.
- 10.6 Buyer's claims for defective Goods are subject to a period of limitation of three months from receipt of the Goods. In the following cases the statutory periods of limitation apply instead of the three months' period:
 - a) Buyer's damage claims for damages caused by Seller intentionally or by gross negligence;
 - b) Buyer's rights with respect to defects concealed in bad faith or caused intentionally;

- c) if and to the extent Seller has assumed a guarantee ;
- d) claims for damages due to culpably caused personal injuries,
- e) Buyer's damage claims due to other reasons than defects of the Goods;
- f) claims under other mandatory statutory liability

11. Limitation of Liability and Damage Compensation

- 11.1 In the event of breach of material contractual obligations, Seller shall only be liable up to the amount of the typically foreseeable damage at the time of entering into the contract.
- 11.2 Seller shall not be liable for damages caused by a breach of non-material contractual obligations.
- 11.3 The above stated liability restrictions shall not apply to damages caused intentionally or by gross negligence, culpably caused personal injuries, nor to any liability in case of mandatory liability. Furthermore, it shall not apply if and to the extent Seller has assumed a guarantee.
- 11.4 Customer shall take all reasonable measures necessary to avert and reduce damages.

12. Product Liability

If Buyer sells the Goods, whether unchanged or changed, whether after processing, connecting or mixing with other goods, the Seller disclaims all warranties regarding such Goods and the Buyer undertakes to indemnify Seller in their internal relationship against any product liability claims of third parties if and to the extent Buyer is responsible for the defect leading to the liability also within their internal relationship.

13. Set-off and Right of Retention

- 13.1 Buyer may only set off claims from Seller if his counterclaim is undisputed, ready for decision or has been finally adjudicated.
- 13.2 Buyer is only entitled to assert a right of retention to the extent that his counterclaim is based on the same contract and is uncontested, ready for decision or has been finally adjudicated.

14. Security

If there are reasonable doubts as to Buyer's ability to pay, especially if payments are in arrears, Seller may revoke credit periods and make further deliveries dependent on advance payments or other security. If such advance payments or security have not been rendered even after the expiry of a reasonable grace period, Seller may partially or totally rescind individual or all of the affected contracts. Seller shall remain entitled to assert further rights.

15. Retention of Title

- 15.1 The Goods shall remain the property of Seller until any and all claims from the business relationship with Seller have been paid in full.
- 15.2 In the case of current accounts, this retention of title shall serve as security for the claim for the balance to which Seller is entitled.
- 15.3 Handling and processing of the retention-of-title Goods shall be done for Seller as manufacturer without any obligations hereto. In case of processing, connecting, or mixing the retention-of-title goods with other goods by Buyer, Seller shall receive co-ownership in the new goods in the ratio of the invoice value of the retention-of-title Goods to the other processed goods at the time of processing. The new goods created by way of processing shall be subject to the same provisions as applicable to the retention-of-title Goods. In the event that the connecting or mixing of the Goods occurs in such manner that Buyer's goods are to be viewed as the main goods, it shall be deemed to be agreed that Buyer assigns proportionate joint ownership to Seller. Buyer shall hold the joint ownership created in such manner in custody for Seller.
- 15.4 Buyer shall only be entitled to resell the retention-of-title Goods in the framework of a normal and proper business operation. Buyer is not entitled to pledge the retention-of-title Goods, grant chattel mortgages on them or make other dispositions endangering Seller's title to such products.
- 15.5 As a precautionary measure, Buyer herewith assigns all purchase price claims from the resale of the retention-of-title Goods to Seller, including all side claims, and Seller hereby accepts such assignment. Buyer shall be entitled to collect the claims assigned to Seller until revocation by Seller. Should Buyer sell the retention-of-title Goods after processing or transformation or joining or mixing of such products with other goods or together with other goods, this assignment of receivables shall only be agreed to for an amount equivalent to the price agreed to between Seller and Buyer plus a safety margin of 10 % of this price. Customer is granted the revocable authorization to collect in trust the claims assigned to Seller in his own name. Seller may revoke such authorization and the right to resell the products if Buyer is in default of the performance of material obligations such as making payment to Seller.
- 15.6 Buyer shall provide Seller at all times with all desired information concerning the retention-of-title Goods or receivables assigned to Seller under the contract. Buyer shall immediately notify Seller of any attachments of or claims to the retention-of-title Goods by

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- third parties and shall provide the necessary documents in this regard. Buyer shall at the same time advise the third party of Seller's retention of title. The costs of a defense against attachments and claims shall be borne by Buyer.
- 15.7 Buyer is obliged to treat the retention-of-title Goods with care for the duration of the retention of title.
- 15.8 In the event that the feasible value of securities existing for Seller shall exceed the assigned claims by collectively more than 10 percent then Seller shall be obligated insofar to release securities as requested by Buyer, either through transfer or assignment as elected by Seller.
- 15.9 Should Buyer be in default of material obligations such as payment to Seller, and should Seller rescind the contract, Seller may, notwithstanding any other rights, request surrender of the retention-of-title Goods and may make use of them otherwise for the purpose of satisfying its matured claims against Buyer. In such case, Buyer shall grant Seller or Seller's agents immediate access to the retention-of-title Goods and surrender the same.
- 15.10 In the event that the retention of title is not effective in the existing form, pursuant to the laws of the country of destination, Buyer shall do everything to create equivalent security rights for Seller without undue delay. Buyer shall co-operate in all measures such as registration, publication, etc. that are necessary and beneficial to the validity and enforceability of such security rights.
- 15.11 On Seller's demand, Buyer is obliged to appropriately insure the retention-of-title Goods, provide Seller with the respective proof of such insurance and assign the claims arising under such insurance to Seller.
- 16. Trademarks and Advertising**
- 16.1 The parties agree that all the intellectual property in, and to, the Goods (including and not limited to trade mark(s), copyright, patents and/ or confidential information relating to the ingredients and specifications or process of development of the Goods), shall remain the exclusive property of the Seller.
- 16.2 Buyer shall not perform and may not authorize a third party to perform any act that may endanger the trademarks or other intellectual property rights used by Seller in relation to the Goods. In particular, Buyer may not obscure, alter or remove in any manner the trademarks and/or other distinctive features, whether imprinted or attached, that are part of Seller's Goods and may not include or attach any other features.
- 16.3 The entire sales promotional, advertising and sales material ("Advertising Material") provided by Seller shall remain the property of Seller. Buyer may use this Advertising Material only in accordance with the instructions of Seller and in relation to the sale of the Goods, and Buyer may not authorize any third party to use the Advertising Material.
- 16.4 Buyer may only advertise the Goods and use the Advertising Material and the trademarks of Seller for this purpose if Seller has granted its prior express consent in writing. Seller may withdraw its consent at any time; in such case the entire advertising of Buyer must be ceased at Buyer's expense according to the instructions of Seller. Irrespective of Seller's consent, Buyer shall in any event remain responsible for ensuring that all advertising measures or advertisements fulfill the statutory requirements, if any, and do not breach any industrial property rights of third parties.
- 17. Force Majeure**
- Any incident or circumstances that are unforeseeable, unavoidable and beyond the Seller's control and sphere of influence and for which Seller does not bear responsibility, such as natural occurrences, war, strikes, lock-outs, shortages of raw materials and energy, obstruction of transportation, breakdown of manufacturing equipment, fire, explosion, or acts of government, shall relieve Seller for the duration of such incident from his obligations under the contract to the extent Seller is prevented from performing such obligations. Delivery and performance periods and dates, as the case may be, shall be extended or rescheduled, as applicable, by the length of such disturbance, and Buyer shall be informed of the occurrence of such disturbance in a reasonable manner. If the end of the aforementioned occurrences is not foreseeable, or should it last for a period of more than 2(two) months, each party is entitled to rescind from the contract.
- 18. Place of Payment**
- Regardless of the place of delivery of Goods or documents, the place of payment shall be Seller's place of business.
- 19. Communication**
- Any notice or other communication required to be received by a party is only effective at the moment it reaches this party. If a time limit has to be observed, the notice or other communication has to reach the recipient party within such time limit.
- 20. General Provisions**
- 20.1 Any dispute arising out of or in connection with the contract shall be heard at the court having jurisdiction over Seller's principal

- place of business or, at Seller's option, at Buyer's principal place of business.
- 20.2 These General Conditions and the contractual relationship of Buyer and Seller shall be governed by the laws of India to the exclusion of the UN Convention on Contracts for the International Sale of Goods (CISG).
- 20.3 If these General Conditions are made known to Customer in another language, in addition to the language in which the sales contract has been concluded (Contract Language), this is merely done for Buyer's convenience. In case of differences of interpretation, the version in the Contract Language shall be binding.
- 20.4 If a provision of the contract and/or these General Terms of Sale is invalid, in whole or in part, the validity of the remaining provisions shall remain unaffected hereby.

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