

General Terms & Conditions



> XERVON GmbH - Benelux

General Terms & Conditions
of Sale

xervon.be

> GENERAL TERMS & CONDITIONS

> 1 General

- (1) All current and future deliveries and services occur based on the present terms and conditions of sale. By accepting the quotation, the client accepts the present conditions.
- (2) All conditions otherwise are only valid if these were accepted by XERVON in writing.
- (3) The deviating conditions explicitly stated in the quotations take priority over these terms and conditions.

> 2 Quotations

- (1) Unless stipulated otherwise, our quotations are only valid for a period of 30 calendar days. We are only obliged by our quotations if the client's acceptance reaches us within this period. Amendments introduced to our quotations are only valid if they were accepted by us in writing.
- (2) Quotations are obligation-free at all times. A contract only exists if XERVON has confirmed the client's order in writing. All agreements made verbally relating to deliveries and services are only effective after they have been confirmed by Xervon in writing.

> 3 Order

- (1) Each order must occur in writing with a signed order. The client must check the order confirmation and must report any inaccuracies in the order to us in writing within five working days after the dispatch date and before the anticipated implementation date. If no report occurs within the established period, the client is not entitled subsequently to change its opinion in this regard.
- (2) Amendments to the order originally approved, of any nature whatsoever, must be brought to our attention by the client promptly, in writing and in clear wording. Any additional costs associated with this are to be charged to the client.
- (3) The prices only apply to the agreed services and deliveries. They are based on the applicable factors for pricing at the time of the quotation date. If after concluding the contract, but before it is implemented, changes to the aforementioned price-determining factors occur, XERVON is entitled to implement a corresponding price adjustment. This applies in particular to material prices, transport costs, wages, insurance premiums, taxes and import charges.
- (4) All prices apply excluding VAT insofar as not explicitly agreed otherwise in writing.

> 4 Security

- (1) Signed, written orders are only accepted insofar as in accordance with the credit lines permitted to us by our insurance company. Before proceeding to implement the confirmed order, we are at all times entitled to require the client to provide a security deemed sufficient in banking (such as an irrevocable bank guarantee to a maximum amount of the order). If the client refuses to issue a security intended in the previous sentence at our request, we are entitled to dissolve the agreement with immediate effect, without prejudice to the other suspension and dissolution conditions stated in these conditions and without prejudice to our right to compensation for damage we suffer resulting from the suspension/dissolution. We furthermore retain the right to suspend the deliveries and works when we reach the credit lines permitted to us as well as when the permitted credit lines are lowered or suspended, without any financial or legal consequences and retaining our rights.

> 5 Severance

- (1) If the client wholly or partially renounces the agreed wishes, in accordance with art. 1794 of the Civil Code it is obliged to compensate our expenses, all of our work and loss of earnings, which is estimated at the fixed-rate of 20% if the works not performed, without prejudice to our right to demonstrate our actual damage should this be greater. XERVON also claims 100% of the price for the part of the order performed.
- (2) An order must be cancelled in writing. When cancelling an order, the client is obliged to deliver all materials to be received according to the order.

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- (3) If the client wholly or partially fails to meet an obligation or a number of its obligations, it is assumed that this is such an imputable failure on the part of the client that XERVON is for that reason entitled to dissolve the contract. All of the damage arising for Xervon as a result of this is charged to the client in full.

> 6 Delivery

- (1) We always state delivery periods without any obligation, unless they are explicitly declared as binding. In the event of delay, we therefore reject any responsibility and can for that reason not be pursued for compensation and/or penalty. A stated delivery time only takes effect after all technical queries and issued relating to this have been resolved, and the client has met its obligations promptly and according to the provisions.
- (2) The client guarantees that the activities can be implemented undisturbed and unimpeded. The transfer of the risk for a service delivered occurs at the moment this is purchased by the client. XERVON is entitled to deliver in batches.
- (3) Irrespective of the above, in the event of damage or destruction as a result of force majeure or other circumstances that cannot be avoided and for which XERVON is not responsible, the risk transfers to the client. The delivery and service count as performed if XERVON has informed the client that the service has been carried out or the client has used the service prematurely.

> 7 Surcharges

- Overtime and Working on Saturdays: 50% supplement
- Sundays and bank holidays: 100% supplement
- Night work between 18h00 and 6h00: 25% supplement
- Work in day shifts: 10% supplement

> 8 Payment

- (1) Payment Subject to agreements otherwise, invoices are payable 30 days after the invoice date.
- (2) In the event of late payment, all invoices – event invoices not yet due – are payable immediately.
- (3) If one of the parties fails to observe one of its essential commitments, such as prompt payment of the invoice, the other party is entitled to dissolve the agreement without legal authorisation and without prior notice of default. In that case, the party in default owes the other party a fixed-rate compensation amounting to 10% of the value of the items or wishes ordered with a minimum of €250 without prejudice to the claimant's right to demand higher compensation provided actual greater damage is proven. In the event of whole or partial non-payment of an invoice on the due date, the client further owes – legally and without prior notice of default – late interest on the unpaid invoice amount according to the statutory interest rate plus 5%, without it being possible for that interest to be lower than 10% per annum, for each month already commenced.

> 9 Complaints

- (1) Any complaints must reach us within eight days after receiving the invoice, by registered letter. Complaints are no longer accepted after this period.
- (2) Complaints relating to the quality and the usability of items and services delivered must be communicated in writing within eight days after the delivery. Complaints are no longer accepted after this period.

> 10 Termination/suspension of the works

- (1) XERVON is entitled to terminate any orders and contracts still ongoing if the invoices are not paid within the predetermined payment period, or if an agreed payment plan is not observed. This is without any financial or legal consequences, and reserving our rights.
- (2) We furthermore also reserve the right to suspend the deliveries and wishes if our permitted credit lines are reached, as

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well as if the permitted credit lines are lowered or suspended. Irrespective of any agreed payment conditions, we also at all times reserve the right to demand a security prior to delivering or proceeding with works, or to demand a bank guarantee from the client for observing its payment obligations. As long as this guarantee has not provided, we are entitled to suspend all further deliveries/works, and to terminate the works/deliveries if such a guarantee remains absence. This also applies as long as the client fails to meet its payment obligations concerning all of the deliveries/wishes performed. XERVON is also entitled to suspend and/or terminate the works/deliveries in the event of force majeure.

- (3) If the client is insolvent or submits a bankruptcy application, is unable to pay or an asset belonging to it is seized, or if the client ceases, sells its business or an essential part of this, or continues it differently, Xervon is furthermore entitled to suspend obligations applying to it based on the contract, or to dissolve the contract wholly or partially. XERVON is entitled to demand the payment of the contractual price plus any addition costs arising.

> 11 Special Conditions

- (1) At the end of each working day, a work report is signed for approval by the client or its representatives. Complaints concerning the hours and the work can no longer be accepted after signing.
- (2) It is assumed with all of our quotations that the construction site is normally accessible to lorries, that all of the obstacles have been cleared away and that there are no impending differences in level except those stated in the price inquiry.
- (3) If our teams are delayed on account of the client or perform excessive journeys at the latter's command, the costs incurred for this reason are charged to it, legally and without prior notification.
- (4) Subject to a written statement otherwise, added to the purchase order, receipt of the latter immediately applies as explicit and unconditional approval of the definitive designs or, in the absence of designs, of the description of the works in accordance with our quotation. The client is obliged to provide all facilities required for performing the contractually established services free of charge and promptly.
- (5) If these facilities are not provided – promptly or otherwise – XERVON is entitled to demand compensation from the client for loss of time, additional costs and suchlike. The client is responsible for and must ensure on its own account and at its own expense that it possesses the permits required for performing the work.
- (6) Any work by our staff outside the regulatory working hours is expected to have been covered by a permit in the client's possession. The client alone would bear the consequences if this is absent.
- (6) Frost, poor weather, high water level, lack of administrative authorisation, days off, holidays, etc. cannot be invoked as force majeure in order to release the client from its obligations to pay the agreed rental price during the period concerned.
- (7) Subject to any provision otherwise, the client may in no instance wholly or partially provide or lend out equipment to third parties, with or without payment.
- (8) Neither is the client permitted, without consent from XERVON, to remove the goods from the location or workplace they were intended for, and/or place these at different location or workplaces (or have this performed).
- (9) The client is obliged to handle the items as a conscientious and careful renter. It is furthermore obliged to insure the items against all damage, risks, faults and theft. The client bears full responsibility for the equipment being damaged, missing, lost and disappearing for any reason whatsoever, including theft, accident, fire and in the event of force majeure.
- (10) All rental costs and fees for using public land are borne by the client. The client is also responsible for monitoring our structures throughout the entire rental period.
- (11) The client is responsible for all of the above safety measures.
- (12) XERVON is not responsible for possible damage caused during the performance of the works of resulting from incorrect information or indications from the co-contractor, its appointees or agents, third parties or unknown parties. XERVON can in no regard be held liable for damage resulting from incorrect use by the purchaser/renter of the items concerned.
- (13) Our liability for damage is limited to damage typical for the contract and that was foreseeable at the time the contract was concluded. The amount of the compensation to be paid can in no instance be more than the order value of each individual order. If the damage does not occur within the scope of a separate agreement but rather a service that is part of a framework contract, the client liability is limited to the agreed service value on a monthly basis and up to a maximum of 50.000€. Compensation for indirect and/or consequential damage – in particular production loss and loss of earnings – is excluded.

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- (14) The client must indemnify XERVON against all claims.
- (15) Liability is only the case insofar as XERVON's liability insurance offers cover for the case concerned and to the amount for which this cover applies.

> 12 Limitation

- (1) All claims, thus including warranty claims, expire one year from the delivery date.

> 13 Retention of title

- (1) All information provided by XERVON and equipment such as tools, models, samples, images, diagrams, calculations and notes remain our exclusive property. They may not be presented or shown to third parties without our prior written approval. The items remain the property of XERVON until the purchaser/renter has paid XERVON the entire purchase price, even if the goods were processed.

> 14 Guarantee

- (1) We only provide the warranty on third-party products that is granted by to us by the supplier.

> 15 Accidents

- (1) Any accident caused by us must be reported in writing within 24 hours. In the event of an accident, our responsibility is limited to that which is covered by our insurance company.
- (2) In the event of accidents for which we are held liable, the client is obliged to inform of the events immediately. If this does not occur, this means our responsibility expires. No alteration whatsoever may be made by the client to a structure involved in an accident and provided by us, prior to our representative having performed all of the required investigations on site. This provision of course makes an exception for required, urgent safety measures.
- (3) The client alone is responsible for any accident of which our staff and third parties are potentially the victim, resulting from the said safety measures being neglected.

> 16 Unforeseen circumstances

- (1) In the event of force majeure and other disruptions and events unforeseeable at the time the contact is concluded – such as disruptions in the company, delivery periods being exceeded or non-performance and/or force majeure involving sub-suppliers, a lack of energy or raw materials, traffic disruptions, government exclusions and orders – for which XERVON is not liable, fully release XERVON for the duration of the disruption from the obligation to deliver or provide services. The delay in XERVON delivering services does not release the client from its obligations to pay for services already delivered.
- (2) All circumstances that were reasonably unforeseeable and unavoidable when the quotation was submitted, and that make executing the agreement more burdensome or difficult financially or otherwise, are to be deemed cases of force majeure. They entitled us to request the contract to be revised or dissolved without any form of compensation. If these circumstances result in an interruption to the works, the execution period is legally suspended for the duration of the interruption, plus the time required to recommence on the site.

> 17 Validity, applicable law

- (1) Agreements we enter into are subject to Belgian law and the courts of Antwerp are competent, even if the co-contractor(s) has its registered offices abroad and irrespective of the location where the works are performed. We nevertheless reserve the right to present disputes before the courts of another jurisdiction, as we see fit.
- (2) If a provision of the present conditions is or becomes wholly or partially void, this does not affect the validity of the remaining provisions. The legally valid arrangement applies most approximating the void provision applies instead of the void provision or the section of the provision that has become void.