

GENERAL TERMS AND CONDITIONS OF SALE AND DELIVERY OF XL CONCEPT B.V.



HAVING ITS REGISTERED OFFICE IN SASSENHEIM AND PLACE OF BUSINESS AT (1059 CH) PILOTENSTRAAT 41B AMSTERDAM (Registered at the Chamber of Commerce in Amsterdam under number 28082735)

Article 1 Definitions

In these General Terms and Conditions the following terms shall be defined as follows:

- Customer: any person or entity ordering Products from the Supplier and/or with whom the Supplier is discussing or negotiating the conclusion of an Agreement;
- Defect: any fault in the Products in deviation of the Specification and any other improper functioning of the Products;
- PPP Disputes Committee: the disputes committee established by the association Platform Promotional Products;
- Term of delivery: the term by which the Products must be delivered, as laid down in the Agreement;
- Supplier: the user of these General Terms and Conditions, i.e. XL Concept B.V. and/or its subsidiaries, having a (pre-)contractual relationship with the Customer;
- Order: any instruction from the Customer to the Supplier for the delivery of Products, regardless of its form;
- Agreement: any agreement made between the Supplier and the Customer, any amendment thereof or addition thereto, as well as any and all (legal) acts in to the preparation and/or fulfillment of such agreement;
- Products: any and all objects manufactured and/or delivered for the fulfillment of an Order or, as the case may be, an Agreement by or for the account of the Supplier, as well as any services to be rendered by the Supplier, including advice and creative expressions, whether or not pertaining to those objects;
- Specification: the description of Products ordered by the Customer, which is stated or referred to in the Order or the Agreement.

Article 2 Applicability

Paragraph 1: Unless agreed otherwise in writing, these General Terms and Conditions will apply to all offers and quotations of the Supplier and all Agreements made between the Supplier and the Customer.

Paragraph 2: The applicability of any General Terms and Conditions (of purchase) used by the Customer are expressly considered not applicable by the Supplier, unless the applicability thereof is expressly accepted in writing by the Supplier.

Article 3 Offers

Paragraph 1: Any and all offers in whatever form entail absolutely no commitment for the Supplier and shall be regarded as a whole. If an offer indicates an acceptance term, this shall only imply that the offer is no longer valid after such term in any event.

Paragraph 2: Any pictures, catalogues, drawings and other data, including measurements, weights and amounts, shall be as accurate as possible. This information is binding only insofar as expressly confirmed.

Paragraph 3: Any and all quotations and offers shall be based on the fulfillment of the Agreement under normal conditions and during normal working hours.

Paragraph 4: An Agreement shall only be valid if and insofar as it is confirmed in writing by the Supplier or, as the case may be, after the Supplier has started with the fulfillment of the Agreement.

Paragraph 5: If due to circumstances including the nature, volume or urgency of the Order, no order confirmation has been sent, the invoice shall be regarded as the order confirmation.

Paragraph 6: Each Agreement shall be entered into by the Supplier on the condition precedent that the Customer shall prove to be sufficiently creditworthy for its financial obligations – at the Supplier's sole discretion.

Paragraph 7: The Supplier shall be and remain the owner of all documents, supplied models, samples or examples relating to the offers made by the Supplier and/or to the Agreement, which cannot be supplied or made available to third parties for inspection, multiplied or imitated in any way without the Supplier's written approval. Within fourteen days of the Supplier's request to that effect, the Customer shall be held to return the same to the Supplier, carriage paid, in sound condition and in the original packaging where applicable.

Article 4 Prices

Paragraph 1: The price or prices indicated in the offer shall be in Euro, unless expressly agreed otherwise in writing, exclusive of VAT and/or any other charges.

Paragraph 2: Unless agreed upon otherwise, the price or prices indicated in the offer shall be based on the price-determining factors applicable to the Supplier at the time of said offer, such as wages, cost price of (raw) materials and exchange rates. Increases in prices as a result of a change of one of these price-determining factors and occurring after the offer has been made, may be passed on to the Customer by the Supplier, even if the Agreement has already been concluded.

Paragraph 3: Should application of the preceding paragraph result in a price increase by 10% or more within a period of 3 months after entering into the Agreement, the Customer shall be entitled to dissolve the Agreement by means of a registered letter within 7 working days after having been notified of the price increase without being entitled to any damages.

Article 5 Delivery of processed Products

Paragraph 1: In the event that the Supplier receives an order to deliver Products specifically processed (or, as the case may be, assembled) for the benefit of the Customer, the Customer shall be required to provide sufficient volumes of material suitable for the adaptation process. As long as the Customer has not fulfilled that obligation, the Supplier shall have the right to suspend its obligations under the Agreement.

Paragraph 2: The Supplier shall have an obligation to send a proof, model, sample or example to the Customer for approval only if the Customer has made a stipulation to that effect in writing upon entering into the Agreement, in which case the Supplier agrees to present the Customer with a proof, model, sample or example no later than two weeks after the Agreement has been entered into and after the materials to be processed have been received, which proof, model, sample or example shall be deemed approved if no written reaction has been received within five working days, unless expressly agreed otherwise.

Paragraph 3: Any and all costs of the proof, the model, sample or examples shall be invoiced separately and shall not be included in the agreed prices unless explicitly agreed otherwise.

Article 6 Advisory services and product development

Paragraph 1: The Supplier may act as an adviser, if so requested. The Supplier shall have the right to invoice this to the Customer separately, whether or not the advice relates to manufactured and/or delivered Products pursuant to the Agreement by or for the account of the Supplier.

Paragraph 2: In the event of any product development, advice regarding promotional products to be applied, advice regarding creative concepts, quotations for extensive projects with processed or non-processed products, national or international market investigations into specific products or product applications of non-specified products, the provisions of paragraph 1 of this Article shall fully apply.

Article 7 Engagement of third parties

The Supplier shall be authorised to engage third parties for the fulfillment of the Agreement. The Supplier shall also be authorised to assign any rights and obligations arising from the Agreement to third parties.

Article 8 Deliveries and Term of delivery. Force majeure

Paragraph 1: The Term of delivery shall be determined roughly and shall never be regarded as final term, unless expressly agreed otherwise. The Term of delivery shall take effect only after the Agreement has been concluded in accordance with Article 3, after all information needed for the fulfillment of the Agreement has been submitted and after the Customer has paid the purchase price or, as the case may be, the instalment(s) agreed, or after the security required by the Supplier has been provided.

Paragraph 2: If the delivery is prevented in part or in full by force majeure, the Supplier shall have the right to suspend the delivery, and – in the event that the situation creating the force majeure continues to exist for more than three months or as soon as it becomes evident that it shall continue to exist for more than three months – to dissolve the Agreement, in whole or in part, insofar as it has not been carried out, and to claim payment for the parts carried out, without any obligation to pay damages to the Customer.

Paragraph 3: Force majeure shall include, without any limitation, fire, floods, strikes, epidemics, (civil) war, terrorism, government measures, permits not having been granted (in time), trade embargoes, labour disturbances, power outage, operational failure, breach of contract or wrongful acts by suppliers and subcontractors of the Supplier or other third parties,

including any defects, failure, non-delivery or late delivery of materials, shipping, fuels, energy and labour.

Paragraph 4: Delivery shall take place ex works, unless explicitly agreed otherwise. Shipping costs and insurance costs shall be borne by the Customer, even if it is agreed that the Supplier shall take care of the transport. The transfer of the risk of the Products shall take place at the moment of delivery in accordance with the provisions of these General Terms and Conditions. The transport shall take place at the Customer's risk, even if the carrier has explicitly stipulated that all shipping documents must state that any and all damage resulting from the transport shall be at the expense and risk of the sender.

Paragraph 5: In the event that the Supplier takes care of the transport, the Customer, or a third party designated by the Customer, must report any damage caused by the transport to the carrier or, as the case may be, the forwarder, immediately after receipt, but in any event within 12 hours after receipt of the Products, and must send a copy of the report to the Supplier.

Paragraph 6: Products that have not been purchased by the Customer, or a third party designated by the Customer after the Term of delivery, shall be stored by the Supplier at the expense and risk of the Customer. If the Products have not been purchased in time, the Supplier shall have the right to dissolve the Agreement after a period of 14 days of the expiry of the Term of delivery, without prejudice to the Supplier's right to sell the Products to third parties.

Paragraph 7: If the colour, composition, weight, appearance etc. of the Products deviate only slightly from any models, samples or examples supplied in advance, or from any other agreed provisions, the Products concerned shall be deemed to comply with the Agreement. The Supplier shall in any event be deemed to have fulfilled its obligations, if the weight or the amount of the Products supplied does not deviate from the agreements made by more than 5%.

Paragraph 8: The Supplier is allowed to send Products in portions, and each portion can be invoiced separately.

Article 9 Complaints

Paragraph 1: It is Customer's obligation to inspect the Products or cause the Products to be inspected for any Defects immediately after delivery.

Paragraph 2: Any and all complaints regarding Defects in the delivered Products must be reported to the Supplier in writing as soon as possible, but in any event within eight days of delivery of the Products concerned, or within eight days of the discovery of the Defect, or in any event within eight days after the Defect should reasonably have been discovered. After expiry of this term, the Customer shall be deemed to accept (the quality of) the delivered Products and to have waived all rights and remedies available to the Customer by virtue of the law and/or the Agreement and these General Terms and Conditions.

Paragraph 3: A complaint as referred to in the preceding paragraph shall not suspend the Customer's obligation to pay.

Paragraph 4: In the event that, in the Supplier's opinion, the Customer has made the Complaint with good reason, the Supplier shall be required only to supply the missing Product(s), to repair or replace the delivered Products, or to refund (part of) the purchase price, at the Supplier's discretion.

Paragraph 5: Complaints can never be founded on minor deviations and/or deviations that are customary in the line of business, such as deviations referred to in Article 8, paragraph 7 of these General Terms and Conditions. The only basis for a complaint is a deviation from the Specification as approved by the Customer.

Article 10 Retention of title

Paragraph 1: The Supplier shall remain the owner of all Products delivered to the Customer, but the Products shall be at the expense and risk of the Customer as from the moment of delivery, until all amounts due pursuant to the Agreement, as well as the claims on account of any failure by the Customer to comply with this or any other agreement(s) have been paid by the Customer in full, including any interest and collection costs.

Paragraph 2: As long as the title to the delivered Products has not been transferred to the Customer, the Customer shall not be allowed to process the Products, to place the Products outside its actual control, or to sell, pledge or otherwise encumber the Products, and the Customer shall take any and all appropriate measures to separate the Products and keep them separated from any other goods held by the Customer and to do or procure all that is necessary to prevent any confusion of property ("vermenging"), accession ("naatrekking") or conversion ("zaakvorming").

Paragraph 3: The Customer undertakes to refrain from assigning or pledging to third parties any claims against its customers, and undertakes to pledge the claims referred to hereinbefore immediately after the Supplier's request to that effect, in the manner set out in Article 3: 239 of the Dutch Civil Code as extra security for its claims against the Customer on whatever account.

Paragraph 4: Any third parties wishing to recover any loss on account of the delivered Products from the Supplier shall be informed by the Customer that the Products are subject to a retention of title held by the Supplier. The Customer must immediately inform the Supplier thereof in writing.

Paragraph 5: If the Customer fails to fulfil its obligations or if the Supplier has valid grounds to believe that the Customer shall fail to fulfil its obligations, the Supplier may invoke its retention of title, in which case, upon request, the Customer shall be required to give the Supplier actual control of the delivered Products, immediately and free of charge. Furthermore, the Supplier shall have the right to retrieve those Products or have them retrieved from the place where they are stored, at the expense of the Customer. The Customer hereby grants the Supplier an irrevocable authorization to enter (or cause others to enter) the premises used by or on behalf of the Customer. After the Products have been retrieved, the Customer shall be credited at the market value, which shall in no event exceed the original purchase price, reduced by the costs of the retrieval and any damage incurred by the Supplier.

Article 11 Payment

Paragraph 1: Unless agreed otherwise in writing and without prejudice to the provisions of the following paragraph, all payments to the Supplier must be made in Euro, either net in cash, or at the office of the Supplier by means of a transfer to or deposit into a bank account to be specified by the Supplier, at the Supplier's discretion, always within 14 days after the invoice date. The Supplier shall have the right to send electronic invoices and the Customer hereby agrees to this method of invoicing insofar as it shall be applied.

Paragraph 2: Setoff and any other form of settlement shall never be permitted without an explicit written agreement.

Paragraph 3: The Supplier shall at all times be authorised to require an advance payment or security which it deems sufficient for the fulfillment of the Customer's payment obligations, before delivering or continuing with the delivery, and the Supplier shall have the right to suspend any further deliveries if the Customer fails to meet such requirement, also in the event that a fixed delivery deadline has been agreed, without prejudice to the Supplier's right to claim damages in the event of late fulfillment or, as the case may be, non-fulfillment of the Agreement.

Paragraph 4: If the Customer fails to pay the amount due under to the Agreement within the agreed period, the Customer shall be in default by operation of the law and the Supplier shall in that case be entitled to charge interest as from the due date of the unpaid invoice or invoices, at the statutory commercial interest rate plus 2%, and at a minimum annual interest of 12% on the amount of the invoice, without prejudice to any other remedies available to the Supplier and without requiring any notice of default.

Paragraph 5: Any and all judicial and extra-judicial expenses incurred by the Supplier for the collection of the invoice amount, including the fees of any third parties engaged by the Supplier, shall be borne by the Customer. The Customer shall owe at least 10% of the principal amount of the extra-judicial expenses, and at the very least € 250.

Paragraph 6: If the Customer is in default with respect to its obligations under the Agreement and these General Terms and Conditions, all payment obligations of the Customer to the Supplier shall be immediately due and payable from the moment of being in default, regardless of whether any invoices have been sent for such obligations.

Article 12 Intellectual and industrial property rights. Non-disclosure

Paragraph 1: Any and all intellectual and industrial property rights (including trade mark rights, model rights and patents) on all designs, drawings, models, samples and examples that have been made available or developed by virtue of the Agreement (hereinafter: "the Information") shall be exclusively vested in the Supplier, unless expressly agreed otherwise.

Paragraph 2: The Customer shall not be entitled to use the Information referred to in the

preceding paragraph in any other way than for the benefit of the use of the Products to which they relate as provided for in the Agreement.

Paragraph 3: The Customer shall observe confidentiality in respect of all Information, Specifications, business information and know-how concerning and provided by the Supplier, which has been made available to the Customer for the fulfillment of the Agreement. Upon request, the Customer shall immediately transfer the confidential information, as well as all copies or other multiplications thereof, to the Supplier.

Article 13 Infringement of third parties' rights

Paragraph 1: If a competent court has irrevocably decided in legal proceedings initiated against the Supplier that any Product supplied by the Supplier constitutes an infringement of intellectual or industrial property rights of a third party, the Supplier shall, at its discretion, replace the relevant good by a Product that does not infringe any such right or attempt to acquire a right to use the contested good or refund the price paid by the Customer for the Product at issue, reduced by a reasonable depreciation.

Paragraph 2: In the event of a replacement or refund, the Supplier shall be entitled to attach the condition thereto that the originally delivered Products must be returned.

Paragraph 3: The Supplier shall have no other obligations in respect of any infringement of third parties' rights than the obligation to replace, acquire or refund as referred to in the first paragraph.

Paragraph 4: If an Order is carried out according to design, drawings, formula, Specifications or instructions provided by or on behalf of the Customer, or if such Order is carried out by making use of any goods to be provided by or on behalf of the Customer, the Customer cannot invoke the aforementioned provisions of this Article and the Customer shall indemnify the Supplier against any and all claims regarding an alleged infringement of intellectual or industrial property rights of third parties.

Article 14 Liability

Paragraph 1: The Supplier shall assume liability only, if:

- the damage is a direct consequence of a willful act or gross negligence on the part of the Supplier or any executive employees of the Supplier;
- the damage is directly caused by a demonstrable Defect in the Products manufactured by the Supplier and/or supplied Products, in that they are not as safe as is fair to expect under all circumstances.

Paragraph 2: The Supplier does not accept any liability for any improper placement of the business logo and/or business name on the Customer's goods, any other adaptations of Customer's goods and/or delivery of Products, if and insofar as the Defect is the result of any inaccuracy, or deficiencies in the design submitted by the Customer to the Supplier, or any infringements on the rights of third parties constituted by the design.

Paragraph 3: The total liability of the Supplier caused by any attributable failure to comply with the Agreement shall in any event be limited to compensation of the material and direct damage up to the amount of the separately stipulated prices of the Products concerned (exclusive of VAT).

Paragraph 4: In respect of the damage referred to hereinbefore, the Supplier shall not assume any liability for any damage that is not compensated by its insurer (upon request, the Supplier shall provide the Customer with a copy of the insurance agreement concerned). Furthermore, the total liability of the Supplier shall never exceed a total amount of € 50,000 per event.

Paragraph 5: The Supplier shall only be held liable for any consequential damage or direct loss for which it has explicitly assumed liability in these General Terms and Conditions.

Paragraph 6: The Customer shall indemnify the Supplier against any and all claims by third parties who have allegedly suffered a loss as a result of a Defect in a good that has been supplied by the Customer to a third party and that consisted (inter alia) of goods supplied by the Supplier, except if and insofar as the Customer provides evidence for the fact that the loss was caused only and exclusively by the Products supplied by the Supplier.

Paragraph 7: In the event of force majeure as referred to in Article 8, paragraph 3 of these General Terms and Conditions, the Supplier shall never be liable for any damage of any kind.

Paragraph 8: Unless explicitly agreed otherwise in writing, all legal claims pursuant to the Agreement and these General Terms and Conditions shall lapse after one year of the delivery date.

Article 15 Dissolution

Paragraph 1: If the Customer fails to fulfil any of its obligations vis-à-vis the Supplier in full, in time or appropriately, if a suspension of payment has been filed in respect of the Customer, if it goes bankrupt or if its business is terminated, in the event of a legal merger or if a substantial part of the Customer's control is transferred to another person or entity, all invoices shall be immediately due and payable and the Supplier shall be entitled to dissolve all Agreements concluded with the Customer in whole or in part by means of a written statement - without requiring any judicial intervention or notice of default - and the Supplier shall be entitled to compensation of all direct damage and consequential damage, including loss of profit, without prejudice to any other remedies available to it.

Paragraph 2: If the Supplier, even after having been demanded in writing to that effect, fails to fulfil its obligations at all, in time or appropriately, the Customer may dissolve the defective part of the Agreement without, however, being entitled to claim any compensation of the costs of dissolution, and the provisions of Article 10 of these General Terms and Conditions regarding the retention of title shall explicitly remain applicable.

Article 16 Processing of Personal Data

Paragraph 1: If the Customer makes personal data available to the Supplier for the implementation of the agreement then the Customer shall remain the controller within the meaning of section 1 under d of the Dutch Personal Data Protection Act.

Paragraph 2: The Supplier shall take the necessary technical and organisational measures in order to secure the processing of personal data against loss or unlawful processing. When taking the measures the Supplier shall take the protectable interest of the Customer into account as well as the nature of the personal data that are processed by the Supplier under the authority of the Customer.

Paragraph 3: After the completion of the agreement the Supplier shall, on the instructions of the Customer, destroy the personal data that the Supplier obtained within the framework of the implementation of the agreement, unless the Customer disputes the supplied services.

Paragraph 4: In addition, see our privacy statement here.

Article 17 Disputes / applicable law / jurisdiction clause

Paragraph 1: These General Terms and Conditions, as well as any and all offers and Agreements to which these General Terms and Conditions apply, shall exclusively be governed by Dutch law. The UN Convention on Contracts for the International Sale of goods (also referred to as the Vienna Sales Convention) shall not apply.

Paragraph 2: Any and all disputes arising between the Supplier and the Customer regarding the implementation of the agreement can be brought to the cognisance of the PPP Disputes Committee by the Supplier and the Customer together in the course of which the PPP Disputes Committee shall issue a binding ruling.

Paragraph 3: Any and all disputes arising between the Supplier and the Customer regarding the implementation of the agreement shall, unless the PPP Disputes Committee has already ruled on the dispute, exclusively be brought to the cognisance of the competent court.

Article 18 Other provisions

Paragraph 1: These General Terms and Conditions are available in the Dutch language.

Paragraph 2: These General Terms and Conditions can be amended by the Supplier (or in any event by XL Concept B.V.). The Customer shall be notified by the Supplier of any amendments in writing, and such amendments shall take effect thirty (30) days after such notice, unless a different date is stated in the notice. The Customer hereby agrees to the contents and applicability of the amended General Terms and Conditions, if any, as from the effective date stated in the notice.

Paragraph 3: If any provision of the Agreement or these General Terms and Conditions are found to be null and void or otherwise unenforceable, this shall not affect the applicability of the remaining provisions of the Agreement and the General Terms and Conditions. In any such event the Supplier shall have the right to replace such provision by a provision that approximates the provision that is null and void/unfulfilled or, as the case may be, unenforceable as regards its aim and purpose.