

# General Conditions of Sale Xella BE nv/sa

## 1. Definitions

In these terms and conditions the following expressions shall have the following meanings and related expressions shall be construed accordingly:

- „the Seller“ means Xella BE nv/sa,
- „the Buyer“ means the natural or juristic person or combination of such persons who place an order with the Seller,
- „the Goods“ means the items or articles the subject of the Order placed with the seller,
- „the Conditions“ means the terms and conditions herein set out which shall govern the purchase and sale of the Goods,
- „the Order“ means the order placed by the Buyer with the Seller for the supply of the Goods,
- „the Contract“ means the contract of sale concluded by the placing of an Order which is accepted by the Seller.

## 2. Order of acceptance

- Neither the Buyer nor the Seller shall be bound by any variation, waiver or addition to the Conditions except as agreed by both parties in writing and signed on their behalf.
- The Contract and all agreements from time to time entered into between the Seller and the Buyer which provide for the sale of any Goods by the Seller to the Buyer shall be deemed to incorporate these Conditions which represent the complete Agreement of the Seller and the Buyer with regard to the Goods except as may be otherwise specifically agreed in writing by the Seller. These Conditions shall override any terms and conditions stipulated, incorporated or referred to by the Buyer in any Order, correspondence, negotiations or in any other way.
- No Order is binding on the Seller until accepted by the Seller in writing by the issue of the seller's official Order confirmation notwithstanding any act or statement of the Seller prior to such issue.
- Without prejudice to the foregoing acceptance of delivery of the Goods by the Buyer shall be deemed to constitute acceptance of these Conditions to the exclusion of all other terms and conditions whatsoever.
- If any term or condition herein (or part thereof) is held to be invalid for any reason by any Court or competent authority, it is to that extent to be deemed removed from the Contract without prejudice to the validity or effectiveness of the remaining terms and conditions hereof.
- No statement or representation made at any time prior to the Contract shall be a term of the Contract or deemed to be an inducement or collateral contract pursuant to which the Buyer entered into the Contract.

## 3. Delivery

- Delivery of the Goods shall be made at the Seller's earliest convenience and is dependent on the Seller's suppliers effecting proper and prompt delivery to the Seller. Any time or date for delivery commences from date of acknowledgement or order and is an estimate only and may be cancelled or revised at the Seller's option. Time for delivery by the Seller shall not be of the essence of the Contract and is conditional upon full clarification by the Buyer of all aspects of Order and complete performance of the Buyer's obligations e.g. obtaining official licenses, provision of guarantees or letters of credit or making on account payments.
- The Buyer will accept delivery of the Goods when tendered by the Seller provided such delivery is tendered at the Buyer's place of business within usual business hours or at such other place as may be agreed between the Seller and the Buyer. The date of dispatch or the date when the Buyer is notified that the goods are ready for dispatch from the Seller's factory or warehouse is the date of delivery.
- The Seller shall not be liable to the Buyer for any loss or damage suffered directly or indirectly by the Buyer from any delays in delivery whatsoever arising.
- The Seller shall have no liability to the Buyer in the event of non-delivery of the whole or any portion of the Goods caused directly or indirectly by Act of God, elements, war, act of Government, strikes or lockouts, fire, flood, breakdown of machinery, non-delivery or delay in delivery by the Seller's suppliers of the Goods or materials required therefore, failure of the Seller's contractors to execute or their delay in executing any work on the goods or any other cause (whether or not ejusdem generis to the foregoing) beyond the Seller's control.
- If delivery is delayed due to any of the causes referred to in the foregoing paragraph by a period in excess of (6) months the Seller may cancel the undelivered portion of the Contract by notice in writing.
- When goods are made to the Buyer's order for call-off and no delivery dates are specified then any Goods not called-off within three months after the date of the Seller's Confirmation of Order may be deemed by the Seller in its absolute discretion to have been called-off.
- Where the Seller has agreed to delivery by way of call-off the Buyer agrees to call off in roughly equal instalments; failing this the Seller will exercise its discretion as to the amount of any instalment.
- If the amount of goods called off exceeds the amount contractually agreed the Seller may but is not obliged to effect delivery. Excess goods will be supplied at the prices prevailing at date of delivery.

## 4. Payment

- Payment of the price of the Goods shall be made net in E Sterling within (30) days of invoice date ("the Due Date") time for payment being of the essence of the Contract.
- The Seller is entitled to interest on any unpaid purchase price from the Due Date until payment at the rate of (4%) per annum above (National Westminster) Bank Plc base rate prevailing from time to time.
- Functional payment shall only be deemed to have been made when cleared funds are available to the Seller.
- All costs of transfer of monies or bank charges must be paid by the Buyer.
- The Buyer has no right to set-off deduct or counterclaim any sum unless the Seller has confirmed such deduction beforehand in writing.
- Any agreed discounts are only payable if payment is effected within the time stipulated and the Buyer owes no other monies to the Seller whatsoever.
- The Seller reserves the right to suspend further deliveries, to demand security for payment and to cancel any allowance of further credit in the event of: I) Any payments under the Contract (or any other Contract with the Buyer) not being made when due, or II) The Seller in its sole discretion at any time considering that the financial condition of the Buyer has ceased to justify any such terms being permitted.

## 5. Measurements

Measurements, dimensions, weights, colours and other details contained in the Seller's catalogues, sales manuals, photographs, drawings, illustrations and price lists and the Seller's samples constitute only any approximate guide and do not form part of the Contract. No warranty is given that the Goods will correspond exactly with those specified.

## 6. Price

Unless otherwise agreed, the price applicable is that shown in the Seller's pricelist at the date of the conclusion of the Contract. The Seller reserves the right to alter its prices if before delivery any costs expenses or charges which form part of the Seller's calculation of its prices (such as cost of materials, salary of fuel) increase or if any new costs expenses or charges arise.

## 7. Delivery and risk

- All quotations and contracts are for delivery of the Goods ex the Seller's works and delivery of the Goods to a carrier shall constitute delivery thereof to the Buyer. Any delivery date is approximate only and is not a contractual commitment.
- The Seller reserves the right to make delivery by instalments.
- Risk in the Goods shall pass to the Buyer on delivery of the Goods to the carrier. If the Buyer requires postponement of delivery beyond the projected delivery date, the Seller may at its option, exercisable by notice in writing to the Buyer, that the risk in the Goods as having passed to the Buyer and store the Goods at the Buyer's expense and risk.
- When delivery is to be made by instalments or the Seller exercises its right to deliver by instalments under Clause 7b) hereof the Buyer shall not be entitled to treat the Contract as repudiated or to damages by virtue of any instalment or any part of any instalment not being delivered in accordance with the Contract.
- The Buyer shall not be entitled to reject the Goods by reason only of short delivery thereof.
- Deviations in quantity of the Goods delivered (representing not more than 10 per cent by value) from that stated in the Contract shall not give the Buyer any right to reject the Goods or to claim damages and the Buyer shall be obliged to accept and pay at the contract rate for the quantity of the Goods delivered.

## 8. Retention of title

- Notwithstanding delivery the property in the Goods shall not pass to the Buyer until the Buyer has paid in full the price of the Goods.
- Furthermore the property in the Goods shall not pass to the Buyer unless and until the full price of any other delivered goods the subject of any other delivered goods the subject of any other business transaction between the Buyer and the Seller has been paid. Such price and the price of the Goods shall hereinafter together be called "the value" and shall where the context so permits include in addition thereto any costs of repossession incurred pursuant to paragraph iv) of Clause c) hereof.
- Until the value has been received by the Seller the Buyer will hold the Goods as bailee on behalf of the Seller and the Buyer hereby acknowledges that there shall accordingly subsist a fiduciary relationship in respect of the Goods between the Buyer and the Seller. Subject thereto: I) The Buyer will store the Goods on its premises separately from its own goods or those of any other person in such a way that they can be readily identified as the goods of the Seller; II) Until payment as aforesaid the Buyer will take all necessary measures for the protection of the Goods including the insurance thereof against all usual risks with an insurance company approved by the Seller for the full replacement value of the Goods. The Buyer will procure that the interest of the Seller is noted upon any policy of insurance effected pursuant hereto and that a copy of the same is supplied to the Seller on the creation thereof; III) The Buyer is authorised by the Seller to agree to sell on the Goods at a price which shall nevertheless be no less than the purchase price of the Goods hereunder subject to the express condition that the entire proceeds thereof are held in trust for the Seller and are not mingled with other monies or paid into any overdraft bank account and shall be at all times identifiable as the Seller's money. The Buyer shall keep records (to be produced to the Seller whenever required) of the name and address of any such sub-purchaser and the date and contract price of each delivery and shall if the Seller so requires in writing assign such claims as the Buyer has against such sub-purchasers as emanate from this transaction; IV) The Seller may, at any time if payment is overdue in whole or in part without prejudice to any other right arising pursuant to or consequent upon this agreement, for the purpose of recovery of the Goods, enter upon any premises where the Goods are stored or where they are responsibly thought to be stored and may repossess the same. All costs and expenses reasonably incurred by the Seller in connection with such recovery shall be paid by the Buyer; V) It is declared for the avoidance of doubt without prejudice to the generality of the foregoing that the Seller may recover the Goods and payment shall become due if: A) The Buyer does or fails to do anything which would entitle an Administrator or Administrative Receiver to take possession of any of its assets or which would entitle any person to present a petition to wind up the Buyer; and/or B) The Buyer passes any resolution to wind itself up or publishes a notice convening a meeting of its creditors pursuant to section 9a of the Insolvency Act 1986 or any statutory modification or replacement thereof; and/or C) The Buyer if an individual has a Bankruptcy Order made against it or enters into any arrangement for the benefit of its creditors generally. D) I) The Buyer may admit the goods with other property not belonging to the Seller. However if goods the property of the Seller are admitted with goods the property of the Buyer or are processed with or incorporated therein the product thereof shall become and/or shall be deemed to be the sole and exclusive property of the Seller. If Goods the property of the Seller are admitted with Goods the property of any person other than the Buyer or reprocessed with or incorporated therein the product thereof shall become or shall be deemed to be owned in common with that other person. II) The provisions of Paragraph iii) of Clause c) hereof shall apply mutatis mutandis to the proceeds of sale of any product referred to in Paragraph i) of this Clause. E) Each of the preceding Clauses and subparagraphs shall be construed and shall take effect separately and in the event of one or more such Clauses or sub-paragraphs being held ineffective this shall not effect the validity of the remaining Clauses or subparagraphs.

## 9. Warranty of title

The Seller warrants that it has title of the Goods or will have such title at the time when property in the Goods is to pass to the Buyer under the Contract and warrants

that in all other respects it is able to satisfy its obligations to the Buyer under Section 12 of the Sale of Goods Act 1979.

## 10. Exclusion of further warranties

Save as expressly stated herein all warranties and conditions whether express or implied by statute (including in particular Sections 13, 14 and 15 of the Sale of Goods Act 1979) usage, trade custom or otherwise relating to the quality or nature of the Goods or their life or wear or fitness for any particular purpose or use under any specific conditions are hereby expressly excluded.

## 11. Claims

- Any Goods alleged by the Buyer to be damaged or not of merchantable quality shall not form the subject of any claim for work done by the Buyer or for any loss damage or expense whatsoever arising directly or indirectly from such alleged defects but provided the Goods are returned to the Seller or made available for its inspection in accordance with the Conditions and are accepted by the Seller as damaged or not of merchantable quality either the Goods shall be replaced as originally ordered or at the sole discretion of the Seller an appropriate credit note will be issued to the Buyer provided always that the Buyer has otherwise complied with the Conditions.
- No claim will be accepted by the Seller where any Goods have been improperly stored or misused or the Seller's instructions (which are available on application) are not followed.

## 12. Damage in transit/shortages

The Buyer shall inspect the Goods immediately they are delivered and the signature of the Buyer or of any person acting on its behalf on the delivery note shall be deemed to be acknowledgement on the part of the Buyer that the Goods are of merchantable quality, undamaged and in accordance with the Contract and the Seller shall not replace the Goods nor be under any liability to deliver any missing part thereof, unless the Buyer a) states on the delivery note that the Goods or part thereof are either damaged or missing and b) notifies the Seller in writing within 3 days of the delivery of the Goods of the extent to which the Goods are damaged and/or missing.

## 13. Inspection/return

- No claim under paragraph 12 hereof will be entertained by the Seller unless, in addition to the Buyer's compliance with paragraph 13 hereof the Buyer makes the Goods available for collection or inspection by the Seller so that the Seller can determine whether a claim under paragraph 13 hereof will be accepted.
- No goods will be accepted for return without the prior agreement of the Seller and returned Goods must be properly and securely packed by the Buyer and accompanied by a detailed list giving the reasons for their return and the date and number of the Seller's invoice in which the Goods were charged.

## 14. Defects

Defects in quantity, quality or dimensions in any delivery shall not be grounds for cancellation of the remainder of the Contract by the Buyer.

## 15. Limit of liability

The limit of the Seller's liability hereunder shall not exceed the price of undelivered Goods or Goods accepted back by the Seller under the terms hereof and the Seller shall under no circumstances be liable in contract or tort or otherwise for any indirect or consequential damage, loss or expense however caused whether to the Buyer or any other person or thing, whether arising directly or indirectly from the negligence of the Seller or anyone for whom the Seller is vicariously liable.

## 16. Cheques

Where payment is made by means of the bill of exchange, cheque or otherwise negotiable instrument the Seller not be deemed to have received payment until the bill of exchange, cheque or instrument has been honoured on presentation for payment, notwithstanding that the Seller may have negotiated it and received value therefor.

## 17. Appropriation of payments

Any payments made by the Buyer generally on account and not otherwise appropriated by the Seller shall be appropriated to the Seller's unpaid invoices in their numerical order beginning with the lowest number.

## 18. Insolvency of Buyer

If the Buyer becomes insolvent or subject to a bankruptcy order or being a limited company has a petition presented for its winding up or passes a resolution for voluntary winding up (except for the purposes of a bona fide reconstruction or amalgamation) or compounds with its creditors or has an administrator or administrative receiver appointed over all of its assets the Contract shall thereupon determine without prejudice to the Seller's right to payment of the price delivered Goods and any damages it might suffer in consequence of such determination notwithstanding that such determination may have been implemented by the Seller.

## 19. Assignment

The Buyer shall not assign its rights hereunder without the prior written consent of the Seller.

## 20. Notices

Any Notice given under the provisions of this Agreement shall be duly served on the Buyer if it is left at or sent by ordinary letter post or sent by facsimile to its address last known to the Seller or on the Seller if it is left at or sent by ordinary letter post to its principal place of business. It shall be assumed that any notice sent by post shall be delivered on the day on which the letter would have been delivered in the ordinary course of the post or if by facsimile on the day it is sent.

## 21. Jurisdiction

This Contract shall be construed in accordance with the Laws of England and the Courts of England shall have non-exclusive jurisdiction thereover.