

General Purchase Conditions of XENTRYS Leuna GmbH

1 Applicability

- 1.1 These General Purchase Conditions (hereinafter: Conditions) shall apply to all offers, deliveries, work performances and provision of services (hereinafter: supplies) of the contractual partner (hereinafter: Supplier) to XENTRYS, as far as these Conditions do not deviate from what XENTRYS and the Supplier have agreed upon in a written agreement.
- 1.2 The applicability of conflicting or deviating conditions of the Supplier shall hereby be expressly rejected. The conditions of the Supplier shall only apply if and as far as these, in each individual case separately, have been expressly accepted in writing by XENTRYS.
- 1.3 These Conditions shall also apply if XENTRYS accepts the supply without reservation in the knowledge of deviating conditions.
- 1.4 These Conditions shall apply only to business enterprises as defined in Section 310 / Section 14 German Civil Code (BGB).

2 Order and contract

- 2.1 All offers of the Supplier shall be deemed to be binding and are exempt of charges for XENTRYS. XENTRYS may accept an offer within 4 weeks after receipt.
- 2.2 The agreement shall only enter into effect if and as far as XENTRYS accepts an offer by furnishing a written order (hereinafter: order).
- 2.3 An order initiated by XENTRYS in the absence of a binding offer of the Supplier shall be deemed to have been accepted if the Supplier does not contradict the offer within 2 weeks.
- 2.4 Oral commitments or arrangements by or with its personnel shall not bind XENTRYS until after and as far as these have been confirmed in writing.

3. Prices, payment and security for advance payment

- 3.1 The agreed price – plus VAT valid at the time of supply – shall be deemed to be inclusive of delivery, transport, packaging, insurance, inspections, testing, certificates and free delivery at XENTRYS's store or point of use.
- 3.2 Payment by XENTRYS shall be effected within 30 days net after receipt of the invoice. Invoices shall only be considered for payment if they have been furnished with the number and the date of the order from XENTRYS and are in accordance with the statutory provisions.
- 3.3 In the event that an advance payment has been agreed upon, XENTRYS is entitled, at any moment, to ask for a parent company guarantee or an irrevocable, primarily liable advance payment surety bond payable on first demand from the Supplier, which has to be made up to the satisfaction of XENTRYS, as security for repayment in the event of withdrawal of the order or of termination of the agreement.
- 3.4 Payment by XENTRYS is subject to invoice verification and by no means whatsoever implies an approval of conditions or prices or a waiver of any right based on failures and defects.

4 Intellectual and industrial property rights

- 4.1 The rights to all images, documentations, specifications, other documents and packing material, in whatever form, irrespective of the manner in which these are used or stored, made available by XENTRYS to the Supplier in connection with the making of an offer and the implementation of the agreement, are vested with XENTRYS. The Supplier shall be obliged to return these documentation, specifications, other documents, packing material and any copies thereof at first request of XENTRYS, but in all events, immediately after termination of the agreement.
- 4.2 The Supplier shall verify the correctness and correlation of the documentation, specifications and packing material before the start of the implementation of the agreement and shall report deviations or defects to XENTRYS, failure of which, the Supplier shall be liable for all damages and costs which XENTRYS suffers as a consequence thereof.
- 4.3 The Supplier is required to mark the documentation, specifications and the packing material clearly as property of XENTRYS and to point out the proprietary right of XENTRYS to third parties. The Supplier is required to inform XENTRYS immediately if the documentation, specifications or the packing material are seized or are otherwise no longer at the free disposal of the Supplier.
- 4.4 The Supplier shall not use the documentation, specifications and the packing material for purposes other than those for which they have been made available and shall not reproduce these either in whole or in part, put them at the disposal of third parties or give them to third parties for inspection in any manner whatsoever.
- 4.5 The Supplier guarantees towards XENTRYS, that the use of the delivered constitutes no infringement on any right of a third party pertaining to intellectual or industrial property and shall indemnify XENTRYS in that matter against claims of third parties and the damages and costs of XENTRYS in connection with these claims and consequently, take these for its own account. In the event any claim will be raised by a third party based upon such infringement the Supplier will indemnify and hold harmless XENTRYS against all costs and damages on XENTRYS's first written demand.

5 Force majeure

- 5.1 In the event of force majeure, the party affected by such an event shall be freed from its obligations for the duration of the event and according to its impact. In such case the Supplier shall immediately inform XENTRYS of the details in writing and keep XENTRYS informed of the development.
- 5.2 Force majeure shall be deemed to be any cause beyond the reasonable control of one party which prevents, impedes or delays the due performance of the contract and which the affected party is unable to control, despite the making of all reasonable efforts, and which may include, but is not limited to, war, riot, civil commotion, earthquake, flood, natural disaster, fire, explosion, strike, lock-out (except were it is in the power of the affected party to prevent), shortages or unavailability of materials (compounded by the same unavailability from alternative sources).
- 5.3 XENTRYS shall be fully or partially exempt from its obligation to accept the ordered delivery/performance, and insofar be entitled to withdraw from the contract if the delivery/performance is no longer utilizable at his place owing

to the delay caused by force majeure – by considering the economic aspects.

6 Termination

6.1 XENTRYS is entitled to terminate the agreement in whole or in part by written statement and without prior notice of default or notification, with immediate effect or to withdraw from the agreement:

a if the Supplier fails to fulfil one or more of its obligations despite the granting of a reasonable period of grace or if it is established that fulfilment without default will be impossible;

b If insolvency proceedings or comparable procedures prescribed by law are opened against the assets of the Supplier or an application for such proceedings is filed or a petition for institution of insolvency proceedings is dismissed due to insufficient assets or the opening of insolvency proceedings has been refused;

c if the Supplier has suspended payment not only temporarily.

Any other rights of XENTRYS to claim for termination or withdrawal from the contract remain unaffected.

6.2 XENTRYS is also entitled to terminate the agreement if, in connection with the execution of or implementation of the agreement, any favour is or shall be offered or provided by or on behalf of the Supplier to a person being part of XENTRYS. S

6.3 In the event of termination, the Supplier is held to remunerate all costs already made by XENTRYS immediately, without prejudice to the right of XENTRYS to claim full compensation of all damages. The Supplier shall furthermore, be required to pay back immediately all what has been paid by XENTRYS.

7 Confidentiality

The Supplier is obliged to keep confidential and not to use for other purposes all knowledge and information, drawings, designs, processes, documentation and other technical and commercial know-how concerning XENTRYS which becomes known within the framework of a request or an offer, an order and/or the performance of the agreement, and to stipulate the same to members of personnel and third parties which use this knowledge and information within the framework of the making of an offer, the assessment of an order and for the performance of an agreement.

8 Prohibition of contracting out and assignment. Set-off.

8.1 Without express written consent of XENTRYS, the Supplier is forbidden to assign the performance of the agreement in whole or in part to third parties or to contract it out. The provision in § 354a German Commercial Code (HGB) concerning claims for money remains unaffected hereby.

8.2 XENTRYS shall be entitled to all statutory rights as to the set-off and retention of its claims against the Supplier's

8.3 Without the express prior written consent of XENTRYS the Supplier shall only be entitled to set-offs or a retention right if it has a counterclaim which has been determined by an unappealable court decision or which is uncontested.

9 Warranty

9.1 XENTRYS shall be entitled in any case to claim in accordance with the statutory provisions for liability for defects including but not limited to the right of recourse against the Supplier pursuant to Sec. 478 of the German Civil Code (BGB).

9.2 In urgent cases – following an information of the Supplier - XENTRYS shall be entitled, at the Supplier's cost, to remedy the defect or have a third party carry out such work. XENTRYS may claim advance payment for such costs.

9.3 The Supplier warrants that he is in possession of an SCC certificate or a comparable certificate.

10 Liability

10.1 XENTRYS or its own employees shall in no case be held liable for any and all damages or any injury, of whatever nature and regardless of the way in which they have been created or inflicted, to the Supplier and/or its employees and/or persons/companies working for the account of and on behalf of the Supplier if not stated otherwise in this Conditions. Such limitation of liability shall not apply to claims for damages based on wilful intent, gross negligence, breach of essential contractual obligations (cardinal obligations) as well as to personal injury, injury to life or to health.

10.2 Unless expressly stated otherwise, the Supplier shall be held liable pursuant to statutory provisions.

11 Applicable law and place of jurisdiction

11.1 The German law shall be applicable to all relations between XENTRYS and the Supplier which are covered by these Conditions. Applicability of the United Nations Convention on Contracts for the International Sale of Goods of 11.04.1980 (CISG) is however excluded.

11.2 All disputes between the parties arising out or in connection with a contract shall exclusively be judged by the courts of the contracting member of XENTRYS-group. XENTRYS is also entitled to take legal action at the seat of the Supplier.

12 Incoterms

The trade terminology in these conditions or in other documents valid between the parties, shall be interpreted and explained in conformity with those determined in the most recent edition of the Incoterms published by the International Chamber of Commerce as valid of the day of conclusion of contract.

PURCHASE OF GOODS

13 General

Articles 13 up to and including 19 apply in so far as the relationship between XENTRYS and the Supplier is related to goods to be purchased or being purchased by XENTRYS from or via the Supplier. In the event of conflict between articles 13 up to and including 19 and other articles stipulated in these conditions, articles 13 up to and including 19 shall supersede.

14 Delivery and transfer of risk

14.1 Unless otherwise agreed in writing, deliveries shall be effected 'Delivered Duty Paid' (DDP) to the warehouse of the enterprise of XENTRYS-Group as implicated in the order. All deliveries shall be delivered to the carrier with proper

packaging and together with the accompanying documents (waybill, bill of delivery).

- 14.2 The agreed delivery dates and times shall be binding. The delivery time commences at the instance on which the agreement is concluded. The delivery time shall be deemed met if within the agreed time the goods arrive at the destination named by XENTRYS.
- 14.3 In the event of a not permitted delivery prior to the agreed time XENTRYS shall be entitled to return or store the goods at the Supplier's cost and risk.
- 14.4 Exceeding of the delivery time renders the Supplier in default without any notice being required. The Supplier is held to give XENTRYS timely and in advance an adequate notice of delivery and any threat of exceeding of the delivery time. Such notification does not release the Supplier from its liability in the event of actual exceeding of the delivery time. If a penalty has been agreed upon with regard to non-timely delivery, this does not affect the damages incurred by XENTRYS caused by this non-timely delivery, as far as these exceed the amount of the penalty.
- 14.5 Partly delivery is permitted solely if and as far as such is expressly laid down in the order furnished by XENTRYS.
- 14.6 XENTRYS reserves the right to approve short or excess deliveries.
- 14.7 In the event of delivery of bulk goods, the determining of the delivered quantity may be effected on the basis of the measurements by XENTRYS on approved and calibrated measuring devices.
- 14.8 The risk shall pass to XENTRYS only with the receipt of the goods as far as delivery DDP is agreed.

15 Documentation, components and apparatus

All drawings, instruction manuals, software, components, apparatus and users rights necessary for the maintenance, rectification, use and/or delivery of the goods shall also be included in the delivery to XENTRYS and, as far as these have been specifically manufactured in connection with the order furnished by XENTRYS, the title thereof shall be transferred to XENTRYS. This documentation will be established in the language specified by XENTRYS or if no language is specified in the German language.

16 Inspection for defects and quality control

- 16.1 XENTRYS shall inspect the goods for visible defects within 14 days after receipt of delivery. Hidden defects shall be notified in writing to the Supplier no later than 14 days after they have been detected.
- 16.2 Any notice of receipt of the goods delivered shall not be deemed as approval that the goods are free of defects or as a waiver of any of XENTRYS's rights or remedies
- 16.3 The Supplier is required to inspect and test the raw materials, semi-manufactured goods, packaging and other goods supplied by XENTRYS prior to processing or use and to report all irregularities before processing or use to XENTRYS.
- 16.4 XENTRYS is at all times entitled to inspect, approve and/or test, or to have tests done, irrespective of the place where the goods concerned are located. Moreover, XENTRYS can furthermore, at all times, without any

charges being due, desire a product or confirmation sample.

17 Quality

- 17.1 The Supplier warrants that the goods to be delivered and the documentation pertaining thereto, comply with the agreed specifications, properties and requirements and are entirely suitable for the use intended by XENTRYS. If nothing has been agreed in that respect, the specifications, properties and requirements have to comply with the standard requirements for business transactions of these goods, or at least with the customs and trade rules.
 - 17.2 The quality of goods to be supplied has to comply with the latest state of the art at all times. The Supplier also warrants that the goods and the documentation pertaining thereto shall comply with all provisions prescribed by government authorities in the country of destination.
 - 17.3 The Supplier also warrants that the goods comply with the product and/or confirmation samples approved in writing by XENTRYS and that the goods shall at all times be of a good and consistent quality and free of construction, material and manufacturing defects.
 - 17.4 If during the production or the completion thereof, the goods or the documentation pertaining thereto should be rejected on or after delivery or it has been determined in another way that these do not comply with the specifications, properties and requirements laid down therefore by XENTRYS or by an authority competent in that respect, the Supplier shall, at XENTRYS's sole discretion, adjust the product to the satisfaction of XENTRYS in order to as yet comply with the specifications, properties and requirements or refund the payment already made by XENTRYS, without prejudice to any other damages that XENTRYS has suffered.
 - 17.5 XENTRYS is entitled to send back rejected goods and/or documentation at the expense of the Supplier or otherwise to keep them in custody for the account and risk of the Supplier. If the goods and/or documentation are stored with XENTRYS, the Supplier is held to collect these from XENTRYS within two days after being requested thereto by XENTRYS.
 - 17.6 The Supplier shall inform XENTRYS of changes which need to be made to the manufacturing process of the good within a reasonable period prior to the intended change.
- #### **18 Product liability**
- 18.1 If and to the extent a damage was caused by a defect of the goods of the Supplier and he is held liable towards third parties, he agrees to hold harmless XENTRYS from any claims by third parties on first demand, if and insofar as the cause for the damage lies within his domain and range of organization and insofar as he is liable vis-à-vis third parties.
 - 18.2 Within the scope of his liability for damages in the sense of Section (1), the Supplier shall also be deemed obliged to reimburse any possible expenditure according to Articles 683, 670 BGB (German Civil Code), which will result from a recall campaign launched by XENTRYS or in connection therewith. XENTRYS will inform the Supplier about any recall campaign as far as possible and reasonable and give the opportunity for a statement. Any other legal titles and claims shall remain unaffected.
- #### **19 Retention of title**
- 19.1 XENTRYS will accept a simple retention of title; any extended form of retention of title will be not accepted.

- 19.2 The retention of title expires with full payment of the purchase price, with reselling of the goods or with processing of the goods pursuant to Section 946 German Civil Code (BGB).

PERFORMING OF SERVICES

20 General

Articles 20 up to and including 26 apply as far as the relationship between XENTRYS and the Supplier relates to services to be involved by XENTRYS from or via the Supplier. In the event of conflict between articles 20 up to and including 26 and other articles stipulated in these Conditions, articles 20 up to and including 26 shall supersede.

21 Performance

- 21.1 The Supplier is obliged to perform the assignment within the agreed time period according to a schedule approved in writing by XENTRYS.
- 21.2 Services performed by Supplier need an acceptance by XENTRYS. Any technical or official acceptance or the taking into operation of the services provided by the Supplier shall not be considered as acceptance thereof.
- 21.3 If the services provided by the Supplier are accepted by XENTRYS, the rights of XENTRYS with regard to possible hidden shortcomings/defaults do not lapse.
- 21.4 If the services provided by the Supplier are not accepted by XENTRYS, the Supplier shall, at XENTRYS's sole discretion, make the necessary adjustments to the satisfaction of XENTRYS within a reasonable period of time in order to comply with the specifications, properties and requirements or refund the payment already made by XENTRYS, without prejudice to any other damages that XENTRYS has suffered.
- 21.5 Exceeding of this time period renders the Supplier in default without any notice being required. The Supplier is obliged to furnish XENTRYS timely and in advance a notification of the progress and of any threat of exceeding of the time limit. Such an advance notification does not release the Supplier from its liability in the event of actual exceeding of the time limit. When, in the opinion of the Supplier, the agreed services have been completed, it shall inform XENTRYS thereof in writing. Within three months after receipt of this notification, XENTRYS shall notify the Supplier whether or not XENTRYS accepts the services performed by the Supplier. If in the agreement a penalty is attached to exceeding of the time limit within which the assignment is deemed to be completed, this does not affect any damages incurred by XENTRYS by non-timely completion as far as these damages exceed the amount of the penalty.
- 21.6 If and as far as the services are performed on the premises of XENTRYS, they shall be effected within the working times applicable at that place.
- 21.7 XENTRYS cannot be held liable for accidents or other damages or injuries caused to the Supplier, its employees or third parties brought in by the Supplier when they are performing services on the premises and in the buildings of XENTRYS with the permission of the Supplier

22 Payment

Travelling and waiting time shall not be regarded as working time.

23 Instructions

The Supplier, its personnel and the persons brought in by the Supplier shall in the performance of the services on

the premises and in the buildings of XENTRYS, adhere strictly to the provisions and instructions relating to safety, health, environment and wellbeing which are in force with XENTRYS and within its premises, as well as to the instructions and guidelines which are provided by XENTRYS from time to time, in particular with regard to the transporting to and storage of materials and apparatus and entrance to the premises and buildings.

24 Quality

- 24.1 The Supplier warrants that the intended result including operational suitability according to the assignment shall be achieved and that the requirements laid down by XENTRYS in connection therewith shall be complied with. Furthermore, the Supplier guarantees the suitability and good quality of designs, drawings, guidelines, materials and the like which have been advised, prescribed or furnished by it or on its behalf.
- 24.2 If the services comprise in advising, the Supplier warrants the correctness and soundness thereof.
- 24.3 Finally, the Supplier warrants that the services shall at all times be performed with due consideration to all legislative provisions and other provisions laid down by government authorities in the field of national insurance premium contributions and tax, safety, environment, hygiene, product specifications or otherwise such as these apply according to the laws applicable at the place where the work is performed.

25 Extra and less work

- 25.1 XENTRYS is at all times permitted to change the order, as far as this is feasible for the Supplier and confirmed in writing by the Supplier. The agreed remuneration shall in that case, be adjusted in proportion to the extra or less services to be performed by the Supplier and any remaining costs or saving of costs.
- 25.2 Extra work shall only be permitted and may only be charged if XENTRYS has furnished a separate written order for that extra work.

26 Subcontracting

- 26.1 The Supplier is not entitled to arrange for third parties to carry out all or parts of the performances/services, unless XENTRYS has given express prior written consent. XENTRYS may only refuse such a consent if there exist legitimate business reasons. The absence of a SCC Certificate or a comparable certificate in relation to the subcontractor shall be regarded also as a legitimate business reason to refuse consent.
- 26.2 In the event that XENTRYS gave its consent to subcontracting, the Supplier will be solely responsible for the rendering of the service/performance.