

## **Terms and Conditions of Sale – X2 EU**

### *Acceptance.*

This agreement contains the sole Terms and Conditions of Sale that apply to the purchase of products, designs or services from X2 EU. By placing an order for products, designs or services from the company, or by accepting delivery of the products described on the applicable packing slip, bill of lading and/or invoice received with the products, you agree to be bound by and accept these Terms and Conditions of Sale.

Any changes to these Terms and Conditions of Sale must be in writing and signed by X2 EU.

### *Parties.*

X2 EU, is hereinafter referred to as 'Company'. The buyer of objects, parts, equipment, designs or services is hereinafter referred to as 'Customer'.

### *Availability and pricing.*

Product listings, specifications, availability, and pricing are subject to change without notice. Orders are not binding upon the Company until accepted by an authorized representative of the Company. Prices listed and charges discussed herein are in Euros. The Company reserves the right to refuse service, terminate accounts, or cancel orders in its sole discretion.

If a raw material, component, or service provider raises its prices, or impose a surcharge on the Company, the Company reserves the right to increase prices and/or surcharge the Customer and Customer agrees to accept such price increase or surcharge until the term of such price increase or surcharge or until the termination of the contract to which these Terms and Conditions apply is reached. Time of payment is of the essence. All orders are accepted subject to Company's price in effect at time of shipment.

### *Price quotations.*

If price quotations are required by the Customer, any such price quotations shall be in writing and are only valid for thirty (30) days from the date of the price quotation unless otherwise set forth in Company's quote or otherwise agreed to by the parties. All price quotations by the Company are subject to change or withdrawal without prior notice to Customer unless otherwise specifically stated in the price quotations. Price quotations are made subject to approval by Company of Customer's credit. Price quotations shall not constitute binding offers or requirements to ship any particular quantity of products or to deliver any particular services.

### *Terms of payment.*

Unless otherwise expressly agreed to by Company in Company's Price Quotation, terms of payment are thirty (30) days net from the date of Customer's invoice. No discount shall be allowed on transportation charges. Customer agrees to pay interest on overdue invoices at the rate of 5% per month, but not higher than the highest rate permitted by law. If Customer fails to pay within payment terms, the Company may defer shipments until such payment is made and may, as its option, cancel all or any part of unshipped orders. Moreover, if Customer fails to make any payments as required, Customer agrees to indemnify Company for all costs and expenses, including reasonable attorney fees, court costs, and associated expenses incurred by Company.

*Credit approval.*

All shipments to be made hereunder shall at all times be subject to the approval of Company's credit department. Company may invoice Customer and recover for each shipment made pursuant to these Terms and Conditions of Sale as a separate transaction without regard to any other order or agreement with Company, or if, in Company's sole judgment, the financial responsibility of Customer is or becomes unsatisfactory, then Company may, as its option and without prejudice to any of its other remedies, (a) defer or decline to make any shipments hereunder except upon receipt of satisfactory security or cash payments in advance, and/ or (b) terminate all purchase orders of Customer.

*Accepted purchase orders.*

Once the Company has either accepted a purchase order or has begun taking actions with respect to purchase order, such purchase order cannot be cancelled, terminated or modified by Customer in whole or in part except with Company's consent in writing and then only upon Terms and Conditions to be agreed upon which shall include protection of Company against all losses. If Customer nonetheless repudiates the contract or notifies Company to proceed no further therewith, Company shall have the right to deliver all finished goods and goods in process, and Customer agrees to accept same and to pay to Company the contract price for all finished goods plus reimbursement, including lost profits, for unfinished goods.

*Cancellation.*

Company reserves the right to cancel any purchase orders or releases there under, or terminate any agreement relating to purchase of Company's products or services on not less than thirty (30) days notice.

*Inspection/non-conforming shipments.*

Company grants Customer the right to inspect products for a period of fifteen (15) business days immediately following delivery ('inspection period'). Customer must notify Company of any products that do not conform to the terms applicable to their sale within the inspection period, and afford Company a reasonable opportunity to inspect such products and cure any nonconformity. If Customer fails to provide Company with notice of nonconformity within the inspection period, Customer shall be deemed to have accepted the products. Customer will have no right to return any product without Company's prior written authorization. Any return authorized by Company must be made in accordance with Company's return policies then in effect. Customer will be responsible for all costs and expenses associated with any returns of products and will bear the risk of loss or damage of such products, unless Company agrees otherwise in writing or determines that products do not conform the applicable terms of sale. Company, in its sole discretion may reject any return of product not approved by Company in accordance with this paragraph or otherwise not returned in accordance with Company's then current-return policies.

*Title/risk of loss/delivery.*

Unless specifically otherwise provided in Company's invoice, the carrier, and not the Company, will bill for freight rates and other transportation charges. Such payments are solely the responsibility of the Customer, to be paid directly by the Customer to the carrier. Company reserves the right to schedule its production and to make deliveries accordingly. In circumstances where the Customer specifies deliveries to be made in installments, which do not conform to such schedule and Company elects to deliver as specified by Customer, Company shall have the right to adjust the price to cover Company's additional cost. All products shall be shipped free on board Company's plant and shall become the property of Customer upon delivery to the carrier and receipt of full payment by Company. Customer shall assume all risk and liability for loss, damage, or destruction, as well as the results of any use or misuse by third parties who may acquire or use the products illicitly after the delivery to the carrier. Unless mutually agreed upon, shipping dates are approximate and are based upon prompt receipt of all necessary information. Company reserves the right to ship items in a single or multiple shipments.

#### *Damage.*

Customer shall notify Company and the delivering carrier within fifteen (15) business days from date of receipt of products, of any damage or shortage, and afford Company a reasonable opportunity to inspect the products. Any loss occasioned by damage or shrinkage in transit will be for Customer's account and claims for such loss shall be made solely against the carrier.

#### *Quantities.*

Unless otherwise agreed in writing, any variation in quantities shipped over or under the quantities ordered (not to exceed 10%) shall constitute compliance with Customer's order and the stated price per item will continue to apply.

#### *Warranty.*

Company warrants only that the products or services sold hereunder will be conveyed free and clear of any lien, security interest or encumbrance created by Company or any party claiming by, through or under Company, and will be free from substantial defects in material and workmanship under normal use given proper installation and maintenance for a period of twelve (12) months from the date of delivery to the carrier.

Company shall have the right either to replace or repair any defective products, to refund the purchase price upon return of the products or to grant a reasonable allowance on account of such defects, and Company's liability and Customer's exclusive remedy for defective products shall be limited solely to replacement, repair, refund or allowance as Company may elect.

Company shall be given a reasonable opportunity to investigate all claims and no products shall be returned to Company until after inspection and approval by Company.

Company shall not be responsible for a Customer's improper selection for a product for a particular application or otherwise. No warranty will apply if the products are in any way altered or modified after delivery by the Company.

#### *Disclaimer of further warranties.*

Except as set forth above, Company makes no warranty or representation of any kind, express or implied (including no warranty of merchantability or fitness for any particular purpose) with respect to its product or services.

#### *Limitation of liability and remedies.*

Company shall not be liable, and Customer waives all claims against Company, for incidental, special, punitive or consequential damages, lost profits or commercial losses, whether or not based upon Company's negligence or breach of warranty or strict liability in tort or any other cause of action. Company will not be liable to Customer for any loss, damage, or injury to persons or property resulting from the handling, storage, transportation, resale, or use of its products in manufacturing processes, or in combination with other substances, or otherwise. In no event will Company's liability under these Terms and Conditions or in connection with the sale of products by the Company exceed the purchase price of the specific products or services as to which the claim is made.

#### *Inventory.*

Except as provided in '*Inspection/non-conforming shipments*' and '*Warranty*' hereof, Company will neither accept return of product, nor be responsible for its destruction.

#### *Product use.*

Customer is solely responsible for determining whether any product is fit for a particular purpose and suitable for Customer's method of application. Accordingly, and due to the nature and manner of use of Company's products, Company is not responsible for the results or consequence of use, misuse or application of its products by anyone.

#### *Material, equipment and facilities.*

Unless otherwise agreed in writing signed by Company, all material, equipment, facilities, and special tooling, used in the manufacture of the products covered by any purchase order shall remain the property of the Company. Any material, tooling, or equipment furnished to Company by Customer

shall be and remain the personal property of Customer with the title to and right of possession remaining in Customer.

*Taxes.*

Customer shall pay to Company, in addition to the purchase price, the amount of all fees, duties, licenses, tariffs, and all sales, use, privilege, occupation, excise, or other taxes, federal, state, local or foreign, which Company is required to pay or collect in connection with the products or services sold to Customer. Failure by the Company to collect any such fees or taxes shall not affect Customer's obligations hereunder and Customer shall fully defend, indemnify and hold harmless Company with respect to such tax obligations.

*Ownership of intellectual property.*

All drawings, know-how, designs, specifications, inventions, devices, developments, processes, copyrights, trademarks, patents and applications therefore, and other information or intellectual property disclosed or otherwise provided to Customer by Company and all rights therein will remain the property of Company and will be kept confidential by Customer in accordance with these Terms and Conditions. Customer shall have no claim to, nor ownership interest in, any intellectual property and such information, in whatever form and any copies thereof, shall be promptly returned to Company upon written request from Company. Customer acknowledges that no license or rights of any sort are granted to Customer hereunder in respect of any intellectual property, other than the limited right to use the Company's proprietary products purchased from Company. Unless specifically provided for and itemized for payment as agreed to by Company, the sale of products or services by Company to Customer does not include any design, development or related services associated with the intellectual property of the Company.

*Confidential information.*

All information furnished or made available by Company to Customer in connection with the subject matter of the Terms and Conditions of or Customer's purchase order shall be held in confidence by the Customer. Customer agrees not to use such information or disclose such information to others without Company's prior written consent. The obligations in this paragraph will not apply to any information which (a) at the time of disclosure was or thereafter becomes, generally available to the public by publication or otherwise through no breach by the Customer of any obligation herein, (b) the Customer can show by written records was in the Customer's possession prior to disclosure by Company, or (c) is legally made available to the Customer by or through a third party having no direct or indirect confidentiality obligation to Company with respect to such information.

*Infringement and indemnification.*

(a) Except as set forth below, Company agrees to defend, indemnify and hold the Customer harmless against any claims, costs, damages, liability and expenses resulting from actual patent, trademark, or copyright infringement, misappropriation of confidential information, or violation of any other intellectual property right, domestic or foreign, that may arise from the sale of Company's proprietary product to the Customer as such pertains to the subject matter of these Terms and Conditions (provided that the product (i) is not modified in any way by the Customer or any other party, (ii) is not a resourced part provided by Customer to Company, and (iii) is used in the manner intended by Company). If a suit or claim results in any injunction or any other order that would prevent Company from supplying any part or product falling under these Terms and Conditions, or if the result of such a suit or claim would, in the reasonable opinion of Company, otherwise cause Company to be unable to supply parts or products, Company shall have the right, as its option, if it so chooses, to do one or more of the following: (i) secure an appropriate license to permit Company to continue supplying said parts or products to Customer; (ii) modify the appropriate part or product so that it becomes non-infringing; (iii) replace the appropriate part or product with a non-infringing but practically equivalent part or product; or (iv) if the Company cannot reasonable accomplish the actions specified in subparagraphs (i) – (iii), then in Company's sole discretion, Company may discontinue selling the part or product without any further liability to Customer. (b) Customer agrees to defend, indemnify and hold Company harmless against any claims, costs, damages, liability and expenses resulting from actual or alleged patent, trademark, or copyright infringement,

misappropriation of confidential information, or violation of any other intellectual property right, domestic or foreign, that may arise from the making, using or selling of any part or product or using any process that is designed or specified by the Customer. (c) If any claim is made by a third party on the basis of which indemnification may be sought under this paragraph, the party entitled to indemnification (the 'indemnified party') shall give written notice of such claim to the party liable for such indemnification (the 'indemnified party') promptly after the indemnified party has actual notice of such claim. The indemnifying party shall have the right to defend and/or settle such claim at its expense, provided that it does so diligently and in good faith. The indemnified party shall cooperate with such defense and/or settlement and shall have the right to participate in (but not to control) such defense and/or settlement at its expense. No settlement shall be entered into unless the indemnified party shall be released from all liability for such claim.

*Force majeure.*

Company shall not be liable for failure to perform or delay in performance or delivery of any products or services due to (a) fires, floods, strikes or other labor disputes, accidents, sabotage, terrorism, war, riots, acts of precedence or priorities granted at the request or for the benefit, directly or indirectly, of any federal, state or local government or any subdivision or agency thereof, delays in transportation or lack of transportation facilities, restrictions imposed by federal, state or local laws, rules or regulations; or (b) any other cause beyond the reasonable control of Company. In the event of the occurrence of any of the foregoing, the time for performance shall be extended for such time as may be reasonably necessary to enable Company to perform. Company may, during any period of shortage due to any of the above circumstances, allocate its available supply of products or services among itself and its Customers in such a manner as Company, in its judgment, deems fair and equitable.

*Assignment and delegation.*

No assignment of any rights or interest or delegation of any obligation or duty of Customer under these Terms and Conditions, Company's price quotation, order acknowledgement, or invoice, or Customer's purchase order may be made without the prior written consent of Company. Any attempted assignment or delegation will be wholly void and totally ineffective for all purposes.

*Integration clause.*

These Terms and Conditions constitute the Terms and Conditions to the contract of sale and purchase between Company and Customer with respect to the products covered by these Terms and Conditions, and supersedes any prior agreements, understandings, representations and quotations with respect thereto. No modification hereof shall be of any force or effect unless in writing and signed by the party claiming to be bound thereby.

*Waiver.*

No failure of Company to insist upon strict compliances by Customer with these Terms and Conditions or to exercise any right accruing from any default of Customer shall impair Company's rights in case Customer's default continues or in case of any subsequent default by Customer. Waiver by Company of any breach by Customer of these Terms and Conditions shall not be construed as a waiver of any other existing or future breach.

*Choice of laws.*

Any dispute arising out of or related to these Terms and Conditions shall be governed by and construed according to the laws of the State of Virginia. The parties hereby agree to the exclusive jurisdiction and venue of the courts of the Province of Virginia in relation to all questions pertaining to the interpretation, applicability, enforceability or validity of these Terms and Conditions.

*Severability.*

If any provision herein shall be held to be unlawful or unenforceable, the remaining provisions herein shall remain in full force and effect.

*Nuclear application exclusion.*

It is expressly understood and agreed that Customer will not use, cause to be used or make available for use the goods described herein in any nuclear application including, but not limited to, use in connection with any nuclear reactor, any nuclear power generating system or any nuclear waste (or spent fuel) disposal project. Any subsequent nuclear application of the goods is wholly unauthorized and shall be deemed to be unknown to, unforeseeable to and unintended by the Company.