



General Purchase Conditions of XYTECH Module Technology (Suzhou) Co., Ltd.

1 Applicability

- 1.1 These General Purchase Conditions apply to all legal relationships in which XYTECH Module Technology (Suzhou) Co., Ltd. (hereinafter referred to as XYTECH) acts as a (potential) purchaser of products or services from a third party (hereinafter referred to as the Supplier).
- 1.2 Departures from the provisions laid down in these General Purchase Conditions are only valid in so far as these have been accepted by XYTECH in writing. The General Terms and Conditions of the Supplier, by whatever name or in whatever form, are explicitly rejected.

2 Formation of agreements

- 2.1 If XYTECH asks the Supplier for an offer, the offer submitted will be deemed to be an irrevocable offer. Any requests by XYTECH to submit an offer are not binding upon XYTECH. XYTECH is not obliged to award the order to any offerer. XYTECH is not obliged to reimburse the costs of an offer.
- 2.2 Agreements are formed only after XYTECH has issued a written purchase order. If the Supplier starts to fulfil the order without first having received the relevant purchase order, he will do so entirely at his own expense and risk.
- 2.3 The Supplier must accept the purchase order from XYTECH in writing within seven calendar days after the date on which it was sent, or reject it stating reasons for its rejection, failing which the Supplier will be deemed to have accepted the purchase order from XYTECH.
- 2.4 XYTECH reserves the right to cancel an order up to the moment the Supplier has accepted the order.
- 2.5 The Supplier is obliged to inform XYTECH with immediate effect of any errors and/or ambiguities in request and/or contract documents.

3 Price

- 3.1 The agreed price does not include VAT but is further fully DDP (Delivery Duty Paid) as laid out in the INCOTERMS of 2001.
- 3.2 With the exception of the provisions laid down in Article 15.2, prices are not subject to change.

4 Payment

- 4.1 Payment will be made within 60 days of the date on which the Supplier fully fulfilled the order and XYTECH accepted receipt of the order, or within 60 days of receipt of the original invoice, whichever of these two dates is later
- 4.2 Payment of an invoice by XYTECH does not imply acceptance of the order to be fulfilled by the Supplier.
- 4.3 XYTECH is entitled, without judicial intervention, to offset and/or suspend payment of any amount, if it or a company affiliated to it has or will have a claim, which may or may not be enforceable, against the Supplier or a company affiliated to the Supplier.

5 Order fulfilment

5.1 The Supplier guarantees that the order:

- 5.1.1 will be complete and suitable for the purpose for which it is intended, as specified and/or inherent in the nature of the order;
- 5.1.2 will be fully in accordance with the requirements as stated in the instructions, specifications, descriptions and/or other documents provided;
- 5.1.3 will fulfil any expectations that XYTECH may reasonably have;
- 5.1.4 will meet the statutory requirements, including those relating to safety, health, welfare and the environment;
- 5.1.5 will be of the highest possible quality and that, in so far as applicable, only expert personnel will be used and that only new materials will be used.

6 Delivery periods

6.1 The Supplier is aware that all deadlines stated in the purchase order are crucial to XYTECH.

6.2 If, in the fulfilment of the order in question, there is a risk of a delay occurring in relation to the agreed delivery period, for any reason whatsoever, the Supplier will take adequate measures on its own initiative and with immediate effect, such as for example, employ extra staff in order to make up for any (potential) delays, and/or to prevent these from arising. The Supplier will report the (potential) delay and the measures to be taken to XYTECH in writing with immediate effect. Without prejudice to the above, the Supplier will be in default with immediate effect, i.e. without any further notice of default being required, if any of the delivery or implementation periods relating to the fulfilment of (part of) the order are exceeded.

6.3 For each calendar day by which a delivery period is exceeded, until the moment of fulfilment, the Supplier will owe XYTECH an immediately payable penalty amounting to 1% of the agreed total price, with a maximum of 25 % of the total price. This penalty does not affect XYTECH's other rights, including the right to claim damages.

7 Default

7.1 Every failure on the part of the Supplier to fulfil its obligations, as well as in the event that the Supplier is declared bankrupt, granted a suspension of payment, repossessed, closed down or wound up, XYTECH reserves the right:

- 7.1.1 to unilaterally dissolve the agreement in its entirety or in part, without any notice of default or judicial intervention being required; and/or
- 7.1.2 to suspend its payment obligations; and/or
- 7.1.3 to oblige the Supplier to repeat the fulfilment of the order at the Supplier's own expense; and/or
- 7.1.4 to reverse the fulfilment of the order at the Supplier's expense and risk; and/or
- 7.1.5 to allow XYTECH or a third party nominated by XYTECH to repeat or reverse the fulfilment of the order at the Supplier's expense and risk.

7.2 XYTECH's rights as referred to in Paragraph 1 apply without prejudice to any other rights that XYTECH may have, such as the right to claim damages.

8 Suspension

- 8.1 XYTECH at all times reserves the right to suspend the execution of the agreement by the Supplier either in full or in part and to oblige the Supplier to suspend the execution of the agreement for the duration of a period to be specified by XYTECH.
- 8.2 The Supplier is obliged to keep the damage arising from such suspension to a minimum by taking appropriate measures.
- 8.3 In the event that the suspension lasts for longer than one calendar month, XYTECH reserves the right to terminate the agreement.

9 Liability

- 9.1 The Supplier is liable for and indemnifies XYTECH against all claims for damages resulting from the non-fulfilment, non-timely and/or non-proper fulfilment of the agreement or from the breach of any other contractual or non-contractual obligation towards XYTECH or third parties engaged by XYTECH.
- 9.2 The Supplier guarantees fulfilment of the obligations of any third parties it engages in the same way as it guarantees fulfilment of its own obligations.
- 9.3 The Supplier waives all rights to claim damages from XYTECH and third parties engaged by XYTECH or right of recourse it has against XYTECH or third parties engaged by XYTECH, and the Supplier indemnifies XYTECH and third parties engaged by XYTECH against claims for damages by third parties engaged by the Supplier. The above does not apply in so far as loss or damage is caused by gross negligence or intent on the part of XYTECH.

10 Force majeure

- 10.1 If the Supplier is unable to fulfil its obligations due to an exceptional event such as a war, an earthquake, a national strike or other exceptional circumstances beyond the Supplier's control (not including problems with supplies to the Supplier, a specific strike at the Supplier and transport problems), the Supplier is obliged to report this situation to XYTECH in writing within one calendar day, after which the fulfilment of the obligations will be suspended for the duration of the force majeure.
- 10.2 Once the force majeure has lasted for two calendar weeks, XYTECH reserves the right to terminate the agreement with immediate effect either in full or in part.

11 Insurance

- 11.1 The Supplier is obliged to take out a liability insurance policy at its own expense, which provides cover for at least 2.5 million euros per event. This does not affect the Supplier's liability for the full damage.
- 11.2 The Supplier will also insure at its own expense all matters it will be put in charge of by XYTECH against all damage, including damage resulting from incorrect or inadequate processing.
- 11.3 At XYTECH's first request, the Supplier will present a copy of the policy document and proof that the premiums have been paid.

12 Intellectual property rights

- 12.1 The Supplier guarantees that the fulfilment of the order and the use of the end product in the broadest sense will not infringe any patent, trademark, design, drawing rights, copyright, trade name or other absolute right of any third party and the Supplier will indemnify XYTECH and third parties on its side against, and pay full compensation to XYTECH and third parties on its side in relation to all claims in this respect and all costs relating to the defence against such claims. The Supplier will also impose the same obligation upon third parties involved in this agreement.
- 12.2 All intellectual property rights related to the fulfilment of the order accrue to XYTECH. These rights will be transferred to XYTECH by the Supplier by virtue of this Agreement, which transfer will be accepted by XYTECH now for then immediately following the creation of these rights. In so far as a notarial instrument is required for the transfer of such rights, the Supplier irrevocably authorises XYTECH now for then to have such an instrument drawn up, and to sign this on behalf of the Supplier, without prejudice to the Supplier's obligation to co-operate in the transfer of such rights at XYTECH's first request, without being able to impose conditions on this. The Supplier hereby irrevocably authorises XYTECH to have the transfer of these intellectual (property) rights entered in the appropriate registers. The Supplier also hereby surrenders to XYTECH all so-called moral rights that may accrue to it, the Supplier, to the extent to which the applicable regulations allow such surrender.

13 Non-disclosure

- 13.1 The Supplier will not disclose the existence and the content of the agreement, or any data and know-how which may come to the Supplier's attention within the framework of the execution of the agreement and compel any third parties involved by it in the execution of the agreement to observe the same non-disclosure obligation in writing. In the event of a breach of this condition, the Supplier will forfeit a penalty of 5,000 euros, and 1,000 euros extra for each day or part of a day that the breach continues, without any warning or notice of default being required, payable to XYTECH on demand, which cannot be offset. This penalty does not affect XYTECH's other rights, including the right to claim damages.
- 13.2 The Supplier guarantees that the non-disclosure obligation as referred to in Paragraph 1 will also be imposed on its staff and any third parties it engages.

14 Materials made available

- 14.1 Materials, equipment, drawings, parts and all other goods that XYTECH makes available to the Supplier for the execution of the agreement will remain the property of XYTECH and must be returned after the execution of the agreement in at least the same condition as before these were made available. The Supplier undertakes not to use or allow third parties to use the above-mentioned goods belonging to XYTECH for any purpose other than the fulfilment of its obligations towards XYTECH.
- 14.2 The Supplier will carry the risk for the goods referred to in Paragraph 1 until these have been returned to XYTECH.

15 Changes

- 15.1 XYTECH is entitled to change the scope and/or nature of the order to be fulfilled in writing.
- 15.2 If, in the Supplier's opinion, a change or addition has consequences for the agreed price and/or delivery period, the Supplier will inform XYTECH of this in writing by return post, though in any event no later than within one calendar week before implementing the change. If the Supplier fails to inform XYTECH of the

price change and/or change in delivery period on time, the Supplier is obliged to implement the change without any entitlement to additional payment.

- 15.3 In the event that, in the Supplier's opinion, a change in the order will lead to a new price and/or delivery period, XYTECH reserves the right to demand that the order is fulfilled without any changes or fulfilled in a different way that is acceptable to XYTECH. If the Supplier and XYTECH fail to reach agreement on the new price and/or delivery period, XYTECH reserves the right to dissolve the agreement.

16 Inspection

- 16.1 Prior to completion and/or delivery of the order, the Supplier will carry out a careful inspection to determine whether the order is in line with that which was agreed, without this leading to additional cost for XYTECH. If the order is not in line with that which was agreed, the Supplier will immediately notify XYTECH of this in writing. In such a case, the Supplier must immediately, and at its own expense, take the measures necessary to fulfil the stipulations and conditions of the order.
- 16.2 XYTECH at all times reserves the right to inspect the way in which the agreement is being executed (or to have others inspect this), but is not obliged to do so, and to take all possible measures to this end that it considers reasonable, which includes inspecting the places where the order is being fulfilled either in full or in part and conducting (or having others conduct) an audit of the Supplier's books.
- 16.3 The (non-)performance of an inspection by XYTECH does not discharge the Supplier from any liability.
- 16.4 Besides the normal PDP (Product Documentation Package), also the XYTECH generic delivery terms & conditions apply to each part/assy that is supplied to XYTECH. The PDP is always leading for specifications that are used in both the PDP as well as the generic delivery conditions.

17 Contracting out and transfer

- 17.1 The Supplier is not permitted to contract out the order, or any part thereof, or rights or claims ensuing from the order to third parties, nor to transfer or pledge these, unless XYTECH has given written permission for this in advance.
- 17.2 In the event that the Supplier is given permission to transfer or contract out the order, the Supplier will ensure that the third party undertakes to fully observe the conditions laid down in this agreement.
- 17.3 Permission as referred to in Paragraph 1 does not release the Supplier from any obligation or liability by virtue of the agreement. The Supplier will fully indemnify XYTECH against claims by third parties and reimburse XYTECH for all payments made by XYTECH to third parties.

18 Ownership and risk

- 18.1 The ownership of (part of) the order transfers to XYTECH the moment (that part of) the order becomes available to XYTECH.
- 18.2 The Supplier is liable until the moment of delivery for all losses for XYTECH arising as a result of damage and/or injury caused by the order and/or as a result of damage to or loss of an order, without prejudice to the other stipulations laid down in these conditions.

19 Guarantee

- 19.1 The Supplier guarantees the absence of any visible or hidden defects in all orders delivered to XYTECH for a period of at least 12 months following acceptance of the order, failing which the order will be remedied within seven calendar days. The guarantee period will be extended by a period equal to the period(s) during which the orders were not used or could not be fully used as a result of a defect. The guarantee period then recommences for goods provided as replacements and replaced or repaired parts of these goods, including those parts of the goods on which replaced or repaired parts may be of influence.
- 19.2 If during the guarantee period a defect arises, XYTECH reserves the right to either return the goods and demand immediate repayment of the amount paid for these goods as well as an additional interest charge at the Dutch statutory rate on the whole amount, or to demand that the goods in question be replaced or repaired without additional charges for XYTECH and within a reasonable time frame.
- 19.3 The conditions laid down in this article do not affect XYTECH's other rights, including those referred to in Article 9.

20 Delivery

- 20.1 Unless stated otherwise in the purchase order, the Supplier will deliver the order at XYTECH's office during XYTECH's normal working hours. XYTECH reserves the right to issue further instructions upon delivery concerning the time and method of unloading, as well as the precise location on the site.
- 20.2 Delivery prior to the moment agreed may only take place with prior written permission from XYTECH and will not lead to any change in the agreed period of payment.
- 20.3 The order must be suitably packaged according to its nature and also taking into account the means of transport.
- 20.4 Goods delivered that are not in line with the agreement may be returned at the Supplier's expense and risk.
- 20.5 The Supplier is responsible for the removal or processing of packaging, dirt, waste and surplus material, at its own expense. If XYTECH so requires, used packaging materials may become the property of XYTECH.
- 20.6 The Supplier can use the first PO for a new product to be delivered to XYTECH to order raw materials and produce first articles. The first article (sample) quantity needs to be agreed with the Quality Assurance (QA) department of XYTECH. Only after the QA department of XYTECH provides formal approval for the first samples, the supplier can start production for the quantity specified in the PO. If The Supplier decides not to wait for the formal approval from XYTECH QA, any required rework cost or even scrap cost of already produced parts/assemblies will be at The Suppliers expense.

21 Reservation of title

- 21.1 The title of the goods delivered by the Supplier pass on to XYTECH upon receipt in compliance with DDP (Delivery Duty Paid) as laid out in the INCO-terms of 2001. See also Article 3.1.

22 Sequential Liability Act

- 22.1 The Supplier guarantees that, in respect of its employees, the statutory obligations pertaining to the payment of social insurance contributions and wages and salaries tax are being fulfilled.
- 22.2 The Supplier indemnifies XYTECH against all claims by the industrial insurance board and tax authorities in respect of contributions and taxes payable for employees.
- 22.3 XYTECH reserves the right to directly transfer the applicable percentage of the part of the wage, or failing this 50%, to the account of the tax authorities in question in respect of wages and salaries tax payable and to the account of the industrial insurance board in question in respect of insurance premiums payable.

23 Void or voidable condition

- 23.1 In the event that any condition of these General Purchasing Conditions or of an agreement is void or voidable by virtue of the applicable law, the remaining conditions continue to apply and XYTECH will specify a permissible condition, the purport of which corresponds as closely as possible to that of the original condition. This new condition will replace the original condition.

24 Applicable law and competent court

- 24.1 All agreements with XYTECH are governed exclusively by the law of the Netherlands. Applicability of the Vienna Sales Convention 1980 (CISG) is excluded.
- 24.2 All disputes are subject exclusively to the judgement of the competent court in the Netherlands. Both parties agree this will be the court (arrondissementsrechtbank) of Amsterdam, the Netherlands.

25 Tooling

- 25.1 All tools produced for orders placed by and products produced for XYTECH are owned by XYTECH, even if they are not paid yet.. On request, The Supplier needs to provide XYTECH with all technical documentation such as, but not limited to, drawings, CAD files, specifications, spare parts lists, maintenance instructions of these tools. Also the specific manufacturing process parameters have to be provided to XYTECH on request. The Supplier can only refuse to hand over these tools on request of XYTECH only in case the costprice of these tools has not fully been paid by XYTECH.
- 25.2 When the tool is not used for production, the tool needs to be stored in an area that protects the tool against corrosion. During the storage period, preventive actions like applying grease/oil have to be taken to prevent corrosion of the tool.
- 25.3 All tools need to be marked according XYTECH specific marking instructions to ensure that these tools can be recognised being owned by XYTECH.
- 25.4 It is not allowed to remove or scrap any tool without written approval from the XYTECH sourcing department.
- 25.5 The Supplier is not allowed to use the tools for any other purpose than for the production of goods for XYTECH.



26 Liquidated damages

26.1 In any case of breach of a single clause of the agreement between both parties, a breach of a single clause in these general terms and conditions included, Supplier shall pay to XYTECH as liquidated damages and not as a penalty the actual costs suffered by XYTECH with a minimum of five thousand Euros (€ 5,000) for every single breach. These costs include all costs for legal assistance and all the costs involved in any Court procedure.

Final clause

27.1 A copy of these general terms and conditions will be sent on first request, free of charge. A copy is also available in the office of XYTECH. Requests can be sent to : (name + address) and can be downloaded for the website www.xytech.com
