

General Terms and Conditions of sale, delivery and/or service of XSPatforms Work at Height B.V. 2021-05

GENERAL

Article 1 - Definitions

- 'Agreement': the contract pursuant to which XSPatforms delivers Goods and/or provides Services of any nature whatsoever and under whatever name to Partner under a Partnership agreement, together with these General Conditions.
- 'Allrisk': a tradename of XSPatforms, mainly indicated in relation to (the performance of) Inspection.
- Customers: the natural person(s) and/or legal entity or entities with whom the Partner has entered into an Agreement.
- Dealer: the natural person(s) and/or legal entity or entities that has entered into a partnership agreement with XSPatforms.
- Effective Date: the date on which the Agreement comes into effect as described in Article 5 of these General Conditions.
- 'General Conditions': these general terms and conditions of sale, delivery and service of XSPatforms.
- 'Goods': an item or a property right.
- 'Inspection': inspection and/or testing services performed by XSPatforms Work at Height in the Netherlands.
- 'Partner': the natural person(s) and/or legal entity or entities that has entered into a distribution agreement with XSPatforms.
- 'Party' or 'Parties': XSPatforms and/or Partner.
- Purchase order: the order made by Partner for the delivery of Goods and/or Services by using a standard order form;
- 'Services': services, including, but not limited to, installation, advice and Inspection.
'XSPatforms': XSPatforms Work at Height B.V.

Article 2 - Applicability

- These General Conditions apply to all offers and Agreements. The applicability of Partner's purchasing or other conditions is specifically excluded.
- Deviations from and additions to these General Conditions shall only be valid if they are agreed between the Parties in writing in the distribution agreement and/or a written attachment to it.
- If any provision of these General Conditions is null and void or is voided, the other provisions of these General Conditions shall remain fully in effect. XSPatforms and Partner shall in this case consult each other for the purpose of agreeing new provisions to replace the null and void or voided provisions.
- In the event of any inconsistency or conflict between any provision of these General Terms and the contract pursuant to which XSPatforms delivers Goods and/or provides Services of any nature whatsoever and under whatever name to Partner, the provisions of the latter shall prevail.

Article 3 - Offer

- All offers and other communications of XSPatforms are without obligation unless XSPatforms has indicated otherwise in writing. Partner guarantees that the information that it has provided or that has been provided on its behalf to XSPatforms and on which XSPatforms has based its offer is accurate and complete.
- All information, images, dimensions, colors, weights, quantities, and other specifications listed in an offer, quotation, etc. of XSPatforms, shall always be considered approximations and are binding on XSPatforms only if expressly agreed.

Article 4 - Price and payment

- The prices quoted by XSPatforms are exclusive of turnover tax and other government taxes payable on sales and delivery and based on delivery Ex Works according to the Incoterms applicable on the day of offer, except insofar as provided otherwise in these General Conditions. 'Works' is understood to mean the premises of XSPatforms in Gorinchem, the Netherlands.
- Payment for the Goods and/or Services provided by XSPatforms shall be made within 30 days of the invoice date into the bank account designated by XSPatforms.
- XSPatforms is entitled to change the prices for its Goods and Services. XSPatforms will inform the Partner in writing thereupon.
- XSPatforms may pass on to Partner an increase in external cost-determining factors that occur after entering into the Agreement and fall outside the direct sphere of influence of XSPatforms. XSPatforms will inform Partner immediately in writing in case of such price increase. Partner is obliged to pay the price increase immediately on XSPatforms' request. Should the aforementioned price increase amount to a total of more than 20% of the agreed total price excluding turnover tax, Partner will be entitled to cancel the Agreement (prematurely), provided he notifies XSPatforms of the cancellation in writing within 7 calendar days after the date the notification has been sent to Partner. Partner is not entitled to any compensation in the event of cancellation.
- If XSPatforms has agreed to install Goods, the price calculated shall include installation and operational delivery of the Goods at the location specified in the offer and including all costs, except for those costs which are not included in the price according to the Agreement.
- Information from XSPatforms' records shall count as conclusive evidence with respect to the performance delivered by XSPatforms and the amounts owed by Partner for delivery of Goods and/or Services, without prejudice to Partner's right to produce evidence to the contrary.
- Payments from Partner shall always be used first to pay interest due resulting from delay and judicial and extrajudicial collection costs and are subsequently deducted from the oldest outstanding payment claim.
- Partner may not suspend any payment and may also not set off any amounts owed.

- If Partner is in default with respect to any payment, XSPatforms may unilaterally suspend performance without notice and may also terminate the Agreement without judicial intervention in accordance with article 8 of these General Terms.

Article 5 - Agreement

- The Agreement will come into effect on the date XSPatforms confirms the written purchase order or on the earlier date of dispatch of the Goods and/or Services based on the written purchase order.
- XSPatforms reserves the right to engage third parties at the expense and risk of Partner for the performance of the Agreement entered into with Partner if this is reasonably required.
- XSPatforms shall be entitled to assign the Agreement to a third-party without Partner's consent. Partner may not assign or pledge any rights or obligations under the Agreement pursuant to any article in these General Terms and Conditions or the underlying Agreement(s), unless it has the prior written consent of XSPatforms.

Article 6 - Advisory

- If XSPatforms provides advice, this advice is provided to the best knowledge of XSPatforms, but this advice shall only be considered as a non-binding instruction.
- Any recommendation or assistance provided by XSPatforms concerning the use, design, application, or operation of the Goods shall not be construed as representations or warranties of any kind, express or implied, and such information is accepted by Partner at Partner's own risk and without any obligation or liability to XSPatforms. It is the Partner's sole responsibility to determine the suitability of the Goods for the intended use of the Products in Partner's application(s) and/or intended application by Partners' customers. The failure by XSPatforms to make recommendations or provide assistance shall not give rise to any liability for XSPatforms.

Article 7 - Delivery time

- Notwithstanding the below paragraphs 2 up to and including 5 of this article, delivery times specified are indicative.
- The delivery time only commences once an Agreement has been reached on all commercial and technical details, once all the information, including final and approved drawings and the like (insofar applicable), is in the possession of XSPatforms, any agreed (pre-)payment has been received, and the other conditions for the Agreement have been met.
- If:
 - there are circumstances other than those known to XSPatforms at the time of the delivery period, the delivery period may be extended by the time XSPatforms needs – taking into account its planning – to implement the Agreement under these circumstances;
 - there are Agreement extras, the delivery period may be extended by the time XSPatforms needs – taking into account its planning – to have the materials and parts delivered and to carry out the Agreement extras;
 - XSPatforms suspends its obligations, the delivery period may be extended by the time XSPatforms needs – taking into account its planning – to implement the Agreement after the reason for the suspension no longer applies.
- Unless Partner has evidence to the contrary, the duration of the extension of the delivery period is presumed to be necessary and to be the result of a situation as referred to above in paragraph 3 of this article.
- Partner is obliged to pay all costs that XSPatforms incurs or damages that XSPatforms suffers as a result of a delay in the delivery or implementation period as stated in paragraph 3 of this article.
- Under no circumstances does exceeding the agreed delivery period give Partner the right to compensation or to terminate the Agreement. Partner indemnifies XSPatforms against any third-party claims due to exceeding the delivery.

Article 8 – Term and termination of Agreement

- Partner is not entitled to cancel or terminate the Agreement prematurely, unless XSPatforms agrees to this. If XSPatforms agrees, Partner will owe XSPatforms an immediately due and payable compensation equal to the agreed price, less the savings for XSPatforms as a result of the termination. The compensation will be at least 20% of the agreed price. Partner may not terminate the Agreement prematurely for providing Services that has been entered into for a definite period of time.
- XSPatforms shall be authorized to terminate the Agreement due to an attributable failure in the performance of the Agreement if Partner is in default. If the Agreement is terminated by XSPatforms on this ground, Partner shall pay XSPatforms a fee for compensation of (internal) costs incurred by XSPatforms and loss of profits of 20% of the agreed fee under the Agreement, with a minimum of EUR 500. Furthermore, Partner shall reimburse all other costs incurred by XSPatforms for the preparation and/or performance of its obligations, as well as any other loss suffered by XSPatforms.
- Either of the Parties may terminate the Agreement in writing, in whole or in part, without notice of default being required and with immediate effect, if the other Party is granted a moratorium, whether or not provisional, a petition for bankruptcy is filed for the other Party or the company of the other Party is liquidated or dissolved other than for restructuring or a merger of companies.
- In case of a change of control in the organization of Partner, such as a transfer of ownership, the transfer of shares, a merger and/or a restructuring, the Partner has to inform XSPatforms immediately; in this situation XSPatforms is authorized to terminate the Agreement prematurely, without any compensation for the Partner.
- XSPatforms is never obliged to repay any amount in money already received or pay any amount in compensation due to termination as referred to in this article.

Article 9 – Confidentiality

1. All information provided to Partner by or on behalf of XSPatforms, such as offers, price lists, designs, images, drawings and know-how, of whatever nature and in whatever form are confidential, and Partner will not use it for any purpose other than for the implementation of the Agreement.
2. Partner will not disclose or reproduce the information referred to in paragraph 1 of this article.
3. If Partner infringes one of the obligations referred to in paragraphs 1 and 2 of this article, it will owe an immediately payable penalty of EUR 25,000 for each infringement. This penalty can be claimed in addition to compensation by virtue of the law.
4. Partner must return or destroy the information referred to in paragraph 1 of this article immediately on request, within a period set at the discretion of XSPatforms. If this provision is infringed, Partner will owe XSPatforms an immediately payable penalty of EUR 1,000 per day with a maximum of EUR 25,000. This penalty can be claimed in addition to compensation by virtue of the law.

Article 10 – Intellectual property rights

1. XSPatforms retains all the rights and authorities which are delegated to him by the law regarding intellectual and industrial property rights. XSPatforms reserves the right to use the knowledge gained due to the execution of the Agreement for other purposes, in so far no confidential information of Partner shall be brought to the notice of third parties when doing so.
2. Partner will not use the IP-rights other than for the purpose of sale, promotion and advertising activities for the Products within the framework of the Agreement. Partner has no right to provide a sub license and/or other rights with regard to the IP-rights to a third party, nor pledge the IP-rights. Partner is not entitled to use the IP-rights other than for the aforementioned use and/or copy the IP-rights, nor make any other infringement on the IP-rights of XSPatforms.
3. Unless agreed upon otherwise between the Parties in writing, the designs, sketches, drawings, films, software and other material or (electronic) files produced by XSPatforms within the framework of the Agreement shall remain XSPatforms' property, irrespective of the fact whether they have been handed over to Partner and Partner has no right to duplicate or distribute any of the aforementioned without XSPatforms' express prior written consent.
4. Partner is not permitted to file (or allow to be filed) any patent application that in anyway incorporates, contains, utilizes or references the Goods without XSPatforms' express prior written consent.
5. Partner will not use the intellectual property rights of XSPatforms in a way that causes harm to the good name, reputation and goodwill of XSPatforms.
6. Partner will not remove or adjust the intellectual property rights, like labels and/or trademarks from the Goods and/or the packaging of the Goods.
7. In the event of a breach of a provision of paragraph 2 or 3 of this article, Partner shall pay a penalty of EUR 10,000 per breach. This penalty can be claimed in addition to compensation by virtue of the law.
8. Partner shall indemnify XSPatforms against any claim from its Customers and/or relations based on the allegation that the Goods and Services developed by XSPatforms infringe third-party intellectual property rights.
9. Partner will inform XSPatforms immediately in case of possible infringement of third parties on the intellectual property rights. It is at the sole discretion of XSPatforms whether or not judicial action will be undertaken. Partner will cooperate with XSPatforms in case of a judicial action.

Article 11 – Liability

1. XSPatforms can only be held liable for damages due to the non-fulfillment of the guarantees that XSPatforms provides on the Goods, as described in clause 17. XSPatforms' obligation to compensate damages is limited to the damage against which XSPatforms is covered under an insurance policy taken out by it or on its behalf and in each case, the obligation to compensate damage is limited to a maximum of (i) 100% of the Agreement amount for that part or that partial delivery per event and (ii) 200% of the Agreement amount for that part or that partial delivery the amount per year.
2. The following damages do not qualify for compensation:
 - a. consequential damages. Consequential damages include inter alia business interruption losses, loss of production, loss of profit, recall costs, penalties, transport costs and travel and subsistence expenses;
 - b. damage to property in the care, custody or control of, but not owned by the insured Party. Among other things, this damage includes damage caused by or during the performance of the work to Goods that are being worked on or to Goods that are located in the vicinity of the place where the work is being carried out;
 - c. damage resulting from personal injury or death.
3. Except in the event of damages caused by auxiliary persons of XSPatforms, damages as a result of intent or willful recklessness by XSPatforms shall not be limited by paragraph 1, 2 and 4 of this article.
4. Partner indemnifies XSPatforms against all third-party claims, including claims due to product liability as a result of a defect in Goods that has been delivered by Partner to a third-party and of which the Goods supplied by XSPatforms are a part. Partner is obliged to reimburse all the damages suffered by XSPatforms in this respect, including the (full) costs of the defense.
5. Unless otherwise provided in the Agreement, XSPatforms shall be discharged from all liability to Partner and/ or all claims for losses, damage or expenses, in the event the claim is brought to XSPatforms after one year after the date of the performance by the Company of the Services or the delivery of the Goods.

Article 12 – Force majeure

1. If XSPatforms fails to fulfil its obligations, this cannot be attributed to XSPatforms if this failure is due to force majeure.

2. Force majeure includes, inter alia, if third parties engaged by XSPatforms – such as XSPatforms' subcontractors and transporters, or other parties of which the performance towards Partner under the Agreement is dependent on – do not meet their obligations at all or on time, or circumstances due to weather conditions, natural disasters, pandemic, terrorism, cybercrime, disruption of digital infrastructure, fire, power failures, loss, theft or loss of tools, materials or information, roadblocks, strikes or work interruptions and import or trade restrictions.
3. XSPatforms is entitled to suspend fulfilment of its obligations if it is temporarily prevented from fulfilling its obligations to Partner due to force majeure. Once the force majeure circumstances no longer apply, XSPatforms will fulfil its obligations as soon as its planning permits.
4. If it concerns force majeure and fulfilment is or becomes permanently impossible, or the temporary force majeure circumstances have lasted for more than six months, XSPatforms is entitled to terminate the Agreement with immediate effect either entirely or in part. In those cases, Partner is also entitled to terminate the Agreement with immediate effect, but only for that part of the obligations that XSPatforms has not yet fulfilled.
5. The Parties are not entitled to compensation for the damages suffered or to be suffered as a result of the force majeure, suspension or termination as referred to in this article.

Article 13 – Applicable law

1. The Agreement and any and all offers made by XSPatforms are exclusively governed by the law of the Netherlands. Any disputes arising out of or in connection with an agreement shall be submitted to the competent district court of Rotterdam, the Netherlands.
2. The Vienna Sales Convention does not apply to this Agreement, nor does any other international regulation that may be excluded.

DELIVERY OF GOODS

Article 14 – General

Articles 14 up to and including 18 apply, alongside the general provisions above, insofar as the Agreement relates to Goods purchased or to be purchased by Partner from XSPatforms. In cases of a conflict between articles 14 up to and including 18 and other articles of these General Conditions, the articles 14 up to and including 18 shall take precedence.

Article 15 – Purchase, sale and delivery

1. XSPatforms shall sell the Goods according to nature and quantity as agreed between the parties in writing, and Partner shall purchase the Goods from XSPatforms on the same basis.
2. The delivery times stated by XSPatforms shall in all cases be indicative.
3. Except where explicitly agreed otherwise, the purchase price of the Goods shall not include the costs of transport, insurance, the hiring of temporary facilities etc.
4. XSPatforms shall at all times be entitled to execute the Agreement in the form of partial deliveries.
5. In the event Parties agreed that delivery of the Goods will take place at the premises of a third-party (such as a Customer of the Partner), XSPatforms shall not be liable for any damages or losses related to any failure to take delivery of the Goods at the stipulated time. Furthermore, in such event (i) Partner shall not be entitled to terminate or cancel the Agreement and (ii) paragraph 4 of article 10 applies to any third-party claims as a result of such failure by XSPatforms.

Article 16 – Transition of risk and ownership

1. Delivery of the Goods takes place when XSPatforms, at its business location, makes the Goods available to Partner and has informed Partner that the Goods are at its disposal. From that time onwards, Partner bears the risk of the Goods in terms of storage, loading, transport and unloading among others.
2. XSPatforms remains the owner of the delivered Goods as long as Partner:
 - a. has not fulfilled its obligations under any Agreement with XSPatforms;
 - b. claims arising from non-fulfilment of the aforementioned Agreements, such as damage, penalties, interest and costs, have not been settled.
3. As long as ownership of the delivered Goods has not been transferred to Partner, Partner is not allowed to deliver, use, consume, sell, pledge or grant to any third-party the Goods or deliver/transfer any other right to third parties.
4. In the event XSPatforms claims its right of retention of title pursuant to this article, Partner shall take any and all appropriate measures to separate the Goods and keep them separated from any other goods held by Partner and to do or procure all that is necessary to preserve the Goods.
5. Partner shall insure the Goods against common risks for the period of the retention of title. Partner hereby authorizes XSPatforms on behalf of Partner to (implicitly) pledge to itself as additional security to claims of XSPatforms against Partner all claims on insurance companies pursuant to the insurances within the meaning of Article 239, Book 3 of the Dutch Civil Code.
6. Delivered Goods that have become the property of Partner through payment and other Goods that are available to XSPatforms, could be used as security for the claims XSPatforms might have against Partner on any account whatsoever (retained pledge without ownership). At the first request of XSPatforms, Partner shall undertake to cooperate in the establishment of a pledge on such Goods and on the claims that Partner acquires at any time due to the resale of Goods to its own Partners.
7. If Partner fails to meet its payment obligations to XSPatforms, or if XSPatforms has good reason to believe that Partner will fail to meet those obligations, XSPatforms shall be entitled to revoke any XSPatforms credit and take back all Goods supplied subject to retention of title, and Partner shall provide free access to the location where the Goods are located.
8. Irrespective of the agreed payment terms, Partner is obliged to provide sufficient security for payment immediately on XSPatforms' request and at its discretion. If Partner does not comply with this provision within the set time limit, it will immediately be in default.

Article 17 – Possession of Goods

1. Partner must cooperate fully and free of charge to enable XSPlatforms to deliver the Goods.
2. Goods not or not timely taken into possession are stored at Partner's expense and risk. These expenses may include cost of transport, administrative costs and all other costs, damages and/or expenses in connection hereto.
3. If the provisions of paragraph 1 or 2 of this article are infringed, Partner will owe XSPlatforms a penalty for each infringement of EUR 100 per day up to a maximum of EUR 25,000, after XSPlatforms has given notice of default. This penalty can be claimed in addition to compensation by virtue of the law.

Article 18 - Guarantee Goods

1. Without prejudice to the following restrictions, XSPlatforms guarantees the quality of the Goods it has delivered as well as the quality of the materials used and/or delivered for the Goods, insofar as it concerns defects in the delivered Goods of which Partner proves that these have arisen within 12 months after delivery, solely or mainly as a direct consequence of a defect in the construction applied by XSPlatforms or use of bad materials.
2. Paragraph 1 applies by analogy to defects that are caused solely or mainly due to poor installation by XSPlatforms.
3. The defects falling under the guarantee referred to in paragraphs 1 will be removed by XSPlatforms by repair or replacement of the defective part, whether or not in the premises of XSPlatforms or by mailing a part for replacement, this always at the discretion of XSPlatforms within a reasonable term. All costs that go beyond the sole obligation as described in the preceding sentence are at the expense of Partner.
4. In any case not included in the guarantee are defects which arise from or are completely or partly caused by:
 - a. not taking into account the operating and maintenance instructions or other than anticipated normal use;
 - b. normal wear and tear;
 - c. installation or repair by Partner or by third parties;
 - d. the application of any government regulation and/or regulatory changes;
 - e. used materials or items respectively used in consultation with Partner;
 - f. materials or items which Partner has given to XSPlatforms to be processed;
 - g. materials, items, methods and constructions insofar applied at explicit instruction of Partner, together with materials and items delivered by or on account of Partner;
 - h. parts XSPlatforms has received from third parties, insofar as the third-party has not given any guarantee to XSPlatforms or the guarantee provided by the third-party has expired.
5. Complaints for defects shall be made in writing as soon as possible after discovery of the defects, yet at the latest within 7 days after discovery of the defect. Exceeding this term of 7 days results in expiration of every claim against XSPlatforms relating to the defect.
6. If XSPlatforms replaces parts of Goods to fulfil its obligations under the guarantee, the replaced parts of Goods become property of XSPlatforms.

PERFORMANCE OF SERVICES

Article 19 – General

Articles 19 up to and including 22 apply, alongside the general provisions above, insofar as the Agreement relates to Goods purchased or to be purchased by Partner from XSPlatforms. In cases of a conflict between articles 19 up to and including 22 and other articles of these General Conditions, the articles 19 up to and including 22 shall take precedence.

Article 20– Best efforts obligation

XSPlatforms shall provide all Services on the basis of a best efforts obligation, unless and in so far as XSPlatforms has explicitly undertaken in the written agreement to achieve a specific result and the result in question is sufficiently determined.

Article 21 – Performance of Services

1. Without prejudice to the provisions in paragraph 1 of this article, Partner shall, if the Parties have agreed that XSPlatforms shall perform Services, in any case see to it at its own expense and risk that:
 - a. the employees or auxiliary persons of XSPlatforms can commence and continue their work during normal working hours from the moment they arrive at the place where the Services need to be performed and, moreover, if XSPlatforms deems it necessary, outside of normal working hours provided that Partner has been notified in time;
 - b. suitable accommodation and/or all provisions under government regulations, the Agreement and common use will be available to the employees and/or auxiliary persons of XSPlatforms;
 - c. the access routes to the place where the Services need to be performed are suitable for the required transport;
 - d. the assigned place of erection is suitable for storage and performance of Services;
 - e. the required lockable storage areas for materials, tools and other items are made available;
 - f. the necessary and usual workmen, auxiliary tools, auxiliary and industrial materials (fuels, oils and greases, cleaning and other small materials, gas, water, compressed air, electricity, steam, heating, lighting, etc. included), and the usual measuring and testing instruments of XSPlatforms are in the right place at the disposal of Partner on time and free of charge;
 - g. all necessary safety and precautionary measures have been taken and shall be maintained, and that all measures have been taken and shall be maintained in order to satisfy the appropriate government regulations with respect to the performance of Services;

- h. the dispatched Goods are at the right place at the beginning of and during the performance of Services.
2. Damages and costs that arise because (i) the conditions stated in this article have not been fulfilled on time or at all and/or (ii) any delay of the performance Services which is not attributable to XSPlatforms or force majeure, are the liability of Partner.
 3. With regard to time for installation or inspection, article 7 applies accordingly.
 4. Partner guarantees the timely acquisition and maintenance of all permits for XSPlatforms, as well as the legal permissions required for the Services to be performed.
 5. Partner will ensure that XSPlatforms can carry out its work undisturbed and at the agreed time and that it is given the necessary facilities for the implementation of its work.
 6. Partner bears the risk and is liable for damage to and theft or loss of Goods belonging to XSPlatforms, Customers and third parties, such as tools, material or equipment intended for the work or used for the work, located at or near the place where the work is carried out or at another agreed location.
 7. Notwithstanding the provisions in paragraph 2 of this article, Partner is obliged to take out adequate insurance against the risks referred to in that paragraph. In addition, Partner must take out insurance for the risk of work-related damage with regard to the equipment or Goods to be used. Partner must send XSPlatforms a copy of the relevant insurance(s) and proof of payment of the premium immediately on request. In the event of damages, Partner is obliged to report this immediately to its insurer for further processing and settlement.

Article 22 - Guarantee Services

1. Notwithstanding article 21 above Services shall be performed in a good workmanlike manner consistent with industry practices and are warranted for 90 days from the date Services are performed. Partner's obligation and XSPlatforms' sole remedy under this warranty is that XSPlatforms will correct or re-perform defective Services or refund fees paid for the Services, at XSPlatforms' sole discretion, if Partner notifies XSPlatforms in writing of defective Services within the warranty period. All Services corrected or re-performed are warranted for the remainder of the original warranty period.