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RESELLERS Terms and Conditions of Sale



Annex 4: RESELLERS Terms and Conditions of Sale

<https://www.xylos.com/en/corporate/general-conditions>

Scope

- A. All sales contracts, invoices, order forms and price offers between XYLOS and the RESELLER are subject exclusively to the following general terms and conditions of sale of XYLOS. These conditions cover the sale of both goods and services.
- B. Any differing conditions, terms and provisions shall apply only if they were approved explicitly and in writing by XYLOS.
- C. The following conditions take precedence over those of the RESELLER, whether general or special.

Price offers

- A. Unless otherwise stated in writing, offers issued by XYLOS are valid for 30 days from the date of offer. Offers from XYLOS are always free of obligation.
- B. The prices stated in the offers are valid only so long as the RESELLER does not specify a delivery date at the time of submitting his order that exceeds three months after his order, any changes included. All prices are exclusive of VAT and other taxes and charges. The prices do not include installation, training costs or transportation costs unless otherwise expressly agreed.
- C. The prices will be indexed annually and automatically on 1 January according to the Agoria salary index.

The formula used for the indexing is the following:

$$P = PO \times [a + b \times (S/S0)]$$

P0	Price on the date of commencement of the contract
P	Revised price
A	0.20
B	0.80
S0	Reference salary on the start date of the contract (the national average as recognised and published by Agoria)
S	The reference salary at the time of the price revision

The prices for specific services shall be monthly revised according to the reported use of these specific services.

Orders

XYLOS is only bound by an order if it is confirmed in writing by XYLOS.

If the RESELLER cancels the order between maximum one week and minimum 3 days before the start of the delivery or service, he will be liable to pay compensation of 30% of the contract price. In the event of cancellation maximum three days and minimum one day before the start of the delivery or service, compensation will be 50% of the contract price. In the event of cancellation maximum 24 hours before the start of the delivery or service, compensation will be 100% of the contract price.

Deliveries

All deliveries are subject to availability by the producer or importer. The delivery dates stated by XYLOS will be specified as accurately as possible, based on all known elements. XYLOS will do everything in its power to make the deliveries on the proposed date or later confirmed date, but will not be held liable for any delay. It is therefore expressly agreed that the delivery times are indicative only.

XYLOS also rejects any liability for the impossibility of implementation due to unforeseen circumstances or arising from unforeseeable circumstances or force majeure. If this condition persists for more than three months, each of the parties shall be entitled to terminate this Contract as regards the goods or services not yet delivered. The goods and services that have already been delivered will in any case be charged for and must be paid by the RESELLER.

A unilateral termination of an assignment by the RESELLER shall incur a lump sum compensation of at least 15% on the ordered goods or on the services commissioned, if XYLOS can demonstrate that implementation had already commenced, both as regards the provision of services and the purchase of goods.

Any defect or complaint must be reported by the RESELLER on the consignment note. Defects or complaints may not give rise to non-payment or delayed payment of the invoices.

In order to be valid, any complaint must include a clear description of the defect and be served on XYLOS by registered mail within 48 hours of delivery or confirmation of defect. After this period, the RESELLER will be deemed to have accepted the delivery. In the event that XYLOS recognises a complaint as valid, it will have the choice either to make an alternative proposal to the RESELLER, either to repeat the delivery or service at its own expense or to pay back the price already received to the RESELLER.

The return of the goods shall only be accepted after the prior and written consent of XYLOS. Insofar as an installation is required, it will be carried out by XYLOS staff or by staff authorised by XYLOS in accordance with the instructions given by XYLOS.

The goods to be supplied are insured by XYLOS up to the place of delivery on condition that the place of delivery is situated in Belgium.

The transfer of risk relating to the goods shall take place at the time of delivery to the RESELLER.

The installation will be performed as specified in the offer, the sales conditions or directives of the supplier/producer/importer regarding the installation of the goods in question.

The delivery will take place in Belgium, unless expressly agreed otherwise.

Invoicing and Payments

Goods will be billed after delivery. Services will be billed monthly.

Unless agreed otherwise in writing, all invoices are payable 30 days from the invoice date. The value-added tax will be paid by the RESELLER.

If the invoice is not paid in full by its due date, XYLOS will be entitled to suspend all deliveries and/or to consider the Contract as automatically dissolved and/or to demand the immediate payment of all invoices, even if these are not yet due.

In the event of late payment, the RESELLER will be liable to pay interest of 1% per month from the due date automatically and without notice of default. The RESELLER shall be liable for all costs of recovery, including both judicial and extra-judicial collection costs.

If no payment is made within eight days after sending a reminder letter either by XYLOS, or by its agent, the RESELLER will be obliged to pay a conventional and lump sum compensation of 12% of the amount due, with a minimum of €100.

In order to be valid, a protest against an invoice must be made in writing and received by XYLOS within 8 days after the invoice date. Any protest against an invoice must contain a clear description of the complaint.

Only seriously contestable invoices may be the subject of a possible postponement of payment after written approval from XYLOS. In any case, that part of the invoice that cannot be seriously disputed must be paid.

Guarantee

Hardware: the goods are guaranteed against defects in materials and workmanship according to the conditions laid down by the relevant manufacturer/supplier/importer.

Software: XYLOS guarantees that the software it has developed will allow the program instructions to be carried out, so long as that software has been installed correctly. On the other hand, XYLOS cannot guarantee that the software will function free from interruption or defects.

Restrictions: the foregoing guarantee does not however cover defects resulting from:

- incorrect and inappropriate maintenance by the RESELLER or third parties;
- software and interfaces supplied or developed by the RESELLER or third parties;
- unauthorised changes or careless use;
- use of the goods in an environment that does not match the specifications;
- incorrect preparation and maintenance of the area in which the goods are located;
- normal wear and tear.

The liability of XYLOS remains in each case limited to the sale price including transportation costs.

Duration and start of the guarantee period: the guarantee period is specified in the offer. The guarantee period starts with the first delivery.

Place of implementation: any interventions in relation to the installed goods within the framework of the guarantee will be performed on the premises of XYLOS, unless agreed otherwise in writing. The goods will be returned if necessary to XYLOS, at the expense of the RESELLER. If the equipment is to be moved from the original installation location, the guarantee shall be valid only insofar as a prior inspection of the new location was conducted by XYLOS and the relocated equipment was moved and/or installed by XYLOS, all this at the expense of the RESELLER.

Shipping costs: the shipping costs to and from the RESELLER for the goods to be returned to XYLOS for repair during the guarantee period shall be borne by the RESELLER.

No other guarantee is granted in addition to the above-mentioned guarantee, either implicitly or explicitly. There is no tacit guarantee regarding the non-marketing of the goods and the suitability for specific applications. XYLOS has the right to market the goods (the goods also to be used for and/or for the benefit of third parties).

Liability of XYLOS

Any claim by the RESELLER for compensation is limited to what is stated in Article 6.

XYLOS is liable only for damage caused by its demonstrably proven error. If this proven error by XYLOS cannot be rectified in kind, then the RESELLER will have the right to claim for proven direct damage, although limited to the total and cumulative amount equal to the total amount of the services actually paid for during the last twelve months prior to the claim (whereby a series of related events counts as one event) with a total maximum of 5% of the price indicated in the offer or €25,000 (whereby the lowest amount shall apply in each case).

XYLOS rejects any liability for any indirect and immaterial damage including an increase in the general costs, business interruption, loss of clientele or contracts, inability to fulfil the planned operation of the company, loss, damage or unavailability of business data, or loss of profits, claims by a third party against the RESELLER, even if XYLOS is informed in advance regarding the possibility of such damage and any disadvantage or other damage, direct or indirect, accidental or arising from poor operation of all or part of the goods or services, as well as for accidents that might occur during or as a result of the installation.

Moreover, XYLOS can in no way be held liable for the failure of a backup to be restored. Implementation and verification of the success of periodic backups is the sole responsibility of the RESELLER. XYLOS is not liable for fraud, or for any damage as a result of fraud.

Ownership - Right of retention

The delivered goods remain the property of XYLOS and XYLOS has a right to retain ownership until the day of the full payment of the invoiced amounts relating to them and possibly compensation and interest, as referred to in Article 5C and 5D, even if the goods were changed and/or incorporated.

Reproduction right

Unless agreed otherwise in writing, the material which belongs to XYLOS and/or to the goods, and is protected by copyright law (software and printed documentation) may only be copied for archiving purposes, to replace a damaged copy or to investigate programming errors.

Studies and designs – Confidentiality

All documents provided by XYLOS to RESELLERS in connection with the studies, investigations, analyses and such carried out by XYLOS, remain the property of XYLOS and must, at the latter's first request, be returned. XYLOS retains the copyright or intellectual property rights or the industrial property rights to these designs and supplies. The divulgence of the contents of these documents by the RESELLER to a third party shall incur liability to pay compensation. The contents of these documents may not be used either intellectually or industrially without the express permission of XYLOS. The RESELLER shall keep all the information relating to XYLOS strictly confidential and shall not distribute it or use it for third parties without the express permission of XYLOS.

In the event of breach by the RESELLER of this Article 10, the RESELLER will be liable to pay XYLOS compensation of €25,000, without prejudice to the right of XYLOS to claim additional damages as provided for by law.

Non-recruitment

During the lifetime of the Contract or collaboration and for a period of 1 year thereafter, the RESELLER shall refrain from approaching staff members / employees / board members / representatives or managers of XYLOS with a view to their recruitment or with a view to the termination of the contractual relationship with XYLOS. In the event of such violation by the RESELLER, the latter will be liable to pay compensation to XYLOS equal to the annual gross salary (i.e. the gross monthly salary x 13.92) or the annual pay/remuneration (which is the daily allowance/remuneration X 240) of the person concerned.

Force majeure

XYLOS is not obliged to fulfil any obligation, including (delivery) deadlines, if it is prevented from doing so as a result of force majeure or unforeseeable circumstances beyond the reasonable control of XYLOS (e.g. industrial disputes, lock-outs, power outages, government action, war, hostilities, riots, civil unrest, whole or partial communication problems, viruses, business disruption, or failure of the supplier of XYLOS, fraud). If there is a risk of exceeding a deadline, XYLOS will enter into consultation as soon as possible with the RESELLER. If the situation of force majeure or unforeseeable circumstances lasts longer than 90 days, XYLOS will have the right to terminate the Contract by registered letter. What has already been performed pursuant to the Contract will be settled proportionately, without XYLOS owing anything to the RESELLER.

Jurisdiction

The Contract is subject to Belgian law and to the business practices in Antwerp insofar as these terms and conditions do not derogate therefrom. Only the courts of Antwerp have jurisdiction to judge possible disputes. XYLOS reserves the right to initiate a claim before other courts with jurisdiction on the case.

The RESELLER will reimburse XYLOS for all legal costs, administration costs and other related costs (including lawyers' fees) which XYLOS has incurred as a result of any legal proceedings.

The current General Terms & Conditions of Sale are valid from 1 March 2016 and replace all previous terms and conditions.

