

XENTELON LICHTMÖBEL®

General Terms and Conditions of XENTELON Lichtmöbel Daniels-Abel

§ 1 General

1. The following terms and conditions of sale, delivery and payment apply to all deliveries, services and offers of XENTELON Lichtmöbel Daniels-Abel, hereinafter referred to as XENTELON.
2. Latest on acceptance of the delivery or service by the contracting party these terms and conditions are considered as accepted.
3. The validity of any terms and conditions of business of the contracting party is expressly excluded and any terms and conditions of the contracting party will not become an integral part of this contract on delivery, even without explicit objection by XENTELON.
4. For the remainder, differing provisions only apply with the written permission of XENTELON. This also applies in cases where the terms and conditions of the contracting party have not been expressly contradicted. Divergent oral collateral agreements and any other subsequent changes are considered valid only after written confirmation by XENTELON.
5. XENTELON provides its services based on these general terms and conditions and on any agreed additions. These exclusively apply to all current and (provided the contracting party is a commercial trader as defined in the HGB [German Commercial Code]) future business relationships, even if not explicitly and separately stipulated.

§ 2 Offers, Order Confirmation, Scope of Service

1. Unless explicitly agreed otherwise, offers are not binding and are without obligation, especially with regard to price, amount, number of users, delivery date, availability and incidental services.
2. Orders are considered binding only after written confirmation from XENTELON, and only with regard to written confirmation and the actual execution.
3. XENTELON is entitled to accept an offer from the contracting party within a period of three weeks.
4. Unless explicitly agreed otherwise and relating to an integral part of the contract, the contracting party is responsible for delivery ex warehouse of XENTELON. The scope of services to be provided by XENTELON under a contract is fulfilled on delivery of the products. XENTELON expressly does

not perform compatibility checks. Unless explicitly agreed otherwise, it is solely the concern and responsibility of the contracting party to ensure that the products of XENTELON can be used or applied by the contracting party and that the contracting party or the third party complies with the technical requirements for the use or defect-free use of the products of XENTELON.

5. The specifications in the catalogues, price lists and other sales documentation apply to lightning furniture ready for connection for the rated operational voltage and frequencies specified in the corresponding product descriptions.
6. All technical data in the catalogues and other sales documentation, lists and graphics provided by XENTELON as well as all weight and dimension specifications have been created and compiled with extreme care. However, in case of obvious mistakes, this information remains subject to subsequent changes. If in doubt, the individually agreed stipulations apply and have priority over any catalogue specifications, even if contradictory to the latter.
7. If XENTELON has to provide assembly, training, consultation or any other services under a contract, the contracting party has to ensure that all required prerequisites are met and required conditions are created and provided by the contracting party, especially, the required rooms, infrastructure, necessary documentation and the required personnel. In case the contracting party does not duly fulfil this duty to co-operate, the period for completion will be extended adequately. The additional costs caused by the contracting party not co-operating accordingly, especially if XENTELON personnel or any material resources have to be provided for a longer period of time, will be charged by XENTELON to the contracting party. Rights according to § 643 BGB [German Civil Code] remain unaffected.

§ 3 Delivery, Transfer of Risk, Default of Acceptance, Acceptance

1. Delivery dates are binding only if XENTELON has expressly confirmed them in writing to be binding. In general, the delivery dates specified by XENTELON should be regarded as a rough indication and as "approximate dates" only. Whereas delivery in commercial transactions takes place within a period of approximately 10 weeks, delivery is subject to availability and correct and punctual supply to ourselves. The delivery period starts, at the earliest, on the day when the order confirmation is sent, but not before the contracting party has provided all required final documentation, licenses and has clarified all technical issues and XENTELON has received the agreed down payment beforehand. For adherence to the delivery period, the day on which the delivery items have left XENTELON or on which the pickup notification has been sent to the contracting party is decisive.

2. Firm deals (§ 376 HGB [German Commercial Code]) need explicit written confirmation by XENTELON. For firm deals, the remaining stipulations apply correspondingly, as far as logic allows the application to firm deals.
3. In case XENTELON does not adhere to a promised delivery date, the contracting party is entitled to exercise any claims only after XENTELON is in default and has received a written reminder and an adequate additional respite of at least three weeks has been set. If the liability for the delay of the service lies with XENTELON, the contracting party's claim for damages is limited to an amount of 30% of the foreseeable damage, unless the delay occurred due to intent or gross negligence of XENTELON or their servant(s) or vicarious agent(s). This also applies to breach of duties during contract negotiations. The contracting party is not entitled to claim for further damages even after the expiration of any respite period which XENTELON had been granted. The aforementioned limitation of liability is not valid in case of death or injury to body or health. The aforementioned regulations do not imply a change in the burden of proof to the disadvantage of the contracting party. XENTELON is entitled to provide evidence that the delay in delivery caused a significantly smaller damage or even no damage at all.
4. Unless agreed otherwise, changes to the order render any agreed dates and periods null and void.
5. In case of force majeure, e.g. mobilization, war, riot, natural disaster (i.e. flooding), strike etc., XENTELON is entitled to adequately defer provision of services for the duration of the obstruction.
6. If in case of force majeure the provision of services is or becomes actually or economically impossible, XENTELON can withdraw from the contract. This also applies if XENTELON has already been in default at the time of occurrence of the aforementioned events. The contracting party, however, is not entitled to withdraw from the contract in any event of delay.
7. Orders with order units different from those specified in the price list require written confirmation by XENTELON before they can be accepted. Otherwise, the contracting party is obliged to accept complementing of the order to the next full order unit according to the price list, and is obliged to make full payment of the complemented order. The contracting party accepts the delivered amount as contractually compliant, no later than on acceptance of the accordingly complemented delivery without exception.
8. If XENTELON is shipping the object of agreement on request of the contracting party, shipment shall be at the risk of the contracting party. With all shipments, the risk of loss of goods is transferred to the shipper, freight carrier or any person in charge of carrying out the shipping.
9. If the contracting party notes any damage to the goods on receipt, the shipper and XENTELON must be notified immediately. The contracting party shall keep the goods ready for immediate inspection and shall fill in possible damage report forms of the shipper and send a copy of those to XENTELON without further request.
10. The contracting party bears the shipping costs, unless the contracting party is a consumer and the costs would be unreasonably high compared to the actual value of the delivery item.
11. Partial deliveries are permitted and have to be paid by the contracting party according to these terms of payment.
12. In the event of the contracting party not accepting or receiving the delivery of goods on the respective place of delivery in time, or not retrieving the delivery according to the agreement, or if delivery is delayed in any other way due to reasons caused by the contracting party, or the contracting party requesting deferral of the delivery, XENTELON is entitled to claim compensation of the resulting damages to XENTELON, including possible additional expenditures. XENTELON is especially entitled to increase prices until the contracting party accepts or retrieves the delivery of goods to the contracting party, to request immediate payment of the respective delivery item and to store the respective delivery items at the risk and cost of the contracting party. Additionally, after setting an adequate respite of two weeks at maximum, XENTELON is entitled to withdraw from the contract and/or to claim compensation instead of the service. XENTELON is entitled to either calculate exactly the damages or to claim a general compensation of 15 % of the net order value. The contracting party may provide evidence that the value of the damages caused is actually lower.
13. Products delivered by XENTELON as ordered shall immediately be inspected and tested by the contracting party. In case the contracting party does not promptly file a notice of defects after the delivery, the delivery item is considered as defect-free and approved. In case of on-site assembly, the contracting party shall immediately check and test the installed products with the help of a XENTELON staff member or, alternatively, alone. If products in general work contractually compliant, the contracting party shall immediately declare acceptance in writing. The contracting party is granted a period of five working days from the date of end of test to declare acceptance. If the contracting party does not accept, the party shall immediately and no later than five working days after the date of the test completion, report defects in detail and with accurate description to XENTELON by means of a defect report. If XENTELON neither receives an acceptance declaration nor a defect report within this five day period, § 640 para. 1 sentence 3 BGB [German Civil Code] comes into force and the service of XENTELON shall be considered as accepted by the contracting party.
14. The contracting party is obligated to accept goods with insignificant defects and is not entitled to reject the corresponding delivery.

§ 4 Prices and Payment

1. The prices agreed upon on conclusion of the contract apply.
2. The agreed prices are net prices plus the legally applicable VAT rate valid at the time of provision of the services.
3. Furthermore, prices are ex warehouse or ex work, including commercial packaging, additional shipping costs not included. If, after conclusion of the contract, freight fees, taxes and charges are implemented or raised, XENTELON is entitled to adjust the price accordingly, even for prepaid or duty paid delivery.
4. Deliveries and services, for which prices have not explicitly been agreed, shall be charged according to the list prices valid on the day of provision of the services.
5. If no fixed price has been agreed, services shall be charged according to the price list valid at the time of order acceptance.
6. These prices are binding for XENTELON for four months. If delivery is scheduled for a date more than four months after conclusion of the contract, XENTELON is entitled to charge prices valid at the time of the actual delivery.
7. Unless agreed otherwise, all invoiced amounts are due immediately without deductions on receipt of an invoice or equivalent request for payment. The day XENTELON receives the money is decisive. Payments are deemed to have been made at the place where XENTELON can deposit the money. Cheques and bills of exchange will, if at all, only be accepted as payment and shall be considered as payment only after encashment. Discount charges and costs are at the expense of the contracting party. Unless otherwise agreed, payments shall exclusively be made in Euros.
8. Spare parts and repairs will be delivered or carried out at cash payment or cash-on-delivery payment.
9. Irrespective of any determination of the contracting party, XENTELON alone is entitled to determine against which of the claims any payments received are to be applied. Partial deliveries and additional devices supplied at a later date shall each be invoiced separately. These general terms and conditions also apply to the latter.
10. The contracting party enters default when the party does not balance due amounts within five days after receipt of an invoice or an equivalent request for payment. XENTELON reserves the right to have the default start at an earlier date by means of a remainder which has to be delivered after due date. Notwithstanding the previous two sentences, the contracting party enters default if a certain due date has been agreed on and the contracting party does not pay the purchasing price on that day at the latest.
11. If the contracting party enters default, interest on late payments of 5 percent above the base rate resp. 8 percent for commercial transactions shall be due from the day the con-

tracting party enters default. In case the contracting party enters default any deductions granted are forfeited.

12. Assertion of any counterclaims is excluded, unless the counterclaims have been legally established, are ready for a decision, beyond dispute or acknowledged by XENTELON.
13. Assertion of any rights of retention according to § 273 BGB [German Civil Code] is excluded, given the contracting party is a commercial trader, unless the counterclaims have been legally established, are ready for a decision, beyond dispute or acknowledged by XENTELON.
14. Regardless of individual payment agreements in individual cases, claims of the supplier are due immediately if any circumstances arise particular to the person of the contracting party that make it unacceptable to adhere to the payment agreements made. This is the case with reasonable indication of a significant deterioration of the financial status of the contracting party, i.e. stoppage of payments, cheque or bill protest or delayed payments, indicating that XENTELON's right to consideration is at risk due to the contracting party's inability to fulfil payment obligations. In such cases XENTELON is also entitled to demand contemporaneous performance or additional securities. Moreover, XENTELON is entitled to determine an adequate period of time for the contracting party to provide contemporaneous performance or securities for a service at XENTELON's choice. If this period expires without results, XENTELON is entitled to withdraw from the contract.
15. The purchaser is not entitled to set-off, provided that the contracting party is a commercial trader, unless the counterclaims have been legally established, are ready for a decision, beyond dispute or acknowledged by XENTELON.

§ 5 Extended Reservation of Title, Assignment

1. The delivery item remains the property of XENTELON until all payments under the contract have been received. Extended reservation of title is expressly agreed. As a precaution, claims resulting from re-sale are already fully transferred to XENTELON until all claims that XENTELON has against the contracting party have been settled. XENTELON herewith accepts this transfer. However, the contracting party remains authorized to collect the claims transferred as a precaution, until this authorization is revoked. This authorization can be revoked in the event that the purchaser fails or stops to meet the obligations under the contract. In the event that the collection authorization is revoked, XENTELON is entitled to notify the assignment in effect. The contracting party shall immediately provide all documentation necessary for notification of the assignment and for collecting the claims. If the purchaser, in opposition to the stipulations under 2, mortgages, assigns and/or makes the reserved good subject of any Sale-Lease-Back, this is not considered a proper sale in ordinary course of business.

2. The contracting party may not mortgage delivered goods nor assign them as a security. In case the goods are mortgaged or seized by third parties, the contracting party shall notify XENTELON immediately.
3. If the contracting party does not comply with the contract, particularly with regard to delay of payments, XENTELON is entitled, upon reminder, to collect the goods and the contracting party is obligated to hand over the goods. The enforcement of the retention of title as well as mortgaging the delivery item by XENTELON shall not be considered a withdrawal from the contract. Collected goods are at free disposal. The amount realized from sale of the goods will be counted toward remuneration. The contracting party is liable for the claim for the deficiency.
4. Until full acquisition of ownership, the contracting party shall keep the delivery items under fully comprehensive insurance against fire, water, explosion and other damage at his/her own costs and shall notify XENTELON immediately of any damage occurred.
5. Subsequent processing of the objects of agreement by the contracting party is always carried out for XENTELON as well. If the objects are connected or mounted to other objects that are no property of XENTELON, XENTELON acquires ownership of the new object to the extent of the ratio of the value of the object to the value of the other objects processed at the time of the processing. All stipulations applicant to the goods delivered under reserve also apply to the objects resulting from processing.
6. The value of the objects under reserve and the share of value in the sense of afore stipulation is the invoice value, unless there is no higher value resulting from afore stipulations.
7. The contracting party, in individual cases, shall make further agreements with XENTELON regarding the reservation of title if and insofar the claims can be protected.
8. Without explicit consent, the contracting party shall neither process nor assign as a security the goods under reserve or claims resulting from resale that XENTELON is the owner of or entitled to collect. If the contracting party does not comply with this stipulation, the party shall compensate any resulting damage to XENTELON.
4. In case of defects, XENTELON shall immediately resolve the defect, at its own discretion, either by means of remedy, bypass or delivery of a different item.
5. If XENTELON fails to resolve a defect twice, the contracting party may either request reduction of price/payment or withdraw from the contract at his/her discretion. However, in case of an insignificant infringement of the contract, particularly in the case of insignificant defects, the contracting party is not entitled to withdraw.
6. In any case, the contracting party shall compensate XENTELON for all benefits of use the contracting party had from the use of the defective item until the delivery of the replacement item.
7. With regard to the nature of the goods, the product description is considered the only binding agreement. Public announcements, promotion or advertisements do not form any agreed specification. Contractual specifications precede catalogue specifications.
8. This warranty against defects does not apply to goods subject to natural wear nor to damages which occurred after transfer of risk as a result of improper or careless use, excessive strain, unsuitable resources or equipment and chemical, electrochemical, electrical and atmospheric influences.
9. The warranty does not apply to defects resulting from the following cases: the contracting party used or applied accessory devices not approved by XENTELON; the contracting party had work carried out that was not authorized by XENTELON or the manufacturer of the goods; the contracting party performed any changes or extensions on the objects of agreement, unless the contracting party is able to provide proof that these changes or extensions did not cause the defect. In case the defect reported by the contracting party can not be detected on review, the costs of the review are at the contracting party given the party is a commercial trader.
10. In case of defects, XENTELON will at its own choice repair the defective object of agreement either at its own place of business or at the contracting party's site. In case the contracting party is a commercial trader, the travel expenses and packaging costs are at the contracting party. If the repairs can be carried out at XENTELON premises and the contracting party is a commercial trader, the party has to send in the defective items to XENTELON at his/her own expense in the original packaging. In the event that the defect can only be repaired on-site at the contracting party's premises, XENTELON will take over the resulting costs only for travelling to the site at which the item was said to be used on conclusion of the contract. Unless agreed otherwise or unless evident from the circumstances, XENTELON is, at most, obliged to carry out repairs at the contracting party's premises. The contracting party shall take over any additional costs arising from the fact that the contracting party has moved the object of agreement to a site or place different

§ 6 Warranty

1. Claims for defects may not be asserted in case of insignificant deviation from the agreed properties and conditions and insignificant impairment of usability.
2. Improper execution of changes or maintenance by the purchaser or a third party rules out any claims for the changes or maintenance and for any resulting defects.
3. Tasks taken over by XENTELON shall be carried out by XENTELON with great care and according to the best possible state of science and technology.

from the site or place agreed in the first place. In case the object of agreement has been moved to a place abroad, the contracting party in any case shall take over all repair costs even if the object of agreement has been used under the terms of the contract only.

11. If the contracting party instructs XENTELON to use particular goods of third parties, XENTELON is not liable for defects of these goods. If goods are provided by the contracting party, XENTELON is not liable for defects of these goods either. XENTELON does not guarantee compatibility and is not liable in case of incompatibility. Unless explicitly agreed otherwise, it is solely the concern and responsibility of the contracting party to ensure that the products of XENTELON can be used or applied by the contracting party and that the contracting party or the third party respectively meets the technical requirements for the use or defect-free use of the products of XENTELON. In case of defects the cause of which might be traced back to products of XENTELON as well as to third-party products, particularly products of the contracting party, it is the responsibility of the contracting party to prove that the defectiveness of the products of XENTELON cannot be determined. Obvious defects which can easily be recognized shall be reported to XENTELON in writing no later than two weeks after their detection. The date of dispatch of the defect report is decisive. In other cases the defect report may be committed within the legal warranty period, subject to the exception under (13.). This regulation is not meant to set a preclusion period for warranty rights of the contracting party.
12. If for both sides the business deal is a trade transaction, the following applies: § 377 HGB [German Commercial Code] applies without restriction. The contracting party shall check for amount and nature of the goods immediately on arrival at the point of destination and has to report any deviations from the contractual agreements. Any delay in reporting the defects will cause the guarantee to expire.
13. Guarantee claims of the contracting party become time-barred according to statutory provisions.
14. XENTELON does not grant warranties in the legal sense.

§ 7 Liability

1. XENTELON is liable for its staff, servants or vicarious agents for compensations, given there is no exculpation, arising from death or injury to body or health, and shall also be liable for ordinary negligence, and that to an unlimited extent
2. In all other cases of violation of any contractual, pre-contractual and legal obligation, XENTELON is only liable in the case of intent or gross negligence and only for contract-typical, foreseeable damage. The contracting party has to grant an appropriate period of time of at least 3 weeks to XENTELON to rectify the infringement. Only after this period of time has elapsed without result, the contracting party may

withdraw from the contract and/or is entitled to claim compensations. Should the purchaser be solely or predominantly responsible for circumstances which would justify cancellation of the contract, or should the circumstances justifying the cancellation of the contract occur during the purchaser's failure to take delivery, cancellation of the contract shall not be permitted. Liability according to the Product Liability Law remains unaffected.

3. XENTELON does not take risk of procurement for ordered products which are not deliverable immediately. To this extent, XENTELON shall be entitled to withdraw from the contract if XENTELON in turn does not receive the delivery item for which it had concluded a purchase agreement. XENTELON's liability in case of intent or negligence remains unaffected. XENTELON will immediately notify the contracting party about the delivery item not being available and will immediately withdraw from the contract, if XENTELON wishes to do so. If XENTELON cancels the contract, it will immediately refund the relevant sum to the contracting party. The contracting party has to accept responsibility, e.g. insufficient obligation of cooperation (inadequate deficiency notifications, organizational mistakes...).

§ 8 Data Protection

The personal data of the contracting party that become directly or indirectly known to XENTELON in the course of the business relationship, will be saved by XENTELON to an automatic file and will be processed for business transactions (information according to German Federal Data Protection Law). The contracting party agrees to the processing of its personal data that becomes known to XENTELON directly or indirectly via third parties.

§ 9 Subcontractors

XENTELON is entitled to subcontract contractual services to third parties. In such cases, warranty remains with XENTELON.

§ 10 Assignment of Claims

The contracting party is not entitled to assign all or parts of the contracts concluded with XENTELON or all or part of the rights or duties under such contracts to third parties without written permission by XENTELON. This also applies to any warranty claims.

§ 11 Miscellaneous

1. Should parts of the regulations under this contract be or become obsolete, the validity of the remaining regulations remains unaffected. The parties agree to replace the obsolete regulation by a regulation which corresponds to the intended purpose and which the parties would have agreed upon if they had known the original regulation to be obsolete.

2. The statements under 1. also apply to contractual loopholes.
3. Changes and amendments to this contract need to be in written form and need to refer to this contract and be signed by both parties to be valid. This also applies if this requirement for written form is to be waived.
4. The location of jurisdiction for disputes arising from this contract is Pinneberg, Germany, provided that the contracting party is a commercial trader or a legal entity under public law.
5. Location for the implementation of all deliveries and services of XENTELON is Pinneberg, provided that the contracting party is a businessman or a legal entity under public law.
6. Only the law of the Federal Republic of German shall apply to this legal relationship. Validity of the UN Convention on Contracts for the International Sale of Goods (CISG) is expressly ruled out.

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