

TERMS AND CONDITIONS X-CAGO B.V.

Article 1. Definitions

In these conditions, the following definitions shall apply:

- X-CAGO:**
X-CAGO B.V.
Visiting address: Olympialaan 1, 6042 JZ, Roermond The Netherlands
Telephone number: + 31 475 354,060 (during office hours from 9 am to 5 pm CET)
Email address: info@x-cago.com
Chamber of Commerce number: 12,043,124
VAT identification number: NL 8093.03.310. B01
- Consumer:** a natural person who, when entering into a distance contract with X-CAGO, is acting for purposes which are outside his trade, business or profession;
- Distance contract** means an agreement whereby -within the framework of a by X-CAGO organized system for distance selling of products and/or services- up to and including the moment at which the contract is concluded, one or more means of distance communication are exclusively used;
- Means of distance communication:** any means which, without the simultaneous physical presence of X-CAGO and the consumer, may be used for the conclusion of a contract between those parties;
- Principal:** every party, other than a consumer, who enters into an agreement with X-CAGO;
- Agreement:** any contract concluded between X-CAGO and a client;
- Client:** pertains to both a consumer as well as a principal;
- Cooling-off period:** the period during which the consumer can make use of his right of withdrawal in a distance contract;
- Right of withdrawal:** the possibility for the consumer to opt out of the contract within the cooling-off period;
- Day:** calendar day;
- Durable medium:** any means that allows the client or X-CAGO to store information that is addressed to him personally, in a way that ensures future consultation and unaltered reproduction of such information.

Article 2. Applicability of these terms and conditions

- These terms and conditions apply to every offer, quotation and agreement -including distance contracts- between X-CAGO and the client, unless the parties have explicitly deviated from these conditions in writing.
- The applicability of any (purchase) terms and conditions of the principal, is explicitly rejected.
- If one or more provisions of these conditions at any time are deemed to be null and/or void(able) in whole or in part, then the remaining provisions of these terms and conditions still apply in full. X-CAGO and the client in such case will enter into consultation to agree to a new provision which will -as far as possible- reflect the purpose and intent of the original provision, which will replace the null and/or void(able) condition(s).
- If and in so far as regarding a consumer one or more provisions in these conditions would conflict with a mandatory legal provision, such mandatory legal provision will take the provision's place.

Article 3. Offers and quotations

- All offers and quotations, irrespective of the way in which these are made, are non-binding in nature. The prices published in a quote are exclusive of VAT, transport, shipping and handling, unless expressly stated otherwise.
- X-CAGO cannot be held to its offers and/or quotations if the client can reasonably understand that the offers or quotation, or a part thereof, include an obvious mistake, slip or (other) manifest error.
- If an offer to a consumer has a limited duration or is subject to conditions, this will be explicitly stated in the offer.
- Any offer to a consumer will contain a complete and accurate description of the products and/or services. The description is sufficiently detailed in order for the consumer to make a proper assessment of the offer. If X-CAGO uses images, these are a true reflection of the products and/or services.
- Every offer as mentioned in paragraph 4 above, will contain such information that it is clear to the consumer what rights and obligations are involved in accepting the offer. This concerns in particular:
 - the price including taxes;
 - any costs of delivery;
 - the way in which the contract shall be concluded and which actions this will require;
 - whether or not the right of withdrawal exists;
 - the method of payment, delivery or performance of the contract;
 - the deadline for accepting the offer, or the period during which X-CAGO guarantees the price;
 - the rate for distance communication, if the cost of using such means of distance communication are calculated on a basis other than the basic fee therefor;
 - whether the contract is filed subsequent to its conclusion, and if so, how the consumer can consult it;
 - the way in which the consumer, before the contract is concluded, can check and if need be, can rectify, the information provided by the consumer in the context of the contract;
 - the languages in which, in addition to Dutch, the contract can be concluded;
 - the rules of conduct to which X-CAGO has subjected itself and the way in which the consumer can consult such rules of conduct electronically; and

- the minimum duration of the contract in case of an ongoing/continuous transaction.

Article 4. Conclusion of an agreement

- An agreement will only be concluded and become effective after the client places an order with X-CAGO and this order has been confirmed by X-CAGO in writing. X-CAGO is entitled to refuse any order without giving a reason therefore.
- A contract with a consumer, subject to the provisions of article 5, is concluded at the time the consumer accepts the offer and meets the corresponding conditions.
- If a consumer has accepted the offer electronically, X-CAGO will confirm the receipt of the acceptance of the offer without delay, by electronic means. Until receipt of this acceptance has been confirmed by X-CAGO, the consumer may rescind the contract.
- If the contract is concluded electronically, X-CAGO will use the appropriate technical and organizational measures to secure the electronic transfer of data and ensures a secure Web environment. If the consumer can pay electronically, X-CAGO will take therefore appropriate security measures.
- X-CAGO is entitled - within the legal framework - to inform itself on the client's ability to fulfill his payment obligations, as well as all facts and factors that are important for a responsible conclusion of the agreement. If X-CAGO -based on this inquiry- has good reason not to enter into an agreement, it is entitled to refuse an order or request or to impose special conditions on the execution of such agreement.
- X-CAGO will provide the following information about the product or service to the consumer in writing, or in such a way that the consumer can store such information on an accessible and durable medium:
 - the office address of X-CAGO where the consumer can lodge complaints;
 - the conditions under which and how the consumer can make use of the right of withdrawal, or a clear statement regarding the exclusion of the right of withdrawal;
 - information on after-sales service and existing guarantees;
 - the information mentioned in article 3, paragraph 5 of these terms and conditions, unless X-CAGO has already provided the consumer with this information before the conclusion of the contract;
 - the requirements for terminating the contract if the contract has a duration of more than one year or is indefinite.
- In case of an ongoing transaction, the stipulation in the previous paragraph only applies only to the first delivery.

Article 5. Right of withdrawal

- When purchasing products, the consumer has the possibility to withdraw from the contract without giving reason within 14 days. This period commences on the day following receipt of the product by or on behalf of the consumer (by a representative which was previously made known to X-CAGO).
- During the so-called cooling-off period the consumer will handle the product and the packaging carefully. The consumer will only unpack or use the product to the extent necessary in order to assess whether he wishes to keep the product. If he exercises his right of withdrawal, he will return the product and all accessories and -if reasonably possible - in the original condition and packaging, to X-CAGO in accordance with the -clear and reasonable- instructions supplied by X-CAGO.
- The right of withdrawal is excluded in the cases listed below:

For products:

 - created by X-CAGO in accordance with the consumer's specifications;
 - that are clearly personal in nature;
 - that cannot be returned due to their nature;
 - that rapidly decay or become obsolete;
 - the price of which is dependent on fluctuations in the financial market on which X-CAGO has no influence;
 - for individual newspapers and/or magazines;
 - for audio and/or video recordings and computer software of which the consumer has broken the seal.

For services:

 - relating to accommodation, transport, catering or leisure activities on a certain date or during a specified period;
 - the delivery of which started with the explicit consent of the consumer before the withdrawal period had expired;
 - regarding betting and lotteries.

The exclusion of the right of withdrawal is valid only if X-CAGO has indicated this clearly in the offer, or at least before the conclusion of the contract.
- If the consumer exercises his right of withdrawal, he bears the cost of return shipping.
- If the consumer prior to exercising his right of withdrawal, has already paid an amount to X-CAGO, X-CAGO will return this amount as soon as possible, but no later than 14 days after the notice of withdrawal has reached X-CAGO. We may withhold reimbursement until we have received the goods back or you have supplied evidence of having sent back the goods, whichever is the earliest.

Article 6. The price

- X-CAGO reserves the right to amend its prices if and when this is necessary due to changes in exchange rates, legal regulations, amended supplier prices or any other cause. X-CAGO will notify the client hereof.
- Notwithstanding the previous paragraph, X-CAGO may offer products or services whose prices are subject to fluctuations in the financial market

- out of X-CAGO's control, with variable prices. These fluctuations and the fact that the price may change based on this, are mentioned in the offer.
3. Price increases within 3 months after the conclusion of a distance contract with a consumer are only permitted if they are the result of statutory regulations or provisions (for example, price changes due to changes in VAT rates).
 4. Price increases later than 3 months after the conclusion of a distance contract with a consumer are only allowed if X-CAGO has stipulated this beforehand and:
 - a) they are the result of statutory regulations or provisions; or
 - b) the consumer has the power to terminate the contract on the day on which the price increase takes effect.

Article 7. Delivery and execution

1. Delivery shall be made, unless otherwise agreed in writing, by making the goods available at the offices of X-CAGO. Delivery of services is effected by the beginning of said service. Delivery is allowed to be in parts. Delivery of digital products such as software (licenses) is done by making the digital products available through an FTP upload and after X-CAGO shows through the applicable test procedures or programs that the products are operational.
2. The delivery times indicated for delivery by X-CAGO are indicative, are no deadlines and can be amended by X-CAGO. Exceeding the delivery time gives the client no right to compensation or dissolution of the agreement.
3. If the client cancels (one sided termination) the agreement before the scheduled delivery time, which needs to happen in writing and in which case the time of receipt of the aforesaid cancellation by X-CAGO counts as time of cancellation, the client owes X-CAGO 50% of the order value: without prejudice to the right of X-CAGO to claim full compensation. The aforementioned is not applicable when the client is a consumer who has entered into a distance contract with X-CAGO.
4. In case the indicative delivery time is exceeded, the client needs to give X-CAGO notice in writing and set a reasonable period of at least 14 days for X-CAGO to still fulfill the agreement.
5. If the goods to be supplied -other than based on a distance contract with a consumer- have not been accepted by the client within 14 days after these have been made available by X-CAGO, X-CAGO is entitled to store these goods at the expense and risk of the client.
6. X-CAGO will complete orders based on a distance contract with a consumer expeditiously but no later than 30 days, unless a longer period of delivery has been agreed upon. If delivery is delayed, or if an order is not or only partially completed, X-CAGO will inform the consumer hereof as soon as possible, and in any case no later than 30 days after the order was placed. In such case, the consumer has the right to terminate the contract without penalty and right to possible compensation.
7. In case of dissolution of the contract in accordance with the preceding paragraph, X-CAGO will -as soon as possible, but no later than 30 days after the notification of dissolution- refund the consumer any sum already paid by the consumer before such dissolution.
8. If delivery of a product ordered by a consumer proves impossible, X-CAGO will attempt to make a replacement product available. At the latest at the time of the delivery, X-CAGO will make known to the consumer in a clear and comprehensible manner that a replacement product is delivered. For replacement products the right of withdrawal cannot be excluded. The costs of any return shipment shall in such case also be borne by X-CAGO.

Article 8. Force majeure

1. If X-CAGO temporarily cannot fulfill its obligations under the agreement reasonably or timely as a result of force majeure, X-CAGO is not liable for damages that the client suffers as a result thereof.
2. Force majeure includes -but is not limited to-: natural phenomena because of which the agreement can not or not timely be completed, such as storm, flood and severe weather; blockades and other serious transport disruptions; limitation or cessation of delivery by the utility companies of water, gas or electricity; accidents, illness and temporary or permanent incapacity of employees of X-CAGO to perform their work, strikes, lockouts, actions of trade unions, government measures which were not previously communicated, internet failures, problems with hosting providers and other circumstances beyond the control of X-CAGO.
3. In the event of force majeure, X-CAGO has the right to choose either to suspend its obligations under the agreement, extrajudicially cancel the agreement with the client in whole or in part, all of this without any obligation to compensate the client in any way.
4. If at the time of the commencement of force majeure, X-CAGO has already fulfilled or can (only) partially fulfill its obligations under the agreement, X-CAGO is entitled to invoice the already delivered/completed or the deliverable part separately and the client shall be bound to pay this invoice, as if it were a separate agreement.

Article 9. Payment

1. All of X-CAGO's invoices must be paid without any suspension, discount or set-off without to the bank account indicated by X-CAGO on the invoice.
2. Payment must be made within 14 days after the invoice date.
3. Contrary to the previous paragraph, X-CAGO is entitled to stipulate an advance payment.
4. When an advance payment is agreed upon, the client cannot assert any rights regarding the implementation of the agreement, before the stipulated advance payment has been made.
5. The client is obliged to report inaccuracies in provided or stated payment data to X-CAGO without delay.

6. The client is in default without the necessity of a notice of default, if payment is not made within the time limit set for payment or if payments cannot be (timely) collected by X-CAGO.
7. From the day that the client is in default, the client incurs an interest rate of two percentage points above the legal (commercial) interest on the outstanding payment(s) due to X-CAGO. X-CAGO can also recover compensation of extrajudicial costs which are set at 15% of the outstanding payment(s) with a minimum of € 160.- excluding VAT. All of this without prejudice to the right of X-CAGO to claim full compensation.
8. X-CAGO is entitled set off its claim(s) on the client (under any agreement between X-C and the client, or resulting from damages) with any debts of X-CAGO to the client.
9. If the client is in default regarding any payment, X-CAGO is entitled to suspend or dissolve (the implementation of) its obligations under any agreement between X-CAGO and the client.

Article 10. Retention of title and transfer of risk

1. All goods delivered by X-CAGO within the framework of the agreement - including those goods delivered based on a distance contract with a consumer- remain the property of X-CAGO until the client has completed all of its obligations towards X-CAGO based on the agreement. As long as the client has not fulfilled (all of) its obligations, the client is required to treat the goods carefully and with due diligence, to keep them insured and not to pledge, process, transfer and/or give the goods to a third party.
2. The risk of damage, loss and/or depreciation of goods transfers from X-CAGO to the client on the moment of delivery.

Article 11. Research and complaints

1. The client must inspect the delivered goods thoroughly for defects at the time the goods are made available to him.
2. The client shall notify X-CAGO of any complaints -with a motivation thereof- in writing within eight days from the delivery date motivated at X-CAGO. For a consumer who has entered into a distance contract with X-CAGO this period is fourteen days. As far as the listed term cannot be qualified as 'without delay' the client must in any case notify X-CAGO within a reasonable time (up to 2 months) after the defects have been ascertained. If the client has not expressed its complaints to X-CAGO within the abovementioned terms, the client will no longer be entitled to any repair, replacement or compensation.
3. The client must report any transport damage, insofar the transportation was commissioned by X-CAGO, in writing within 1 business day after delivery to both the transporter and X-CAGO. After that period, the client will not be entitled to any compensation.
4. The client must provide X-CAGO with the opportunity to investigate a complaint. A submitted complaint will be answered within a period of 14 days after the date of receipt of such complaint. If a complaint needs longer processing time, X-CAGO will notify the client within the 14-day period of the receipt of the complaint and provide the client with an indication when the client can expect a more detailed answer.
5. X-CAGO accepts no returns from the client (other than on the basis of the right of withdrawal) other than after prior written permission has been given to effectuate such return, so that X-CAGO can investigate the complaint.
6. Color and/or shape deviations -in comparison with a description- that do not substantially affect the quality and function of the product, as well as minor deviations, are not a cause for complaints. Size, made-to-order and special products are in no case taken back by X-CAGO.
7. The fact that a complaint has been submitted, does not suspend the payment obligation(s) of the client.

Article 12. Compliance and warranty

1. X-CAGO guarantees that the products and/or services provided to the consumer, comply with the distance contract, the specifications stated in the offer, the reasonable requirements of reliability and/or usability and on the existing legal provisions and/or government regulations existing on the date of the conclusion of the distance contract.
2. A warranty supplied by X-CAGO, a manufacturer or an importer does not affect the legal rights and claims that the consumer has under the agreement.
3. Any warranty on goods supplied to the client never extends beyond the guarantee which was provided by the manufacturer or supplier of the goods (manufacturer's warranty).
4. Any kind of guarantee will expire if a defect is caused by or resulting from improper or inappropriate use, installation, changes or repairs, and/or processing by the client or third parties engaged by him, or in case of digital goods like software, if not the most latest version is used.
5. The client shall at all times be ultimately responsible for the final assessment whether the delivered goods are suitable for use and/or processing by the client, regardless of any advice or reviews given by X-CAGO.
6. No warranty is given for defects resulting from normal wear and tear, incorrect and/or improper use and/or processing and/or no or incorrect or untimely performed maintenance.
7. The assessment of the warranty as well as the choice for the method of recovery is reserved for X-CAGO. An approved warranty claim does not mean that the delivered good will be replaced, X-CAGO may also decide to repair the product. The warranty in such case only extends to the free of charge repair of the product, provided that the costs for X-CAGO associated with such repair are in reasonable proportion to the errors and/or defects. If the latter is not the case, X-CAGO is entitled to charge part of the repair and/or replacement costs to the customer.

Article 13. Liability

1. In so far as no mandatory legal provision dictates otherwise:
 - a) X-CAGO shall not be liable for any damage (explicitly including indirect damage, including consequential damage, loss of profit, damage due to business stagnation and the like) unless the damage is due to gross negligence or willful misconduct on the part of X-CAGO;
 - b) to the extent that despite paragraph a. above, there is liability on the part of X-CAGO, this is limited to (free of charge) recovery of a defective product or replacement thereof in whole or in part, this at the discretion of X-CAGO;
 - c) X-CAGO is never liable for damage resulting from:
 - i. incorrect and/or incomplete information submitted by the client. The client is responsible for the accuracy and completeness of the essential information which needs to be provided;
 - ii. any failure of the client to comply with his obligations under the agreement, including the provision of sufficient cooperation in the implementation of the agreement, or;
 - iii. damage caused by failure in the obligations of third parties engaged by the client.
2. If despite the abovementioned liability exclusions, X-CAGO can still be held liable, then the liability of X-CAGO towards the client –unless a mandatory legal provision dictates otherwise- is limited to the amount of that part of the agreement to which the damage pertains and the amount which in such case is actually paid under the commercial liability insurance policy concluded by X-CAGO.
3. The client will, in so far as far as no mandatory legal provision dictates otherwise, refrain from holding X-CAGO liable in respect to damages which can be directly claimed from a third party or its insurance company.
4. Unless a mandatory legal provision dictates otherwise, any legal claim expires when a period of two months after the date on which the damages have been detected or could have reasonably been detected, has passed.
5. For X-CAGO to be in default –unless a mandatory legal provision dictates otherwise- a written notice is always required.

Article 14. Security

1. X-CAGO is at all times entitled to demand security from the client for the performance of the client's obligations under the agreement. The client will adhere to such a request upon X-CAGO's first request.
2. If the client supplies no or insufficient security, X-CAGO is entitled to terminate the agreement in whole or in part, with immediate effect. In such case, the client is liable for all resulting damage on X-CAGO's part.

Article 15. Intellectual property and confidentiality

1. Unless expressly stipulated otherwise, all (intellectual property-) rights on goods manufactured and/or delivered by X-CAGO (as well as all underlying designs, illustrations, drawings, models, documents, (source-) codes etc.) exclusively belong to X-CAGO.
2. With regard to knowledge about intellectual property rights and all information which may be classified as sensitive or confidential, the client will exercise strict secrecy.
3. Documentation made available to the client by X-CAGO, may only be copied for the fulfillment of the agreement and/or for archiving. Every copy should always contain the copyright notice of the original. Documentation at all times remains the property of X-CAGO and should not be transferred or in any way, be made available, to third parties –including any copy thereof.
4. X-CAGO has the right to use any increased knowledge obtained during the performance of an agreement for other purposes/agreements, in so far as strictly confidential information of the client will not be made available to third parties.
5. If the client is informed by a third party on a violation of (intellectual property-) rights, any liability in relation thereto the client would be able or willing to shift to X-CAGO, the client is obliged to notify X-CAGO immediately, failure of which results in the expiration of any (related) claim of the client on X-CAGO. In addition, the client is obliged to render X-CAGO the opportunity to introduce itself and to (also) defend itself against the alleged liability.
6. If and to the extent that (third party) intellectual property rights rest on (parts of) anything which is made available to X-CAGO by the client, the client guarantees that making this available to X-CAGO (as well as any processing thereof) in no way infringes on the (intellectual property) rights of third parties and indemnifies X-CAGO for any resulting liability.

Article 16. Termination and suspension

1. X-CAGO is entitled to suspend the performance of its obligations, in whole or in part, or to terminate the agreement immediately, without prejudice to its right to damages and without any obligation for compensation of the client in the case X-CAGO has good reason to fear that the client will fail -in the full/timely fulfillment of- its obligations, a state of suspension has been issued or a request thereto has been submitted, has been declared bankrupt or a request thereto has been submitted, the client's assets have been attached -by way of execution or provisional attachment-, all or a significant part of its activities and/or assets has been transferred, stopped or suspended, or any similar situation.
2. The client must inform X-CAGO immediately when a circumstance as mentioned in paragraph 1 above occurs. When such circumstance occurs, everything X-CAGO at that point (still) can claim from the client will be immediately due and payable.

Article 17. Additional or different terms

Additional or provisions differing from these terms and conditions, must be laid down in writing.

Article 18. Applicable law and disputes

1. Solely Dutch law is applicable to all offers, quotations, contracts and/or agreements –as well as all rights and obligations resulting therefrom- by/with X-CAGO.
2. All disputes related to offers, quotations contracts and/or agreements by/with X-CAGO, and/or resulting therefrom, will, unless a mandatory provision dictates otherwise, in the first instance be submitted to the competent court in the District of Limburg.
3. If, however, the client's residence/principal place of business is in a country outside the EU, with which country no treaty regarding the implementation and execution of Dutch judgements applies, all disputes related to offers, quotations contracts and/or agreements and/or agreements resulting therefrom, however, by way of derogation from the preceding paragraph, will be exclusively settled by arbitration in accordance with the rules of arbitration of the Dutch Arbitration Institute (NAI). Arbitration will in such case take place in Roermond, the Netherlands, in the English language and the arbitral tribunal shall consist of one arbitrator.

These terms and conditions have been translated into English for your convenience. If any discrepancy arises between this translation and the original (Dutch) version, the Dutch version will be leading.