

General terms & Conditions

Article 1 Definitions In these terms, the following terms are used with the following meanings, unless expressly stated otherwise:

Xustain: Xustain B.V. or one of its subsidiaries, the user of these terms, the service provider, the seller of services; Client: The counterparty of Xustain, the purchaser of services; Agreement: The agreement between Xustain and the client; Price: The order amount, the rate, the fee.

Article 2 General

2.1 These terms apply to every quotation and agreement between Xustain and the client, unless expressly and in writing deviated from these terms by the parties.

2.2 These terms also apply to all agreements with Xustain, for the performance of which Xustain uses the services of third parties.

2.3 Parties can only deviate from these general terms and conditions in writing.

2.4 If Xustain enters into agreements with the client more than once, these general terms and conditions apply to all subsequent agreements, regardless of whether they have been declared applicable or handed over explicitly.

2.5 If one or more provisions in these general terms and conditions are null and void or are annulled, the remaining provisions of these general terms and conditions will remain in full force and effect.

Article 3 Quotations and Agreements

3.1 All quotations, in whatever form, are without obligation, unless a term for acceptance is stated in the offer.

3.2 Agreements in which Xustain is a party are only considered concluded: a) after both parties have signed an agreement drawn up for this purpose, as of the date of signature, or; b) after receipt and acceptance of the written acceptance by the client of an offer made by Xustain, or; c) in the case of an oral agreement, by providing information for the execution of the activities.

3.3 In the case of oral agreements, the invoice is deemed to accurately reflect the agreement in full, subject to objection within 15 days after the invoice date.

3.4 Xustain is entitled to refuse an assignment if the assignment conflicts with any code of conduct.

3.5 Prices in the quotations mentioned are in Euros excluding VAT and other government levies (such as waste disposal tax), as well as excluding any costs to be incurred in the context of the agreement, including administrative costs, provisions, unless otherwise agreed upon by the parties.

3.6 Quotations apply only to the assignments to which they relate and cannot be invoked for subsequent assignments.

3.7 The files, documents provided to the client with the quotation, such as plans, reports, analyses, brochures, or other items, remain the property of Xustain and must be returned to Xustain upon first request.

Article 4 Amendment of the Agreement

4.1 If it appears during the execution of the agreement that it is necessary to amend or supplement the activities to be performed for proper execution, the parties will adjust the agreement accordingly in a timely manner and in mutual consultation.

4.2 If the parties agree to amend or supplement the agreement, the completion time of the execution may be affected. Xustain will inform the client of this as soon as possible.

4.3 If the amendment or supplement to the agreement has financial and/or qualitative consequences, Xustain will inform the client in advance.

Article 5 Price/Costs

5.1 Parties may agree on a fixed price when concluding the agreement.

5.2 This fixed price will in most cases be a rate per ton based on the tonnages removed, with the weighing data provided by Xustain serving as settlement unless otherwise agreed upon.

5.3 Xustain will notify the client in writing of the intention to increase the price. Xustain will specify the extent of the increase and the date on which it will take effect.

5.4 Xustain has the right to change its rates annually on January 1st, unless otherwise agreed upon by the parties.

5.5 Government-imposed levies, such as waste disposal tax, will be increased in line with government increases.

Article 6 Cancellation of the Agreement

6.1 Cancellation of an order must be made in writing at least 5 working days before the execution date, failing which the client is liable for 10% of the order price. In case of cancellation within 5 working days, the client is liable for 50% of the order price.

6.2 The client must ensure that Xustain has actually received the cancellation.

6.3 If Xustain incurs any costs to a third party due to cancellation by the client, these costs are entirely borne by the client.

Article 7 Suspension and Termination

7.1 Xustain is entitled to suspend the performance of obligations or terminate the agreement if:

the client fails to fulfill the obligations under the agreement in whole or in part;
circumstances have come to the knowledge of Xustain after the conclusion of the agreement that give good grounds to fear that the client will not fulfill the obligations.

in the event that there are good grounds to fear that the client will only partially or not properly fulfill, the suspension is only permitted to the extent that the shortcoming justifies it;

the client was requested to provide security for the fulfillment of his obligations under the agreement at the conclusion of the agreement and this security is not provided or is insufficient.

7.2 Furthermore, Xustain is entitled to (have) the agreement terminated if circumstances arise of such a nature that fulfillment of the agreement has become impossible or can no longer be demanded according to standards of reasonableness and fairness, or if circumstances arise otherwise that are of such a nature that unaltered maintenance of the agreement cannot reasonably be expected.

7.3 If the agreement is terminated, Xustain's claims against the client are immediately due and payable. If Xustain suspends the performance of obligations, it retains its rights under the law and the agreement.

7.4 Xustain always reserves the right to claim damages.

Article 8 Execution of the Agreement

8.1 Xustain shall carry out the services with care, where applicable in accordance with the agreements and procedures laid down in writing with the client. Xustain shall only engage sufficiently qualified personnel and resources in the execution of the agreement.

8.2 If and to the extent that proper execution of the agreement requires it, Xustain has the right to have certain activities carried out by third parties.

8.3 The client shall ensure that all data, documents, files, which Xustain indicates as necessary or which the client reasonably should understand to be necessary for the execution of the agreement, are provided to Xustain in a timely manner. If these are not provided to Xustain in a timely manner for the execution of the agreement, Xustain has the right to suspend the execution of the agreement and/or to charge the client the extra costs resulting from the delay according to the usual rates.

8.4 If, in the context of the assignment, work is carried out by Xustain or third parties engaged by Xustain at the location of the client or a location designated by the client, the client shall provide, free of charge, the facilities desired by Xustain's employees within reason.

8.5 The location and timing of the execution of the agreement are determined in consultation. However, Xustain is permitted to change the location and timing, provided it discusses this with the client in a timely manner. In general, such changes are considered to have been communicated in a timely manner if communicated no later than 48 hours before the execution of the agreement, or a part thereof, takes place.

8.6 If the contract has not been signed during the execution of the work, the latest sent quotation and/or version of the contract will automatically be considered as the final contract.

Article 9 Duration of the Contract/Execution Period

9.1 The agreement between Xustain and a client is entered into for an indefinite period or quantity, unless the nature of the agreement dictates otherwise or the parties expressly and in writing agree otherwise.

9.2 If the client wishes to terminate the agreement prematurely, before Xustain has fully executed the assignment or before the project is completed, Xustain is entitled to compensation for the loss incurred thereby and which can be demonstrated, unless the termination is based on facts and circumstances attributable to Xustain.

9.3 Premature termination is considered to occur when an agreement or project is interrupted or postponed by the client for more than two months, unless agreed otherwise by the parties.

9.4 If the agreement is terminated prematurely by Xustain, Xustain will, in consultation with the client, ensure the transfer of any remaining work to a third party, unless the termination is based on facts and circumstances attributable to the client.

9.5 Termination, dissolution, and termination of the agreement must be done in writing by registered mail.

Article 10 Inspection/Complaints

10.1 Complaints about the services provided must be reported in writing to Xustain immediately by the client. The notice of default must contain the most detailed description possible of the shortcoming so that Xustain can respond adequately.

10.2 If a complaint is justified, Xustain will still perform the services as agreed, unless this has become demonstrably pointless for the client in the meantime. The latter must be communicated to Xustain in writing by the client.

10.3 The right to complain lapses if the client does not inform Xustain during the execution of the work or within 5 working days after the complaint arises.

10.4 Complaints about invoices must also be submitted in writing within 15 days of the invoice date.

10.5 After the expiration of the above-mentioned periods, the client is deemed to have approved the performance and the invoice.

10.6 If it is no longer possible or meaningful to perform the agreed work, Xustain shall only be liable within the limits of the provisions of the article "Liability."

Article 11 Liability

11.1 If Xustain is liable, this liability is limited to what is regulated in this provision.

11.2 If Xustain is liable for direct damages, this liability is limited to the maximum amount that Xustain's insurer pays to Xustain, or up to the quotation amount or the agreed price.

11.3 Contrary to what is stipulated in paragraph 2 of this article, in the case of an assignment with a duration of more than six months, liability is further limited to the price payable over the last six months.

11.4 Direct damage is exclusively understood to mean:

the reasonable costs incurred to determine the cause and extent of the damage, insofar as the determination relates to damage within the meaning of these conditions;
any reasonable costs incurred to have Xustain's defective performance conform to the agreement, unless these cannot be attributed to Xustain;
the reasonable costs incurred to prevent or limit damage, insofar as the client demonstrates that these costs have led to the limitation of direct damage as referred to in these general terms and conditions.

11.5 If the agreement is terminated prematurely, the client cannot hold Xustain liable for the results achieved up to the date of termination, because an intended result or objective can only be achieved when Xustain can perform the entire agreement.

11.6 Xustain is not liable for any damage whatsoever resulting from the client providing incorrect and/or incomplete data.

11.7 Xustain is never liable for damage resulting from advice given. Advice is always given on the basis of the facts and circumstances known to Xustain and in mutual consultation, with Xustain always taking the client's intentions as its guiding principle and starting point.

11.8 Xustain is never liable for indirect damage, including consequential damage, loss of turnover and profit, missed savings, and damage due to business interruption.

11.9 The client must make copies of all documents, information carriers, electronic files or software, etc., provided to Xustain, in case these items are lost or damaged. The client cannot hold Xustain liable for the loss or damage of these items.

11.10 The limitations of liability for direct damages as stipulated in these conditions do not apply if the damage is due to intent or gross negligence on the part of Xustain or its subordinates/employees.

Article 12 Force Majeure

12.1 The party claiming force majeure is obliged to immediately notify the other party thereof.

12.2 Parties are not obliged to fulfill any obligation if they are prevented from doing so as a result of circumstances that are not attributable to fault, and which are not under the law, a legal act or generally accepted standards attributable to their account.

12.3 Force majeure, as used in these general terms and conditions, is understood to mean, in addition to what is understood by it in law and jurisprudence, all external causes, foreseen or unforeseen, over which Xustain cannot exert any influence, such as fire, theft, illness of personnel, power and computer failures, and delays in traffic, but which prevent Xustain from fulfilling its obligations. Strikes in Xustain's company are also included.

12.4 Xustain also has the right to invoke force majeure if the circumstance that prevents (further) performance occurs after Xustain should have fulfilled its obligations.

12.5 During the period that force majeure continues, the parties can suspend the obligations under the agreement. If this period lasts longer than two months, each party has the right to terminate the agreement, without obligation to compensate damages to the other party.

12.6 Insofar as Xustain has partially fulfilled its obligations under the agreement at the time of the occurrence of force majeure, or will be able to fulfill them, and the fulfilled or to be fulfilled part has independent value, Xustain is entitled to separately invoice the already fulfilled or to be fulfilled part. The client is obliged to pay this invoice as if it were a separate agreement.

Article 13 Indemnities

13.1 The client indemnifies Xustain against claims from third parties regarding intellectual property rights to documents and data provided by the client, which are used in the execution of the agreement.

13.2 The client indemnifies Xustain against any claims from third parties who suffer damage in connection with the execution of the agreement and which is attributable to the client.

13.3 The indemnity referred to in this article also includes all judicial and extrajudicial costs of Xustain.

13.4 If the client provides Xustain with information carriers, electronic files, or software, etc., the client guarantees that these information carriers, electronic files, or software are free of viruses and defects.

Article 14 Confidentiality

14.1 Both parties are obliged to maintain confidentiality with regard to all confidential information they have obtained from each other in the context of the agreement. All information is considered confidential, unless one of the parties has informed the other party in writing that the information is not confidential.

14.2 If, on the basis of a legal provision or a court decision, Xustain is obliged to provide confidential information to third parties designated by law or the competent court, and Xustain cannot invoke a legal or recognized or permitted right of non-disclosure, Xustain is not obliged to pay damages or compensation and the other party is not entitled to terminate the agreement on the grounds of any damage caused thereby.

Article 15 Payment

15.1 Payment must be made within 30 days after the invoice date in the currency in which it is invoiced, unless otherwise agreed upon by the parties. Objections to the amount of the invoices do not suspend the payment obligation.

15.2 Xustain is entitled to demand full or partial advance payment of the amount due. After payment of the advance amount, Xustain will commence the execution of the agreement.

15.3 Parties may agree on a payment arrangement. With installment payments, the price is increased with additional administrative costs.

15.4 If the client defaults on payment within the agreed period, the client is in default by operation of law. In that case, the client owes an interest of 3.5% per month or part of a month, unless the statutory (commercial) interest is higher, in which case the highest interest applies. The interest on the amount due will be calculated from the moment the client is in default until the moment of payment of the full amount.

15.5 In the event of liquidation, (application for) bankruptcy, admission of the client to statutory debt restructuring, guardianship, seizure, or (provisional) suspension of payment of the client, Xustain's claims on the client become immediately due and payable.

15.6 Payments made by the client are first allocated to costs, then to accrued interest, and finally to the principal amount and the current interest.

Article 16 Collection Costs

16.1 If the client defaults on or is in default with the (timely) performance of his obligations, all reasonable costs incurred in obtaining payment out of court are for the account of the client. In any case, the client is obliged to pay collection costs in the event of a monetary claim. The collection costs are calculated in accordance with the collection rate as advised by the Dutch Bar Association in debt collection cases, with a minimum of € 350.00.

16.2 If Xustain has incurred higher costs which were reasonably necessary, these are also eligible for reimbursement. Judicial and enforcement costs are also for the account of the client.

Article 17 Applicable Law/Jurisdiction

Belgian law applies to every agreement between Xustain and the client. The court in the place of business of Xustain has exclusive jurisdiction to hear disputes between the parties. However, Xustain has the right to submit the dispute to the competent court in Belgium according to the law.