

## General terms of business of XtraX GmbH & Co. KG

### § 1 Area of application of the terms of delivery

#### 1.

These terms are subject to all deliveries effected by us, as far as no deviating written agreement is made. All general terms of our customers does not apply also if we expressly disagree to their inclusion with conclusion of contract.



#### 2.

For any request you can refer to:

**XtraX GmbH & Co. KG**  
**Lessingstraße 10 b**  
**89231 Neu-Ulm**  
**Germany.**

**Phone:** +49 (0) 731/715798-0

**Fax:** +49 (0) 731/715798-1

**E-mail:** [order@x-tra-x.de](mailto:order@x-tra-x.de); [info@x-tra-x.de](mailto:info@x-tra-x.de)

**Internet:** [www.x-tra-x.de](http://www.x-tra-x.de)

**Office hours:** Monday until Friday from 9:00 am to 6:00 pm

The XtraX GmbH & Co. KG is registered in the commercial register of the county court, number HRA 11080 and is represented legally through the XtraX Verwaltungs GmbH which is registered in the commercial register of the county court with number HRB 12327. The XtraX Verwaltungs GmbH is represented legally by the managing directors Alexandra Steffelbauer and Jürgen Ellenrieder.

### § 2 Orders and contract conclusions; supply reservation

#### 1.

You can order our articles during the stated office hours by telephone or at any time by fax, by post or by email to [order@x-tra-x.de](mailto:order@x-tra-x.de). We only can accept orders of persons underage (persons aged 7-18) if the acceptance of the legal guardian has been provided.

#### 2.

You are bound to your orders two weeks after providing the order. Due to § 5 your right to withdraw remains unaffected.

#### 3.

Due to our special product range long delivery times can occur. Therefore it is advisable:

- a) To indicate a replacement article together with the order which should be delivered, if the ordered article is not ready for immediate shipment? Have you indicated a replacement article we will cancel the not available article and deliver instead the replacement; If no replacement has been indicated we will deliver the ordered article; our right to detach ourselves from delivery (clause 7) will remain unaffected. If the article occurs to be sold out on receipt of your order we will inform you.
- b) By placing an order you accept back orders which are causing further shipping costs on each delivery (see § 3 clause. 3)

#### 4.

There is no minimum order value. Please note that you have also to pay postage for less-value orders

#### 5.

You are kindly requested to indicate the way of payment. You can pay by credit card, IMO (International Money Order, wire transfer, COD - Cash On Delivery (only A, CH, FL). Paying by credit card you should provide all data mentioned in § 3 para. 2. On receipt of incomplete or incorrect data we are authorized to deliver COD and charge the resulting costs.

#### 6.

A contract becomes affected by us confirming the order or by supplying the requested articles. We are not obliged to accept an order. The automatically send e-mail confirmation of your order is not a binding acceptance of your order.

#### 7.

If we are not in the position to supply due to several reasons after concluding a congruent hedging transaction with a supplier we are entitled to detach ourselves from delivery; we have to inform you about this immediately and we have to refund effected considerations.

### § 3 Payment, shipping and handling, special offers

#### 1.

The total of the purchased articles including shipping costs have to be paid either by cash on delivery, by credit card, Paypal or in advance by wire transfer. If you choose payment by wire transfer we will send you all necessary details in our confirmation of receipt of your order. The payment must be effected without deduction at the latest within 14 days after the date of invoice. Paying by credit card the card will be charged soonest on the day of shipment.

#### 2.

We accept credit card of VISA, EuroCard, MasterCard and American Express. On placing the order and providing the credit card details you confirm that you are the entitled owner of the card. Please provide the credit card number (for VISA, EuroCard and MasterCard 16-digit and for American Express 15-digits), the date of expiration (4-digits) as well as the check number (for VISA, EuroCard and MasterCard please provide the last 3 digits and for American Express the last 4 digits). The transmission of the credit card data by our web shop is secured by SSL coding.

#### 3.

For deliveries within Germany with a total value up to 125,00 € we are charging the following shipping costs. For deliveries into Austria, Switzerland and Liechtenstein we are charging special shipping costs according clause 4.

a) Payment by credit card:

- (1) EUR 6,00 for the **first delivery** per order within **Germany**
- (2) EUR 7,50 for **each** delivery to **Austria**
- (3) EUR 13,00 for **each** delivery to **Switzerland** and to **Liechtenstein**;

b) Payment by advanced payment (wire transfer):

- (1) EUR 7,00 for **the first delivery** per order within **Germany**
- (2) EUR 7,50 per order to **Austria**
- (3) EUR 13,00 per order to **Switzerland** and to **Liechtenstein**;

c) Payment by cash on delivery (COD):

- (1) EUR 8,50 for the first delivery per order within **Germany** (excl. C.O.D charge of EUR 2,00 at present)
- (2) EUR 14,00 for **Austria** (excl. C.O.D. charge of the national Post – Please refer to your post office to be informed of the amount due) for **EACH** delivery to Austria.

d) Payment by Paypal:

- (4) EUR 6,00 for **the first delivery** per order within **Germany**
- (5) EUR 7,50 per order to **Austria**
- (6) EUR 13,00 per order to **Switzerland** and to **Liechtenstein**;

For additional deliveries within Germany applies:

Additional deliveries (so called back orders) which are paid by credit card the shipping costs are 3,00 € for EACH delivery which will be effected 4 weeks on receipt of order confirmation. Paying C.O.D. the shipping for additional deliveries is 4,25 € for EACH delivery (excl. the C.O.D. charge) which will be effected 4 weeks on receipt of order confirmation. After these 4 weeks we will delivery you free of shipping costs. We do not charge shipping costs for additional deliveries if you pay in advance by wire transfer, Paypal or cash in a registered.

#### 4.

Orders with a value more than EUR 125,00 we do not charge shipping costs for the first delivery within Germany (the C.O.D. charge of the national post and the shipping costs for additional deliveries – so called back orders - still remain!!) For deliveries outside Germany the additional shipping costs of clause. 3 and 5 become effective.

5. For deliveries not mentioned in clause 3 we charge the resulting costs (as far as in clause. 3 nothing deviating is regulated). The shipping costs at present are:

Price to approximately 2 kg of packages

Country	Credit-Card PayPal Bank transfer	Cash on Delivery
<b>Albania</b>	19,00 €	-
Belgium	8,90 €	-
<b>Bosnia- Herzegovina</b>	19,00 €	-
<b>Canada</b>	19,00 €	
<b>Croatia</b>	19,00 €	-
Cyprus	9,90 €	-
Czech Republik	9,90 €	-
Denmark	8,90 €	-
Estonia	9,90 €	-
Finland	9,90 €	-
France	9,90 €	-
Great Britain	9,90 €	-
Greek	9,90 €	-
Hungary	9,90 €	-
Ireland	9,90 €	-
<b>Island</b>	19,00 €	-
Italy	9,90 €	-
Latvia	9,90 €	-
Lithuania	9,90 €	-
Luxembourg	8,90 €	-
<b>Macedonia</b>	19,00 €	-
Malta	9,90 €	-
<b>Montenegro</b>	19,00 €	-
<b>Norway</b>	15,00 €	-
Poland	9,90 €	-
Portugal	9,90 €	-
Romania	9,90 €	-
<b>Russia</b>	19,00 €	
<b>Serbia</b>	19,00 €	-
Slovakia	9,90 €	-
Slovenia	9,90 €	-
Spain	9,90 €	-
Sweden	9,90 €	-
The Netherlands	8,90 €	-
<b>USA</b>	19,00 €	
World wide	ex 19,00 €	-

\*Transfer also means international money order or wire transfer

6. If you withdraw your order according to § 5 you can ask us to refund already paid postage (shipment costs) according legal requirements (please pay attention to § 5 clause 3 special manifestations).

7. Special offers only apply as long as stock lasts. If a special offer order can not be fulfilled in spite of adequate stockage, because the article is no longer available, we will not accept you.

8. Prices are shown in Euro and include the German value added tax (VAT).

9. Prices are subject to alternation. Prices at already signed contracts are subject to alternations.

## § 4 Delivery

1.  
Delivery will be effected (except by ordering COD) on receipt of the amount due (see clauses 3, 1)

2.  
We process the orders at latest the day after receipt of the order and supply the ordered articles as soon as possible. Due to our special range delays in delivery can occur. In that case you will be informed by e-mail or letter.

3.  
If an article is out of stock we will inform you by e-mail or letter. We reserve the right detach ourselves from delivery.

4.  
All articles are properties of XtraX GmbH & Co. KG until the entire amount has been paid.

## § 5 Right of Withdrawal

1.  
If you are customer (a natural person which places an order without commercial or job-related intensions) which does not bought our articles in one of our shops, but ordered by telephone, fax, snail mail or e-mail – in this case you are able to reserve the right withdrawal. For the right of withdrawal the following directives should be pointed out.

2.  
In case of withdrawal you have to return the goods to the address stated below. We take over the shipping costs for the return when the value of the returned items exceeds EUR 40.00 and/or in case we have delivered the wrong or defective items. In all other cases the shipping costs for the return have to be paid by you.

3.  
For the rest the following detailed shown regulations of the right of withdrawal are valid:

### (1) Right of Withdrawal

**You can cancel all orders within 14 days either in writing (for example by letter, fax or e-mail) or by sending back the goods without giving reasons. This period of time begins on the day following receipt of these special instructions if you have received all the required information in accordance to Artikel 246 § 2 in association to § 1 clause 1 and 2 EGBGB as well as our dues in accordance to § 312e clause 1 phrase 1 BGB in association to Artikel 246 § 3 EGBGB in cases of placing orders via online-shop.) In the case of a delivery of goods, the time period does not begin to run until the day after receipt of the goods if you have received these special instructions at that point in time and have fulfilled the above-mentioned obligations. To be within this cancellation period, all you need to do is send the notice of cancellation or despatch the goods in time. Please direct your cancellations to:**

**XtraX GmbH & Co. KG  
Lessingstr. 10 B  
89231 Neu-Ulm  
Germany**

**Fax: +49-731-715798-0  
E-Mail: [info@x-tra-x.de](mailto:info@x-tra-x.de)**

### (2) Withdrawal consequences

**In the event of a valid withdrawal both parties have to return the performance made or granted. If you cannot return the items received or only in worse condition, you have to pay damages (money) for it (worse condition refers, for example, to altered, laundered or worn textiles/clothes/shoes or similar). This does not apply when the worsening of the items can be put down to their examination as it is also possible e.g. in retail shops. Furthermore you can avoid having to pay damages by treating the items carefully, not taking possession of them as your own property and avoiding everything which could impair their value.**

**After the orderly receipt of the return we refund the value you have paid and the shipping costs for the return if applicable. Please return the items the cheapest way and sufficiently posted.**

### (3) Special manifestations

**No right of withdrawal in the following cases in accordance to § 312d clause 4 no. 1 and 2 BGB:**

- a. **at deliveries of goods which are especially produced on demand or definitely tailored on your requirements or not returnable caused by their perishable character or in case of their exceeded expiry date,**
- b. **at deliveries of audio and video recordings or software in case of broken seals,**
- c. **at deliveries of newspapers, magazines and journals.**

#### **End of declaration of the Right of Withdrawal**

To make proceedings on your return faster and easier, please call us before you returning goods. Your right to withdraw is not affected by this requested call

#### 4.

Customers who live outside Germany are kindly requested to provide with the cancellation/withdrawal the Iban and Bic/SWIFT code of their bank so a quick proceeding of the pay back can be effected. The pay back for customers living in Switzerland, Liechtenstein and Norway as well as all non European countries will be effected by bank transfer or –if the payment was made by credit card or Paypal- by credit the amount back into the credit card or Paypal account. Charges due to transferrals or cheques cause by credit institutions have to be paid by the customer.

#### **§ 6 Limitation of liability**

##### 1.

In cases of contractual- and non-contractual liability we are liable on amends forlorn expenses as follows:

- **In cases of intention and gross negligence we are liable for unlimited exposures.**
- **In all other cases only in concealment of an important contractual obligation. This is limited to indemnity for typical and predictable claim.**

**In all other cases the liability is excluded.**

##### 2.

Our liability on personal injuries and in consideration to the product liability is not effected by the foresaid narrowing of liability.

##### 3.

Claims caused by contrarious aims than usually usage of clothes we are not liable for you or any third party.

##### 4.

All quotations of articles and prices in our catalogues, leaflets and on our web site are arranged with great care. We are not liable for misprints and mistakes in translations of German texts into other languages.

#### **§ 7 Warranty**

##### 1.

In all cases of absences referring warranty you will be entitled to all rights which are chartered by the German Civil Code. **Please note limitations and exclusions of liability mentioned in § 6.**

##### 2.

Basically the following is important:

- a) We are only liable for defects which exist before delivering. We are not liable for defects caused by unusually usage, wrong care or wear out.
- b) According to the German Civil Code warranty and claims based on defects end after two years on receipt of delivery.
- c) If a defect is shown in the first **six months** after receipt of delivery so it is assumed that the defect has been already existed before the delivery. If the defect is shown after six months on receipt of the delivery you are obliged to prove that the defect existed already on receipt of the delivery particularly that the defects are not caused by unusually usage, wrong care or wear out.
- d) Proof of delivery is your invoice. Please keep them during the period of warranty.
- e) In the case of a defect which existed before delivery you have the choice of getting a new article or a repaired one. We can refuse your request under restriction of commensurability if i. e. the costs are not in due proportion to the value of the article.

- f) If exchanging or repairing fails you are able to set us a time limit for exchanging or repairing. If time is running out you can withdraw your order or you can ask for a reduction of the price. Under specified circumstances you are able to claim for amends.

3.

Please call or write us immediately if you discover a defect.

2.

If you bought articles in one of our shops please contact the shop directly. Your right to complain defects will be not affected by that.

### **§ 8 Promotion arrangements, contests and lotteries**

1.

Promotion arrangements, contests or lotteries are limited to the announced terms and German law. Legal proceedings are excluded.

2.

Offers of such special activities are valid as long as stock lasts.

3.

Staff, relatives and friends of XtraX GmbH & Co. KG are barred from such activities corresponding to paragraph 1.

### **§ 9 Final provisions**

1.

In case of doubt the German Terms of Delivery are valid.

2.

German law applies under exclusion of the United Nations Convention on Contracts for the International Sale of Goods (CISG).

3.

If you are a merchant or you have no legal venue in Germany, Neu-Ulm will be the exclusive venue. We are also allowed to take legal proceedings at other responsible courts.

### **§ 10 Brands reserved by trademark laws**

Please note that all rights are reserved for the following brands „XtraX“, „Bat Attack“, „From Dusk Till Dawn Distribution“, „Royal Monster“, „Monster Society“ and „Donaupiraten“. Please note that merchandise articles of the 69 Eyes, Blitzkid, the Other, Zimbl, Kinkats, Übermutter and Doro are licensed to XtraX GmbH & Co. KG. We reserve the right to take legal proceedings (according civil law and penal) against all unauthorized use.

**XtraX GmbH & Co. KG (status quo: 11<sup>th</sup> June 2010)**