

General Terms and Conditions of Sale and Delivery of ELCO GmbH (April 2017)

1. Scope of application of our General Terms and Conditions

- 1.1. The present terms of delivery shall apply for all transactions with persons at the time of signing of the contract acting in a corporate capacity or in a capacity as self-employed professionals (entrepreneurs) as well as for all transactions with body corporates organised under public law or public separate assets.
- 1.2. Our GTC apply exclusively; they shall also apply for future business with the contracting party. Other provisions, in particular the contracting party's terms and conditions, shall not apply, even if we have not rejected such conditions explicitly. We are entitled to withdraw from the contract when the contracting party disagrees with the validity of our GTC
- 1.3. Any changes or modifications to our GTC will be notified to the contracting party in writing. They shall be considered accepted if the contracting party does not contradict them in writing or electronically. We will inform the contracting party of this consequence separately when we announce any changes or modifications. Any protest or disagreement must be sent to us within one month after the notification of change has reached our contracting partner.

2. Contract conclusion/ Written form

- 2.1. Any orders made by the contracting party shall be binding offers. At our discretion, we are entitled to accept this offer either by sending a written order confirmation within two weeks or by sending the contracting party the goods ordered within this deadline.
- 2.2. Our offers are non-binding and shall only be deemed as an invitation to the contracting party to place an order.
- 2.3. The written form prescribed for these General Terms and Conditions shall generally be preserved when the necessary declaration is made in text form, which is in accordance with Section 126b of the German Civil Code (BGB), (e.g. fax or email).

3. Prices, Packaging

- 3.1. Unless otherwise specified in the order confirmation, our prices are quoted ex works excluding packaging, freight, assembly and insurance. Our prices are net prices. The applicable statutory VAT will be invoiced separately. All prices shall only apply for the respective order and are not binding for reorders.
- 3.2. The minimum order value is € 500.00.
- 3.3. Any costs for packaging, freight and insurance as well as assembly costs will be invoiced separately. All freight and packaging costs will be charged at cost price. If the invoice value exceeds € 750.00, delivery is free within Germany, in case of export sales only ex works.
- 3.4. In case of new items and in case of purchase on approval, the price will only be agreed after final approval.
- 3.5. The contracting party shall be entitled to return any transport packaging of our deliveries to our place of business. Packaging must be clean, free from foreign material and sorted by material. Otherwise, we are entitled to charge the contracting party for any extra costs resulting from the disposal.
- 3.6. If our company carries out the setup or assembly of goods delivered, any extra costs resulting from the assembly such as travel expenses, costs for tool transport and personal luggage as well as allowances shall be borne by the contracting party in addition to the agreed contract price.
- 3.7. We are bound to the prices agreed for an order for four months as from signing of contract. If longer deadlines have been agreed for the delivery or provision of services, we shall be entitled to amend or increase our calculated prices accordingly, if costs for material or salaries have increased compared to our originally calculated prices.

4. Payment / Discount / Default of payment

- 4.1. Unless otherwise agreed, our invoices shall be paid within 30 days upon receipt of invoice without deduction. All payments shall be made in Euro (€). Any applicable bank charges shall be

paid by the contracting party. Any other terms and conditions require a separate written agreement.

- 4.2. In case of delayed payment, ELCO GmbH shall be entitled to claim default interest in the amount of 8 percentage points above the base interest rate according to Section 247 of the German Civil Code (BGB). We reserve the right to prove that damage resulting from such delay was higher and also, to claim such damage, if the contracting party should be unable to prove that it is not responsible for the delay in payment.
- 4.3. If the contracting party is obligated to pay because there are several deliveries, such payments will be credited as follows: First of all, the debt due will be paid, in case of several debts due the one that provides the least security for us. Any service or performance, which is insufficient to repay the entire debt, will be first credited to the costs, second to the interest and last to the main service or performance. Any deviation from the above by the contracting party shall be invalid.

5. Offset/ Right of Retention

- 5.1. The contracting party shall only be entitled to offset rights if the contracting party's counterclaims are recognized by declaratory judgement, uncontested or have been acknowledged by us.
- 5.2. Moreover, the contracting party is entitled to exercise a right of retention insofar as its claim is recognized by declaratory judgement, uncontested or has been acknowledged by us. The contracting party can withhold payment in case of defects on parts of the delivery or performance only to the amount corresponding to the reduced value of the defective delivery or performance. We are entitled to avert rights of retention - also the defence of lack of performance of the contract - by securities, which can also be provided by bank guarantees. The security shall be considered furnished at the latest, when the contracting party falls in default of acceptance with accepting the security.

6. Right to refuse performance if financial situation deteriorates

- 6.1. If it turns out after signing of the contract that our claim for payment of the contract price is at risk as a consequence of poor capability of the contracting party, we are entitled to enforce our right to refuse performance regarding the delivery of goods and to insist on payment in advance. This shall particularly apply when insolvency proceedings are opened concerning the contracting party's assets, when the contracting party falls behind with payment of outstanding accounts of other business relations, when bills or cheques are not paid or the limit set by a credit insurer has been exceeded or would be exceeded with the intended delivery.
- 6.2. The right to refuse performance lapses when the contracting party effects payment or provides a sufficient security for that by provision of a bank guarantee.
- 6.3. We reserve the right to set the contracting party an adequate time limit for payment or provision of a security, which should not exceed ten days. Should this target elapse effectlessly, we are entitled to cancel the contract and to claim damages.

7. Tools/ Fixtures

- 7.1. Tools and fixtures of customers will be made to his/her order and pass into his/her ownership after full payment. Instead of delivery, we are irrevocably entitled to ownership in these means of production for the duration of the business relation - yet at least until delivery of the agreed total; moreover, we are responsible for maintenance and insurance.
- 7.2. By placing the order with us, customer gives us - in its name and on its account - the authorization to award this tool and fixture contract to a third manufacturer of our choice. Such third manufacturer shall then replace us as a contractor.
- 7.3. The price for tools and fixtures includes all manufacturing costs. Any changes or amendments are payable as extra costs. Unless agreed otherwise, such costs for tools and fixtures are due as follows: 50% with order/ 50% on initial sampling. All costs are due net. If no sample can be presented due to reasons the customer bears responsibility, any open costs shall be due upon notification of the customer that the tool or fixture is finished. As far as costs for tools, fixtures, development or start-up are included in the price for the goods to be delivered, the project quantity specified by the customer shall be deemed as ordered quantity. If the contract ends prior to acceptance of the project quantity, the customers shall be bound to pay the unamortised part of costs.

7.4. If more than one year has passed since a part has been manufactured for the last time, we are entitled to notify the customer that the tool or fixture will be destroyed at his/her expense after another four weeks. If this time limit expires without any written opposition, our statutory duty to retain and insure such goods lapses. If the customer wants us to still retain such goods, all costs including possible transport costs shall be borne by the customer.

8. Delivery, Passage of Risk, Delay in Delivery

8.1. The date of delivery can be obtained from our order confirmation. Any terms and dates of delivery and service shall only be binding when we have confirmed them in writing. The date of delivery extends accordingly when the contracting party is unable to submit any documents, which are required for processing the order, in due time as required by our company.

8.2. Any deliveries are ex works. The terms of delivery shall be deemed as fulfilled when the goods are leaving our company at the date of delivery, upon advice of readiness to dispatch or when we agree a date with the contracting party for delivery or service.

8.3. We are entitled to reasonable and acceptable partial delivery and to invoice it separately unless the contracting party has a particular interest and need for delivery of the total quantity.

8.4. At the moment of handover of goods to the carrier, forwarding agent or to the person or institution otherwise commissioned with the delivery, or, in case of transport by own employees at the moment of handover to them and leaving our company, the risk of accidental perishing and accidental deterioration passes over to the contracting party. This shall also apply when we bear the forwarding costs by way of exception. If shipping delays for reasons we are not responsible for, the risk passes upon notification of readiness for dispatch.

8.5. Should delivery be delayed due to reasons beyond our control or force majeure (acts of God, insufficient supply with raw and auxiliary material or energy, other disruptions of operations, impossibility of provision of means of transport, labour disputes, official interventions etc.) unforeseeable on signing of contract, the date of delivery shall be extended by the duration of the impediment to delivery or performance, however a maximum of two months plus an adequate start-up period of at least one week as from removal of circumstances of impediment. Should delivery or performance become impossible due to above reasons, we shall be exempt from our delivery or performance commitment. We will immediately notify the contracting party of any foreseeable extension of the time for delivery or of the final impossibility of performance, in which case any payments already made by the customer for such goods will be repaid.

8.6. We shall only be in default when the contracting party has initially fixed an adequate time limit of at least 14 days for fulfilment, unless we have seriously and finally refused performance or delivery. It shall also be necessary to fix a time limit in case of a calendar-based specification of the delivery date according to Sec. 286, Para. 2, 1 and 2 of the German Civil Code (BGB). Only after this extension of time has lapsed unfruitful, the contracting party shall be entitled to withdraw from the contract and to claim damages.

8.7. Claims for damages of the contracting party as a result of delay in delivery or performance or claims for damages instead of performance shall be limited to the amount of the total contract amount. This shall not apply in case of wilful intent or gross negligence by us or our vicarious agents or in case of harm to life, body or health. Any change of burden of proof to the disadvantage of the contracting party is not linked with the provisions specified in this paragraph.

8.8. Should delivery or performance be delayed at the instigation of the contracting party or due to reasons we are not responsible for, we shall be entitled to claim warehousing charges amounting to 1% of the gross merchandise value for each commenced month unless the contracting party is able to prove that the loss occurred was less. In such case, the risk passes over to the contracting party at the moment of provision of goods and a respective advice of dispatch.

8.9. In case of make-and-hold orders we are entitled to set a period of grace of 14 days after 6 months of the confirmed date have passed and then, at our discretion, to invoice the not accepted quantity, to withdraw from the contract and to claim damages.

9. Quality of purchase item and variances in quantity

9.1. Our products have to correspond to the specifications agreed in the contract. A marginal tolerance of agreed specifications shall still be deemed as provided in the contract when the tolerance is irrelevant and has only an insignificant effect on product use or is inevitable according to state of the art.

9.2. In case of delivery of series items from mass production, customary variances from drawings, dimensions and weights shall be allowed if they have no significant effect on use of such items. Moreover, we reserve the right to deviations in quantity of plus/minus 10%, whereby de facto delivered items will be invoiced.

10. Liability for material defects

10.1. Obvious defects have to be notified in writing within one week at the latest, calculated as from the date of handover. Hidden defects have to be notified by the contracting party one week after discovery at the latest. The contracting party shall be obliged to give a detailed written description of the defect notified by him and to make such report available to us. If there is no notification of defects or if it is submitted too late, the contracting party forfeits its claims concerning existing defects of a purchased item. Any processing of a possible notification of defects from our part, especially the inspection of goods after return from the contracting party, shall by no means be considered as a waiver of the notification of defects in due time by the contracting party.

10.2. The contracting party shall also be obliged to accept the delivery if goods show only insignificant defects.

10.3. In case of a defect we are, at our discretion, first of all entitled to remedy the defect or to supply replacement parts that are free from any defects (Cure, Sec. 439 Para. 1 German Civil Code (BGB)). In case of cure we are obliged to bear all expenses required for the purpose of cure, in particular transport, workmen's travel, work and material costs, unless such costs do not rise due to the fact that goods were brought to another place than the place of fulfilment.

10.4. We can refuse cure if such is only possible in connection with unreasonably high costs. This is especially the case, when:
- costs associated with the removal of defects would presumably exceed the amount of 100% of the market value of the purchased item;
- in case of subsequent delivery, costs for procuring replacement on our part would exceed the amount of 150% of the market value of the purchased item.
Any other legal rights of the contracting party (reduction, withdrawal, damages or compensation of vain costs) shall remain unaffected.

10.5. Unless mandatory law provides otherwise, the contracting party shall be obliged to set us an appropriate time limit for cure first before it is allowed to claim other warranty rights. We shall usually be granted a time limit of at least three weeks for cure if goods are delivered, and of at least ten days for the supply of replacement parts; this shall not apply, when shorter time limits have been agreed in individual cases or when a shorter time limit is compulsory, e.g. in urgent cases where there is a risk of unreasonably high damage or risks for reliability of operation. If there is no cure within the specified time limit, the customer shall be entitled to claim legal rights, particularly to withdraw from the contract, to declare a reduction of the purchase price or - under circumstances contained in clause 11 - to claim damages.
No time limit is required when we have rejected cure finally and seriously or when cure is impossible.

10.6. Withdrawal from the contract is excluded if the purchased item shows only minor defects. Insignificant defects are shown when there are only slight variances, deviations or tolerances from the quality agreed in the contract and if the usability of goods is only insignificantly affected.

10.7. Any liability for defects shall be excluded in the following cases:
- natural wear and tear of the purchased item;
- errors or damage on the purchased item arising after passing of risk as a consequence of incorrect or negligent treatment, undue stress or wear or as a result of usage of inappropriate equipment or means of production;
- errors or damage on the purchased item arising after passing of risk as a consequence of special outside influences that are no requirement for the contract; or
- when the contracting party itself or a third party has carried out repair works without necessity.

- 10.8. The contracting party shall only be entitled to claim damages instead of performance when the delivery of the defective product means a serious breach of duty.
- 10.9. Damages for possible indirect damages not occurring in connection with cure (loss of production, claims for delayed delivery to contracting party's customers, etc. Sec. 280 German Civil Code (BGB)) can only be claimed when an appropriate time limit granted to us in writing has expired unsuccessfully. For the rest, clause 11 shall apply for damage claims.
- 10.10. The claims of the contracting party for defects on the purchase item lapse within one year as from delivery of the purchased item. If the contracting party wants to withdraw from the contract or declares a reduction of the purchase price, such rights are also excluded after one year as from delivery of the purchased item. A shorter warranty period shall not apply in case of wilful or fraudulent intent.
- 10.11. If the time limit set for cure has expired unsuccessfully, we are entitled to ask the customer with one month's notice to claim his/her other warranty rights he/she has towards us. Should the customer not make such declaration within this set time limit, any warranty claims shall be excluded; this shall only apply when we have explicitly referred to this legal consequence with time limit in our request.
- 10.12. Exceeding the above warranty, we assume no guarantee for the quality of the purchased item delivered by our company.

11. Liability for damages and vain expenditure

- 11.1. Our liability for damages and compensation for vain expenditure, irrespective of legal basis, shall be limited to gross negligence and wilful intent. The same shall apply for breach of duty by our legal representatives and vicarious agents. The factor shall be excluded from any product liability or product stewardship.
- 11.2. In case of basic negligence we are only liable, irrespective of legal basis, in case of serious breach of contractual duties; the amount of a possible claim for damages shall then be limited to compensation for typical foreseeable damage. The contracting party shall be obliged to notify us in writing before signing of contract about particular risks, special ways of damage and unusual amounts of damage. Any liability for subsequent damage, lack of economic success, indirect damage and damage arising from third party claims exceeding the above shall be excluded.
- 11.3. Any limitations of liability do not apply for claims in connection with injury or harm of life, body or health as well as for claims resulting from the Product Liability Act and other mandatory regulations with regards to liability (Environmental Liability Law etc.)
- 11.4. If the subject of the sales contract is an object that is only classified to a category, then this shall also determine our liability in this case in accordance with above rules and regulations; any liability independent of fault shall be excluded.
- 11.5. Beyond the above, we shall only be liable for fulfilment of guarantees as agreed, in case we have granted guarantees by way of exception; guarantees must be in writing and must be explicitly designated as such.

12. Duty of protection and consideration

In case of breach of duty of protection and consideration in terms of Section 241, Para. 2 German Civil Code (BGB) on our part, that are not directly referring to the delivery of goods, our contracting partner shall only be entitled to claim damages and use its right to withdraw from the contract when we received a written warning regarding a breach of duty beforehand. This shall not apply, if we, our representatives or vicarious agents are accused of wilful intent or gross negligence or in connection with harm to life, body or health.

13. Retention of title

- 13.1. All goods delivered shall remain our property until payment of all claims under the business relationship - also future claims - has been received from the contracting party. When allocating such claims to current invoices, retention of title shall be applicable for the respective balance.

- 13.2. If the contracting party acts culpably or contrary to the contract, and especially in case of delay in payment, we shall be entitled to reclaim the delivery item from the contract without prior cancellation. The contracting party shall be obliged to return the goods. Reclaim of goods does not imply cancellation of the contract from our part unless we have explicitly declared so in writing. The reclaimed goods will be credited with the actual revenue after costs for recovery and reclaim.

- 13.3. In case of garnishment or other attacks from any third party, the contracting party shall immediately notify us in writing so we can take action in accordance with Section 771, German Code of Civil Procedure. As far as the third party is unable to compensate for legal and extrajudicial costs of a claim in accordance with Section 771 German Civil Code, the contracting party shall be liable for such costs incurred to us.

- 13.4. The contracting party shall be obliged to insure our property against fire, water and theft. All claims against the insurance company have been assigned to us.

- 13.5. The contracting party may resell the delivery item within the framework of due business activities, if it agrees retention of title with its customers in accordance with these conditions when it does not receive full payment from its customer. The resale is not carried out within the framework of due business activities i.e., if the contracting party has agreed an effective prohibition of assignment with its customer; allocation in current invoices shall be allowed, in contrast. In case of resale, the contracting party assigns, already at this stage, all claims amounting to the final invoice amount (including value-added tax) to us, which accrue to him from the resale against his customers or any third parties, independent of the fact if the delivery item has been resold with or without processing. The contracting party shall be entitled to collect such outstanding claims even after assignment. Our right to collect such claims ourselves remains unaffected by that; we undertake, however, to not collect such claims as long as the contracting party fulfils all payment obligations towards us correctly and does not fall behind with payment. If the contracting party falls behind, we are entitled to ask the contracting party to disclose the assigned claims and their respective debtors, give all information necessary for collection, hand over all necessary documentation in this regard and inform the debtor (third party) about the assignment.

- 13.6. Any processing, alteration or transformation of the delivered item by the contracting party is generally carried out for us. If the delivered items are processed or used with other goods or products not belonging to us, we acquire joint ownership of the new product at the appropriate rate of the delivered item's value to the other processed or used goods at the moment when they are processed or used. For the product resulting from any processing or use, the same shall apply as for goods subject to retention of title; the customer's claims acquired by the selling of the processed or used goods shall be assigned to us in the amount of our joint ownership share.

- 13.7. If the delivered items are intrinsically combined or mixed with other goods or products not belonging to us, we acquire joint ownership of the new product at the appropriate rate of the delivered item's value to the other combined or mixed goods at the moment when they are combined or mixed. If such combination or mixing is carried out in a way that the good of the buyer is to be considered as main product, it shall be deemed agreed that the contracting party assigns joint ownership to us proportionately. The contracting party holds the sole or joint ownership in safe custody for us.

- 13.8. We undertake to release any securities owing to us insofar on request of the contracting party, as the value of the claims to be secured, as far as they are still unpaid, exceeds by more than 20%. There is no right to request the return if and insofar as there is a release claim to the contrary.

14. Limitation period

If negotiations between us and the contracting party are in progress in respect of a claim, the limitation period is suspended (Sec. 203 German Civil Code (BGB)). Suspension of the limitation period ends six months after the last written statement of one of the parties in connection with the negotiations in respect of a claim, unless one of the parties to the contract notifies the end of the negotiations in writing at an earlier stage.

15. Property Rights / Secrecy

- 15.1. The contracting party warrants that no property rights of a third party are infringed by documentation, objects and the like, which have been handed over to us for the purpose of delivery or performance. We will notify the contracting party of third party rights we are aware of. The contracting party shall indemnify us from claims of any third party and to reimburse us for damage incurred to us. If we are enjoined from the performance, manufacture or delivery by any third party under reference to any property right belonging to him, we shall be entitled - without checking the legal situation - to cease our works and to claim reimbursement for our efforts and expenses. Any documentation, objects and the like submitted to us, which did not result in an order, will be returned against reimbursement of costs on request. Otherwise, we are entitled to destroy those three months after submission of the offer.
- 15.2. We reserve property and copy rights in all samples, models, drawings, quotes, calculations and similar information of physical and not physical kind - also in electronic form. Such information may not be made accessible to any third party. If the contracting party receives such information as a result of contract negotiations, he shall be obliged to return such information to us at his cost, if no contract is signed eventually.
- 15.3. The contracting party shall be obliged to make all information, which is clearly marked confidential or the need to keep them confidential results from the circumstances, only accessible to any third party with our explicit approval.
- 15.4. For any infringement of our property rights, especially in cases where the customer has items developed by us manufactured by a third party, the infringing party shall pay liquidated damages amounting to the tool costs. We reserve the right to claim further damages.
- 15.5. If exclusivity has been agreed it lapses when, after half a year since the last order, we set the customer an additional respite of two months and no follow-up order with the quantity agreed at the commencement of exclusivity is placed within this term. If two years have passed since the last delivery, we are not required to set a respite and unamortized amounts can be invoiced.

16. Data Protection

- 16.1. The data required for processing of business transactions will be stored at a central place in our company.

17. Final Provisions

- 17.1. German law shall apply under the exclusion of the UN Convention on Contracts for the International Sale of Goods (CISG).
- 17.2. Should individual provisions of these General Terms and Conditions be or become null and void, in whole or in part, the validity of the remaining provisions shall remain unaffected; statutory regulations shall apply in lieu.
- 17.3. Exclusive place of jurisdiction shall be Gutersloh. ELCO GmbH shall be entitled to institute proceedings against the contracting party at its general place of jurisdiction or at the place of jurisdiction responsible for its place of business.
- 17.4. Place of performance, payment and fulfilment for all obligations arising from the legal relations and business with the contracting party shall be Gutersloh. Any agreements regarding bearing of costs involve no changes of the afore-mentioned place of fulfilment.