

## **General Terms and Conditions of Sale**

### **I General Provisions**

1. Legal relations between Supplier and Purchaser in connection with supplies and/or services of the Supplier (hereinafter referred to as "Supplies") shall be solely governed by the present Terms and Conditions. The Purchaser's general terms and conditions shall apply only if expressly accepted by the Supplier in writing. The scope of delivery shall be determined by the congruent mutual written declarations.
2. The Supplier herewith reserves any industrial property rights and/or copyrights pertaining to its cost estimates, drawings and other documents (hereinafter referred to as "Documents"). The Documents shall not be made accessible to third parties without the Supplier's prior written consent and shall, upon request, be returned without undue delay to the Supplier if the supply contract is not awarded to the Supplier. Sentences 1 and 2 shall apply mutatis mutandis to the Purchaser's Documents. These may, however, be made accessible to those third parties to whom the Supplier has rightfully subcontracted Supplies.
3. Partial deliveries are allowed, unless they are unreasonable to accept for the Purchaser. Delivery quantities up to 10 % more or less of the agreed order quantities are allowed.

### **II Prices, Terms of Payment, and Set-Off**

1. Prices are EX WORKS and excluding packaging if not mentioned differently; value added tax ("VAT") shall be added at the then applicable rate. Prices do not include freight, insurance and customs charges.
2. Payments shall be made free of charge to Supplier's paying office.
3. The Purchaser may not set off claims against payments to be made to the Supplier unless undisputed or non-appealable.
4. In case of a significant change in regard of prices for material, wages, salaries, freight rates, public dues or other cost-effective elements between entering into this Agreement and the date of delivery, the Supplier reserves the right to implement a reasonable price increase.

### **III Retention of Title**

1. The items pertaining to the Supplies ("Retained Goods") shall remain the Supplier's property until each and every claim the Supplier has against the Purchaser on account of the business relationship has been fulfilled. If the combined value of the Supplier's security interests exceeds the value of all secured claims by more than 20%, the Supplier shall release a corresponding part of the security interest if so requested by the Purchaser; the Supplier shall be entitled to choose which security interest it wishes to release.
2. For the duration of the retention of title, the Purchaser may not pledge the Retained Goods or use them as security, and resale shall be possible only for resellers in the ordinary course of their business and only on condition that the reseller receives payment from its customer or makes the transfer of property to the customer dependent upon the customer fulfilling its obligation to effect payment.
3. Should the Purchaser resell the Retained Goods, it assigns to the Supplier, already today, all claims it will have against its customers out of the resale, including any collateral rights and all balance claims, as security, without any subsequent declarations to this effect being necessary. If the Retained Goods are sold on together with other items and no individual price has been agreed with respect to the Retained Goods, the Purchaser shall assign to the Supplier such fraction of the total price claim as is attributable to the price of the Retained Goods invoiced by the Supplier.
4. a) The Purchaser may process, amalgamate or combine Retained Goods with other items. Processing is made for the Supplier. The Purchaser shall store the new item thus created for the Supplier, exercising the due care of a diligent business person. The new items are considered as Retained Goods.  
b) Already today, the Supplier and the Purchaser agree that if Retained Goods are combined or amalgamated with other items that are not the property of the Supplier, the Supplier shall acquire co-ownership in the new item in proportion of the value of the Retained Goods combined or amalgamated with the other items at the time of combination or amalgamation. In this respect, the new items are considered as Retained Goods.

- c) The provisions on the assignment of the claims according to No. 3 above shall also apply to the new item. The assignment, however, shall only apply to the amount corresponding to the value invoiced by the Supplier for the Retained Goods that have been processed, combined or amalgamated.
  - d) Where the Purchaser combines Retained Goods with real estate or movable goods, it shall, without any further declaration being necessary to this effect, also assign to the Supplier as security its claim to consideration for the combination, including all collateral rights for the prorata amount of the value the combined Retained Goods have on the other combined items at the time of the combination.
5. Until further notice, the Purchaser may collect assigned claims relating to the resale. The Supplier is entitled to withdraw the Purchaser's permission to collect funds for good reason, including, but not limited to delayed payment, suspension of payments, start of insolvency proceedings, protest or justified indications for overindebtedness or pending insolvency of the Purchaser. In addition, the Supplier may, upon expiry of an adequate period of notice disclose the assignment, realize the claims assigned and demand that the Purchaser informs its customer of the assignment.
  6. The Purchaser shall inform the Supplier forthwith of any seizure or any other act of intervention by third parties. If a reasonable interest can be proven, the Purchaser shall, without undue delay, provide the Supplier with the information and/or Documents necessary to assert the claims it has against its customers.
  7. Where the Purchaser fails to fulfill its duties, fails to make payment due, or otherwise violates its obligations the Supplier shall be entitled to rescind the contract and take back the Retained Goods in the case of continued failure following expiry of a reasonable remedy period set by the Supplier; the statutory provisions providing that a remedy period is not needed shall be unaffected. The Purchaser shall be obliged to return the Retained Goods. The fact that the Supplier takes back Retained Goods and/or exercises the retention of title, or has the Retained Goods seized, shall not be construed to constitute a rescission of the contract, unless the Supplier so expressly declares.

### **IV Time for Supplies; Delay**

1. Times set for Supplies shall only be binding if all Documents to be furnished by the Purchaser, necessary permits and approvals, especially concerning plans, are received in time and if agreed terms of payment and other obligations of the Purchaser are fulfilled. If these conditions are not fulfilled in time, times set shall be extended reasonably; this shall not apply if the Supplier is responsible for the delay.
2. If non-observance of the times set is due to:
  - a) force majeure, such as mobilization, war, terror attacks, rebellion, epidemics, pandemics, or similar events (e. g. strike or lockout);
  - b) virus attacks or other attacks on the Supplier's IT systems occurring despite protective measures were in place that complied with the principles of proper care; or
  - c) hindrances attributable to German, US or otherwise applicable national, EU or international rules of foreign trade law or to other circumstances for which Supplier is not responsible;such times shall be extended accordingly.
3. If the Supplier is responsible for the delay (hereinafter referred to as "Delay") and the Purchaser has demonstrably suffered a loss therefrom, the Purchaser may claim a compensation as liquidated damages of 0.5 % for every completed week of Delay, but in no case more than a total of 5 % of the price of that part of the Supplies (without metal) which due to the Delay could not be put to the intended use.
4. The Purchaser's claims for damages due to delayed Supplies as well as claims for damages in lieu of performance exceeding the limits specified in No. 3 above are excluded in all cases of delayed Supplies, even upon expiry of a time set to the Supplier to effect the Supplies. This shall not apply in cases of liability based on intent, gross negligence, or due to loss of life, bodily injury or damage to health. Rescission of the contract by the Purchaser based on statute is limited to cases where the Supplier is responsible for the delay. The above provisions do not imply a change in the burden of proof to the detriment of the Purchaser.

## **General Terms and Conditions of Sale**

- At the Supplier's request, the Purchaser shall declare within a reasonable period of time whether it, due to the delayed Supplies, rescinds the contract or insists on the delivery of the Supplies.
- If dispatch or delivery, due to Purchaser's request, is delayed, the Purchaser may be charged, for every additional month commenced, storage costs of 0.5 % of the price of the items of the Supplies, but in no case more than a total of 5 %. The parties to the contract may prove that higher or, as the case may be, lower storage costs have been incurred

### **V Passing of Risk**

- Even where delivery has been agreed freight free, the risk shall pass to the Purchaser as follows:
  - if the delivery does not include assembly or erection, at the time when it is shipped or picked up by the carrier. Upon the Purchaser's request, the Supplier shall insure the delivery against the usual risks of transport at the Purchaser's expense:
  - if the delivery includes assembly or erection, at the day of taking over in the Purchaser's own works or, if so agreed, after a successful trial run.
- The risk shall pass to the Purchaser if dispatch, delivery, the start or performance of assembly or erection, the taking over in the Purchaser's own works, or the trial run is delayed for reasons for which the Purchaser is responsible or if the Purchaser has otherwise failed to accept the Supplies.

### **VI Receiving Supplies**

- The Purchaser is obliged to make an incoming inspection of all deliveries before further processing. If the Purchaser detects any defects, the Purchaser shall immediately inform the Supplier. If the Purchaser fails to conduct an incoming inspection, the Purchaser shall be barred from making any claims against the Supplier. This shall not apply for latent defects that could not have been discovered at the time of the incoming inspection. The Purchaser shall have six (6) months to discover and report such latent defect(s), if any. Otherwise, the Purchaser may not claim any warranty thereon regardless of whether there is any negligence on part of the Purchaser. The Supplier explicitly does not waive the objection of a belated notification of deficiencies according to § 377 HGB German Commercial Law, Delayed Complaint.
- The Purchaser has to inform the Supplier before conclusion of contract about the risk of using the goods in the application in Aerospace (Aeronautics) industry. The Supplier informs the Purchaser that the delivered goods are not intended to be used in any applications in Aerospace/Aeronautics. The Supplier explicitly waives the delivery of goods for such applications.

### **VII Defects as to Quality**

The Supplier shall be liable for defects ("Sachmängel", hereinafter referred to as "Defects"), as to the quality of Supplies or services rendered as follows:

- Defective parts or defective services shall be, at the supplier's discretion, repaired, replaced or provided again free of charge, provided that the reason for the defect had already existed at the time when the risk passed. The supplier will waive the liability for assembly and disassembly cost acc. to § 439 Abs. 3 German Civil Code ("Bürgerliches Gesetzbuch").
- Claims for repair or replacement are subject to a statute of limitations of 12 months calculated from the start of the statutory statute of limitations; the same shall apply mutatis mutandis in the case of rescission and reduction. This shall not apply where longer periods are prescribed by law according to Sec. 438 para. 1 No. 2 (buildings and things used for a building), Sec. 479 para. 1 (right of recourse), and Sec. 634a para. 1 No. 2 (defects of a building) German Civil Code ("Bürgerliches Gesetzbuch"), in the case of intent, fraudulent concealment of the Defect or non-compliance with guaranteed characteristics ("Beschaffenhheitsgarantie"). The legal provisions regarding suspension of the statute of limitations ("Ablaufhemmung" "Hemmung") and recommencement of limitation periods shall be unaffected.
- Notifications of Defect by the Purchaser shall be given in written form without undue delay.

- In the case of notification of a Defect, the Purchaser may withhold payments to an amount that is in a reasonable proportion to the Defect. The Purchaser, however, may withhold payments only if the subject-matter of the notification of the Defect involved is justified and incontestable. The Purchaser has no right to withhold payments to the extent that its claim of a Defect is time-barred. Unjustified notifications of Defect shall entitle the Supplier to demand reimbursement of its expenses by the Purchaser.
- The Supplier shall be given the opportunity to repair or to replace the defective good ("Nacherfüllung") reasonable period of time,
- There shall be no claims based on Defect in cases of insignificant deviations from the agreed quality, of only minor impairment of usability, of natural wear and tear, or damage arising after the passing of risk from faulty or negligent handling, excessive strain, unsuitable equipment, defective civil works, inappropriate foundation soil, or claims based on particular external influences not assumed under the contract. Claims based on defects attributable to improper modifications or repair work carried out by the Purchaser or third parties and the consequences thereof are likewise excluded.
- The Purchaser shall have no claim with respect to expenses incurred in the course of supplementary performance, including costs of travel, transport, labor, and material, to the extent that expenses are increased because the subject matter of the Supplies has subsequently been brought to another location other than the Purchaser's branch office, unless doing so complies with the normal use of the Supplies.
- The Purchaser's right of recourse against the Supplier pursuant to Sec. 478 BGB is limited to cases where the Purchaser has not concluded an agreement with its customers exceeding the scope of the statutory provisions governing claims based on Defects. Moreover, No. 7 above shall apply mutatis mutandis to the scope of the right of recourse the Purchaser has against the Supplier pursuant to Sec. 478 para. 2 BGB.
- The Purchaser shall have no claim for damages based on Defects. This shall not apply to the extent that a Defect has been fraudulently concealed, the guaranteed characteristics are not complied with, in the case of loss of life, bodily injury or damage to health, and/or intentionally or grossly negligent breach of contract on the part of the Supplier. The above provisions do not imply a change in the burden of proof to the detriment of the Purchaser. Any other or additional claims of the Purchaser exceeding the claims provided for in this Article VII, based on a Defect, are excluded.
- The German law for product liability is valid, in particular the disclaimer of warranty for suppliers. Any other regulations shall explicitly not apply.

### **VIII Industrial Property Rights and Copyrights; Defects in Title**

- Unless otherwise agreed, the Supplier shall provide the Supplies free from third parties' industrial property rights and copyrights (hereinafter referred to as "IPR") with respect to the country of the place of origin only. If a third party asserts a justified claim against the Purchaser based on an infringement of an IPR by the Supplies made by the Supplier and used in conformity with the contract, the Supplier shall be liable to the Purchaser within the time period stipulated in Article VII No. 2 as follows:
  - The Supplier shall choose whether to acquire, at its own expense, the right to use the IPR with respect to the Supplies concerned or whether to modify the Supplies such that they no longer infringe the IPR or replace them. If this would be impossible for the Supplier under reasonable conditions, the Purchaser may rescind the contract or reduce the remuneration pursuant to the applicable statutory provisions;
  - The Supplier's liability to pay damages is governed by Article XI;
  - The above obligations of the Supplier shall apply only if the Purchaser (i) immediately notifies the Supplier of any such claim asserted by the third party in written form, (ii) does not concede the existence of an infringement and (iii) leaves any protective measures and settlement negotiations to the Supplier's discretion. If the Purchaser stops using the Supplies in order to reduce the damage or for other good reason, it shall be obliged to point out to the third party that no acknowledgement of the alleged infringement may be inferred from the fact that the use has been discontinued.
- Claims of the Purchaser shall be excluded if it is responsible for the infringement of an IPR.

## **General Terms and Conditions of Sale**

3. Claims of the Purchaser are also excluded if the infringement of the IPR is caused by specifications made by the Purchaser, by a type of use not foreseeable by the Supplier or by the Supplies being modified by the Purchaser or being used together with products not provided by the Supplier.
4. In addition, with respect to claims by the Purchaser pursuant to No. 1 a) above, Article VII Nos. 4, 5, and 8 shall apply mutatis mutandis in the event of an infringement of an IPR.
5. Where other defects in title occur, Article VII shall apply mutatis mutandis.
6. Any other claims of the Purchaser against the Supplier or its agents or any such claims exceeding the claims provided for in this Article VIII, based on a defect in title, are excluded.
7. Elektrisola will not be responsible for any duties which may apply by bringing any products into circulation outside of Germany.

### **IX Conditional Performance**

1. The performance of this contract is conditional upon that no hindrances attributable to German, US or otherwise applicable national, EU or international rules of foreign trade law or any embargos or other sanctions exist.
2. Before concluding the contract, the purchaser shall provide in writing if the goods are intended for use in countries, companies or persons that are affected by a trade embargo, or in case of resale, that the possibility of use under any trade embargo cannot be excluded.
3. The Purchaser shall provide any information and Documents required for export, transport and import purposes.

### **X Impossibility of Performance; Adaptation of Contract**

1. To the extent that delivery is impossible, the Purchaser is entitled to claim damages, unless the Supplier is not responsible for the impossibility. The Purchaser's claim for damages is, however, limited to an amount of 10 % of the value of the part of the Supplies (without metal) which, owing to the impossibility, cannot be put to the intended use. This limitation shall not apply in the case of liability based on intent, gross negligence or loss of life, bodily injury or damage to health; this does not imply a change in the burden of proof to the detriment of the Purchaser. The Purchaser's right to rescind the contract shall be unaffected.
2. Where events within the meaning of Article IV No. 2 (a) to (c) substantially change the economic importance or the contents of the Supplies or considerably affect the Supplier's business, the contract shall be adapted taking into account the principles of reasonableness and good faith. To the extent this is not justifiable for economic reasons, the Supplier shall have the right to rescind the contract. The same applies if required export permits are not granted or cannot be used. If the Supplier intends to exercise its right to rescind the contract, it shall notify the Purchaser thereof without undue delay after having realized the repercussions of the event; this shall also apply even where an extension of the delivery period has previously been agreed with the Purchaser.

### **XI Other Claims for Damages**

1. Unless otherwise provided for in the present General Conditions, the Purchaser has no claim for damages based on whatever legal reason, including infringement of duties arising in connection with the contract or tort.
2. This does not apply if liability is based on:
  - a) the German Product Liability Act ("Produkthaftungsgesetz");
  - b) intent;
  - c) gross negligence on the part of the owners, legal representatives or executives;
  - d) fraud;
  - e) failure to comply with a guarantee granted;
  - f) negligent injury to life, limb or health; or

g) negligent breach of a fundamental condition of contract ("wesentliche Vertragspflichtungen").

However, claims for damages arising from a breach of a fundamental condition of contract shall be limited to the foreseeable damage which is intrinsic to the contract, provided that no other of the above case applies.

3. The above provision does not imply a change in the burden of proof to the detriment of the Purchaser.

### **XII Venue and Applicable Law**

1. If the Purchaser is a businessman, sole venue for all disputes arising directly or indirectly out of the contract shall be Gummersbach. However, the Supplier may also bring an action at the Purchaser's place of business.
2. This contract and its interpretation shall be governed by German law, to the exclusion of the United Nations Convention on contracts for the International Sale of Goods (CISG).

### **XIII Severability Clause**

The legal invalidity of one or more provisions of this Agreement in no way affects the validity of the remaining provisions. This shall not apply if it would be unreasonably onerous for one of the parties to be obligated to continue the contract.