

## Terms and Conditions of Sale and Delivery of Elfering Export GmbH

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- hereinafter referred to as the "Supplier" -

### § 1 Scope

- 1) All offers, deliveries and services - insofar as deviating conditions have not been expressly recognised or agreed in writing, including those arising from future legal transactions - shall be subject exclusively to the following terms and conditions (exclusively in the respective current version).
- 2) Any terms and conditions of the contractual partner that contradict or deviate from these terms and conditions shall not apply, even if the user does not expressly object to them. Even through implied conduct, these terms and conditions shall apply exclusively if the user has not expressly consented to the validity of other terms and conditions in writing.

### § 2 Conclusion of contracts

- 1) Offers are subject to change and non-binding, in particular with regard to delivery, delivery time and price, unless they are expressly marked as binding or contain a deadline for acceptance.
- 2) Orders of the customer shall only be accepted by written order confirmation or by delivery of the goods.

### § 3 Delivery

- 1) Deliveries shall be made on the basis of EXW (INCOTERMS 2010) at the agreed place of delivery at the risk of the purchaser, unless expressly agreed otherwise.
- 2) Delivery dates shall only be binding if they are confirmed in writing. If shipment has been agreed, delivery periods and delivery dates refer to the point in time of handover to the forwarding agent, carrier or other third party commissioned with the transport.  
If the dispatch or acceptance of the delivery item is delayed for reasons for which the purchaser is responsible, the costs incurred by the delay shall be charged to the purchaser, beginning one month after notification of readiness for dispatch or acceptance.
- 3) The initial weight determined in the factory shall be relevant. It shall be determined by checking the weight. The purchaser shall bear any customary weight losses occurring during transport. Any further differences in weight must be reported in writing immediately upon acceptance of the goods and, upon delivery, must be listed and acknowledged on the consignment note or delivery note.
- 4) We reserve the right to make customary changes to the delivery items, provided that they do not unreasonably affect the purchaser and provided that they do not affect the usability of the goods.
- 5) Partial deliveries shall be permissible to a reasonable extent for the purchaser, taking into account the interests of the Supplier, in particular if
  - the partial delivery can be used by the customer within the scope of the contractual purpose,
  - the delivery of the remaining goods that have been ordered is ensured, and
  - neither considerable additional work nor additional costs arise for the purchaser as a result.
- 6) An event of *force majeure*, sovereign measures, strikes, lock-outs and other events that lead to the prevention, hindrance or significant aggravation of the delivery shall entitle the Supplier to a corresponding extension of the delivery time, including a necessary start-up time, or to withdraw from the contract. The same shall apply to corresponding events in the domain of the Supplier's

upstream suppliers. The purchaser may demand from the Supplier a declaration as to whether the Supplier will withdraw from the contract or deliver within a reasonable period of time; in the event of failure to make such a declaration, the purchaser may withdraw from the contract itself.

- 7) If the Supplier is in default with a delivery or service or if a delivery or service becomes impossible for the Supplier, regardless of the reason, liability for damages shall be limited in accordance with § 9 of these General Terms and Conditions of Sale.

## § 4 Quantity, quality, labelling

- 1) The Supplier shall always be entitled to deliver up to 10% more or less than agreed. The delivery of a quantity that is up to 10% more or less than agreed shall not constitute a material defect.
- 2) The quality of the goods shall be in accordance with commercial practice, unless otherwise agreed in individual cases and confirmed in writing by the Supplier. In principle, the Supplier's product description shall exclusively serve as the agreed condition of the goods. Public statements, promotions or advertisements of third parties shall not constitute a description of the condition of the purchased goods in addition to the product description.

## § 5 Prices, payment terms

- 1) The prices shall apply to the agreed scope of services and deliveries. Additional or special services shall be charged separately. The prices are in EURO based on an EXW delivery (INCOTERMS 2010) at the agreed place of delivery, plus packaging, the total value added tax; for export deliveries, with the addition of customs duties, fees and other public charges.
- 2) Unless otherwise agreed, the purchase price shall be due and payable net (without any deduction) immediately upon receipt of the invoice. In the event of default, the Supplier shall be entitled to demand default interest at a rate of 9 percentage points above the applicable base interest rate.
- 3) The purchaser shall be entitled to engage in a set-off with counterclaims only to the extent that its counterclaim is legally established, undisputed or acknowledged by the Supplier. The purchaser shall be entitled to exercise a right of retention insofar as it has an undisputed, recognised or legally established counterclaim based on the same contractual relationship.
- 4) The retention of collection and/or del credere commissions shall be permissible only after the prior conclusion of a written collection and/or del credere agreement between the Supplier and the purchaser.
- 5) In the case of payment via third parties, in particular within the framework of regulation and/or del credere agreements, the purchase price debt shall be fulfilled only when the Supplier receives the payment.
- 6) The Supplier shall be entitled to execute or render outstanding deliveries or services only against advance payment or the provision of security if, after the conclusion of the contract, the Supplier becomes aware of circumstances which are likely to substantially reduce the creditworthiness of the customer and which jeopardise payment of the outstanding receivables by the purchaser arising from the respective contractual relationship - including from other individual orders to which the same framework contract applies. The Supplier shall maintain a trade credit insurance policy for claims against the purchaser. The following in particular are deemed to be circumstances which are likely to substantially reduce the creditworthiness of the customer:
  - the cancellation of the insurance cover by the insurer,
  - the limitation of the insurance cover, in particular based on the discontinuation of the business relationship for reasons of creditworthiness, subsequently agreed renewals of bills of exchange, the dishonouring of cheques or bills of exchange along with return debit notes for lack of cover, the initiation of judicial dunning proceedings or the filing of an action along with the involvement of a collection agency or an attorney for the collection of claims, the occurrence of the insured event based on the insolvency of the customer.

## § 6 Retention of title

- 1) The Supplier shall retain title to the delivered goods until full payment of all claims within the business relationship, including those in the future, including all ancillary claims. In the event that the purchaser acts in breach of contract, in particular in the event of a default in payment, the Supplier shall be entitled to take back the purchased goods after setting a reasonable deadline. After taking back the purchased goods, the Supplier shall be entitled to sell them; the proceeds of sale are to be set off against the liabilities of the purchaser - less reasonable costs of sale. In all other respects, liability shall continue to exist in full, if necessary after deducting the proceeds from the sale and including the costs of the sale. In addition, this shall not affect the assertion of a further claim of the Supplier.
- 2) The purchaser may neither pledge the goods and the claims taking their place, nor transfer or assign them by way of security.
- 3) In the event of an attachment or any other intervention by a third party, the purchaser shall notify the Supplier immediately in writing so that the Supplier can take legal action in accordance with § 771 of the German Code of Civil Procedure (*Zivilprozessordnung*, "ZPO"). Insofar as the third party is not in a position to reimburse the Supplier for the court costs and out-of-court costs of an action pursuant to § 771 ZPO, the purchaser shall be liable for the Supplier's loss that arises.
- 4) The purchaser is entitled to resell, process or mix the purchased goods in the ordinary course of business; however, it hereby assigns to the Supplier all claims in the amount of the final invoice amount (including turnover tax) of the claim which accrue to it from the resale against its customers or third parties, regardless of whether the purchased goods have been resold without or after processing (in the case of a current account relationship, in accordance with § 355 of the German Commercial Code (*Handelsgesetzbuch*), the claim assigned in advance also refers to the recognised balance or the existing "causal" balance in the event that the customer is insolvent). The purchaser shall remain entitled to collect this claim even after the assignment. This shall not affect the Supplier's power to collect the claim. The Supplier may demand that the purchaser inform the Supplier of the assigned claims and their debtors, provide all information necessary for collection, hand over the relevant documents and inform the debtors (third parties) of the assignment. The Supplier may also demand that the goods subject to retention of title be insured at the purchaser's expense and that insurance claims be assigned to the Supplier. The same shall apply to other claims which take the place of the goods subject to retention of title within the meaning of these provisions or otherwise arise with regard to the goods subject to retention of title, such as insurance claims or claims in tort in the event of loss or destruction.
- 5) The processing or alteration of the purchased goods by the purchaser shall always be carried out for the Supplier. If the purchased goods are processed with other objects that do not belong to the Supplier, the Supplier shall acquire co-ownership of the new items in the ratio of the value of the purchased goods (final invoice amount including turnover tax) to the other processed objects at the time of processing. In all other respects, the same shall apply to the item resulting from processing as it applies to the purchased goods delivered under reservation.
- 6) If the purchased goods are inseparably mixed with other objects not belonging to the Supplier, the Supplier shall acquire co-ownership in the new item in the ratio of the value of the purchased goods (final invoice amount, including turnover tax) to the other mixed objects at the time of mixing. If the mixing is carried out in such a manner that the purchaser's item is to be regarded as the main object, it is deemed to be agreed that the purchaser transfers proportional co-ownership to the Supplier. The purchaser shall hold the sole ownership or joint ownership thus created in safekeeping for the Supplier.
- 7) The Supplier shall be obligated to release the collateral to which it is entitled at the request of the purchaser, to the extent that the realisable value of its collateral exceeds the claim to be secured by more than 10%; the choice of the collateral to be released shall be incumbent on the Supplier.

## § 7 Duty of inspection and notification of defects

- 1) The purchaser shall be obligated, at its own expense, immediately upon delivery at the agreed destination or, in the case of self-collection, upon their acceptance;

- a) to inspect the goods in terms of quantity, weight, temperature and packaging, and to note any objections thereto on the delivery note or consignment note or the receipt of delivery/removal note of the cold store, and
  - b) to undertake a representative quality control at least randomly, to open the packaging (cartons, sacks, cans, foils etc.) to an appropriate extent for this purpose and to inspect the goods themselves for external quality, smell and taste, whereby frozen goods are to be defrosted at least randomly.
- 2) When giving notification of any defects, the purchaser must observe the following forms and deadlines:
    - a) The notification must be made by the end of the working day following delivery/collection of the goods at the agreed destination or acceptance. In the case of a notification of a concealed defect which initially remained undetected despite a proper initial inspection in accordance with clause 1) a) above, the following shall apply by way of derogation: The notification must be made by the end of the working day following its detection, but at the latest within two weeks after delivery of the goods or their collection/acceptance;
    - b) The Supplier must receive the detailed notification within the aforementioned periods in writing, by telegram, telex or fax. A notification of defects by telephone shall not be sufficient. Any notification of a defect to sales representatives, brokers or agents shall not be considered;
    - c) The notification must clearly indicate the nature and extent of the asserted defect;
    - d) The purchaser shall be obligated to keep the goods subject to objection at the place of inspection ready for inspection by the Supplier, its suppliers or experts commissioned by the Supplier.
  - 3) In the event that frozen goods are the subject of an objection, the purchaser shall be obligated to store them in compliance with the relevant statutory requirements. The purchaser shall be obligated to provide the Supplier with proof of a seamless cold chain.
  - 4) Objections with regard to the number of items, weight, temperature and packaging of the goods shall be barred if the notation on the delivery note or consignment note or receipt of delivery required in accordance with clause 1 a.) above is missing. Furthermore, any complaint shall be barred as soon as the purchaser mixes, re-dispatches or resells the delivered goods, or has started handling or processing them.
  - 5) Goods or which there is no notification in due form and time shall be deemed approved and accepted.

## § 8 Warranty

- 1) Only the purchaser shall be entitled to claims based on defects in the delivery items, and such claims are not transferable.
- 2) Insofar as there is a defect in the delivered goods, the purchaser shall be entitled to subsequent performance. The Supplier can fulfil the purchaser's claim for subsequent performance, at its own discretion, by eliminating the defect or delivering a defect-free item. The Supplier shall bear the costs of subsequent performance, provided that such costs are not increased by the fact that the goods were taken to a place other than the place of performance.
- 3) If the subsequent performance fails, or if it does not take place within a reasonable period of time set by the purchaser, the purchaser shall be entitled, at its discretion, to declare withdrawal or reduction.
- 4) Insofar as the Supplier is responsible for the defect, the purchaser shall be entitled to claim damages in accordance with § 9 of these General Terms and Conditions of Sale.
- 5) The limitation of actions for the aforementioned claims for defects shall commence 12 months after the transfer of risk. The statutory period of limitations shall apply to liability based on intentional acts. In the case of liability based on intentional acts, any injury to life, body or health or grossly negligent breaches of duty by the Supplier or its vicarious agents, the statutory periods of limitation shall apply.

## § 9 Liability

- 1) The Supplier shall be liable in accordance with the statutory provisions insofar as the purchaser asserts claims for damages based on intentional acts or gross negligence, including intent or gross negligence on the part of the Supplier's representatives or vicarious agents. As far as there is no intentional breach of the contract, liability for damages shall be limited to the foreseeable damages that typically occur.
- 2) The Supplier shall be liable in accordance with the statutory provisions insofar as the Supplier culpably violates a material contractual obligation; in this case as well, liability for damages shall be limited to the foreseeable damages that typically occur.
- 3) This shall not affect liability based on a culpable injury to life, body or health; this also applies to mandatory liability under the German Product Liability Act (*Produkthaftungsgesetz*).
- 4) Unless otherwise provided above, liability is barred.
- 5) Insofar as the Supplier's liability for damages is excluded or limited, this shall also apply with regard to the personal liability for damages of its employees, workers, staff, representatives and vicarious agents.
- 6) In order to limit the Supplier's manufacturer's liability, the purchaser shall be obligated to immediately provide the Supplier with all information received by the Supplier which indicates the existence of product defects (in particular customer complaints) and to support the Supplier immediately and comprehensively in the event of product recalls.
- 7) If the goods are exported by the purchaser or its customers to areas outside the Federal Republic of Germany, the Supplier shall not assume any liability if the industrial property rights of third parties are infringed by its products. The purchaser shall be obligated to compensate the Supplier for the damages caused to the Supplier by the export of goods which were not expressly delivered for export by the Supplier.

## § 10 Empty containers

The purchaser shall return empty containers (Euro-crates, pallets, Euro-hooks, etc.) to the Supplier in the same type, quantity and quality. The empty containers shall be returned in cleaned condition in accordance with hygiene regulations. If the purchaser is not in a position to return the empty containers on delivery, it must balance the empty containers account immediately and at its own expense. If the purchaser is in default with the return of the empty containers, the Supplier shall be entitled, without prejudice to its statutory claims, after setting a reasonable period of grace, to refuse the return and to demand monetary compensation for damages from the purchaser.

## § 11 Data storage

- 1) The purchaser agrees and is hereby informed that all data relating to it arising from the business relationship, including personal data within the meaning of the Federal Data Protection Act (*Bundesdatenschutzgesetz*), will be stored within the framework of electronic data processing.
- 2) Both contracting parties shall be obligated to keep secret any data of the other contracting party that have become known to them, even after the termination of this contract. This shall not affect the mandatory statutory provisions, in particular the German Telecommunications Act (*Telekommunikationsgesetz*) of the German Telemedia Act (*Telemediengesetz*), the Federal Data Protection Act and the GDPR.

## § 12 Area of application, applicable law

- 1) Unless otherwise agreed, the Supplier's place of business is the place of performance.
- 2) The area of jurisdiction for all disputes arising from the contractual relationship is the court which is responsible for the Supplier's registered office in 48683 Ahaus-Alstätte. However, the Supplier shall be entitled to bring lawsuits at the purchaser's registered office.
- 3) The law of the Federal Republic of Germany shall apply; the application of the UN Convention on Contracts for the International Sale of Goods (CISG) is barred.

Valid from January 2020

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