

General Terms and Conditions of Sale and Delivery of ELMATECH GmbH, D-51597 Morsbach

I. General remarks – Area of application

1. Our general terms and conditions of sale and delivery shall apply exclusively; we shall not recognise any contrary terms or terms of the customer which deviate from our terms and conditions of sale unless we have expressly approved their applicability in writing. Our terms and conditions of sale shall apply even if, being aware of contrary terms or terms of the customer deviating from our terms and conditions of sale, we make delivery to the customer without any reservations.
2. All agreements which are made between us and the customer for the purpose of the performance of this contract are laid down in writing in this contract.
3. Our terms and conditions of sales apply to all contracts of sale which we, the sellers, conclude with companies, legal entities under public law and special funds under public law. They do not apply in relations with consumers.

II. Quotation, purchase order, deliveries

1. Our quotations are always without obligation. Purchase orders shall only be binding on us if we acknowledge them in writing or if we fulfil them by forwarding the goods. If the purchase order is to be qualified as a quotation in accordance with Art. 145 of the German Civil Code (BGB), we can accept this within 4 weeks. Verbal ancillary agreements shall only be binding on us if we confirm them in writing. In the case of purchase orders by electronic means we shall acknowledge receipt of the purchase order without delay. Acknowledgement of receipt is not yet a binding acceptance of the purchase order. The acknowledgement of receipt can be combined with the declaration of acceptance.
2. In the absence of any deviating agreements our deliveries are to be understood as ex works or despatch warehouse, which in each case shall also be the place of performance. We reserve the right to decide the type of forwarding unless a special type of forwarding has been agreed upon. In this case we are entitled to invoice such services in accordance with our price provision in Item III.
3. We are entitled to effect part deliveries and partial services as long as this is reasonable for the customer and its justified interests are adequately taken into account.

III. Prices, terms of payment

1. Unless otherwise agreed elsewhere, our prices are to be understood as being in EUROS ex works or ex despatch warehouse excluding packaging and loading. We shall additionally invoice the respective rate of statutory value-added tax, the cost of transport ex works or ex despatch warehouse and the cost of a transport insurance specially requested by the customer in certain circumstances. Any possible customs duties, fees, taxes and any other public levies shall likewise be borne by the customer. Also any assembly or installation costs incurred must be borne by the customer itself.
2. For invoicing it is always the prices valid on the day of delivery that apply. If they are higher than at the time of the conclusion of the contract the customer shall be entitled to cancel the contract, with regard to the quantity not yet purchased, within 14 days of being informed of the price increase.
3. Unless stated otherwise in the order acknowledgement, the purchase price is due for payment net (without deduction) within 14 days after receipt of the invoice. If the customer defaults on payment, we shall be entitled to demand default interest in the amount of the rate which the bank charges for our loans on current account but not less than 8 % above the respective currently ruling basic interest rate.
4. We accept bills, cheques and other payment order papers only on account of performance. Their expenses and costs as well as the risk regarding timely presentation and protest shall be borne exclusively by the customer.
5. The customer shall only be entitled to offsetting rights if its counterclaims have been the subject of an absolute and non-appealable court decision, are undisputed or have been recognised by us. Moreover, it shall only be authorised to exercise the right of retention to the extent that its counterclaim is based on the same contractual relationship.

IV. Delivery time

1. The start of the delivery time stated by us requires clarification of all of the technical questions. The meeting of our delivery obligation also requires the timely and orderly meeting of the obligations of the customer. The defence of lack of performance of the contract is reserved.
2. Delivery times shall apply subject to oneself taking delivery on a correct and timely basis.
3. If the customer defaults on acceptance or if it infringes any other co-operation obligations we shall be entitled to demand that the loss we have incurred to that extent including any possible additional expenses be refunded. This shall remain subject to any statutory entitlements going beyond that.
4. Delivery times shall be deemed to have been observed if the goods are held ready by us for despatch ex works within the time limit and/or in the case of shipment at the request of the customer is handed over for despatch within the time limit.
5. Delays in supplies and services due to cases of Force Majeure – deemed to be such are the circumstances or occurrences which cannot be prevented by the prudence of orderly business management – suspend our contractual obligations for the duration of the disturbance and the extent of its effect. They entitle us to postpone the delivery and/or service by the duration of the impediment plus a reasonable start-up time or, due to the part not yet performed, to cancel the contract – wholly or partially. If the resultant delays exceed a period of two months, the customer shall be entitled, after setting a reasonable additional period of time, to cancel the contract with regard to the part not yet performed. There shall be no other entitlements for the customer.
6. If we are in default as regards the supplies and services or if we are to blame for the exceeding of a delivery time agreed upon, the customer shall be entitled to a compensation for default in the amount of 0.5 % for every full week of the default, but no more than up to 5 % of the invoice volume of the supplies and services affected by the default. All and any further claims by the customer are excluded, unless we can be accused of intent or gross negligence.

V. Passage of risk, packaging costs

1. The risk of accidental perishing and accidental deterioration of the goods – also in the case of part delivery – shall pass to the customer at the latest upon transfer to the customer, the forwarding agent, the carrier the person or entity otherwise appointed to execute shipment.
2. If the supply or service is delayed due to circumstances for which the customer is responsible, the risk shall pass to the customer upon notification of readiness for dispatch.
3. Transport and all other packaging shall, in accordance with the packaging rules, not be taken back; pallets are excepted from this rule. The customer is obliged to ensure the disposal of the packaging at its own expense.

VI. Reservation of title

1. We reserve the title of ownership of the goods sold up to the complete payment of our accounts receivable including future accounts receivable from the current business relationship with the customer. The customer is authorised to resell and/or process the goods purchased during the ordinary course of business.
2. The customer now already assigns to us, as security, accounts receivable from third parties arising from resale in total or in the amount of our possible co-ownership share. The customer is empowered to collect these accounts receivable up till the revocation or until the discontinuation of its payments to us for our account. The customer is not authorised to assign these accounts receivable even for the purpose of the collection of accounts receivable by way of factoring, unless at the same time it is established that the factor is obliged to bring about the consideration in the amount of our share of the accounts receivable directly to us as long we still have accounts receivable due from the customer.
3. The customer must inform us without delay by registered letter if and to the extent that attachments by third parties of the goods and accounts receivable belonging to us take place.
4. The goods and the accounts receivable taking their place must not, before complete payment of our accounts receivable, be pledged to third parties, nor transferred as security or assigned.
5. If the value of the securities exceeds our account receivable by more than 20 % we shall to that extent release securities at our discretion at the request of the customer.
6. The exercising of the reservation of title includes immediate cancellation of the contract.
7. In the event of default on payment, the suspension of payment, application for and opening of insolvency proceedings or other decline in the financial standing of the customer, we can demand that the latter notifies us of the assigned accounts receivable and their debtors, makes all of the statements necessary for collection, hands over the associated documents and informs its debtor of the assignment. We reserve the right to collect these accounts receivable directly. Disposal of these accounts receivable from that point in time shall only be effective with our approval. Moreover, the immediate surrender of the goods subject to reservation of title can be demanded.

VII. Trial deliveries

Trial deliveries shall be deemed after the expiry of the trial period, starting as of the day of arrival 'to have been taken over to firm account on our terms, unless express notification otherwise is sent to us or the goods are returned before the expiry of the trial period laid down. We shall in each case draw attention to these terms separately in the event of trial deliveries.

VIII. Warranty

1. The warranty rights of the customer require that the latter examine the goods delivered for obvious defects, without delay, in particular also for obvious shortages or damage and send a notification of defect about such to us in writing, without delay, but not later than two weeks after receipt of the goods. In order for the time limit to be observed mailing the notification of defect in good time shall be sufficient. In the case of defects which are not obvious (i.e. concealed defects) the customer shall be obliged to send us a notification of defect in writing after their discovery, but at the latest within the limitation period in accordance with Item VIII.5.
2. The Purchaser shall bear the burden of proof for all pre-requisites, especially for the presence of the defect, for the point in time of the ascertainment of the defect and for the timeliness of the notification of defect. If the customer omits the notification of defect provided for above, our liability for defects shall be excluded. Subject to technical alterations as well as changes of colour, shape and/or weight within the scope of what is reasonable.
3. To the extent that there is a defect in the item purchased for which we are to blame, we reserve the right to remedy the defect at our discretion first of all by replacement or reworking/repair (subsequent performance). In the event of subsequent performance we are obliged to bear all of the expenses necessary for this purpose, in particular transport, travelling expenses, costs of work and material, to the extent that they are not increased as a result of the item purchased being taken to a place other than the destination.
4. In the event of the failure of subsequent performance, if it is impossible, if it is as a whole seriously and finally refused by us or if it is unreasonable for the customer, the company shall be entitled, at its discretion, to reduce the purchase price (price reduction) or to demand cancellation of the contract (rescission). The right of cancellation shall, however, be excluded, if and to the extent that there is only an insignificant defect in the goods.
5. The limitation period for claims based on defects in the goods is one year from the delivery of the goods.
6. As the nature of the goods only that in the manufacturer's product description shall be deemed to have been agreed upon. The manufacturer's public statements, plugs or advertising are not in addition a contractual statement of the nature of the goods.
7. If our statements concerning suitability, processing and application of our products, in particular our goods guidelines are not followed by the customer, if changes are made to our products, parts replaced or consumption material used which are not in conformity with the original specifications, our liability for defects shall no longer apply, unless the customer proves that the defects were not caused by this or defects are not due to the above mentioned measures.
8. If the customer receives defective assembly instructions from us we shall be obliged only to subsequently replace it by assembly instructions free from defects. This shall apply even if the defect in the assembly instructions is opposed to orderly assembly of the goods sold.
9. In the case of water re-coolers, we do not provide any warranty for the loss of refrigerants and refrigerating oil.
10. The customer shall not receive any guarantees in the legal sense from us.

IX. Restrictions of liability and statute of limitations

1. In the case of slightly negligent infringements of duties the acceptance by us of liability going beyond the liability for defects according to Item VIII. for damages regardless of the legal nature of the claim made shall be excluded. This shall apply if and to the extent that slightly negligent infringements of duties by the statutory representatives or by our vicarious agents are involved. In the case of an obligation, i.e. in the case of the infringement of a duty to show consideration for the rights, objects of legal protection and interests of the customer, the period of limitation shall end one year after delivery of the goods. If delivery of the goods did not take place the period of limitation shall start at the end of the year in which the claim arose. Shorter statutory limitation periods shall prevail.
2. The exclusion from liability in paragraph 1 and the shortening of the period of limitation in paragraph 2 shall not apply to the case of the breach of a guarantee or a major contractual duty. In the case of the infringement of a major contractual duty the acceptance of liability by us, however, limited to replacement of the typical foreseeable loss.
3. The provisions in the above paragraphs 1 to 3 shall not apply in the case of claims of the customer under product liability, in the case of loss of life, physical injury or health impairment attributable to us, and not in the case of grossly negligent or intentional breaches of duty by us or our statutory representatives or vicarious agents.

X. Exclusion of subsequent performance and cancellation

1. If a period of time for performance set by the customer has expired fruitlessly and if the customer does not comply with the subsequent demand within a further reasonable period of time set by us for this purpose for a declaration as to whether it adheres to its claim for performance or demands damages in place of performance, the claim for performance shall be excluded after the expiry of the reasonable time limit associated with the demand.
2. Because of an infringement of duty not based on a defect in the goods the customer can only cancel the order if the circumstance justifying cancellation is based on fault for which we are to blame. In the case of an insignificant infringement of duty cancellation shall be excluded.
3. Cancellation shall also be excluded in those cases in which the customer would according to law be obliged to compensation for lost value instead of to a restitution of the item purchased.

XI. Provision of skilled personnel

For the provision of skilled personnel, the costs incurred by us for assembly/erection work and allowance, for overtime worked, work on Sundays and on public holidays, travelling and waiting times which are also counted as working hours, are to be borne by the customer. Moreover, the cost of travel shall be borne by the customer. The cost of luggage, material and tradesmen's tools and equipment shall likewise be borne by the customer. Moreover, the customer shall procure and appoint at its expense unskilled and skilled workers in the numbers considered necessary by us as well as the jigs and fixtures, consumables and transport possibilities required for installation and commissioning

XII. Secrecy and data protection

1. The customer is obliged to keep secret all sales documents, specifications and price lists received as well as any other documents and information ("information subject to secrecy") and to oblige its vicarious agents accordingly. Articles which are our property are to be preserved in such a way that they cannot be made accessible to unauthorised third parties. Information subject to secrecy and articles which are our property may be disclosed to third parties only with our express consent. The obligation to maintain secrecy shall also apply for the duration of two years after the end of the handling of this contract.
2. Unless expressly agreed otherwise, our information submitted in connection with purchase orders shall not be deemed to be confidential.
3. We are authorised, within the scope of the purpose for which the business relationship is intended, to process, or to have processed by third parties, the person-related data with which we have been entrusted, while observing the data protection regulations.
4. We may include the name of the customer in our own reference list.

XIII. Venue, applicable law

1. As far as the customer is a merchant which has been registered on the commercial register in the meaning of the German Commercial Code (Handelsgesetzbuch), a legal entity under public law or a special fund under public law, the venue for all disputes between him and us is at the domicile of our company or at the domicile of his company; for actions taken against us the exclusive venue is district court Bonn/county court Waldbröl.
2. These general terms and conditions for the sale of products and services and all legal relations between the customer and us shall be subject to the law of the Federal Republic of Germany to the exclusion of all international and supranational legal orders (applying to contracts), in particular of the UN Sales Convention.

General Terms of Purchasing of ELMATECH GmbH, D-51597 Morsbach

I. Area of application

1. Our General Terms of Purchasing shall apply exclusively; we shall not recognise any opposing terms and conditions of the supplier or any terms and conditions departing from our terms of purchasing, unless we have expressly consented to their application. This shall also apply to general terms and conditions of business which are stated in order acknowledgements or other acknowledgements from the supplier. The acceptance of deliveries / services does not constitute any acceptance of the supplier's terms and conditions. Our terms of purchasing shall also apply if the contract with the supplier is performed without reservations in the knowledge of opposing, supplementary terms or terms departing from our terms of purchasing.
2. All agreements which are made between us and the supplier for the purpose of the performance of this contract are set forth in writing in this contract.
3. Our terms of purchasing apply only in commercial business dealings.
4. To the extent that it is relevant in the individual case, as an addition the statutory regulations shall apply and in the case of international contracts, the Incoterms of the International Chamber of Commerce in Paris as well as the uniform guidelines and practices for documentary letters of credit in the respective currently valid version.

II. Quotation, quotation documents

1. Purchase orders shall only be deemed to be legally binding when they have been placed by us in writing or have been confirmed by us in writing. Departures from these terms of purchasing shall also require our written confirmation. Verbal ancillary agreements shall not be binding upon us. Purchase orders by e-mail may only be executed by the supplier, if this has been expressly agreed upon with us. The respective contract shall come about with the contents of our purchase order subject to our right to alter the purchase order (delivery time, quantity ordered etc.), if the supplier does not raise any objection. An objection by the supplier to the respective purchase order shall, if specific reasons are given, be effective within 5 work days after the receipt of the purchase order.
2. We reserve property rights and copyright to illustrations, drawings, costing calculations and other documents. This also applies to such written documents as are designated as "confidential".
3. The supplier shall be entitled only with our written consent to have the order or individual parts thereof executed by third parties active on an independent basis.

III. Prices, terms of payment

1. The price shown in the purchase order is binding. In the absence of any written agreement formulated otherwise the price shall include delivery "free domicile" to the address for shipments including packaging. The statutory value-added tax as well as customs duties are included in the price and are to be shown separately. At our request the supplier is obliged to take back the packaging at its expense without our having to declare an express proviso.
2. Our purchase order, call-off, article/drawing numbers are to be listed on all delivery notes and invoices. Checkable invoices are to be sent to us in duplicate. For all and any consequences arising as a result of the failure to meet this obligation the supplier shall be held responsible if it does not provide evidence of the fact that said failure occurred for reasons beyond its control. Payments shall be effected, unless otherwise agreed, with 60 days strictly net or within 30 days with 2 % discount for early payment. The punctuality of payment shall be dependent on the point in time of the order to pay issued by us.
3. Additional and/or extra services/work will only be remunerated if a written supplementary agreement was made on this before performance of the work/services.

IV. Delivery times

1. The delivery time stated in the purchase order is binding on the supplier. If no delivery time is stated delivery is to be made immediately. The supplier is obliged to inform us without delay if circumstances arise or are identified by the supplier which will result in the impossibility of the delivery time fixed being adhered to.
2. The punctuality of deliveries depends on arrival at the receiving point and/or point of use stated by us within the agreed delivery time.
3. In the event of the failure to adhere to the delivery time for reasons lying within the supplier's sphere of risk we can claim flat-rate compensation for every whole week of the delay of 1 % of the supply value. The compensation shall be limited to a total of 10 % of the value of the respective order amount.
4. The supplier is, for security reasons, not entitled to transfer and/or assign any possible claims and rights under the respective purchase order to third parties.

V. Passage of risk

The transfer of risk depends on the terms of delivery agreed upon. To the extent that no agreement has been made, the risk shall pass upon delivery and receipt of the goods at the agreed point of receipt and/or point of use.

VI. Reservation of title

1. The supplier shall be obliged to advise us in writing before delivery if the goods are delivered with reservation of title.
2. In the case of the reservation of title indicated in the due manner the following shall apply: before the passage of ownership the supplier shall permit us to dispose of the products supplied within the course of normal business. If the goods are combined by us with other items to produce a uniform item before the passage of ownership and if the other item is to be considered the main item, we shall be obliged to transfer percentage ownership of the new item to the supplier, to the extent that the main item belongs to the supplier. If we resell the products delivered in accordance with the provisions we hereby already now assign the accounts receivable from their purchasers arising from the sale with all ancillary rights to the supplier up to the complete redemption of the account receivable. The supplier will release the security held by it insofar as its value exceeds the accounts receivable by more than a total of 10 %.
3. We reserve title to the materials, tools made available and other items of which we permitted the use. If these items provided by the customer are combined inseparably with other articles, further processed or transformed, it shall be deemed to have been agreed that we shall have percentage co-ownership transferred to us by the supplier.

VII. Warranty, termination

1. The goods must be in conformity with the respective current state of the art and the agreements made as regards quality. The supplier shall guarantee that all of the export control regulations applicable in connection with the supply are observed.
2. We shall be entitled to the statutory warranty claims without any reductions; irrespective of that, we shall be entitled, at our discretion, to demand the statutory entitlements to subsequent performance, to remedy of defects or replacement and the entitlements going beyond that to price reduction or cancellation as well as, additionally, to damages, including making up for the loss in place of performance as well as payment of damages for our expenses incurred in vain.
3. The warranty period shall be 24 months, counting from the passage of risk.
4. To the extent that the supplier grants a seller's guarantee and/or a manufacturer's guarantee, the details can be seen from the Terms of Guarantee enclosed with the particular goods delivered.
5. If the supplier does not settle our claim under the warranty within a reasonable length of time which, as a rule, is 14 days, we shall be entitled for each day by which the commencement of the settlement of our claim under the warranty is delayed, without prejudice to the provisions in Item IV.3, to claim lump-sum compensation for each whole week of the delay amounting to 1 % of the supply value.
This shall apply by analogy if the remedy of defects is delayed by the supplier culpably interrupting the remedying of defects. The compensation shall be limited to an amount totalling 10 % of the value of the order amount. The supplier shall be entitled to provide us with evidence of the fact that we incurred no loss or only slight loss as a result of the delay arising.
6. Up till the completion of an order we shall be entitled at any time to terminate it with immediate effect. Quantity variances shall be deemed to be a defect.

VIII. Liability, indemnification, third-party liability insurance cover

1. Insofar as the supplier is responsible for damage/loss or injury it is obliged to indemnify us against third-party claims for damages on first demand. Within the scope of its liability for claims in the meaning of sentence 1, the supplier shall also be obliged to refund any expenses incurred by or in connection with any re-call action taken by us. All and any other statutory claims shall remain unaffected by this.
 2. The supplier undertakes to maintain a product liability insurance providing cover of EUR 5.0 million per claim for physical injury / damage to property – global. Should we be entitled to contractual and/or statutory claims for damages going further than this, they shall remain unaffected.
- ## IX. Secrecy, industrial property rights
1. The supplier is obliged to keep secret all illustrations, drawings, calculations and other documents as well as all the information, agreements, arrangements which are not generally known, within the scope of the particular purchase order. These may be disclosed to third parties only after our express approval has been given. This obligation shall apply also after the completion of the handling of the respective purchase order.
 2. The supplier guarantees that it is the owner of all of the rights connected with the supplier's supply and service and that the rights of third parties (patent, trade-mark, copyright, rights of use or utility model rights or other industrial property rights) are not infringed by it. If we have claims made against us on the grounds of alleged infringements of industrial property rights, the supplier shall be obliged, on our first written demand, to indemnify us against these third-party claims. The indemnification shall comprise all expenses we may incur in connection with recourse taken by third parties.

X. Right of retention, offsetting

1. The supplier shall not be entitled to any rights of retention to the extent that they originate from counter-claims from earlier or other legal transactions with us.
2. The supplier may only offset with such accounts receivable as are undisputed or have been subject to an absolute and non-appealable court decision.
3. We are entitled to the rights of offsetting and withholding without any reductions.

XI. Protection of employees, accident prevention and safety; product and/or process changeovers

1. The supplier is obliged to observe relevant statutory regulations and rules and regulations referring to protection of employees, accident prevention, transport and plant safety (as well as our own general and location-related regulations) and to maintain an effective management system in the areas stated and on request to provide us with appropriate evidence and/or to grant us the right of inspection.
2. Suppliers with which we have constant business relations are obliged to inform us in good time if they intend carrying out product and/or process changeovers with regard to products or services purchased by us.

XII. Venue, applicable law, written form

1. Unless mandatory statutory provisions state otherwise the venue for all possible disputes between the supplier and us is at the domicile of our company or at the domicile of the supplier; for actions taken against us exclusive venue is district court Bonn/county court Waldbröl.
2. Only German law shall apply, the UN Sales Convention being excluded. Only the German text of the contract shall be binding.
3. Each and any amendment to the contract shall be required to be made in writing.

Note: The supplier takes cognisance of the fact that we store and process data – also business related personal data – from the contractual relationship in accordance with Art. 28 of the Federal Data Privacy Protection Act for the purpose of data processing.