

General Terms and Conditions of Business of Elster GmbH

General Terms and Conditions of Business

I. Quotation, Order and Contract

1. All quotations, purchase contracts and delivery contracts with us including repair contracts shall be subject to the following conditions. They shall be recognised by the Customer on order placement and on acceptance of the first delivery at the latest and shall apply for the entire duration of the business association. Differing terms of sale imposed by the Customer shall only be accepted if agreed in writing by us. Amendments to individual conditions shall not affect the other conditions. We hereby explicitly object to any counter-confirmations by the Customer referring to the validity of his general terms of business.
2. Our quotations are always non-binding. The contract shall become binding only on receipt of our written confirmation and in accordance with the contents of the written confirmation or through delivery.
3. We reserve the right to modify the design or form of the contract item as a result of technical progress and without prior notice.
4. Assurances, supplementary agreements, modifications and additions to the contract shall not be valid unless made in writing. This requirement can only be waived in writing.
5. The Customer shall not be entitled to transfer rights arising out of this contract to third parties without our agreement.

II. Prices and Terms of Payment

1. All prices are in euros ex point of sale and are exclusive of packaging. The prices valid on the day of delivery shall apply. Prices are subject to value-added tax at the applicable rate.
2. With the exception of repair and wage invoices, invoices shall be payable within 14 days of the invoice date net cash.
3. The Customer may not offset counter-claims which are disputed or not legally binding. And he may not assert withholding rights.

III. Arrears of Payment, Deterioration of Assets, Deferment, Revocation

1. If the Customer defaults on or defers payment, we shall be entitled, subject to the assertion of a greater actual default claim, to charge interest at 8 percentage points above the basic interest rate valid at the time.
2. In the event that the Customer is in arrears or specific grounds exist for believing that he might become insolvent, we shall be entitled to perform any future supplies or works only after advance payment of all claims, bills of exchange and deferred amounts, including those not yet due, or on provision of suitable guarantees. If the Customer fails to comply with our request for advance payment or the provision of guarantees within a reasonable time, we shall be entitled to withdraw from the contract and to invoice the Customer for the costs incurred up to that time.
3. Should the Customer be required to return the delivered goods for any reason, he shall reimburse us for the utilisation which he has obtained or failed through his own fault to obtain from the time of delivery ex-works to the time of receipt of the returned goods at the factory. In the event of a reversed transaction for which the Customer may be held responsible, the Customer shall also reimburse expenses incurred as a result of the contract and provide compensation for damage to the goods which has been caused directly by him or through a circumstance for which he may be held responsible. Reimbursement shall be made for permission to use the goods with allowance for the decrease in value. Section 287 (I) of the German Code of Civil Procedure [ZPO] shall apply for determination of the amount of reimbursement.

IV. Delivery Schedule

1. The agreed delivery schedule shall commence on conclusion of the contract but not before the provision in full by the Customer of all necessary documents, approvals and authorisations, and receipt of any agreed deposit. The maintenance of the delivery schedule shall be contingent at all events on fulfilment by the Customer of his contractual obligations.
2. The delivery schedule shall be deemed to have been maintained if the contract item has left our factory before its expiry or if notification of readiness for shipment has been given. Subsequent modification or alteration requests by

the Customer may result in an appropriate extension of the delivery schedule. The same shall apply in the event of unforeseen difficulties beyond our control such as force majeure, labour disputes, strikes, lock-outs or delays caused by our suppliers. We shall inform the Customer as soon as possible of the start and termination of such difficulties. Should delivery be impossible as a result of these circumstances, we may withdraw from the contract without the Customer being entitled to assert claims of any kind on that account.

V. Delays in Delivery

In the event of a delay in delivery caused by a breach of contract on our part as a result of intent or gross negligence, we shall assume liability in accordance with the statutory provisions. In this context, any culpability on the part of our representatives or vicarious agents shall be attributed to us. In cases of simple negligence, our liability shall be limited to direct losses and to the value of the order concerned, provided the losses typical of the type of contract do not exceed this figure. In the latter case, our liability shall be limited to the corresponding foreseeable losses the nature and amount of which are typical of the type of contract.

VI. Delivery, Insurance, Transfer of Risk

1. We shall deliver uninsured ex-works or off-premises warehouse. Partial deliveries shall be admissible. In the absence of specific instructions, we shall choose the route and method of transport at our discretion and shall be under no obligation to choose the cheapest and quickest method. Unless otherwise agreed, packaging shall be at our discretion. Depending on the type of packaging, the price at cost or a proportion of the rental costs shall be invoiced. Transport insurance may be taken out at the Customer's request and at his expense.
2. The risk of accidental loss and damage shall pass to the Customer at the latest on dispatch of the parts, even in the case of partial deliveries and the acceptance by us of other services, e.g. dispatch costs or delivery to site and installation.
3. In the event that shipment is delayed on account of reasons for which the Customer is responsible, the risk shall pass to the Customer on the date of notification of readiness for shipment.

VII. Delayed Acceptance, Call-Up Orders

1. Should the Customer fail to accept the contract item on schedule, we shall be entitled to grant him a reasonable extension period on the expiry of which we may dispose of the goods elsewhere and supply the Customer with an appropriate delay in the delivery schedule. In this case we shall be entitled to request reimbursement of any losses incurred by us to this extent, including any additional expenses which were objectively necessary in connection with the unsuccessful quotation and the storage and preservation of the item supplied, and we shall be entitled to make a corresponding adjustment to the price. Our rights to claim compensation instead of performance for the purpose of settlement, once the extension period has expired, shall remain unaffected hereby. In the event that compensation is claimed instead of performance, we may demand 20% of the agreed price as compensation without demonstration except where a significantly smaller loss can be shown to have been incurred. We reserve the right to claim for a higher actual loss.
2. Orders which are confirmed by us on call-up must be accepted within a year of the order date, except where agreed to the contrary. The same shall apply to schedule extensions or subsequent changes to call-up status. In the event that goods are not called up within the designated period, paragraph 1 shall apply accordingly.

VIII. Title, Extended Retention of Title, Current Account

1. We shall retain unrestricted title to the delivered items until payment in full of the purchase price including all additional claims or clearing of the debit balance in the case of repeat or regular business transactions. In the case of regular transactions the individual items in the current account shall not be treated separately. The goods delivered by us shall remain our property until full settlement of all our claims irrespective of their legal basis; in case of payment by cheque or bill of exchange this shall apply until their redemption and appropriate crediting of our account.
2. The Customer may only sell our reserved items in the course of normal business and only provided that he is not in arrears of payment. He may only resell the goods to his own customers with retention of title. He shall not be entitled to dispose of the reserved items in any other way (e.g. as security or pledging).
3. Should the reserved item be combined or mixed with other items, the seller shall acquire co-title to the new or mixed item.
4. Should the reserved item or items made from it – irrespective of their status – be sold, processed, integrated or otherwise used by the Customer, he hereby transfers to us all claims and additional rights with respect to third parties arising out of the sale and/or processing or integration until complete settlement of all our claims as a result of goods delivered. In the event that a new item or stock of items created through combination or mixing is resold, processed

or integrated, the assignment shall extend to the proportionate value of our co-title. The Customer is entitled to redeem this claim even after assignment. Our authority to collect the claims ourselves is unaffected by this. We undertake, however, that we will not collect the claims as long as the Customer meets his payment obligations from the income received by him, he is not in default with payment and, in particular, no application has been made for the instigation of insolvency proceedings against the Customer's assets and stoppage of payments has not taken place. If this is the case, we are entitled to demand that the Customer disclose to us the claims assigned and the debtors on such claims, provide all the information necessary for collection, hand over the related documents and notify the debtors about the assignment.

5. We undertake at our discretion and on request to release guarantees which exceed unpaid liabilities by more than 40%.

6. After having granted a reasonable extension period, we shall be authorised to repossess our reserved items in the event of arrears in payment, threatened suspension of payments, compulsory execution on the Customer's assets or bill protests. The Customer shall be obliged to release the goods. Our taking back the purchased goods shall not constitute withdrawal from the contract.

7. The Customer shall notify us without delay of the pledging or other interference with our reserved items by third parties. All costs arising through interventions of this kind by third parties shall be borne by the Customer. The duty of restitution shall be waived inasmuch as the outcome of our legal action was unsuccessful or inasmuch as the third party liable to pay restitution meets his obligation to us.

8. The Customer shall be obliged to handle the reserved items with care; in particular, he shall undertake to insure them at his own expense to an adequate extent against fire, water and theft damage at their new value. Insofar as maintenance and inspection work is necessary, the Customer shall perform such work promptly at his own expense.

IX. Complaints

1. Complaints with respect to the nature, quality and quantity of our delivery must be reported to us without delay within 7 days in the case of obvious defects and immediately on discovery in the case of hidden defects, otherwise the delivery shall be deemed to have been accepted.

2. Complaints which are not acknowledged by us shall not release the Customer from his payment obligations. In the case of acknowledged defects the withholding of payments by the Customer shall only be permitted where this is commensurate with the defects involved. If the complaint is unjustified, we shall be entitled to demand reimbursement of the expenses incurred by us from the Customer.

X. Liability for Defects

1. We shall guarantee the delivered items manufactured by us for 12 months from the date of transfer of the risk in such a way that parts which do not meet the contracted standard and which prove to be unserviceable or the use of which is materially impaired as a result of a circumstance prior to the transfer of risk shall be repaired or replaced at our discretion unless that is unacceptable to the Customer. We retain title to replaced parts. Defective goods shall be returned to us by the Customer at our request in the original condition in which they were supplied against a reimbursement of costs. The Customer shall grant us the required time and opportunity to complete all settlement measures which we deem appropriate, otherwise we shall be released from our liability for defects. We shall only be liable for defects if the sealed goods supplied by us still bear the original seal intact. In cases where settlement takes place, the period of limitation shall not recommence. No liability shall be accepted for defects which have resulted from inappropriate or improper usage, faulty or negligent treatment or maintenance, inappropriate production equipment or substitute materials, faulty assembly work or commissioning by the Customer or third parties, natural wear and tear, excessive loading or influences conflicting with the intended purpose of the item. Our liability for defects shall also be cancelled if improper alterations or repair work are carried out by the Customer or a third party without our prior approval. In the event that repair or replacement is not possible or proves to be unsuccessful or causes an unacceptable delay, the Customer may opt for a reduction in the price or may withdraw from the contract. Expenses incurred on account of the purchased items having been taken to a location other than the head office or branch of the Customer shall not be borne by us unless this is in accordance with the contractual use of the items.

2. Notwithstanding paragraph 1, our liability for defects in respect of bought-in products or for parts not made by us shall be limited to the assignment of claims against our suppliers, in so far as the defect is not our responsibility. In the event that assigned claims cannot be satisfied, e.g. on account of insolvency, etc., we shall be liable as substitutes but only within the framework of these conditions.

3. The Customer shall only have a statutory right of recourse against us to the extent that the Customer does not enter into any agreements with his customer which go beyond the extent of statutory claims for defects. Otherwise paragraph 1 shall apply accordingly with regard to the extent of the right of recourse.

4. No other guarantee claims or claims for compensation shall be entertained unless anything to the contrary is

stipulated in section XI.

XI. Other Claims for Compensation

1. Our verbal and written application advice, suggestions, calculations, planning, etc., are only designed to help the Customer to gain the best possible utilisation of our products. They do not release the Customer from his obligation to test our products to verify their suitability for his intended purpose.
2. We shall only be held liable for breach of contractual and non-contractual obligations, particularly on account of impossibility, culpability during contract preparations and tort in cases of intent and gross negligence, such liability being restricted to the losses typical of this type of contract that could be foreseen on conclusion of the contract. Furthermore, our liability for culpable breach of material contractual obligations shall be restricted to reasonably foreseeable losses typical of this type of contract. The above provisions shall apply to the same extent to our performing and vicarious agents.
3. These restrictions shall not apply in cases of mandatory liability under the Product Liability Act, in the event of injury to life, body or health, even if and to the extent that we maliciously conceal or have guaranteed the absence of defects in the item concerned.

XII. Product Specifications, Applicable Language

1. Specifications, be they in leaflets, brochures, catalogues, price lists, etc. are not a component of the contract unless specifically agreed. They contain no legally binding statements and do not justify in particular the assumption of guaranteed characteristics, other independent commitments or concrete instructions for usage. This is also true for certifications of conformity or standards.
2. The documents in the German language are decisive in determining the contents of the contract when orders and correspondence are not executed in the German language. No liability is accepted for translation errors.

XIII. Tools, Samples, Drawings, Secrecy

1. Tools which were produced in conjunction with the manufacturing of products for the manufacturer and all rights associated with them belong to us. Any transfer of rights to the Customer must be agreed in writing.
2. We shall retain title and copyright to drawings, samples and other documents – with the exception of printed advertising material. They may not be made accessible to unauthorised third parties and must be returned at our request.
3. The parties to the contract agree to treat all details which are in the public domain and which are acquired by the other by dint of the business relationship as business secrets.

XIV. Place of Performance, Applicable Law, Place of Jurisdiction

1. The place of performance for delivery and payments shall be the registered office of the executing company.
2. The law of the Federal Republic of Germany shall apply; the application of the United Nations Convention on Contracts for the International Sale of Goods is excluded.
3. The exclusive place of jurisdiction for all present and future claims arising out of the business association with registered businessmen, legal entities under public law or holders of special assets under public law shall be Wiesbaden. In the case of deliveries to other countries, we may file suit at our discretion in the capital of the country in which the Customer has his registered office.
4. Should any provision of these conditions and the affected subsequent agreements prove to be inoperative this will not affect the validity of the rest of the contract. The parties to the contract will replace the inoperative provision with a settlement which will facilitate equal commercial success for both of them.