

General Terms and Conditions (Sales, Delivery and Payment Terms)

ELMED Dr. Ing. Mense GmbH

Relevant for Europe, Asia, Australia, Africa, South & Central America
As at April 2009

1. Introduction

The deliveries, services and products of the Seller take place only based on these terms and conditions. They thus apply to all future business relationships, even if they are not expressly stipulated again. Any opposing terms and conditions of the Buyer are hereby opposed. The mutual written declarations are the standard for the scope of the deliveries and services. If the contract is concluded without such mutual declarations, then either the written confirmation of the order from the Supplier or, if this is not effected, the written order of the Customer is the standard. Oral agreements and assurances only become binding upon mutual written confirmation thereof. If both parties of the contract are "Vollkaufleute" [merchants who have been entered as such in the commercial register], then a commercial letter of confirmation, which is not opposed or not opposed in good time by the other party will suffice.

2. Offers and Delivery

Our offers are subject to confirmation. Details regarding delivery times are not binding, unless the date is guaranteed in writing by the Seller. After the Customer has extended the deadline because the original delivery date was not kept by the Seller, on condition that the Customer will refuse receipt of the goods and services after the extended deadline has expired and the Seller has still not delivered the goods or services, he can choose to either withdraw from the contract or demand compensation on the grounds of non-performance. The right to compensation is limited to the enforcement of a payment compensating for loss of accrued interest, insofar as only slight negligence on behalf of the Seller with regard to the non-compliance can be proved. The payment compensating for loss of accrued interest is set at 4 % per annum (or 5 % per annum with "Vollkaufleute" [merchants who have been entered as such in the commercial register]); unless the Buyer proves that a higher loss of accrued interest has arisen in individual cases. For repair works exceeding 25 % of the value of a new unit, cost estimates shall be automatically issued. For these cost estimates and for any other cost estimates issued on customer's request, a lump sum shall be charged to the customer. This lump sum shall be then deducted from the repair costs incurred by the customer on executed repair works. The same shall apply to the purchase of a new unit.

3. Pricing

If duties and other third-party costs included in the agreed price change 4 months after conclusion of the contract and up to the time of performance as stipulated in the contract, or if new costs and duties arise, then the price will change accordingly at the request of one of the two parties to the contract, unless the price rise substantially exceeds the rise in the general cost of living between the time of ordering and time of delivery.

4. Risk and Insurance

All risks are transferred to the Customer as soon as the goods leave our plant. The goods are uninsured. At the written request of the Buyer, the goods can be insured at the Buyer's expense. The risk of loss or random destruction of the ordered item is transferred, if the parties have not concretely agreed otherwise, to the Buyer upon notification that the goods are ready for dispatch. After receipt of the delivery, the Buyer must inform the transport company or the Seller in writing of damage in transit for which the Seller is contractually responsible. The Buyer must examine the transported goods after receipt with regard to obvious damage. If he does not give notice thereof in due time according to sentence 5, then he will lose his right to claim compensation, unless the Seller was deliberately or grossly negligent.

5. Payment Terms

Our payments are, unless otherwise stipulated, payable within 30 days net. Cash discount deductions agreed on for individual cases are payable within 14 days (receipt of payment). They are not possible if previous invoices have exceeded the payment term of 30 days. Any shortfalls due to unauthorised cash discounts as well as the deduction of forwarding charges and packing costs must be paid in full later. It is deemed as agreed that the delivery will ensue according to our choice either by payment on account or by payment in advance with a deduction of a 2 % discount. The Buyer is only entitled to right of retention and set-off insofar as his counterclaims are determined to be beyond

dispute or legally binding. Upon a delay in payment on the side of the Buyer, we are entitled, without further evidence, to charge interest to the amount of the prevailing bank rates for overdraft facilities, but at least to the amount of 4 % above the discount rate of the German federal bank, the "Deutsche Bundesbank". We reserve the right to claim further damages due to such delays. Payment with a bill of exchange requires our agreement. If we accept the bill of exchange, the bill of exchange tax as well as the discount charges and VAT must, in any case, be paid net by the Customer within 10 days.

6. Guarantee

For faults, which also include the absence of guaranteed qualities, the Supplier is liable as follows:

- a) All those parts or services which become unserviceable or whose serviceability is substantially impaired within 12 months as calculated from the day of the transfer of risk – regardless of the period of operation – as a result of a circumstance pre-dating the transfer of risk, especially because of faulty construction, bad materials or deficient design, must, at the option of the Supplier, be repaired free of charge, delivered again or provided again. The Seller must immediately be informed in writing of the establishment of such faults. If the faults are obvious, the Buyer will lose his rights of guarantee if he has not asserted his claims vis-à-vis the Seller within at least one month (or with "Vollkaufleute" [merchants who have been entered as such in the commercial register] within a week).
- b) The Buyer must observe the contractual obligations he is subject to, especially the agreed payment terms. If a notification of defects is asserted, the payments of the Buyer may be withheld to an extent, which is in appropriate proportion to the faults, which have arisen. If, however, the legal transaction is part of the operation of his trade, then the Buyer can only withhold payments if the fault being reproved is determined to be indisputable or valid.
- c) In order to rectify the faults, the Buyer must grant the Supplier the required time and opportunity to do so according to equitable discretion. If he refuses to do so, then the Supplier is freed from the liability of faults.
- d) If the Supplier allows an appropriate extension of the deadline to pass without rectifying the faults, then the Customer can demand that the contract is cancelled (annulment) or the payment is reduced (reduction).
- e) In all cases, the right of the Buyer to assert claims due to faults will become barred by the statute of limitations 12 months after the point the complaint was made. If no agreement is reached within this period, then the Supplier and Customer can agree to extend the limitation period.
- f) The liability for defects does not refer to natural wear and tear, nor to damages, which arise after transfer of risk due to faulty or careless operation, excessive operational demands, unsuitable equipment, defective construction work, unsuitable substratum, and such chemical, electrochemical or electrical influences, which are not presumed according to the contract.
- g) With improper changes or corrective maintenance work performed by the Customer or a third party, liability for the results arising from that will be annulled.
- h) The conditions regarding guarantee periods in points a) and e) do not apply insofar as the law prescribes mandatory longer periods.
- i) Claims for compensation as made by the Buyer against the Seller due to infringement of secondary obligations (PVV) are excluded insofar as they are not based on the deliberate or gross negligence of the Seller or his assistants.
- j) Any of the Seller's expenses arising due to unfair complaints from the Buyer, must be reimbursed to the Seller by the Buyer, insofar

as they were necessary to clarify and process the complaint made. The Seller can make the return of the purchased item contingent on the reimbursement of such costs, insofar as the expenses are not completely out of proportion to the value of the purchased item or to the recognisable disadvantages of the Buyer upon the exercise of the right to retention.

- k) Any possible rights to compensation due to inadequate deliveries are limited according to the amount of the purchase price of the deliveries in question, unless it is a matter of claims made by the Buyer due to the absence of guaranteed characteristics or claims against the Seller or one of his assistants due to deliberate or gross negligence. The precondition for such liability claims of any kind is the proper installation and use of the goods delivered as defined in the current documentation (instruction manual, technical hints) at any one time.

7. Cancellation

If the Seller becomes aware of circumstances whereby the payment of the purchase price by the Buyer appears to be seriously at risk, then the Seller can insist on matching payment of the purchase price with physical delivery, even if, upon conclusion of the contract, delivery by the Seller in advance of payment was agreed upon. Cases of force majeure, which hinder the contractual parties either completely or partially in the fulfilment of their obligations, absolve both parties to the contract from the fulfilment of this contract until the force majeure no longer exists. The contractual party subject to the case of force majeure must inform the other partner immediately thereof. Strikes, lockouts and the impossibility of procuring transportation are deemed equal to a case of force majeure. Both partners will determine by mutual consent whether an additional delivery for the deliveries, which did not take place during this time, should occur after the termination of the force majeure.

8. Extended Retention of Title

Until all demands to which the Seller is entitled on all legal grounds, now and in the future, are fulfilled, the Seller is granted the following assurances from which he will exempt the Buyer on request if he so chooses, insofar as their value exceeds the demands by more than 20 %:

- The goods remain the property of the Seller.
- Processing or working on the goods always happens in the name of the Seller as manufacturer, yet without any obligation on his part. If the (co-)ownership on the part of the Seller expires due to combination with other goods, then it is agreed now that the (co-)ownership on the part of the Buyer regarding the single item is transferred to the Seller in line with the value percentage (invoice value) thereof. The Buyer holds the (co-)ownership of the Seller in custody free of charge. Goods to which the Seller is entitled to claim (co-)ownership are hereafter referred to as goods under reservation of ownership.
- The Buyer is entitled to process and sell goods under reservation of ownership as part of his proper business dealings, as long as he is not in default. Pledges or transfers by way of securities are not permitted. As a precaution, demands (including all demands on account balances from current accounts with business partners) arising from the sale or other legal grounds (insurance, civil offence) with regard to the goods under reservation of ownership are hereby ceded fully by the Buyer to the Seller. The Seller revocable authorises him to collect the demands ceded to the Seller on behalf of his account in his own name. This direct debit authorisation can only be revoked if the Buyer does not duly fulfil his payment obligations.

In cases of third party access to the goods under reservation of ownership, the Buyer must indicate which property is that of the Seller and inform the Seller immediately thereof. Costs and compensation will be borne by the Buyer.

In cases of conduct on the part of the Buyer which is contrary to the contract – especially delays in payment – the Seller is entitled to take back the goods under reservation of ownership or, if need be, to demand the transfer of the Buyer's right to restitution to a third party. Should the goods be taken back or the goods under reservation of ownership are impounded – so long as no law governing payment by

instalment applies – then this does not mean that the contract is cancelled.

If payment by bill of exchange is agreed on, the Buyer is deemed to be in default of payment as soon as he does not honour the bill on the due date.

If the retention of title becomes invalid upon delivery abroad or for some other reason, the Buyer is obliged to furnish the Seller immediately with a guarantee against the delivered goods or some other guarantee for the demands of the Seller, which is legally effective according to the regulations which apply according to the registered office of the Customer and which comes closest to the retention of title according to German law.

9. Place of Performance and Place of Jurisdiction

The place of performance for all rights and obligations is Heiligenhaus, Germany. The place of jurisdiction, also for disputes regarding bills of exchange and cheques, is Velbert. The laws of the Federal Republic of Germany apply. The validity United Nations Convention on Contracts for the International Sale of Goods (CISG) is excluded. If any or several of the previous conditions are invalid, the other conditions remain unaffected by this. In such cases, the Customer and we are obliged to replace an invalid condition with a valid one, which comes closest to the economic purpose of the invalid one.