

General Terms and Conditions of Sale and Delivery

1. Scope of application

- 1.1 These General Terms and Conditions of Sale and Delivery ("GTC") of Elma Electronic AG ("the Supplier") apply to all orders placed by the customer. Any deviations from these GTC shall only be effective if confirmed in writing by the Supplier.
- 1.2 General terms and conditions of the customer to which the Supplier has not expressly agreed in writing shall not be part of the agreement. Any deviations from these GTC shall only be effective if confirmed in writing with the customer in the individual agreement. This applies in particular to any agreements removing the need for the written form.
- 1.3 These GTC apply solely for use in respect of (1) a person who, when concluding the agreement, is acting in exercise of their commercial or independent professional activity (entrepreneur) and (2) legal entities.
- 1.4 If any provision of these GTC is or becomes ineffective, the effectiveness of the other GTC shall not be affected by this. The contractual parties undertake here to replace the ineffective clause with an effective clause that reflects the ineffective clause or comes closest to it commercially.

2. Processing of orders

- 2.1 The Supplier's offers are non-binding. The order is only deemed to have been accepted if confirmed in writing by the Supplier or if complied with by the Supplier by the supply of goods and invoicing. Verbal ancillary agreements shall only be binding if confirmed in writing. All prices given are exclusive of statutory VAT.
- 2.2 Information and advice on technical application issues, etc., shall always be given on a non-binding basis and no liability is accepted. Samples provided to the customer shall be non-binding unless the Supplier guarantees the properties in writing.
- 2.3 Sales shall only be concluded for specific delivery dates, specific quantities and qualities.
- 2.4 The Supplier may make changes that differ from the order confirmation if the products fulfill the same function or the services meet the same purpose. Changes at the customer's request require additional written agreement by letter, fax or email.
- 2.5 The order confirmation shall be authoritative for the scope and execution of the order; if it does not cover these points, then the Supplier's offer shall be authoritative.

3. Customer's duty of information

The customer shall notify the Supplier early in writing of any specific technical requirements and of any statutory, official or other provisions at the place of destination if they are significant for execution of an order.

4. Place of fulfillment and transfer of benefit and risk

- 4.1 Unless otherwise agreed, the goods shall be supplied from the dispatch warehouse or the Supplier's works (place of fulfillment). Product packaging is included in the price. Special packaging at the customer's request shall be charged to the customer separately. No credit is given for return consignments. The Supplier shall choose the type and method of dispatch, making every effort to choose the most cost-effective method and taking the customer's requirements into account. In doing so – even in the case of agreed freight-free delivery – additional costs incurred shall be charged to the customer.
- 4.2 Cases of force majeure, which are deemed to be circumstances and events that cannot be prevented by diligence of proper business management, labor dispute measures, official measures and other involuntary business interruptions that have lasted or are likely to last for more than one week suspend the contractual obligations of the parties for the duration of the disruption and to the extent of their effectiveness, but not for longer than five weeks plus an additional delivery period. The extension applies if the Supplier advises the customer immediately of the reason for the hindrance as soon as the former realizes that the delivery deadlines cannot be met. If the hindrance has lasted more than five weeks and the customer is not advised immediately on request that consignments cannot be delivered or accepted on time, the customer may immediately withdraw from the contract. Further claims, particularly claims for damages, are excluded in the aforementioned cases.
- 4.3 Benefit and risk of the ordered products pass to the customer upon supply at the place of fulfillment. This also applies if products are sent to another place by the Supplier in agreement with the customer. Products are always dispatched for the account of and at the risk of the customer.
- 4.4 If consignments arrive at the customer in a damaged state, the customer is obliged to inform the Supplier immediately in writing.

5. Prices and payment terms

- 5.1 The given prices apply ex works, excluding dispatch packaging insurance, VAT, duties and levies. The Supplier reserves the right to charge a supplement for small consignments.
- 5.2 All the Supplier's invoices are due for payment on a net basis within 30 days of invoice date. The customer is not entitled to settle the Supplier's outstanding receivables by offsetting.
- 5.3 The Supplier is entitled to ask for one or several advance payments from the customer. If advance payment is requested when the order is placed, the Supplier shall only issue the confirmed order after such advance payment has been received.
- 5.4 If the customer causes delays in processing an order, the Supplier reserves the right to invoice the additional expenses that have arisen (and documented) on top of the delivery price.

6. Customer's payment default

- 6.1 If the customer does not comply with the payment date (payment default), it shall pay default interest of 5% p.a. from the due payment date without a reminder. The assertion of further damages remains reserved.
- 6.2 Upon payment default, the Supplier may set a reasonable extension period and, if the customer does not pay the whole amount due (including default interest) within this period, the Supplier may declare cancellation of the order in question and demand the return of the supplied products and services. Furthermore, the Supplier is entitled to suspend the execution of other orders already accepted from the customer.

7. Delivery dates

- 7.1 Delivery dates or delivery periods are calculated from the date on which the order was accepted by the Supplier through issue of the order confirmation.
- 7.2 The delivery dates as per the order confirmation shall be reasonably extended:
- a) If details that the Supplier needs to execute an order are not supplied on time or if the customer subsequently changes them;
- b) If the customer is behind schedule with the preparatory work it has to carry out;
- c) If hindrances arise that are beyond the Supplier's control, such as natural disasters, immobilization, war, unrest, epidemics, accidents and illness, significant malfunctions, labor conflicts, delayed or incorrect deliveries and official measures.
- 7.3 The Supplier is entitled to supply part consignments.

8. Delayed deliveries

- 8.1 If there are delays in carrying out orders for which the Supplier is not responsible, the Supplier shall be entitled to effect delivery within a reasonable extension period that it shall specify. If the extension period is not complied with and a further delay is unacceptable to the customer, the customer may declare cancellation of the order in question, provided that the customer communicates this within five working days after the extension period has ended.
- 8.2 If the Supplier is demonstrably responsible for non-compliance with the agreed and subsequently extended deadline, the customer has a claim for compensation of proven damages caused by the delay. Damages shall be limited to a maximum of 5% of the value of the outstanding consignment when the extended period ends. Further claims arising from delays in supplies, particularly other claims for damages or claims for statutory default interest are excluded, apart from cases of intent or gross negligence.

9. Default in acceptance and acceptance

- 9.1 If the customer is silent or expressly refuses to accept the consignment without being entitled to do so, the Supplier may either choose to withdraw from the contract or demand damages, after first having issued a prior warning and set a reasonable deadline.
- 9.2 If no particular acceptance procedure is agreed, the customer is obliged to check all products and services itself upon receipt under this Section 9.
- 9.3 The customer is obliged to check the supplied products and/or services immediately for identity, amount, transport damages, accompanying papers and other defects.
- 9.4 Products and services are deemed to have been accepted if the Supplier does not receive written notification of defects within ten days after delivery or if products and services are used commercially for more than twenty working days. The customer must advise the Supplier immediately in writing of any hidden defects that are discovered, but by latest twelve months after delivery of the products or provision of the services.
- 9.5 If notification is not received on time, all defect rights shall be forfeited, including claims for damages.

10. Guarantee for defects

- 10.1 The Supplier is responsible for products and services possessing the warranted characteristics, displaying the expressly agreed technical features and for complying with the provisions at the intended location that the customer made reference to in Section 3 of these GTC.
- 10.2 Errors and disturbances for which the Supplier is not responsible, in particular due to natural wear and tear, force majeure, improper handling, interference by the customer or third parties, excessive load, unsuitable equipment, disturbances by other machinery and equipment, unstable power supply, special climatic conditions or unusual environmental influences, are not regarded as defects.
- 10.3 Under no circumstances may the customer make a claim due to a minor defect. Minor in this sense specifically means defects that do not affect the use of products and services.
- 10.4 If notices of defects are recognized by the Supplier, it reserves the right to correct defects or supply defect-free replacement goods within thirty working days of the Supplier receiving the goods. In such instances, the latter shall bear the freight costs. It shall specify the place of defect correction. Ownership of replaced parts reverts back to the Supplier.
- 10.5 If subsequent performance fails, the customer is only entitled to reduce the purchase price or withdraw from the contract. If the aforementioned period of thirty working days expires, the customer shall only be entitled to reduce the purchase price or, if use of the total consignment or services is unacceptable to the customer, to withdraw from the contract. Further rights, in particular claims for damages, are excluded.
- 10.6 All defect rights and claims deriving therefrom have a time limit of twelve months from acceptance of the products or services under Section 9 of these GTC. Recognition or correction of a defect by the Supplier does not interrupt the limitation period.

11. Damages

11.1 In cases of intent or gross negligence, the Supplier shall be liable for a representative or vicarious agent under statutory provisions. Moreover, the Supplier shall only be liable due to injury or killing of a person or due to damage or destruction of an object under the provisions of the Product Liability Act (PLA).

In cases of gross negligence and culpable breach of significant contractual obligations, the Supplier's liability shall be limited to foreseeable damage typical for this type of contract, unless there are other exceptional cases as listed in sentence two of this paragraph.

Aside from liability under PLA, liability for damages by the delivery item to the legal interests of the customer or third parties, e.g. damages to other objects, remain wholly excluded.

11.2 The regulations of Section 11.1 above extend to damages in addition to performance and damages rather than performance, regardless of the legal basis, particularly due to defects, breach of contractual obligations or arising from tortious liability. They also apply to the claim for compensation for unnecessary expenditure.

12. Customer's responsibility and obligations

12.1 The customer alone is responsible for fitting and applying the products and for combining them with other products. As such, it shall exercise the necessary caution and follow all the manufacturer's and/or Supplier's instructions.

These General Terms and Conditions of Sale and Delivery of Elma Electronic AG are constituted in a German, French and English version. In the event of any conflict or contradiction between the German original and the French and/or English translation, the German original shall prevail.

12.2 The customer is obliged to pass on all safety-relevant information in a suitable form to users.

12.3 The customer shall dispose of the supplied products after use at its own cost in accordance with the relevant statutory provisions or shall transfer this duty of disposal to its customers. The customer shall indemnify the Supplier against all duties of disposal, particularly any take-back obligation, disposal costs and corresponding third-party claims.

12.4 The customer is responsible for complying with all relevant domestic and foreign export requirements in connection with the import, export, processing or selling on of the Supplier's products; the latter should be informed as soon as possible about such provisions.

13. Other provisions

13.1 The place of performance for any claims arising from the contractual relationship is the headquarters of Elma Electronic AG in Wetzikon/Switzerland, provided this is permissible.

13.2 The sole jurisdiction for any disputes arising from or in connection with the legal relationship with the customer is the local competent court in Wetzikon/Switzerland. The Supplier is also entitled to choose to claim against the customer in its general jurisdiction.

13.3 The law of Switzerland shall apply to the business relationships and the overall legal relationships between the Supplier and customer, excluding the conflict of law rules. Application of the United Nations Convention on Contracts for the International Sale of Goods (CISG) is specifically excluded.

13.4 The data required to process the order shall be saved by the Supplier under the relevant data protection laws.

© Elma Electronic AG
Hofstrasse 93 • CH-8620 Wetzikon, Switzerland
Telephone +41 44 933 41 11
www.elma.com • sales@elma.ch

Edition: May 2018