

# General Terms of Delivery and Payment

These Terms are for use vis-à-vis:

- a. A person who at the conclusion of the contract is acting in execution of their commercial or free-lance professional career (contractor)
- b. Legal entities under public law or a special fund under public law

## 1. General Remarks

The General Terms apply to all contracts for purchase, services, labor and materials of Elma Electronic GmbH (hereinafter referred to as "Elma" or "Supplier"). They apply without express agreement to all future business transactions of the above-mentioned type. General Terms and Conditions of Business of Orderer to which Elma has not expressly agreed shall in no case become the subject matter of contract.

Deviations from these General Terms are only effective if they have been agreed in writing in an individual contract with Orderer. This applies in particular to agreements abolishing the requirement for written form.

## 2. Offer Documents

Documents such as statements of weights and measures which are an integral part of the offer of Elma allow for customary deviations insofar as they are not expressly stated to be binding. Elma reserves ownership and copyrights to all cost estimates and other documents; they may not be made accessible to third parties without the express consent of Elma. Elma is obligated to make plans designated by Orderer as confidential available to third parties only with Orderer's consent.

## 3. Scope of Delivery; Acceptance

- 3.1 The contract note of Elma definitively applies to the scope of delivery insofar as nothing to the contrary has been agreed in writing outside of said note. Subsidiary agreements require the written consent of Elma.
- 3.2 If Orderer must undertake an acceptance of the goods, Orderer must perform such acceptance on the premises of and at Elma within fifteen days of receipt of the notification of readiness of acceptance. If this deadline is not met, the goods shall be considered accepted when this time period expires. Acceptance may not be refused due to minor defects; the rights of Orderer pursuant to article 9 remain intact in this respect, however.

## 4. Price, Payment and Price Adjustment

- 4.1 Prices are regarded as net prices; that is in particular without deducting taxes, fees, charges and customs ex works including loading at the plant, yet excluding transport insurance, permits for transit, import or any other permits, as well as other costs caused by delivery Elma charges the packaging separately.

- 4.2 Each invoice amount must be paid within thirty days of the invoice date without any deductions to the designated account of Elma.

For new customer business, Elma reserves at its full discretion the right to demand payment in advance.

- 4.3 Bills of exchange are not permitted as payment. Elma can at its discretion claim for payment by confirmed irrevocable negotiable letter of credit of an international major bank.

- 4.4 If Orderer should default on payment, Supplier shall be entitled to demand immediate payment in cash of all outstanding debts from the business relationship. This right shall not be excluded through deferment of payment or the acceptance of checks. Furthermore, Supplier shall then also be entitled to make outstanding deliveries only on the basis of payment in advance or the provision of securities.

- 4.5 If the financial standing of Orderer should considerably worsen after the contract is signed, Supplier can also withdraw from the contract insofar as Orderer is not willing or able to match payment with delivery or provide security.

- 4.6 Orderer can only offset such receivables as are uncontested or legally established.

- 4.7 If Orderer is in default of payment, Elma shall charge default interest amounting to 5%. The proof of higher or lower damage remains permissible.

- 4.8 Supplier reserves the right to adjust prices if wage rates or material prices should change between the time the offer is made and the fulfillment of the contract. Prices shall moreover be adequately adjusted

- a. if the delivery period is subsequently extended for reasons for which Orderer is responsible, or
- b. if the type or scope of the agreed services or service undergo a change, or
- c. if the material or the execution undergo a change because the documents provided by Orderer did not match the actual conditions or were incomplete.

## 5. Delivery Dates; Delays

- 5.1 The agreed delivery dates apply only under the assumption that all details of the order are clarified in due time and all obligations of Orderer are fulfilled in due time, such as providing the necessary official permits, issuing a letter of credit or making a down payment.

- 5.2 If, once the contract is signed, the delivery is delayed due to force majeure, such as war, national unrest, forces of nature or other unforeseeable events for which Elma cannot be held responsible, such as industrial action, interruption of operations for which Elma is not responsible, etc., the delivery period shall

be extended by the duration of the obstruction and by a reasonable start-up period.

- 5.3 If Elma should not be able or expected to fulfill its obligations due to an obstruction stated in paragraph 5.2 above, Elma can withdraw from the contract; Orderer has the same right, if the delay makes acceptance unreasonable for Orderer.
- 5.4 If Elma should default, Orderer can withdraw from the contract following a reasonable period set by Orderer in writing. The same applies if Elma should not be able to fulfill its obligations for reasons attributable to Elma.
- 5.5 A right of withdrawal to which Orderer or Elma is entitled pursuant to paragraphs 5.3 and 5.4 above always covers only that portion of the contract not yet fulfilled. Insofar as partial deliveries or services rendered for Orderer are unusable, Orderer is also entitled to withdraw with regard to these parts.
- 5.6 All other claims against Supplier with regard to delay are excluded insofar as Supplier is not culpable owing to violation of essential contractual obligations, intent or gross negligence.

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## 6. Transfer of Risk; Consignment

Risk is transferred to Orderer when the goods are handed over to the carrier or forwarding agent, but at the latest when they leave the plant. The Incoterms 2010 in the version effective at the time the contract is signed shall apply. Goods reported as ready for shipment must be picked up by the agreed delivery date at the latest; otherwise Elma shall store them at the expense and risk of Orderer and charge for them as delivered ex works. Elma is entitled to make and charge for partial deliveries. Delivered items must be received even if they exhibit minor defects; this does not affect the rights pursuant to article 9.

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## 7. Title Retention

- 7.1 Elma retains ownership of the delivered goods until all claims due to Elma from the business relationship and still outstanding, on whatever legal grounds, are fully settled.
- 7.2 Orderer is entitled to process or combine products from Elma with other products within the scope of its proper business operations. Elma acquires co-ownership to the items produced through such processing or combination in order to ensure its claims stated in paragraph 7.1, which co-ownership Orderer now transfers to Elma. Orderer must hold in safe custody free of charge the items to which Elma has co-ownership as an accessory contractual obligation. The extent of co-ownership shall be determined by the ratio of the value the product from Elma has to the item created by the combination at the time they are combined.
- 7.3 Orderer is entitled to a right of resale for cash or with retention of title in the ordinary course of business. Orderer now transfers all claims with ancillary rights arising from the resale to Elma. If products belonging to Elma are resold together with other goods, then the purchase price claim is transferred to Elma in the amount of the price of the products from Elma. The transferred claims serve as security for all claims pursuant to paragraph 7.1. Orderer is entitled to collect

the transferred claims. The rights stated in this paragraph can be revoked if Orderer does not properly fulfill all Orderer's contractual obligations toward Elma, especially if Orderer should default on payment. These rights shall expire without express revocation if Orderer ceases to make payment for longer than merely temporarily. Upon request of Elma, Orderer must declare without delay in writing who has purchased the goods to which Elma retains title or co-ownership and state the claims arising from the sale, as well as issuing at Orderer's own expense a public notarized deed on the transfer of claims to Elma.

- 7.4 Orderer is not entitled to otherwise dispose of the items to which Elma retains title or co-ownership, nor of the claims transferred to the latter. Orderer must inform Elma without delay of attachments or other impairment of rights to the items or claims belonging in full or in part to Elma. Orderer shall bear all the expenses required to keep third parties from gaining access to the goods to which title has been retained or which is pledged as security and to replace the item, insofar as they cannot be collected from third parties.
- 7.5 In the event of default of payment or culpable violation of other contractual obligations of Orderer, Elma is entitled to demand restitution of the goods to which Elma has reservation of title or co-ownership. If Elma should exercise this right, then this shall only constitute withdrawal from contract if Elma has expressly so declared in writing – regardless of any other mandatory legal provisions. If the value of the securities existing for Elma exceeds the total claims by more than ten percent, then Elma shall, at Orderer's request, release securities of its own choice to this extent.
- 7.6 If the retention of title is not effective according to the law in whose area the goods are situated, then a security corresponding to the retention of title in this area shall be considered as agreed. If the cooperation of Orderer is necessary for the formation of such rights, then Orderer must take all action necessary to establish and maintain such rights.
- 7.7 If according to the law in whose area the goods are situated, the agreement of a further retention of title provision is permissible (for example, the advance assignment of claims of the purchaser arising from a resale of the goods delivered by Elma), said purchaser shall make an agreement of this nature with Elma upon request.

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## 8. Complaints due to incorrect, defective or incomplete Deliveries

Complaints must be indicated to Elma without delay, in the case of obvious defects, within ten days, indicating all necessary details.

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## 9. Liability for Defects

- 9.1 Supplier is obligated to remedy all defects or deviations in the goods based on a defect in design, material or workmanship.
- 9.2 The warranty period for power supplies ("PSU") amounts to twenty-four months. For any other delivery – excluding PSU - the warranty period amounts to twelve month.
- 9.3 If, within the period of limitation, there should be a material defect whose cause was present at the time of risk transfer, Supplier can undertake supplementary performance by choosing either to eliminate the defect or to deliver an item free of defects. Supplier shall continue to retain title to the replaced goods.
- 9.4 Liability for material defects is excluded if the product has been modified by other parties or if parts of third-party origin have been incorporated, unless there is no causal relationship between the defect and the modifications and if regulations for shipment, packaging, installation, treatment, use, maintenance or repair by unauthorized third parties have not been observed.
- 9.5 Natural wear and damage through improper treatment are not included in the material defect liability. In particular, Supplier shall not be liable for modifications of the state or mode of operation of the product through improper storage or unsuitable production facilities, as well as climatic or other effects.
- 9.6 Orderer must give Supplier or a third party bound to the guarantee sufficient time and opportunity for the performance of the warranty services. The expenses necessary for subsequent performance shall be borne by Supplier in reasonable proportion of the value of the item in a state free of defects to the significance of the defect and/or the possibility of achieving a different kind of supplementary performance; Orderer shall bear further expenses.
- 9.7 Warranted characteristics are only those expressly designated as such in the order confirmation or the specifications. This warranty applies at the longest until the termination of the warranty period. If an acceptance inspection has been agreed, the warranty is considered fulfilled if the proof of the respective characteristic has been provided at this inspection. If the warranted characteristics are only partly fulfilled or not at all, Orderer shall first be entitled to immediate reworking by Supplier. To this end, Orderer must grant Supplier the necessary time and opportunity. If the reworking is only partially successful or not at all, then Orderer shall be entitled to the damage compensation agreed for this case or, if no such agreement has been made, to a reasonable price discount.  
If the defect is so grave that it cannot be remedied within a reasonable period of time, and if the deliveries or services are no longer suitable for the declared purpose, or if their suitability is substantially impaired, Orderer shall have the right to refuse to accept the defective part or, if Orderer considers a partial acceptance economically unreasonable, to withdraw from the contract. Supplier can only be obligated to refund those amounts paid for the parts affected by the withdrawal.

- 9.8 Supplier shall only be liable for Orderer's claims based on defective advice or the like, or due to violation of any accessory obligations, in cases of intent or gross negligence.
- 9.9 The limitation period shall not be renewed during the time required for supplementary performance. It shall not begin anew.
- 9.10 If the supplementary performance should be to no avail, Orderer can withdraw from the contract or reduce the remuneration.
- 9.11 Further rights based on defects – especially contractual or non-contractual claims to damage compensation not originating in the goods themselves – are excluded to the extent stated in paragraph 10 (see exclusion of liability).
- 9.12 If a complaint should prove to be unjustified, Supplier shall be entitled to charge Orderer for all expenses this has caused .
- 9.13 The provisions of this Subparagraph apply accordingly to defects of title not based on the violation of third-party property rights.

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## 10. Liability for Damage Compensation

- 10.1 Any claims of Orderer other than those mentioned above, in particular claims for damage compensation, shall be excluded. This exclusion of liability does not apply:
- a. in the event of intent or gross negligence of legal representatives, executives or vicarious agents of Elma;
  - b. in the event of initial inability to perform
  - c. in the event of culpable violation of essential contractual obligations; i.e. such contract obligation whose fulfillment even enables the agreed execution of the contract and on which the contracting party trusts or may trust. In these cases, the liability is limited to reasonably foreseeable damage that is typical of the contract;
  - d. to claims under the Product Liability Act for defects in the delivery item for persons or material damages to privately used items;
  - e. to such risks against which Elma can be reasonable expected to insure itself;
  - f. if warranted characteristics are lacking, insofar as covered by the warranty in each case.

Insofar as liability of Elma is excluded or limited, this also applies to the personal liability of its legal representatives, employees and vicarious agents.

10.2 All cases of violation of contract and their legal consequences, as well as all claims of Orderer, regardless of the legal grounds on which they are asserted, are conclusively provided for in these Terms. In particular, all claims for damage compensation, mitigation, cancellation of contract or withdrawal from contract not expressly mentioned are excluded. In no case is Orderer entitled to claim for compensation of damages not occurring directly on the delivery item, such as loss of production, loss of effectivity, loss of orders, loss of profits and other direct or indirect damages. This exclusion of liability does not apply in cases of intent or gross negligence on the part of Supplier, yet does apply to intent or gross negligence on the part of auxiliary persons. This exclusion of liability does not apply if it contradicts compelling law.

## 11. Other Provisions

- 11.1 If any provision of these General Terms is held to be invalid or unenforceable in whole or in part, the validity of the other provisions of these General Terms and the remainder of the provision in question shall not be affected thereby. Instead of the invalid provision shall come a provision which is as close as legally permissible to what the parties would have agreed, if they would have recognized that the provision in question is invalid or unenforceable. The same shall apply if this General Terms contain a contractual gap.
- 11.2 The place of fulfillment for all deliveries and services of the Parties arising from their business relationship is Pforzheim/Germany (Supplier).
- 11.3 The legal venue for all disputes arising from the contractual relationship, including actions on checks and bills of exchange, is the competent court for Pforzheim /Germany (Amtsgericht Pforzheim/Landgericht Karlsruhe- Chamber for Commercial Law). Elma can at its own discretion bring an action against the contractual partner at said partner's main office or any other competent court. This legal venue also applies to disputes concerning the origin and effectiveness of the contractual relationship. Orderer is also entitled to transfer Orderer's claims arising from the business relationships only with the prior written consent of Elma.
- 11.4 The laws of the Federal Republic of Germany apply exclusively, excluding its international private law insofar as it refers to the applicability of another legal system. The application of the UN Convention on Contracts for the International Sale of Goods (CISG) and other standardizations of bilateral and multilateral treaties concerning international purchases shall be excluded.

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These General Terms of Delivery and Payment of Elma Electronic GmbH are constituted in a German and English version. In the event of any conflict or contradiction between the German and the English version, the German version shall prevail.

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