

General Sales Terms and Delivery Conditions

of Elbe, Firma G. Elbe & Sohn GmbH & Co.KG

- in the following mentioned as “Elbe” -

§ 1

Scope of Application

- (1) Deliveries of Elbe are exclusively based on these general sales terms and delivery conditions. The general terms and conditions of a customer are hereby expressly rejected. The sales terms and delivery conditions set forth by Elbe also apply if Elbe effects deliveries without reservation with knowledge of conditions which are conflicting to or different from the sales terms and delivery conditions.
- (2) The sales terms and delivery conditions apply - even without repeated reference - for all subsequent business transactions.
- (3) These sales terms and delivery conditions apply only to business persons.

§ 2

Offer and Signing of a Contract

- (1) Offers of Elbe are non-binding and are without obligation.
- (2) All orders and acceptances of orders of Elbe require written confirmation for legal validation. This also applies for additions, modifications or supplemental agreements.
- (3) Drawings, images, weights, measures or miscellaneous performance data are only binding if they are expressly agreed upon in written form.

§ 3

Price

- (1) The prices which are mentioned in the confirmation of the order of Elbe are valid. They are net prices “ex works” excluding the Value Added Tax (VAT) mandated by law which is determined separately in the invoice. Freight and packaging costs will be billed separately.
- (2) If not indicated otherwise, the purchase price is binding until thirty days after the date of the offer of Elbe. Elbe reserves the right after the expiration of the thirty days to increase the prices as compensation for cost increases which incurred after the signing of the contract, especially by conclusions of a collective agreement or increases of the material prices which are not caused by Elbe.
- (3) Additional deliveries and performances will be billed separately.
- (4) The shipment is - also in the case of post paid deliveries - for the account and the risk of the consignee.

§ 4

Dates of Delivery and Cancellation of the Contract

- (1) Dates and times of performance are not binding provided that it has not been agreed otherwise in written form.
- (2) Compliance with times of delivery and performance depends on the timely and acceptable fulfilment of the customer’s obligations.
- (3) Elbe is not responsible for delivery and performance delays due to Force Majeure and occurrences beyond Elbe’s control which substantially complicate the deliveries of Elbe or render delivery impossible - this pertains especially to difficulties in material supply which occurred subsequently, breakdowns, strikes, block outs, shortage of staff, shortage of means of transport, official orders etc., even if the events occur with suppliers of Elbe or their subcontractors, for the duration and extent of the effect provided that the interferences cannot be avoided or the avoiding is not possible with

reasonable means. The delays entitle Elbe to postpone the delivery or service for the duration of the effects of this event. The delays also entitle Elbe to additional reasonable time to compensate for the lost time.

- (4) If the inability to deliver due to circumstances according to Subclause 3 exceeds three months, the customer, after a reasonable extension period, has the right to rescind the part of the contract that has not been fulfilled. If the delivery time according to Subclause 3 Sentence 2 takes longer or if Elbe is relieved of its obligations, then the customer cannot claim damages. Elbe can only rely upon the stated circumstances if Elbe gives the customer immediate notice.
- (5) Elbe has the right to make partial deliveries and to perform partial services at any time.
- (6) In the case of a delivery delay, the customer is only entitled to rescind the contract if the customer has given Elbe an extension period of four weeks in written form.
- (7) Claims for compensation due to delay in delivery are excluded and respectively restricted according to Clause 10 of the contract. This does not apply to transactions for delivery by a fixed date.
- (8) If the customer defaults on acceptance or violates other co-operational duties, Elbe is entitled to claim incidental damage, including possible additional expenditures. In this case, the risk of coincidental loss or coincidental deterioration of the delivered goods is transferred to the customer at the point of default or violation by the customer.
- (9) Elbe has the right to make deliveries ahead of schedule.

§ 5

Shipment and Transfer of Risks

- (1) The shipment is performed “ex works” provided that it is not regulated otherwise in the confirmation of the order. The risks pass to the customer once the goods have been handed over to the person in charge of the transportation of the goods; the risks pass at least to the customer once the goods leave Elbe’s storage facilities. This is valid regardless of who is responsible for shipping and handling costs.

- (2) If the goods are ready for delivery and the delivery is delayed due to no fault of Elbe, then the risks pass to the customer once the customer has received notice that the goods are ready for dispatch.
- (3) If Elbe follows a shipping instruction given by the customer, Elbe follows the instructions without accepting personal liability, solely by order, for the invoice and risk taken by the customer unless Elbe acts wilfully or grossly negligent.

§ 6

Warranty

- (1) The customer must examine the delivered goods immediately upon arrival and make complaints for detectable defects within a period of eight days after receipt in written form. Complaints regarding non-detectable defects must be made within a period of eight days upon discovery in written form.
- (2) A defect does not exist if there is only an irrelevant deviation from the agreed-upon condition or only an irrelevant derogation of the fitness of the goods.
- (3) If the customer or a third party makes inappropriate changes or repairs, the liability for the consequences will be released. In addition, the customer has the burden of proof that the defect complained by the customer already existed at the point of transfer of risk.
- (4) Elbe is not liable for the characteristics which the customer can expect from public announcements made by Elbe, by the manufacturer (sec. 4, 4 Clause 1 and 2, Product Liability Act) or his assistant, especially in advertising or the labelling of the certain characteristics of the goods if Elbe was unaware of these statements.
- (5) If the customer demands specific performance, by either a form of remedy of the defects or an additional delivery due to defectiveness of the delivered goods from Elbe, Elbe has the option of performing by either remedy of the defect or an additional delivery.
- (6) Elbe does not have to bear expenses which become necessary for purposes of specific performance, such as if expenses increase because after the delivery the purchased

goods are brought to another city other than the residence or the commercial establishment of the customer, particularly transportation costs, route costs, labour costs and material costs, unless the transfer is a purpose for the use of the good.

- (7) The customer is not entitled to withdraw from the contract because of defects. However, the customer keeps the right to claim a reduction of the purchase price.
- (8) The legal claims for damages of the customer against Elbe exist only if the customer did not make agreements with his own customers that exceed the claims for damages mandated by the law.
- (9) Claims for damages and claims for expenses based on the defects of the goods are exclusively laid out in Clause 10 (claim for damages, claim for expenses). Further claims or additional claims based on a defect of the goods against Elbe and the person employed in the performance of its obligation are excluded.
- (10) The limitation period for warranty claims for defects of delivered goods is twelve months. The limitation period begins with the transfer of risk provided that the German Civil Code (Bürgerliches Gesetzbuch) does not provide longer limitation periods according to § 438 Sec. 1 No. 2 (goods for buildings), § 479 Sec. 1 (claims for recourse) and § 634 a) (defects on buildings).

§ 7

Reservation of Title

- (1) All merchandise delivered by Elbe remain property of Elbe until the customer has paid all debts including the future debts of the business relation between the parties. This also applies for balance claims from current accounts which Elbe has against the customer.
- (2) If Elbe has agreed with the customer a payment of the debt by cheque-bill-procedure, the reservation of title also refers to the payment of a bill by the customer which is accepted by Elbe and does not expire by the credit of the cheque received by Elbe.
- (3) The rework or transformation of the object of sale is performed always for Elbe as producer. If the object of sale is processed with other objects which belong to Elbe,

Elbe acquires co-ownership of the new object at the ratio of the value of the object of sale to the other processed objects at the date of the processing. The provisions which apply to the object of sale under reservation of title also apply to the object created by processing.

- (4) If the delivered merchandise is inseparably mixed with other objects which belong to Elbe, Elbe acquires co-ownership of the new object at the ratio of the value of the delivered object to the other mixed objects at the date of the mixture. If the mixture is made in a way that the object of the customer is the main object, it is agreed that the customer transfers co-property on a pro ratio basis to Elbe. The customer keeps the sole property or co-property in custody for Elbe.
- (5) The customer is entitled to resell the delivered goods under reservation of title in the course of its ordinary course of business. Any claim of the customer that occurs from the sale of goods delivered under reservation of title is hereby already now assigned from the customer to Elbe. This assignment is accepted by Elbe. The customer is entitled to collect the claims against its buyers, as long as Elbe has not cancelled the authorization. The customer is not entitled to perform other assignments - especially overall or global assignments - or chattel mortgages referring to the goods under reservation of title.
- (6) The customer must give his buyers' notice of the assignment on demand by Elbe and must provide all the necessary information and documents for the enforcement of a claim.
- (7) In the case of the customer's breach of contract, especially in the case of delay of payment or reasonable doubts of his ability to meet his financial obligations (i.e. inability to pay, filing for insolvency), Elbe is entitled to forbid the customer to sell or use the delivered goods under reservation of title and take the goods into possession. In this case, the customer agrees that an employee of Elbe or another authorized person may enter the customer's storage or business premises. Demand for retraction of the delivered goods does not require rescission by Elbe from the contract. The retraction claim of the reserved good, as well as the placement of a lien on the reserved good, constitutes only a declaration for withdrawal from the contract when Elbe has given the customer a period of notice to perform - as long as such notice is not dispensable according to Sec. 323 Subs. 2 BGB (German Civil Code) - , which has elapsed, and Elbe has explicitly declared the withdrawal in writing. The right of the customer to

collect the claims assigned to Elbe elapses if the requirements of Clause 7 Subclause 7 Sentence 1 are met.

- (8) Elbe is obliged to release the above-mentioned securities as per Elbe's choice if their market value should exceed all Elbe's claims by 10%.
- (9) The customer must keep the goods under reservation of title separate from the other goods. The customer is obliged to immediately give Elbe notice in written form by registered mail of any possible grasp by a third party, for example attachment of the reserved goods and the claims assigned to Elbe. In the case that damage occurs to the reserved goods through the grasp of a third party, the customer must compensate Elbe for the damages. Elbe has also to bear all the costs of an intervention by Elbe to enforce Elbe's rights of possession.
- (10) The customer is obliged to provide sufficient insurance for the goods under reservation of title against insurable accidents at its costs. Insurance claims in the case of damage are already now assigned to Elbe in the amount of the invoice value of the possibly damaged goods under reservation of title.
- (11) If under the statutory or other regulations of the country of destination the reservation of title does not take effect without registration or any other formality, the customer hereby already now gives his agreement to such registration. The customer will provide all necessary assistance in order to fulfil the formalities required under the respective national law.

§ 8

Time of Payment and Payment Conditions

- (1) If the confirmation of the order contains nothing different, the invoices of Elbe are due thirty days after the date of the charging of the invoice without reduction.
- (2) Elbe is entitled to use payments to credit old debts first despite declarations of the customer to the contrary. If costs and interests have accrued, then Elbe is entitled to use payments to credit costs first, then interests and lastly to credit the principle obligation.

- (3) A payment is only complete when Elbe possesses the amount. Acceptances of cheques are not payments until a credit note appears on Elbe's bank account. Upon acceptance of the bill of exchange, the customer must bear and immediately pay the discount charges, as well as other transaction fees, including VAT. Elbe is not responsible for whether the bill of exchange or cheque is handed in on time, protested or collected. *(This liability limitation is not valid if Elbe acts wilfully or grossly negligent.)*
- (4) If the customer does not make a payment within due time, Elbe is entitled to charge interests in the amount of 8% above the day's actual base interest according to Sec. 247 of the BGB (German Civil Code). The assertion of Elbe to prove further damage is not excluded. The customer, however, is entitled to prove that as a result of the delay no damage or a substantially minor damage accrued.
- (5) If a customer does not make a payment within due time, Elbe is entitled to claim maturity interest in the amount of 5% p.a. if the requirements of § 353 HGB (German Commercial Code) are fulfilled.
- (6) If the payment obligation of the customer is in delay of more than four weeks or if the customer fails to fulfil the obligations of retention of title, stops payments or files for an opening of jurisdictional or non-jurisdictional insolvency proceedings, then all of its obligations are immediately due, including the cheques and bills of exchange that Elbe has accepted for the later due date. In addition, in this case Elbe is entitled to claim for advance payments or security payments.
- (7) If Elbe has not yet delivered, it is entitled according to the requirements of Subclause 6 to withhold the performances until the complete payment of the price even if the maturity of the price is later.
- (8) Payments to employees or commercial agents of Elbe are only settling the debts if the payee presents an authority to collect.

§ 9

Set-off by the Customer, Retention

The customer is only entitled to the right of set-off if the counterclaims have become res judica, are uncontested or accepted by Elbe. The customer is only entitled to the right of

retention of mature claims if the counterclaims result from the same contractual relationship; a more extensive right of retention is excluded. If the agreement is a commercial transaction for both parties, the customer is entitled to refusal of performance only in case of defective goods or gross breach of the contract. The customer agrees to a set-off of his claims against liabilities vis-à-vis Elbe.

§ 10

Compensation for Damages, Compensation for Disbursements

- (1) Elbe is liable for intentional and grossly negligent acts according to the statutory provision. Incidentally, Elbe is only liable under the product liability act, in the case of harm to life, to the body or to the health of persons or in the case of culpable breach of substantial contractual duties.
- (2) The liability of Elbe is limited to foreseeable and contract-typical damages. This limitation is not valid if a legal representative or an authoritative employee of Elbe caused the damages deliberately or gross negligently or has breached substantial contractual duties. Furthermore, this limitation is not valid if Elbe is liable for harm to life, body or health.
- (3) A claim for reimbursement for expenses is excluded under the conditions stipulated for claims for compensation of damages in Clause 10 Subclause 1.
- (4) A change of the burden of proof to the disadvantage of the customer is not associated with the above-stated regulations.

§ 11

Place of Delivery, Jurisdiction, Partial Nullity

- (1) For these general sales terms and conditions and the entire legal relationship between Elbe and the customer the law of the Federal Republic of Germany applies under the exclusion of the UN-Convention of Contracts for International Sale of Goods (CISG).
- (2) Place of delivery for all obligations of the contractual relationship is the registered office of Elbe.

- (3) If the customer is a business person as defined in Sec. 38 Subs. (1) of the Civil Process Order (Zivilprozessordnung), the jurisdiction for all reciprocal claims and obligations from the business relationship, including the bills of exchange claims and cheque claims, as well as for disputes about the creation and the validity of the contractual relationship lies with the local court or the district court responsible for the registered seat of Elbe. However, the parties are also entitled to sue the other party in its general jurisdiction.

- (4) In case one or more of the Clauses of these terms and conditions or of the contract, which they will be a part of, should be or will become ineffective, the validity of the remaining Clauses of these terms and conditions or of the contract will remain. Should additions and interpretations of these general terms or the contract be necessary due to the invalidity, this shall be made such as to achieve as closely as possible the economic purpose of the invalid Clause.