



**GENERAL TERMS AND CONDITIONS  
OF PURCHASING OF ELEKTRO  
THERMIT GMBH & CO. KG**

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## **1. General provisions, scope**

- (1) Our General Terms and Conditions of Purchase apply exclusively. We do not accept any terms and conditions used by the other party (referred to hereinafter as the “Supplier”) and which add to, contradict or deviate from our own Terms and Conditions unless we have expressly consented in writing to their applicability; this requirement of consent shall also apply if we are aware of terms and conditions used by the Supplier and accept delivery without making reservations in this respect.
- (2) Our General Terms and Conditions of Purchase apply exclusively to entrepreneurs within the meaning of Section 14 (1) BGB [German Civil Code], to legal entities under public law and to public-law corporations.
- (3) Any references to the applicability of statutory provisions are made for clarifying purposes only. Such statutory provisions are applicable even without such clarification, unless they have been directly altered or expressly excluded by our General Terms and Conditions of Purchase

## **2. Conclusion of contract**

- (1) Only orders which have been placed by us in text form (including telefax and email) are binding. The content of our order shall be authoritative.
- (2) The Supplier has to accept our order in writing within ten working days after receipt of the order, unless the order specifies some other period for which it is binding; compliance with this deadline for acceptance is determined by the date on which confirmation is received. Our order expires when said period for acceptance expires

## **3. Prices**

The agreed prices are fixed prices for all work and (ancillary) services to be performed by the Supplier, carriage free to destination, and include any costs for delivery, packaging, transport insurance and statutory value added tax, unless otherwise specified by the agreed INCOTERMS® or other delivery clause.

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## **4. Invoicing, payments**

- (1) We shall be issued an invoice (original and duplicate), separately from the shipment, for every delivery or service performed. Invoices must match the wording used in our orders and must include our respective item code. Invoices which do not contain these details or do not conform to statutory requirements shall be deemed to have not been issued and shall be returned with details of the objections.
- (2) Deliveries to different locations or plants may not be invoiced collectively, but must be separately invoiced.
- (3) We settle invoices within 30 days of receipt, provided that the goods/services have been received and approved.
- (4) We reserve the right to deduct a 3% discount from the net amount if we pay the invoice within 14 days of receipt.
- (5) We shall not owe any default interest.
- (6) In the event of incorrect or defective deliveries or performance of services, we have the right to withhold the entire amount or a proportionate amount of payment until proper fulfilment of the order.
- (7) The Supplier has a right of retention or set-off against claims of our own only for such owed amounts that have been acknowledged by us or which have been established by a final court decision, unless the counterclaim is based on a material breach of contract on our part. A material breach of contract is a breach of any contractual obligation that protects material legal interests of the Supplier and which must be granted to the Supplier by the content and purpose of the contract, or of any contractual obligation whose fulfilment is essential if the contract is to be properly implemented, and compliance with which the Supplier generally relied upon and may rely upon
- (8) We reserve the right to choose an appropriate method of payment. If payment is made by bank giro transfer, the duty to pay has been honoured in good time if the transfer order was sent to our bank three days before the term of payment has expired; we shall not accept responsibility for any delays caused by the banks involved in the payment transactions.

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- (9) Any claims on the part of the Supplier shall be barred by limitation in accordance with the statutory regulations

## **5. Delivery dates, default**

- (1) The agreed delivery dates and deadlines are binding. Compliance with the delivery date or deadline is determined by the date on which the goods are received at the specified delivery address, unless otherwise stated in the agreed delivery clause.
- (2) The Supplier shall inform us immediately and in writing, and verbally beforehand, if circumstances that may result in non-compliance with the agreed delivery dates arise or become known to him. This provision shall apply even if the delay in delivery is not the fault of the Supplier. In the event of any breach of this obligation, we shall be entitled to compensation from the Supplier for the resulting damage.
- (3) We shall not accept part deliveries or part performance of services, or billing thereof, unless this has been expressly agreed in writing. If part delivery has been agreed, the remaining amounts shall be stated in the delivery documents.
- (4) In the event of any default on delivery, we have full entitlement to our statutory rights and claims. In particular, we have the right to claim damages instead of performance if the statutory requirements are met, and to withdraw from the contract – also in respect of the unfulfilled part only.
- (5) In the event of any delay in delivery, we have the right to claim liquidated damages amounting to 0.25% of the net price per day of delay, but no more in total than 5% of the net price of the delayed goods or services; this is without prejudice to any further claims, in particular to statutory claims to damages, from which the liquidated damages shall be deducted. If we accept delayed delivery or performance, we have the right not to claim the liquidated damages until the final payment is made.

## **6. Acceptance procedure**

- (1) Any contractually specified verifications of performance and acceptance procedures shall be

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provided and conducted at no cost to ourselves and shall be recorded in writing by both parties.

- (2) Cases of force majeure, including strikes, lock-outs, civil unrest, official measures and other unforeseeable, unavoidable and serious events beyond our control entitle us to postpone acceptance for the duration of the hindrance, plus a reasonable preparation period. If, in such cases of force majeure, it is no longer reasonable for one of the parties to implement of the contract, said party may withdraw from the contract. The Supplier may not derive any claims to damages from such postponement of acceptance or from our withdrawal from the contract.

## **7. Delivered quantities**

- (1) The Supplier may deliver only the quantities that were ordered. Any additional quantities delivered may be returned by us without prior notification of the costs and risks incurred by the Supplier and with a corresponding deduction from the invoice amount.
- (2) The values determined by us during the incoming goods inspection are authoritative for the quantities, weights and measurements of items and for the quantities delivered, unless some other form of verification is stipulated.

## **8. Other procurement and delivery rules**

- (1) Unless we have given our prior written consent, the Supplier has no right to have the goods or services owed by the Supplier provided by third parties instead (e.g. by subcontractors).
- (2) On the date of dispatch, a detailed dispatch note containing our order data shall be sent to us. The order data to be stated by the Supplier must include at least the order number and item code, the contact person and the date of the order. The goods themselves must be accompanied by delivery documents containing the same details. For all orders, the place of delivery specified under terms of delivery on the first page must be complied with, and all packages must be marked as prescribed.
- (3) In the case of deliveries made directly to third parties, the copies of the consignment notes signed by the recipient, or other confirmations of receipt, shall be sent to us along with the invoice for the goods. In the case of such deliveries, the goods and packaging thereof must not contain any indications of origin of whatever kind.

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(4) The Supplier shall keep to the normal goods receiving times (Mondays to Fridays, 7 am to 3 pm).

## **9. Packaging**

- (1) The Supplier shall take back any packaging material at our request. If we send packaging material back to the Supplier, we shall inform the Supplier in good time before dispatching it.
- (2) The packaging material is included in the purchase price, and the Supplier must inform us accordingly of the respective value of the packaging material at our request.

## **10. Health and safety at work, environmental protection, REACH**

- (1) Services, installation work, repairs and other work and services performed in connection with supplied machinery, plant and equipment must be carried out by the Supplier in such a way that they comply with the respective laws, directives and legal regulations applicable in the territory of the Federal Republic of Germany, unless some other country has been agreed upon. With regard to health and safety at work, the Supplier/Contractor shall pay particular attention to ensure compliance with the following laws, provisions, rules and regulations: the Equipment Safety Act (Gerätesicherheitsgesetz) and associated legal statutes – in particular the CE mark required in legal statutes, declarations of conformity and operating instructions, accident prevention regulations, regulations governing health and safety at work, and generally accepted safety and industrial medicine rules, generally accepted engineering standards, the Chemicals Act (Chemikaliengesetz) and associated legal statutes – in particular the Hazardous Substances Regulations (Gefahrstoffverordnung), the Federal Immission Control Act (Bundesimmissionsschutzgesetz) and associated legal statutes, the End-of-Life Vehicles Ordinance Regulations (Altfahrzeugverordnung), and the laws and applicable regulations governing the protection of water resources, waste disposal and hazardous goods.
- (2) The Supplier shall ensure that his deliveries comply with the provisions in Regulation (EC) 1907/2006 concerning the Registration, Evaluation, Authorisation and Restriction of Chemicals (REACH). If so required under the terms of the REACH Regulation, the substances contained in the Supplier's products must be pre-registered, or registered if the transitional period has expired, unless the substance has been exempted from registration. The Supplier has provide safety data sheets in accordance with the provisions of the REACH Regulation, and the information required under Article 32 of the REACH Regulation. At our request, he shall also provide us with the

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information pursuant to Article 33 of the REACH Regulation

## **11. Defects, notification of defects, period of limitations**

- (1) In the event of any claims against the Supplier, the statutory claims in respect of defects and other breaches of obligation shall apply, unless these General Terms and Conditions of Purchase determine otherwise or contain supplementary provisions in that respect. In the event of defects, we are specifically entitled to demand, at our discretion, either remedy of defect or delivery of a new item by the Supplier.
- (2) The Supplier is obligated to perform appropriate in-process quality control and to conduct appropriate outgoing goods inspections and thus to check the quality of the parts to be delivered prior to their dispatch.
- (3) With regard to our statutory duty to inspect receiving goods and report defects, Section 377 HGB (German Commercial Code) shall apply accordingly, subject to the proviso that we have the right to inspect and to complain of defects within at least five working days after delivery or after the discovery of such defects, unless longer periods are granted by law.
- (4) The Supplier shall provide a warranty for defects for a warranty period of 36 months as from the transfer of risk, unless a longer warranty period is stipulated by law.
- (5) In the case of replacement deliveries and remedies of defect, the warranty period for replaced and remedied parts shall start again, unless we had to assume from the behaviour of the Supplier that the latter saw no obligation to respond in such a manner and did so purely as a gesture of goodwill, and that said response was in fact such a gesture of goodwill.
- (6) If the goods deviate from their contractually agreed properties, e.g. in respect of dimension, tolerances, stability, surfaces and hardness, the values we measure shall apply, unless some other form of verification is stipulated.
- (7) The Supplier shall hold us free from any third-party claims, if and to the extent that the Supplier himself would bear liability towards third parties.
- (8) If the Supplier fails to honour his obligation to remedy defect (by eliminating the defect or by supplying a non-defective replacement, at our discretion) within a reasonable period as specified

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by us, we may remedy the defect ourselves or have it remedied, and may claim reimbursement from the Supplier for the expenses incurred, including an appropriate advance payment. If the remedy of defect by the Supplier fails or is unreasonable for us to accept (e.g. due to special urgency, jeopardisation of industrial safety or the threat of excessive losses), we do not have to set a deadline for remedy; in such a case, however, we shall inform the Supplier without delay, if possible in advance.

- (9) All necessary costs for inspection, remedy, replacement delivery or repair (costs for personnel, material, installation, dismantling, transport, product recall, etc.) shall be borne by the Supplier. This principle shall also apply if it transpires that no defect actually existed; this is without prejudice to our liability for damages in the event of an unjustified complaint of defect, but we shall bear liability only if we had realised, or failed to realise due to gross negligence, that no defect existed in fact. The Supplier shall also bear any expenses that we incur in the course of remedy of defect, including our expenses for any necessary receiving goods inspections that go beyond the normal scope.

## **12. Product liability, indemnity, indemnity insurance**

- (1) If, in addition to ourselves, the Supplier is also responsible towards a third party for product related damage, he shall hold us free from any third-party claims to damages if the cause lay within the sphere of control and organisation of the Supplier. In addition to payment of damages to third parties, the Supplier's liability also includes the costs for appropriate legal defence, product recall costs, inspection costs and replacement costs.
- (2) As part of his liability for damages within the meaning of the clause 12.1 above, the Supplier shall also reimburse any expenses that arise from or in connection with any product recalls that we conduct. This specifically applies to any product recall operations under the Product Safety Act (Produktsicherheitsgesetz). We shall inform the Supplier – to a reasonable and feasible extent – about the content and scope of any product recalls to be carried out and shall provide him with an opportunity to state his position. This shall be without prejudice to other statutory claims.
- (3) The Supplier must take out and maintain product liability insurance with appropriate scope and cover as customary for the industry and for the duration of the contractual relationship, including the warranty period and the statutory period of limitation. The Supplier must provide proof of such insurance at our request.

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### **13. Means of production**

Models, drawings, specimens, dies, tools, templates and/or other technical aids and documents that are provided to the Supplier, or produced by the Supplier in accordance with our specifications may not be sold, pledged or otherwise given to third parties, or otherwise used for third parties, unless we have given our written consent. The same applies to any objects produced with the aid of such means of production. Such objects may only be supplied to us, unless we have stated in writing that we consent to some other use. Drawings and models shall remain our inalienable, material and immaterial (intellectual) property and must be returned to us after execution of the order, without us having to request them. The Supplier shall be liable for any breach of the above.

### **14. Confidentiality, protection of know-how**

- (1) All business or technical information and data of whatever kind to which access is provided by us, including features that can be inferred from any objects, documents or data that are provided, and any other knowledge or experience, collectively referred to hereinafter as “Information”, shall be treated by the Supplier as confidential vis-à-vis third parties, if and as long as it is not obviously in the public domain, and in the Supplier’s own enterprise may be provided only to such persons who must necessarily be involved in using the Information for the purpose of supplying us, and who must likewise be committed in writing to maintaining confidentiality. This obligation to maintain confidentiality shall also remain in force even after the contract has ended. The Information remains our exclusive (intellectual) property.
- (2) Such Information may not be copied or used commercially, except for deliveries of goods to us or performance of services for us, without our prior written consent.
- (3) We reserve all rights in respect of such Information and data (including copyrights, and the right to file intellectual property rights such as patents, utility models, trademarks, etc.). If these were made available to us by third parties, the above reservation of rights and the duty to maintain confidentiality shall also apply for the benefit of such third parties.
- (4) Products made in accordance with documents drafted by us, or in accordance with our confidential specifications, may neither be used by the Supplier himself, nor offered or supplied to third parties, unless the Information specified by us are lawfully common knowledge or the state of the art.

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## **15. Compliance**

- (1) We operate a “zero tolerance policy” in respect of corruption and other violations of the law.
- (2) The Supplier gives his assurance that, in honouring his obligations, he shall
  - comply with all applicable statutory provisions and regulations, in particular with anticorruption, anti-money laundering and anti-trust regulations, and with the provisions of laws against unfair or distorted competition. The same shall apply to the Supplier’s employees and vicarious agents;
  - not make any payments of money, or provide other favours that involve a financial benefit for the recipient, to holders of public office; and
  - shall comply with our Code of Conduct for our business partners (which we shall provide on request).
- (3) The Supplier shall exercise due care in selecting any third parties he commissions, and shall commit them to adhere to the statutory provisions and regulations applicable to them, in particular to anti-corruption, anti-money laundering and anti-trust regulations, and to the laws against unfair or distorted competition.

## **16. Termination**

- (1) Each Party has the right to terminate the contract with immediate effect for good cause, without prejudice to any other rights of termination. Good cause for termination without notice exists, in particular, if
  - one of the parties commits a material breach of contract (including the obligations specified in clauses 15.2 and 15.3), despite due warning and setting of a reasonable deadline (unless this can be dispensed with according to statutory regulations);
  - or there are reasonable grounds for suspecting (e.g. due to reports in the media) that acts of corruption or other criminal offences have been committed; the party terminating the contract shall provide the other party with an opportunity to respond to such accusations.
- (2) Notice of termination must be in writing to obtain effect.

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## **17. Third-party intellectual property**

- (1) The Supplier shall make every endeavour to ensure that no products supplied by him infringe third-party intellectual property rights in countries of the European Union, in other countries in which he produces the products or has them produced, or in the agreed country to which the product is to be delivered or in which it is to be used.
- (2) If we are sued by a third party for infringement of intellectual property rights, the Supplier shall hold us free from such claims, unless the cause was beyond the sphere of control and organisation of the Supplier. We have no right, without the consent of the Supplier, to conclude agreements with the respective third party that entail obligations on the part of the Supplier
- (3) This duty on the part of the Supplier to indemnify us shall apply to all expenses that we necessarily incur as a result of or in connection with our being sued by a third party, also and in particular to costs of legal defence and to all costs for procuring essential replacements.
- (4) If sale and/or use of the object of supply or of the result of work to us or by us has been prohibited, the Supplier shall, at our discretion, either procure a right of use for us at his own expense, or shall modify the object of supply or the result of work in such a way, in consultation with ourselves, that it no longer infringes the intellectual property rights in question.

## **18. Retentions of title by the Supplier**

We respect only a simple right of retention on the part of the Supplier. No extended or prolonged rights of retention shall be accepted.

## **19. Place of performance, place of jurisdiction**

- (1) The place of performance for all rights and duties arising from the contract is our place of business.
- (2) The place of jurisdiction is our place of business. However, in derogation therefrom, we also have the right to sue the Supplier at some other statutory venue. The above is without prejudice to any exclusive places of jurisdiction that are stipulated by law.

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## **20. Applicable law**

These Terms and Conditions are governed by the substantive laws of the Federal Republic of Germany, under exclusion of the UN conventions relating to the international sale of goods (CISG).

**Note:**

In accordance with the provisions of the Federal Data Protection Act, we draw attention to the fact that we use data processing equipment and that we also store data received in the course of the business relationship with the Supplier; however, such data are used solely in connection with the business relationship with the Supplier and are not disclosed to any third parties.