



**GENERAL TERMS AND CONDITIONS  
OF SALE FOR DELIVERY AND SERVICE  
TO COMPANIES OF ELEKTRO-  
THERMIT GMBH & CO. KG**



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## CONTENT

<b>1. Scope.....</b>	<b>3</b>
<b>2. Conclusion of the Contract .....</b>	<b>4</b>
<b>3. Delivery Dates and Delays .....</b>	<b>4</b>
<b>4. Delivery, Passing of Risk, Acceptance, Delay in Acceptance.....</b>	<b>5</b>
<b>5. Price, Terms of Payment .....</b>	<b>6</b>
<b>6. Reservation of Title .....</b>	<b>7</b>
<b>7. Claims of Defect by the Buyer .....</b>	<b>8</b>
<b>8. Other Liability .....</b>	<b>9</b>
<b>9. Limitation of Actions .....</b>	<b>10</b>
<b>10. Applicable Law and Legal Venue.....</b>	<b>11</b>

**GENERAL TERMS & CONDITIONS OF SALE FOR DELIVER AND SERVICE  
TO COMPANIES OF ELEKTRO-THERMIT GMBH & CO. KG**

## **1. Scope**

(1) These General Terms and Conditions shall apply to all of our business relationships with our customers ("Buyer"). These terms and conditions shall only apply if the Buyer is an entrepreneur as defined by § 14 of the German Civil Code, a legal entity under public law, or a special fund under public law.

(2) These terms and conditions shall apply in particular to purchase agreements on the sale and/or delivery of movable goods ("goods"), regardless of whether we manufacture said goods or purchase them from suppliers (§§ 433, 651 German Civil Code), and for other services, including all advising and consulting. If not agreed otherwise, the version of these terms and conditions valid at the time the Buyer places the order or, in any event, the most recent version sent to the Buyer in writing shall serve as the valid general agreement for similar future agreements without requiring us to make reference to the terms and conditions in each and every case.

(3) We are entitled to make subsequent changes to these terms and conditions at any time if legitimate reasons exist for doing so, such as changes in the law and legal practices or market conditions. Any such changes to these terms and conditions, which shall be communicated to the Buyer in writing, shall become valid if the Buyer does not object in writing within six weeks. We shall make express reference to this right to object in the written communication informing the Buyer of changes to the terms and conditions.

(4) Our terms and conditions shall apply exclusively. Any terms or conditions of the Buyer that diverge, contradict or supplement, in particular any purchasing terms or conditions, shall only become part of the contract if and to the extent that we expressly approve the validity of such terms or conditions. This approval shall be required in every case, including for instance, if we unreservedly make a delivery to the Buyer with knowledge of the Buyer's terms and conditions and even if unconditional acceptance of the purchase terms is an intended consequence of the order acceptance.

(5) Agreements reached in individual cases with the Buyer (including ancillary agreements, supplements and amendments) shall always have precedence over these terms and conditions. Subject to contrary evidence, a written agreement or our written confirmation shall be decisive in determining the contents of any such agreement.

(6) Legally relevant declarations and notifications made by the Buyer in reference to this contract (e.g. setting of deadlines, notice of defects, declarations of withdrawal or reduction), must be submitted in writing, meaning, for example, by letter, email, or fax, in order to be valid. Any formal requirements stipulated by law and other forms of proof, especially in the case of doubt regarding the legitimacy of the declarant, shall remain unaffected.

**GENERAL TERMS & CONDITIONS OF SALE FOR DELIVER AND SERVICE  
TO COMPANIES OF ELEKTRO-THERMIT GMBH & CO. KG**

(7) References to the validity of statutory provisions are purely for purposes of clarification. Even in the absence of such clarifications, the statutory provisions shall apply insofar as they are not directly changed or expressly precluded by these terms and conditions.

## **2. Conclusion of the Contract**

(1) Our offers are without obligation and non-binding. They are only offers extended to the Buyer regarding orders. This shall also apply if we have sent to the Buyer catalogues, technical documentation (e.g. drawings, plans, calculations, weights and measures, references to DIN standards), other product descriptions or documents (e.g. cost estimates), including in digital form, to which we reserve property rights and copyrights. Moreover, the aforementioned documents are to be kept confidential in relation to third parties, even after the contractual relationship has ended. This obligation to observe secrecy shall only cease if and to the extent that the knowledge contained in the documents has become general knowledge.

(2) The order of goods by the Buyer is deemed as a binding contractual offer. If not stipulated otherwise in the order, we shall be entitled to accept this contractual offer within four calendar weeks after receiving it.

(3) Acceptance of the order can be declared either in writing (e.g. by order confirmation or, in the case of delivery, by invoice) or by delivery of the goods to the Buyer.

(4) If our order confirmation contains a clause listed in INCOTERMS (e.g. EXW, etc.), the most recent, relevant INCOTERMS shall apply to said clause unless another version has been specifically referenced in our order confirmation.

## **3. Delivery Dates and Delays**

(1) The delivery deadline shall be agreed upon individually and explicitly or set by us in the order confirmation.

(2) Delivery deadlines shall not begin before all details regarding order fulfillment have been clarified and all other requirements to be fulfilled by the Buyer have been met.

(3) Insofar as we are unable to observe binding delivery deadlines for reasons for which we are not responsible (non-availability of the service), we shall immediately inform the Buyer of this situation and, at the same time, indicate the expected, new delivery date. If the service is not available by the new delivery deadline, we shall have the right to withdraw, in part or in whole, from the contract; we will immediately reimburse the Buyer for any consideration already provided. Deemed a case of non-availability of a service within this context is, in particular, the belated delivery by our suppliers if we have

**GENERAL TERMS & CONDITIONS OF SALE FOR DELIVER AND SERVICE  
TO COMPANIES OF ELEKTRO-THERMIT GMBH & CO. KG**

concluded a congruent covering transaction, if neither we nor our suppliers are at fault, or if we are not obliged to procure in individual cases.

(4) The rights of the Buyer under § 8 of these terms and conditions and our statutory rights shall remain unaffected, particularly if the duty to perform has been suspended (e.g. due to the impossibility or unreasonableness of performance and/or supplementary performance).

#### **4. Delivery, Passing of Risk, Acceptance, Delay in Acceptance**

(1) The delivery is carried out ex warehouse, where the place of performance for the delivery and any supplementary performance is also located. At the request and at the expense of the Buyer, the goods shall be sent to another place of destination (sale by delivery to a place other than the place of performance). Insofar as not otherwise agreed, we are entitled to determine the type of shipment (in particular transport company, shipment route, and packaging). Furthermore, we will attempt to follow the wishes of the Buyer regarding mode of shipment and route; however, any extra costs incurred when doing this shall be covered by the Buyer. This shall apply even in cases where carriage-paid delivery has been agreed.

(2) The risk of accidental loss and accidental deterioration of the goods shall pass to the Buyer at the latest when the goods are handed over. With a contract of sale involving the carriage of goods the risk of accidental loss and accidental deterioration of the goods and the risk of delay shall already pass with the delivery of the goods to the carrier, the freight forwarder or the other person or institution determined to carry out the shipment. Insofar as an acceptance has been agreed this shall be decisive for the passing of risk. Moreover, the statutory provisions governing contracts for work and services shall also apply accordingly to any agreed acceptance. If the Buyer is in default with the acceptance, this shall be deemed equivalent to the handover or receipt.

(3) If the Buyer is in default of acceptance, if the Buyer fails to cooperate, or if our delivery is delayed for other reasons for which the Buyer is responsible, then we are entitled to demand compensation for the resulting damages, including additional expenses (e.g. storage costs). As compensation we shall charge a lump sum based on the agreed price in the amount of 0.5% per full calendar week, limited to a total of 5%, beginning with the delivery deadline, in the absence of a specific delivery date, beginning with the notification that the goods are ready for shipment.

Evidence of higher damages and our statutory claims remain unaffected (in particular for reimbursement of additional expenses, reasonable compensation, termination); the lump sum is, however, to be offset against further monetary claims. The Buyer retains the right to prove that we did not suffer any damages or substantially less damage than covered by the aforementioned lump sum.

**GENERAL TERMS & CONDITIONS OF SALE FOR DELIVER AND SERVICE  
TO COMPANIES OF ELEKTRO-THERMIT GMBH & CO. KG**

(4) In the event of a delivery order or call which is delayed due to the customer, we shall be entitled to postpone the delivery for a reasonable period of time for planning.

## **5. Price, Terms of Payment**

(1) Insofar as not otherwise agreed in individual cases, the prices valid at the time of contract conclusion shall apply ex warehouse, plus the applicable VAT. All prices are in EUR and do not include packaging. If there is no agreement otherwise, services which do not fall within the scope of the offer shall be rendered and invoiced based on our general price lists valid at the time.

(2) For sales by delivery to a place other than the place of performance (§ 4 subs. 1) the Buyer shall be liable for the transport costs ex warehouse and the costs for any shipping insurance desired by Buyer. Any customs duties, fees, taxes or other public dues shall be paid by the Buyer.

(3) The purchase price shall be due in full (without discount deduction) within 14 days of invoicing and delivery, or acceptance of the goods. However, we reserve the right at all times, even in the context of an ongoing business relationship, to carry out the delivery, in part or in whole, only after advance payment has been made. The reservation of this right shall be declared at the latest in the order confirmation.

(4) The Buyer shall be in default after the aforementioned payment due date. Statutory default interest shall be paid on the purchase price for the duration of the default. We reserve the right to assert further damages due to default. Our claim for commercial maturity interest from merchants under § 353 of the German Commercial Code shall remain unaffected.

(5) Should the Buyer be in default, we shall also have the right to withhold all deliveries and services related to all contracts with the Buyer until all payment obligations have been satisfied. The Buyer may avoid such withholding by arranging the issue of an absolute, undated guarantee by a major German bank, or a local credit institute covered by the deposit insurance fund, in the amount of all payments due.

(6) The Buyer is only entitled to offset or retain to the same extent as the Buyer's entitlement has been bindingly determined by a court of law or is undisputed. In the case of delivery defects the rights of the Buyer, particularly those under § 7 subs. 7 of these terms and conditions, shall remain unaffected.

(7) If there are indications after contract conclusion that our entitlement to the purchase price is at risk through insufficient ability of the Buyer to pay (e.g. filing for insolvency proceedings), then according to the statutory provisions we are entitled to refuse service and—if applicable after setting a deadline—to cancel the contract (§ 321 German Civil Code). In the case of contracts regarding the manufacture of unique objects (one-off production), we may declare our withdrawal immediately; the statutory provisions regarding the lack of necessity to set a deadline remain unaffected.

**GENERAL TERMS & CONDITIONS OF SALE FOR DELIVER AND SERVICE  
TO COMPANIES OF ELEKTRO-THERMIT GMBH & CO. KG**

## **6. Reservation of Title**

(1) We reserve the right of title to the goods until all of our current and future claims arising from the sales contract and the current business relationship (secured claims) have been satisfied.

(2) The goods subject to retention of title may not be pledged to third parties or assigned as collateral before full payment of the secured claims. The Buyer must inform us immediately in writing if and insofar as insolvency proceedings have been filed or third parties have access (e.g. attachment) to the goods belonging to us.

(3) In the event that the Buyer is in breach of the contract, particularly by not paying the purchase price due, we shall have the right under statute to withdraw from the contract and/or demand that the goods be handed over based on reservation of title. The demand to handover goods does not include the declaration of withdrawal from the contract. We merely have the right to demand the return of the goods and to reserve the right to cancel the contract. If the Buyer does not pay the purchase price due, we may however only exercise these rights if we have already set a reasonable payment deadline for the Buyer and this deadline has passed in vain or there is no necessity under statute to set such a deadline.

(4) The Buyer is authorized within the ordinary scope of business to resell and/or process the goods subject to retention of title until revocation of such authorization in accordance with (c) below. In this case the following provisions shall also apply.

(a) The reservation of title covers the products which are produced by processing, mixing or combining our goods at their full value, whereby we are deemed the manufacturer. If the ownership rights of a third party continue to exist in the case of any processing, mixing or combining with third-party goods, then we shall acquire co-ownership in proportion to the invoiced values of the processed, mixed, or combined goods. Furthermore, the same shall apply to the produced product as to the goods delivered under the reservation of title.

(b) The Buyer hereby assigns to us the claims against third parties which arise from the resale of the goods or the produced product in full or in the amount of our potential co-ownership share as collateral according to the aforementioned subsection. We hereby accept this assignment. The obligations of the Buyer stated under subsection 2 shall also apply in respect to the assigned claims.

(c) In addition to us, the Buyer shall remain authorized to collect the claim. We shall undertake not to collect the claim as long as the Buyer meets any payment obligations to us, no deficiency in the Buyer's ability to pay exists, and we have not asserted the right to retain title as provided for under subsection 3. However, should this be the case, we can request the Buyer to inform us of the assigned claims and their debtors, to provide all information necessary for collection, to hand over all relevant documents and

**GENERAL TERMS & CONDITIONS OF SALE FOR DELIVER AND SERVICE  
TO COMPANIES OF ELEKTRO-THERMIT GMBH & CO. KG**

notify the debtors (third parties) of the assignment. In addition, we shall be entitled, in this case, to revoke the authorization of the Buyer to resell and/or process the goods subject to retention of title.

(d) If the realizable value of the collateral items exceeds our claims by more than ten percent, we shall upon request of the Buyer release collateral items at our discretion.

## **7. Claims of Defect by the Buyer**

(1) The statutory provisions shall apply to the rights of the Buyer if there are defects of quality or title (including false delivery and shortfall in delivery, as well as improper assembly or faulty assembly instructions) insofar as nothing is determined otherwise in the following. In any event, the special statutory requirements regarding the delivery of the goods to a consumer (right of recourse under §§ 478, 479 German Civil Code) shall remain unaffected.

(2) Our liability for defects shall be based on the agreement regarding the quality of the goods. The product descriptions that are part of the individual agreements or which have been published by us (especially in catalogues and on our Internet site) are considered to be the agreement concerning the goods. The characteristics of any samples of our products shall only become component to the contract if this has been expressly agreed. Furthermore, the Buyer must inform us of any special requirements to be met by our goods in due time prior to contract conclusion.

(3) In the absence of any agreed specification, the statutory provisions provide the basis for determining if a defect is present or not (§ 434 (1) sentences 2 and 3 of the German Civil Code). However, we do not assume any liability for public statements made by the manufacturer or other third parties (e.g. advertising or other promotional statements).

(4) If individual (replacement) parts are purchased, we assume no responsibility for their suitability for the purposes envisioned by the Buyer unless we have expressly confirmed the suitability.

(5) The Buyer's claims of defect presume that the statutory obligations regarding inspection and reporting defects have been satisfied (§§ 377, 381 German Commercial Code). If a defect is identified at delivery, during the inspection or at a subsequent time, then this is to be reported to us immediately in writing. In all cases, obvious defects must be reported within ten calendar days of delivery, and any defects not identifiable at the time of inspection must be reported in writing within the same period of time starting from the time they are identified. If the Buyer fails to carry out the proper inspections and/or report, our liability shall be precluded for the defect which was not reported, or not reported in a timely manner, or not duly reported in compliance with the statutes.

(6) If the delivered object is faulty we can initially choose whether we shall provide subsequent performance by remedying the defect (rectification of a defect) or by delivering a faultless object

**GENERAL TERMS & CONDITIONS OF SALE FOR DELIVER AND SERVICE  
TO COMPANIES OF ELEKTRO-THERMIT GMBH & CO. KG**

(replacement delivery). Our right to refuse subsequent performance under the statutory provisions remains unaffected.

(7) We are entitled to make the owed subsequent performance dependent on the Buyer paying the purchase price due. The Buyer, however, has the right to retain a reasonable part of the purchase price proportionate to the defect.

(8) The Buyer must give us the time and opportunity which are necessary for the outstanding subsequent performance, in particular for handing over the goods for which a complaint was made for purposes of inspection. In the event of replacement delivery, the Buyer must return the faulty object to us according to the statutory provisions. Subsequent performance does not include the disassembly of the defective goods or renewed assembly or installation if assembly or installation were not among our original obligations.

(9) The expenses necessary for the inspection and subsequent performance, in particular costs for transport, travel, work and materials, (not costs for disassembly or assembly/installation), shall be borne by us if there is indeed a defect. Otherwise, we may demand reimbursement from the Buyer for any costs incurred in connection with the unjustified claim of defect (in particular for testing and transport costs) unless the lack of defect was not recognizable for the Buyer.

(10) If the subsequent performance has failed, or a reasonable deadline set by the Buyer for subsequent performance has come and gone in vain or is not required under statute, the Buyer may withdraw from the sales contract or reduce the purchase price. However, no right to withdraw exists in the case of an insignificant defect.

(11) If the Buyer or a third party authorized by him has carried out improper work (e.g. installment of replacement parts), repairs, maintenance, or other changes in regard to our goods and these actions have led to defects in the goods, no claim of defective goods shall exist against us for these goods or the consequences arising from them.

(12) Claims of the Buyer for damages or reimbursement of fruitless expenses shall only exist as provided for under § 8 and are otherwise excluded.

## **8. Other Liability**

(1) If not otherwise provided for in these terms and conditions, including in the following provisions, we shall be liable according to the relevant statutory provisions if any contractual or non-contractual duties are breached.

**GENERAL TERMS & CONDITIONS OF SALE FOR DELIVER AND SERVICE  
TO COMPANIES OF ELEKTRO-THERMIT GMBH & CO. KG**

(2) We shall be liable for damage compensation—regardless of legal basis—in the case of willful intent and gross negligence. In the case of simple negligence, we shall be liable, subject to a milder standard of liability according to statute (e.g. the duty of care exercised in our own matters), only for

a) damages arising from injury to life and limb or health,

b) damages arising from the not insignificant breach of an essential contractual duty (an obligation, the breach of which puts the performance of the contract at risk, and on the fulfillment of which the contractual partner relies and may, as a rule, depend); in this case our liability is limited to the compensation of the foreseeable damage that typically occurs.

(3) The limitation of liability in subsection 2 shall also apply to breaches by or in favor of persons, for whose culpability we carry responsibility under statute. These shall not apply if we have fraudulently concealed the defect or given a guarantee of the quality of the goods or for claims asserted by the Buyer under the German Product Liability Act.

(4) The Buyer may only withdraw from or cancel the contract due to a breach of duty which does not consist of a defect if we are responsible for the breach of duty. A right to terminate on the part of the Buyer (particularly under §§ 651, 649 German Civil Code) is hereby precluded. Furthermore, the statutory provisions and legal consequences shall apply.

## **9. Limitation of Actions**

(1) In divergence from § 438 subs. 1(3) of the German Civil Code, the general period of limitation for claims arising from material and legal defects shall be one year from delivery. If an acceptance has been agreed, the limitation period shall begin with the acceptance.

(2) Claims regarding goods involving a building or a thing that has been used for a building in accordance with the normal way it is used and has resulted in the defectiveness of the building, the claims shall become statute-barred in five years from delivery (§ 438 subs. 1(2) German Civil Code). Other special statutory provisions shall also remain unaffected in regard to the limitation of claims (especially § 438 subsections 1(1) and 3, §§ 444, 479 German Civil Code).

(3) The aforementioned periods of limitation under the law governing sales and purchases shall also apply to contractual and non-contractual claims for damage on the part of the Buyer for defects in the goods unless the application of the usual statute of limitations (§§ 195, 199 German Civil Code) would lead to shorter limitation periods in individual cases. Damage compensation claims on the part of the Buyer in accordance with § 8 subs. 2, sentences 1 and 2a of these terms and conditions and the German Product Liability Act shall only be subject to the statutory limitation of actions.

**GENERAL TERMS & CONDITIONS OF SALE FOR DELIVER AND SERVICE  
TO COMPANIES OF ELEKTRO-THERMIT GMBH & CO. KG**

## **10. Applicable Law and Legal Venue**

(1) The law of the Federal Republic of Germany shall apply to these terms and conditions and the contractual relationship between us and the Buyer with the exclusion of all international uniform laws, in particular the United Nations Convention on Contracts for the International Sale of Goods.

(2) If the Buyer is a merchant within the meaning of the German Commercial Code, a legal entity under public law, or a special fund under public law, our corporate seat in Halle (Saale), Germany, shall be the exclusive place of legal venue, including the international venue, for all disputes arising directly or indirectly from the contractual relationship. The same shall apply if the Buyer is an entrepreneur within the meaning of § 14 of the German Civil Code. We, however, shall be entitled in all cases to file legal actions at the place of performance for the delivery, as defined under these terms and conditions or in an overriding individual agreement, or at the general court with jurisdiction over the Buyer. Any statutory provisions having precedence over this provision, especially in regard to exclusive jurisdiction, shall remain unaffected.