

General Terms of Purchase and Delivery

for Businesses (B2B)

agreed between

Elsner Elektronik GmbH

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entered in the Commercial Registry with the District Court Stuttgart under HRB 331386,

represented by Bastian Elsner, Jutta Elsner, Lina Elsner,

VAT Reg. No.: DE 812 151 291

– hereafter only "Provider" –

and

customers who are entrepreneurs within the meaning of § 14 of the German Civil Code (BGB)

– hereafter only "Customer" –.

§ 1 General

(1) All offers, supplies and deliverables proceed exclusively based on these Terms and Conditions, with the exception of framework agreements, for which the General Terms and Conditions of Elsner Elektronik GmbH shall apply in addition. They are part of all contracts concluded between the user and the ordering party regarding supplies or deliverables. Older terms and conditions are hereby invalid.

(2) Terms and conditions of the ordering party do not apply also when the user does not breach them separately in the specific case. Even if the seller refers to a letter containing or referring to the terms and conditions of the principal or a third party, this does not constitute an agreement to the validity of those terms and conditions.

(3) These Terms and Conditions also apply to all future offers, supplies and deliverables to the ordering party, even if not agreed again on a separate basis.

§ 2 Offer and Contract Conclusion

(1) Offers are provisional and non-binding. In order to become effective, all contracts regarding supplies and deliverables, including special agreements and legally important statements, must be in writing and/or confirmed by the user by fax. This also applies to supplements and changes.

(2) Information on the subject matter of a supply or deliverable (e.g. weight, dimensions and technical data), including visual form (e.g. drawings and pictures), are for informational purposes only. They are not guaranteed properties, but descriptions and identification of the supply and/or deliverable.

(3) Usual deviations and deviations based on legal regulations or representing technical improvements are permitted unless their applicability impairs the contractual aims.

(4) Orders and jobs can be accepted by the user within two weeks.

(5) The user reserves the ownership title or copyright for submitted offers, quotations and drawings, calculations, descriptions, models, tools and other materials and aids made available to the ordering party. The ordering party must not use, copy and make these objects available to and/or inform third parties without the user's exclusive agreement. The ordering party shall return such objects to the user upon request, without keeping any copies thereof.

§ 3 Prices

(1) Prices apply to the supplies and/or deliverables scope named in the order confirmation. Extra and special work shall be invoiced separately. If there are no special price agreements regarding the particular offer or the client, commissioned jobs shall be performed at the list prices applicable on the day of the job confirmation.

(2) The ordering party bears the packaging and dispatch costs. From a goods value of € 100.00 net (€ 119.00 incl. VAT), the user sends webshop orders within Germany free of shipping costs! This only applies to items that are available in the webshop. Bulky goods deliveries are excluded.

(3) The return of delivered defect-free objects is possible only if the user agreed in writing or by fax with the return before returning the objects. The agreement with the return is always on the condition that the goods are in their original packaging, free of damage and merchantable. For goods returned from orders performed free of error, the ordering party shall pay the user a processing fee of 20% of the sales price. Delivered defect-free objects sent back without the user's agreement and objects not packed in their original packaging, damaged or in a non-merchantable condition remain sold and shall be paid for by the ordering party. The user can always return these goods at the expense of the ordering party.

(4) If individual net purchase prices change significantly during the term of the contract, Elsner Elektronik GmbH is entitled to adjust the sales prices, but only to the extent that the price change of the respective preliminary product has a proportionate effect on the price of the final product. In the event of a price adjustment exceeding 15%, the Contractual Partner shall be entitled to withdraw from the contract. Elsner Elektronik GmbH must inform the contracting partner of the right of withdrawal if a price adjustment is made. The cancellation must be made in text form to Elsner Elektronik GmbH no later than two weeks after notification of the price adjustment.

§ 4 Periods, Dates, Withdrawal, Transfer of Risks

(1) Delivery periods and dates, including fulfillment periods and dates, are always approximate unless a fixed period and/or deadline has been agreed. As soon as the dispatch has been agreed, the delivery periods and dates apply to the moment of the handover of the goods to the shipper, carrier or other persons and companies authorized for transportation. Otherwise, it is the timely dispatch readiness, as long as told to the ordering party, that is sufficient for meeting delivery periods and dates.

(2) The delivery and/or fulfillment period starts with the arrival of the agreed advance payment. Delivery and fulfillment periods shall be

extended by the period in which the ordering party fails to meet its obligations under the Terms and Conditions. Delivery and fulfillment dates shall be postponed accordingly.

(3) The ordering party shall, upon request, provide evidence for the user that no legal barriers in user's sphere of influence hamper the delivery. The user is entitled to retain the delivery affected by such hindrance until due evidence has been provided. Should the user fail to submit such evidence within a reasonable period of time, as agreed, the user can withdraw, in part or entirely, from the contract due to the still uncompleted part of the order.

(4) The Seller shall not be liable for impossibility of delivery or for delays in delivery insofar as these are caused by force majeure or other events that were not foreseeable at the time of conclusion of the contract (e.g. of any kind, difficulties in the procurement of materials or energy, transport delays, strikes, lawful lock-outs, shortages of labour, energy or raw materials, difficulties in obtaining the necessary official permits, official measures or the non-delivery, incorrect delivery or late delivery by suppliers) for which the Seller is not responsible. Insofar as such events make it significantly more difficult or impossible for the Seller to deliver or perform and the hindrance is not only of temporary duration, the Seller shall be entitled to withdraw from the contract. In the event of hindrances of temporary duration, the delivery or service deadlines shall be extended or the delivery or service deadlines shall be postponed by the period of the hindrance plus a reasonable start-up period. If the client cannot reasonably be expected to accept the delivery or service as a result of the delay, he may withdraw from the contract by immediately notifying the seller in writing.

(5) Customary excess or short deliveries are permissible. The seller is only entitled to make partial deliveries if

- the partial delivery is usable for the customer within the scope of the contractual purpose,
- the delivery of the remaining ordered goods is ensured and
- the principal does not incur any significant additional expenditure or additional costs as a result (unless the seller agrees to bear these costs). In this context, each partial delivery shall be deemed to be an independent transaction.

(6) The risk passes to the ordering party with the handover of the delivery subject to the shipper, carrier and/or a person or company authorized with the transportation at the latest. This also applies for partial supplies. In the case of a delay with the handover or dispatch due to circumstances, the cause of which is attributed to the ordering party, the risk passes to the ordering party on the day of dispatch readiness.

(7) The goods are insured against damage in transport at the user's cost.

(8) We reserve the right to withdraw from the contract if the purchase prices for the required manufacturing materials change on average by more than 30% during the performance of the contractual relationship.

(9) Subject to self-supply. In the event of non-availability of the service, we will inform you immediately and refund the consideration without delay.

§ 5 Claims for Defects of the Ordering Party

(1) The statutory provisions shall apply to the rights of the Purchaser in the event of material defects and defects of title (including incorrect and short delivery as well as improper assembly/installation or defective instructions), unless otherwise stipulated below. In all cases, the special statutory provisions on the reimbursement of expenses in the case of final delivery of the newly manufactured goods to a consumer (supplier's recourse pursuant to §§ 478, 445a, 445b) shall remain unaffected, unless an equivalent compensation has been agreed, e.g. within the scope of a quality assurance agreement.

(2) The basis of the liability for defects is above all the agreement made on the quality and the presumed use of the goods (including accessories and instructions). All product descriptions and manufacturer's specifications which are the subject matter of the individual contract or which were publicly announced by us (in particular in catalogues or on our Internet homepage) at the time of the conclusion of the contract shall be deemed to be a quality agreement in this sense. Insofar as the quality has not been agreed, it is to be assessed in accordance with the statutory regulation whether a defect exists or not (§ 434 para. 3 BGB). Public statements made by the manufacturer or on his behalf, in particular in advertising or on the label of the goods, shall take precedence over statements made by other third parties.

(3) In principle, the seller shall not be liable for defects of which the buyer is aware at the time of conclusion of the contract or is not aware due to gross negligence (§ 442 BGB). Furthermore, the buyer's claims for defects presuppose that he has complied with his statutory duties of inspection and notification (§§ 377, 381 HGB). In the case of building materials and other goods intended for installation or other further processing, an inspection must in any case be carried out immediately before processing. If a defect becomes apparent during delivery, inspection or at any later time, we must be notified of this in writing without delay. In any case, obvious defects must be notified to us in writing within 7 working days of delivery and defects which cannot be detected during the inspection must be notified to us within the same period of time. If the buyer fails to carry out a proper inspection and/or to give notice of a defect, liability for the defect that was not reported in time or not reported properly shall be excluded in accordance with the statutory provisions. In the case of goods intended for installation, mounting or assembly, this shall also apply if the defect only became apparent after the corresponding processing as a result of a breach of one of these obligations; in this case, the Buyer shall in particular have no claims to reimbursement of the corresponding costs ("dismantling and installation costs").

(4) If the delivered item is defective, the buyer may initially choose whether to provide subsequent performance by remedying the defect (rectification) or by delivering an item free of defects (replacement). If the chosen type of supplementary performance is unreasonable for the buyer in the individual case, he may reject it. The Seller's right to refuse subsequent performance under the statutory conditions shall remain unaffected.

(5) The Seller is entitled to make the supplementary performance owed dependent on the Buyer paying the purchase price due.

However, the buyer shall be entitled to retain a part of the purchase price proportionate to the defect.

(6) The buyer shall give the seller the time and opportunity required for the subsequent performance owed, in particular to hand over the goods complained about for inspection purposes. In the event of a replacement delivery, the Buyer shall return the defective item at the Seller's request in accordance with the statutory provisions; however, the Buyer shall not have a claim for return. Subsequent performance shall not include the dismantling, removal or disassembly of the defective item or the installation, fitting or assembly of a defect-free item if the Seller was not originally obliged to perform these services; the Buyer's claims for reimbursement of corresponding costs ("dismantling and assembly costs") shall remain unaffected.

(7) The Seller shall bear or reimburse the expenses necessary for the purpose of inspection and subsequent performance, in particular transport, travel, labour and material costs and, if applicable, removal and installation costs, in accordance with the statutory provisions and these GTC, if a defect is actually present. Otherwise, the Seller may demand reimbursement of the costs incurred by the Buyer as a result of the unjustified request to remedy the defect if the Buyer knew or was negligent in not knowing that there was actually no defect.

(8) In urgent cases, e.g. if operational safety is at risk or to prevent disproportionate damage, the buyer has the right to remedy the defect himself and to claim reimbursement from the seller for the expenses objectively necessary for this. The Seller shall be notified immediately of any such self-remedy, if possible in advance. The right of self-execution does not exist if the Seller would be entitled to refuse a corresponding subsequent performance in accordance with the statutory provisions.

(9) If a reasonable period of time to be set by the buyer for subsequent performance has expired unsuccessfully or is dispensable under the statutory provisions, the buyer may rescind the purchase contract or reduce the purchase price in accordance with the statutory provisions. In the event of an insignificant defect, however, there shall be no right of withdrawal.

(10) Claims of the buyer for damages or reimbursement of futile expenses shall also exist in the case of defects only in accordance with § 6 and are otherwise excluded.

§ 6 Other Liability

(1) The liability for damage compensation, if part of a liability, is ruled out or limited as laid down in the following paragraphs. This applies to each and every reason, e.g. in the case of breach of duties under §§ 280 BGB ff., impossibility, delay, defects and for non-permitted action for the liability.

(2) In the event of slight negligence on the part of bodies, legal representatives, employees or other vicarious agents, the user shall not be liable unless liability is for loss of life, bodily harm and damage to health or for typical and foreseeable damages from the breach of essential contractual obligations. Material contractual obligations are the obligation to deliver and install the delivery item in due time,

to ensure that it is free from defects of title and material defects which impair its functionality or usability more than insignificantly, as well as advisory, protective and custodial obligations which are intended to enable the Client to use the delivery item in accordance with the contract or which are intended to protect the life and limb of the Client's personnel or to protect the Client's property from significant damage.

(3) In the event of gross negligence on the part of employees (with the exception of senior staff) or other ordinary vicarious agents, the User shall not be liable if a non-essential contractual obligation has been breached, except in case of loss of life, bodily harm and damage to health.

(4) Liability for all damages, except in cases of fraudulent intent, loss of life, bodily injury or damage to health and violations of the Product Liability Act, is limited to a maximum of €1,000,000 per one damage case.

(5) Liability is not excluded or limited if the user is liable deliberately.

(6) The above exclusions and limitations of liability shall apply to the same extent in favour of the organs, legal representatives, employees and other vicarious agents of the Seller.

(7) Insofar as the Seller provides technical information or acts in an advisory capacity and this information or advice is not part of the contractually agreed scope of services owed by the Seller, this shall be done free of charge and to the exclusion of any liability.

§ 7 Limitation

(1) Notwithstanding Section 438 (1) No. 3 of the German Civil Code (BGB), the general limitation period for claims arising from material defects and defects of title shall be one year from delivery. Insofar as acceptance has been agreed, the limitation period shall commence with acceptance.

(2) Special statutory provisions on the limitation period (in particular § 438 para. 1 no. 1 and 2, para. 3, §§ 444, 445b BGB) shall remain unaffected.

(3) The above limitation periods of the law on sales also apply to contractual and non-contractual claims for damages of the buyer based on a defect of the goods, unless the application of the regular statutory limitation period (§§ 195, 199 BGB) would lead to a shorter limitation period in individual cases. Claims for damages by the buyer pursuant to § 5 para. 2 p. 1 and p. 2(a) as well as pursuant to the Product Liability Act shall become statute-barred exclusively according to the statutory limitation periods.

§ 8 Reservation of Ownership

(1) The user reserves the title of ownership to all supplied goods (goods subject to retention of title) until the ordering party has paid the purchase price for the goods delivered and met all existing payment obligations arising from the business relationship.

(2) In the case of action by the ordering party breaching the contract, e.g. late payment of secured claims, the user can disallow the use or consumption of such goods or withdraw the goods. The withdrawal of goods represents only a withdrawal from the contract if the user

has declared so also in writing. After the withdrawal of goods, the user has the right to use the goods, with the proceeds being credited to the ordering party for its obligations (less reasonable costs of use).

(3) The ordering party now transfers the purchase price claims towards its clients arising from the re-sale of goods subject to retention of title or from another sale and/or other compensation claims, including all secondary rights, to the user. They serve as security to the same extent as the above goods. The consumer has the right and authority to resale or another sale of the above goods only under the provision that the claims within this transaction are passed on to the user. The processing or modification of delivered goods subject to retention of title is always done for the user as the manufacturer. If (co-)ownership expires through union, it is now agreed that the respective share in the (co-)ownership of the ordering party in the singular item passes to the user as security of his claims.

(4) In the case of access of third parties to the above goods, e.g. confiscation, the ordering party shall advise of the ownership of the user and inform the user without delay. If the third party is not able to pay the expenses which the user has incurred in this respect, the liability lies on the ordering party's side. The ordering party shall preserve the above goods for the user. The ordering party must insure these goods against fire, theft and flood.

(5) The ordering party has the authority to collect the claims ceded to the user until revoked. The user is not entitled to apply this right of revocation, as long as the ordering party has duly met its payment obligations arising from the business transactions and as long as there are no circumstances that would damage substantially the credibility of the ordering party. If there are circumstances for exercising the right of revocation, the user can demand from the ordering party the stating of the claims ceded, including debtor, making all notes necessary for the collection of these claims, and the forwarding of relevant documents to the user and informing the debtor about the cession. The cession notice to the debtor can be also made by the user himself.

(6) If the realizable value of all existing collateral exceeds the secured claims by a total of 20%, the user is obliged, at the request of the ordering party, to release the collateral at user's option.

§ 9 Payment Terms

(1) Invoiced amounts shall be paid to the user within 14 days from the invoice date excluding deductions. Cheques and bills of exchange lead to a payment only upon exchange.

(2) If the ordering party is late with a payment, a 9% interest rate above the respective prime interest rate under § 247 par. 1 of BGB applies to the claim of the user for the delay period. The exercise or provision of evidence of higher or lower damage due to the delay is reserved.

(3) Offsetting against counterclaims of the Client or the retention of payments due to such claims is only permissible insofar as the counterclaims are undisputed or have been legally established or arise from the same order under which the delivery in question was made.

(4) If, after contract conclusion, circumstances arise that limit substantially the credibility of the ordering party, the user is entitled to make outstanding supplies or fulfill deliverables only against an advance payment or security.

§ 10 Other Provisions

(1) The place of fulfillment for all obligations under the contractual relation is user's registered office.

(2) The court of jurisdiction for all disputes stemming from the business transaction is the user's registered office if the ordering party is a dealer, a legal entity of public law or investment fund.

(3) The business transaction is subject exclusively to German law. The contractual language is German. The German version of these General Terms and Conditions shall therefore prevail in the interpretation of the Terms and Conditions. The English/French/Italian/Spanish version is for information purposes only.

(4) These Terms and Condition apply if applied towards a person who, upon contract conclusion, was performing commercial activities or was self-employed (entrepreneur), if the contract belongs to the commercial trade operation, towards a trade organization, a legal entity of public law or against an investment fund and for end consumers.

(5) If the individual clauses of these Terms and Conditions are or become partially or fully ineffective, the remaining part and/or remaining clauses shall remain in force. In this case, those legally effective regulations shall apply instead of the ineffective clause and/or part thereof that are the closest to the aim of the inefficient clause.

Note:

The ordering party acknowledges that the information from the business relationship will be stored under § 28 of the federal data protection law for the purpose of data processing and the user reserves the right to provide this information to the credit insurer for information needed for credit insurance.