

General Conditions of Sale and Delivery
of eltromat GmbH, 33818 Leopoldshoehe and of eltromat GmbH, 04442 Zwenkau, Germany

§ 1 Applicability

1. Our Conditions of Sales and Delivery shall apply exclusively. They shall also apply to any future business transactions with the customer. Conditions of delivery deviating from our General Conditions of Sale and Delivery shall not be effective, even if we have failed to contradict expressly or if we unconditionally provide services to the contractual partner or accept performance tendered by the contractual partner. Furthermore, general terms and conditions of the contractual partner shall not be effective, if they do not comply with legal provisions, regardless of the content of such terms and conditions. We shall be entitled to terminate the contract if the contractual partner should raise any contradictions against the validity of our Conditions of Sale and Delivery.

2. Any changes to our General Terms and Conditions shall be notified to the contractual partner in writing. Changes shall be deemed approved if the contractual partner fails to object in writing. We shall separately advise our contractual partner of this consequence when making such modification known to him. Any such objection must be received by us within one month upon receipt of our notification of modification by our contractual partner.

3. The present Conditions of Delivery shall also apply to all transactions with persons acting in performance of their commercial or independent professional business (entrepreneurs) when entering a contract and to all transactions with legal entities under public law or public separate estates.

§ 2 Offers and Prices

1. Our offers shall be subject to change and merely constitute an invitation to the customer to place orders. Any order of the contractual partner shall be a binding offer. The contract shall become effective upon our written confirmation of order.

2. The prices agreed shall be net prices and apply ex works and exclusive of assembly, packing, freight and insurance. The respective applicable sales tax at the time of delivery shall be added to the prices, unless the delivery is exempt from sales tax.

3. The prices agreed with regard to an order shall be binding upon us for six months upon conclusion of the contract. In cases where longer terms of delivery or performance have been agreed we shall be entitled to make a pro-rata mark-up based on the basis of our original pricing for the cost increase occurred as a result of an increase in material or labour costs.

§ 3 Delivery and Performance

1. Any delivery or performance dates shall only be binding, if they have been confirmed by us in writing. Failing such express confirmation they shall be regarded as approximate dates and be subject to change. Terms of delivery shall commence upon dispatch of our order confirmation. Terms of delivery or performance shall be complied with, if we indicate our readiness for shipment at the agreed date of delivery or performance. The term of delivery or performance shall not commence until the orderer has provided all data, drawings, releases etc. to the full extent and until all open technical issues have been resolved and all down payments agreed have been effected.

2. Any changes requested by the orderer subsequently will result in a suspension of the delivery term which will begin to run again upon a notification to this end.

3. If the delivery or performance is delayed due to the occurrence of events which are beyond our control or which could not be foreseen when the contract was concluded (e.g. breakdowns, regulatory acts, unforeseeable lack of raw material, malfunction, interruption or failure of data processing equipment and lines, shortage of energy supply, labour dispute) and which could not be prevented by us in spite of reasonable care given the circumstances of the event, the term of delivery or performance shall be extended accordingly, however, by no more than two months. If, for the same reason, the delivery or performance should turn out to be impossible without our default, we shall be released from the obligation to deliver or perform respectively.

4. We shall only be in delay if a respite of two weeks has been granted to us in writing, even if the time of performance has been or is to be fixed by calendar days. We shall only be liable for damages caused by delay or non-performance up to the amount of the order value, unless we or our vicarious agents have acted wilfully or with gross negligence or if such delay causes injuries to life, body or health.

5. If the customer is in default with any payments, irrespective of their nature, or if a more than minor deterioration should occur in his financial circumstances, we shall be entitled to refuse any further deliveries or performance and to request advance payments. Such deterioration of the financial circumstances may be assumed if e.g. bills of exchange or cheques are protested or if the limit set by a credit insurer is exceeded or would be exceeded by the proposed delivery.

6. If dispatch is delayed upon request of the buyer we will charge him any additional costs incurred by us, however at least 0.5% of the invoice amount for each month in case of storage in the works of the seller, starting one week upon the agreed delivery date. Should the customer fail to accept the goods within 6 months upon the agreed delivery date, we shall be entitled to make other dispositions concerning the delivery item and to deliver new goods to the customer within a reasonably extended term.

7. Notwithstanding our right to claim a higher damage actually incurred, we shall, should the customer terminate an order without good cause, be entitled to claim 15 % of the sales price for the costs incurred due to the processing of the order and for lost profits.

Should we be entitled to terminate the contract for a reason attributable to the customer, we shall be authorised to claim 15 % of the net sales price as lost profit unless a higher damage can be proven. In both cases the contractual partner shall be free to prove that no or only a minor damage has been incurred.

§ 4 Term of Delivery, Passing of Risk

1. Any deliveries or performance will be effected EXW Incoterms 2000. The risk of accidental loss or accidental deterioration shall pass to the forwarding agent upon dispatch and to the customer at the latest when leaving the works. If the dispatch is delayed for reasons not attributable to us, the risk shall transfer upon notification of readiness for shipment.

2. Failing any special instructions the type and sequence of dispatch shall be determined by the seller without accepting any responsibility for the cheapest or fastest dispatch. A transport insurance will only be taken out upon request and at the expense of the buyer.

3. Partial deliveries shall be acceptable.

§ 5 Payments, Retention Rights

1. Unless agreed otherwise, any payments shall be made as follows:

a) in cash without any deductions, no later than 30 days upon the date of invoice

b) in case of large orders exceeding an order value of 25,000.00 €
1/3 upon receipt of the order confirmation
1/3 upon receipt of notification of readiness for shipment
1/3 30 days upon dispatch or notification of readiness for shipment

c) Assembly or repair costs shall be payable immediately upon receipt of invoice net and without any deductions.

2. Our invoices shall be payable without any discounts, unless expressly agreed otherwise. If a discount has been agreed, any deduction of such discount shall only be admissible if, apart from complying with the contractually agreed discount conditions, our justified and undisputed claim is fully paid within the discount term. If the payment is not made in due time or not in the amount due, a deduction of discount shall not be admissible. For all other purposes a deduction of discount shall always be subject to the provision that the contractual partner is not in default with any other obligations towards us.

3. We shall not be bound to accept any bills of exchange as payment. If they are accepted on account of performance, any discount or note charges will be borne by the buyer. If a bank should refuse to discount a bill of exchange, a cash payment will be effected immediately.

4. If the term of payment is exceeded, the customer shall pay default interest of 8 percentage points above the respective basic interest rate as of the due date without any reminder being required. Our entitlement to claim higher damages shall remain unaffected. If the customer defaults with regard to an invoice, any other claims shall become payable immediately, unless the customer can prove that he did not cause the delay. If the contractual partner is in default of payment or if his ability to perform is endangered we shall be entitled to refuse any further deliveries and to claim advance payments unless the contractual partner provides sufficient security. A lack of ability to perform will be assumed in particular if bills of exchange or cheques are protested or if the limit set for the contractual partner by a credit insurer is reduced or cancelled, unless the contractual partner is able to prove that the decision of such insurer is not justified by lack of ability to perform. Finally, a substantial decline of the credit rating by a renowned credit agency shall be considered a lack of ability to perform, unless the contractual partner is able to prove that the decline of his credit rating is not justified.

A lack of ability to perform shall be assumed in the above cases until a proof to the contrary has been provided by the contractual partner.

Any rights of retention to our benefit shall remain unaffected.

5. The contractual partner shall have the unlimited defence of non-performance if statutory requirements have been fulfilled. Any other rights of retention shall be subject to the following provisions. The customer shall only have a right of retention regarding those claims from the same contractual relation which are undisputed or have been established effectively or are ready for decision. In the latter case he may retain payment of the compensation in case of partially faulty delivery or performance only to the amount which is equal to the value of the faulty delivery.

6. The customer shall only be allowed to setoff our claims against claims of his own right, which are uncontested, have been established effectively, or are ready for decision.

§ 6 Warranties

1. Any claims of the contractual partner for defects shall be subject to the following provisions. For damage claims §7 shall apply in addition.

2. We warrant that the items delivered by us are free of defects of quality and title. The criterion for conformity of the products delivered shall be the respective description of the products and their intended use as per the contract that has been entered with the customer. The customer shall be solely responsible for the correctness of the specifications and data provided. We shall not be required to check the customer's specifications. We shall not be liable for any defects resulting from faulty drawings and CAD or other data provided by the customer. Minor changes to the goods regarding their construction, form and design as well as to the data to be provided in the description and minor changes to our services shall be accepted by the customer, as far as they are reasonable or as far as commercial quantities, quality and design allowances are concerned. Such minor deviations shall not justify any warranty claims.

3. In case of a defect we shall first be entitled to remove the defect or to deliver an item free of defect (supplementary performance). In case of supplementary performance we shall be required to bear all expenses necessary for the purpose of supplementary performance, in particular transport, handling, labour and material expenses, unless such expenses are increased by the fact that the goods have been taken to a place different from the place of delivery. Any parts rejected by our customer shall only be returned to us at our expense upon our request and, as far as required, in sound packing with the packing slip bearing the order number enclosed.

4. Unless otherwise provided mandatorily by law, the customer shall be required to first grant us a reasonable period of grace to effect supplementary performance before he shall be entitled to raise any further warranty claims against us. As a rule, we will be granted a period of at least 4 weeks to effect supplementary performance, if devices or equipment have been delivered, and of 20 working days in case of delivery of spare parts. This shall not apply if, on an individual basis, a different term has been contractually agreed or if a shorter term is imperative, e.g. in urgent cases, where relatively large damages are impending or if the safety of operations is endangered. If the supplementary performance is not carried out within this term, the customer shall be entitled to resort to his statutory rights, in particular to withdraw from the contract, to abate the purchase price or to claim damages, if the conditions of §7 are fulfilled.

Setting a term shall not be required if we have refused supplementary performance definitively and seriously or if a supplementary performance is impossible.

5. If the term of supplementary performance has lapsed without success, we shall be entitled to request the customer to assert any further warranty claims against us within a term of two weeks.

If the customer fails to make such statement, we can still choose between supplementary performance and replacement.

6. Withdrawal from the contract shall be excluded, if the purchase item only has minor defects. Minor defects shall mean, in particular, immaterial deviations from the contractually agreed properties and immaterial limitations of the usability of the goods as provided for in the contract.

Furthermore, warranty claims shall be excluded, if the defects have occurred due to usual wear and tear of the item purchased, due to faulty or negligent usage, due to insufficient or improper maintenance, inappropriate use or improper application, faulty assembly, as a result of undue strain or due to use of improper operating resources after the passing of risk or due to impairments

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which have been caused by special external influences after the passing of the risk, which have not been provided for in the contract. Any warranty claims shall furthermore be excluded, if the orderer has himself or had through a third party performed any maintenance work, although such work would not have been necessarily required.

7. Damages due to any accessory damages occurring independent of non-performance (e.g. loss of production, loss of profit, liability for late deliveries vis-à-vis the customer's purchasers etc. § 280 German Civil Code), can only be asserted if a reasonable term for supplementary performance set in writing has lapsed without success. For all other purposes, §7 shall apply to damage claims.

8. The warranty term is 12 months upon dispatch of the item of purchase. In case of rectification of defects or delivery of spare parts the warranty shall only shall run until the expiration of the warranty period of the initial delivery.

9. In cases where customers raise claims against our contractual partner, he may only take recourse to us to the extent that he has not entered any agreements with his customers beyond local legal provisions, in particular warranty liability. In such cases the above rules shall apply accordingly to the scope of our warranty liability vis-à-vis the contractual partner.

10. We shall be entitled to claim a compensation of our expenses at reasonable rates to the extent we have acted based on a problem report or a defect asserted, and the investigation shows that the service rendered by us is free of any faults under warranty.

§ 7 Damages

1. We shall be liable to pay damages, on whatever legal grounds,

- if we, our legal representatives or our vicarious agents should have acted wilfully or with gross negligence;
- if we or any of the above should have acted slightly negligently under the conditions of Section 1;
- in case we provided warranties for the performance of such warranties in the agreed scope; any warranties must be made in writing and be expressly identified as such;
- in case of injury to life, body, or health;
- in cases where such statutory liability may not be lawfully excluded (e.g. product liability act, environmental liability act).

2. In cases of slight negligence we shall be liable to pay damages, on whatever legal grounds, only in case of breach of material contractual duties, unless Sec. 1 applies.

Material contractual duties shall mean duties which are essential for the proper execution of the contract and for which the customer relies on regular fulfilment. In this sense, our duty to perform our contractual duties free of defects shall not constitute a material contractual duty.

In case of a slightly negligent breach of material contractual duties our liability for damages shall be restricted to reasonably foreseeable damage that is typical of the contract. Customers shall be obligated to inform us in writing on exceptional risks, atypical contingencies and unusual amounts of damage prior to the execution of the contract.

There shall be no liability in excess hereof whatsoever for any consequential damages, lack of financial success, special damages, or damages resulting from claims asserted by any third party. In cases of slight neglect we shall not be liable for any damages caused by loss of production.

3. If the object of the purchase contract is only defined generically, liability shall exclusively be subject to the above provisions. Any liability for damages regardless of negligence or fault shall be excluded.

4. The above provisions concerning liability shall also apply to legal claims of customers for indemnification of wasted expenditures as well as personal liability of officers, employees, co-workers, legal representatives or vicarious agents.

§ 8 Other Rights and Duties

In any case of a violation of duties relating to protectiveness and heedfulness in terms of § 241 Subsection 2 of the German Civil Code [BGB] that we are accountable for our customer shall not be entitled to claim any damages and to exercise his right of rescission unless we have priorly been given a written warning notice with respect to the relevant breach of a duty.

A warning notice shall not be required if we, our legal representatives, or our vicarious agents are charged with intentional or grossly negligent misconduct, nor in connection with injuries to life, body or health.

§ 9 Protective Rights, Copy Rights

1. We shall be entitled to the copyright regarding all documents, drawings, data or information surrendered to us. The same shall apply to any protective rights.

Any drawings, wiring schemes and other documentation provided shall be our property, unless they have been assigned to the customer in the scope of delivery contracts together with the products delivered.

2. The customer shall have a simple usage right in our knowhow and our protective rights, as far as this is required to use the products delivered by us. No further usage rights shall be assigned. The customer shall be entitled to make copies of any technical documentation and technical descriptions, wiring schemes, logical diagrams, impulse diagrams, maintenance instructions etc., which are delivered with the equipment, for his own use in connection with the application and installation of the equipment. The customer shall, however, undertake not to disseminate or otherwise provide such documentation to any third parties and neither to copy the equipment delivered himself nor to have any third parties copy them.

§ 10 Retention of Title

1. We shall retain title to any and all goods delivered by us until all debts from the business relation with the customer, including debts arising in the future, have been settled. If debts are transferred to an open account, the retention of title shall apply to each respective balance of that account. In any case of a culpable breach of contract by the other contracting party, in particular if payment is defaulted, we shall be entitled to recover the item which is subject to a retention of title. In this case, the contractual partner shall be obligated to return the item. The request for return constitutes a recession from the contract.

The actual sales revenue obtained from the sale of the item subject to a retention of title shall be credited to the claims against the contractual partner after our claims have been setoff and the costs of sale and recovery have been deducted. We shall be free to effect a freehand sale.

The customer shall be obligated to insure our property against fire, water, and theft. All claims against insurers shall be assigned to us. If the contractual partner, upon our request, fails to prove that he has taken out sufficient

insurance, we shall be entitled to insure the delivery item against theft, breakage, fire, water and other damages at the expense of the contractual partner.

2. The customer shall be authorised to process the goods in the ordinary course of his business or to resell the same provided that an expanded or extended retention of title is agreed. He shall not be authorised to make any other dispositions.

The customer's authority to process or resell the goods shall expire if he fails to comply with his payment obligations towards us, commits a serious breach of any contracts concluded with us or suffers a decline of assets. A decline of assets shall mean a suspension of payments, over-indebtedness, filing of insolvency proceedings as well as any other substantial change in the customer's financial situation, which may endanger our securities.

3. Any processing of items subject to a retention title shall be made on our behalf (§ 950 German Civil Code). In case processing is done for several suppliers, we shall be entitled to a joint ownership interest under § 947 et seq. of the German Civil Code. If the customer combines or commingles our items with an item in his possession in a way that the customer's item is to be considered as the main item, the customer shall assign already now a pro-rata joint ownership interest in the main item in proportion to the value of our item to the value of the main item. Our joint ownership interest shall remain in the possession of the customer who shall keep safe the item on our behalf.

4. The contractual partner already now shall assign to us any claims arising to him out of the resale of the goods under retention of title. The assignment shall be subject to the following provisions:

a) If the sale is effected after processing, combining or commingling, the contractual partner shall assign to us already now a pro-rata interest in the claim arising from such resale in proportion to our ownership interest in the item sold, if a joint ownership has been created as a result of processing, combining or commingling.

b) If the sale is effected together with any objects owned by third parties, and it is not clear which part of the claim from such resale is attributable to our items under retention of title, the contractual partner shall already now assign to us a pro-rata part in the claim arising out of such resale in proportion of the value of our goods under retention of title to the value to objects owned by third parties.

c) In case the claim from resale assigned under the above provisions cannot be clearly identified at the time of accrual of the claim assigned, our contractual partner shall already now assign the claim from such resale to us to the amount of the final commercial invoice (gross sales price of the respective goods under retention of title).

5. Partial payments by a debtor of the customer to the customer shall be deemed to be credited first to other claims of the customer and shall be credited to our claim only upon full satisfaction of such claims.

The customer shall be entitled to collect the claims assigned in the ordinary course of business. This entitlement shall expire in the cases provided in § 10. In these cases, the customer shall be required to assist in the collection of claims.

6. The contractual partner shall already now assign to us any claims arising to him from the sale of the claims assigned to us to a factoring company. Notwithstanding the effectiveness of the above assignment under property law regulations, the contractual partner shall only be allowed to assign claims assigned to us under the expanded retention of title in the scope of real factoring (that is, if the factoring company accepts the risk of insolvency of the debtor of such claim).

7. The contractual partner already now shall assign to us any claims for compensation against credit insurers, if and insofar as the claim assigned to us or to be assigned to us under the above provisions is subject to insurance coverage.

8. We hereby undertake to release the securities we are entitled to under the above provisions upon the customer's request, in our discretion, insofar as their marketable value exceeds the total claim to be secured by more than 20%.

§ 11 Data Protection

We will store the data required to process business transactions in a central facility.

§ 12 Miscellaneous

1. All orders placed with us shall be subject to German law. The application of Uniform Law on the International Sales of Goods (CISG) shall be excluded.

2. The place of jurisdiction shall be our registered office. However, we shall also be authorised to sue the orderer at his general place of jurisdiction or at the place of jurisdiction competent at his registered office.

3. The place of performance, payment and fulfilment of all obligations resulting from the legal relations with the customer shall be our registered office. No stipulation as to the bearing of costs shall imply any modification to the above rule of the place of fulfilment.

4. If any individual clauses should be or become invalid in full or in part, such invalidity shall not affect the validity of the other clauses or remaining parts of such individual clauses hereof, instead, the respective statutory provision shall apply.