

General Terms of Delivery and Payment
ELSOLD GmbH & Co. KG

1. General – Application

The terms and conditions of business shall apply to all current and future business relations.

Any general terms and conditions of business which diverge from, conflict with or supplement same shall not form part of the contract, even where known, unless consent is explicitly given in writing as regards their application.

2. Conclusion of Contract

Our quotations are always without engagement. Technical modifications and changes in form, colour and/or weight shall remain within the limits of what can be reasonably expected.

By ordering the goods the ordering party declares his intention to purchase the ordered goods in a binding manner. We shall be entitled to accept the contractual quotation included in the order within 2 weeks after receipt at our company. Acceptance shall be made in writing.

As regards the contents of the contract solely our written acknowledgement of order shall apply. Agreements made verbally or by telephone shall in all cases only be binding on ourselves following the issue of written confirmation.

Completion of the contract shall be subject to the correct and timely delivery to ourselves by our ancillary suppliers. This shall only apply where we are not responsible for the failure to deliver, in particular on conclusion of a congruent covering transaction with our ancillary supplier.

The customer shall be immediately informed about the non-availability of the service. The consideration shall be reimbursed immediately.

Rights ensuing to the ordering party under the present contract shall only be transferable with our consent.

3. Prices

All prices are quoted ex works in €, except as explicitly provided otherwise. Prices do not include value-added tax. The specified prices shall apply subject to the condition that at the time the contract is concluded, the major cost factors remain unchanged. Where there is a change in same (e.g. materials, auxiliary materials, wage costs, statutory dues, freight etc.) up to the time of delivery, we shall thus be entitled to effect a corresponding adjustment in our sale prices, on disclosure of the original calculation and specific description of the increase in the cost factors.

In the cases of transactions involving modification the agreed prices and conditions shall be conditional on the material necessary for modification being available to ourselves on time and in sufficient quantities prior to execution of the contract and being suitable for the intended modification. Should this not be the case, we shall be entitled to charge for the additional work involved. Supplementary claims for value-added tax ensuing from transactions involving modification and provision, which result – for whatever reason – shall be borne by the ordering party and paid without deduction immediately after being claimed.

The write-off of call offs shall be carried out according to the effected deliveries. If call off exceeds the order volume, we shall be entitled to delete the excess or to charge same at the current price.

4. Execution

4.1 Advice

Advice, information and suggestions regarding the options for the use, processing and application of the products manufactured by ourselves shall only include an agreement regarding the nature of the goods where laid down in writing.

4.2 Samples

The provision of samples shall not constitute any agreement regarding the nature of the goods according to § 434 (1) German Civil Code.

4.3 Consent to technical data by ordering party

The models for execution submitted to the ordering party by ourselves shall also be examined by same as regards all major qualities required for usage of the manufactured product. We accept no liability for the suitability of the product for the intended purpose. The ordering party shall sign and return the documents to us to indicate his consent. The samples made available to the ordering party shall be countersigned as a sign of approval. Any corrections required by the ordering party shall be clearly marked by same. We shall not be liable for identifiable defects which have been overlooked by the Client on inspection or which do not form the subject of an objection, except where said defect was concealed fraudulently by ourselves. Technical advice and recommendations on our part shall be based on an appropriate inspection; they are however made outside our contractual obligations. Any liability on our part shall be excluded in this regard.

4.4 Excess or short delivery, tolerances

Depending on the type of the product we explicitly reserve the right to effect excess or short delivery in terms of weights and piece numbers up to 10%, with orders under 100 kg up to 20%, and both as regards the full volume of the transaction or contract and every single partial delivery.

We reserve rights to the following tolerances for the delivery of foils:

thickness +/- 10%, format +/- 2.5 mm, paper weight +/- 10%.

4.5 Quality tolerance

Contracts shall be executed according to the customary quality in line with state-of-the-art technology under the tolerance required in technical terms in relation to materials and processes, except where specified standards for execution have been agreed in the individual case.

5. Packaging

Packaging shall be determined following acknowledgement of order. In general the choice of packaging shall be left to ourselves. Packaging shall be charged at cost price. Loaned packaging shall remain our property. Return shall be effected in impeccable condition within an appropriate period of time and, except where agreed otherwise, free of charge.

The ordering party shall be entitled to return transport packaging to us at the place of dispatch of the goods at his own expense. Packaging must be clean, free of foreign materials and sorted according to the different packaging materials.

6. Delivery and Dispatch

Delivery shall be effected ex works and at the risk of the recipient. The choice of the method of shipment shall be left to ourselves except where agreed otherwise. Partial shipment shall be permissible in all cases.

7. Transfer of Risk

All risk shall pass to the ordering party as soon as the goods are made available to same or the carrier.

Where the ordering party fails to accept the goods on time, this shall be equivalent to handover.

Should goods be taken back for reasons for which we are not responsible, and on delivery of modification material, the ordering party shall bear all risk until arrival at our works.

8. Delivery and Acceptance

8.1 Delivery

We shall be obliged to dispatch the goods on the agreed date. Compliance with an agreed delivery time shall be subject to the clarification of all details regarding execution and the fulfillment of all conditions incumbent on the ordering party by same in a timely manner. Where the ordering party stipulates after acknowledgement of order changes to the contract which affect the manufacturing time, a new delivery period shall commence with confirmation of the change by ourselves. We shall be entitled to effect partial delivery. Delay in partial deliveries shall not give rise to any rights as regards the other partial deliveries on the part of the ordering party.

Rights ensuing from delay in delivery can only be asserted by the ordering party following the granting of an additional period of time of reasonable length in writing. Compensation on the basis of any delay in delivery can only be claimed in the case of intent or gross negligence on our part, however only to a sum equivalent to the value of the contract. Compensation for consequential damage, e.g. due to lost profit or covering purchases, shall be excluded.

Interruptions in operation either at our plant or at third-party plants, on which production or shipment depends to a major extent, shall release us from our obligation regarding compliance with the delivery period without the payment of compensation following the immediate notification of the ordering party where no remedy can be found on time or only incurring disproportionate expense. Interruptions in operation shall be considered to be all impediments of a serious nature, which we did not cause from an objective viewpoint or were able to foresee. The same shall apply, where, despite a congruent covering purchase, our sub-supplier fails to effect timely and correct delivery.

8.2 Acceptance

Where acceptance is not effected according to the contractual agreements, we shall be entitled to charge for the costs thereby incurred. If acceptance is not effected despite the granting of an additional period of time of reasonable length, the risk shall pass to the Client following expiry of the additional period of time. If acceptance is not effected despite the granting of an second additional period of time of reasonable length, we shall be entitled, at our discretion, to demand acceptance and compensation due to delayed acceptance, or however compensation due to non-fulfilment, or to withdraw from the contract.

Where the ordering party wishes the inspections necessary for production use to be performed by ourselves, the nature and scope of the inspections shall be agreed in advance. Where this does not take place by conclusion of the contract at the latest, the costs shall be for the account of the ordering party.

Where acceptance has been agreed according to special conditions, the ordering party shall effect same at our works immediately after notification of readiness for acceptance at his own expense. Where acceptance is not effected despite the granting an additional period of time of reasonable length, we shall be entitled to dispatch the goods or to put same into storage at the expense and risk of the ordering party. This shall constitute acceptance of the goods. The quality risk shall pass to the ordering party in all cases after 6 months at the latest starting from the agreed delivery date.

9. Terms of Payment

Invoicing and payment shall be effected either in € or in the currency specified in the acknowledgement of order. Invoicing shall be effected on dispatch of the goods or at the time when the ordering party is in default as regards acceptance. Cheques and bills of exchange shall only be accepted on account of performance, with bills of exchange however only being accepted with special agreement.

Where there is major deterioration in the financial circumstances of the ordering party, or where same is in default for said reason with regard to payment and acceptance, we shall hold the right to also demand immediate payment of goods yet not delivered, of any invoices, bills of exchange and cheques not yet due, where the sums are covered by contractual expenditure on our part.

In the case of delay in payment according to § 286 German Civil Code default interest shall be paid according to § 288 German Civil Code. We reserve the right to provide evidence of and claim greater losses from default. It shall only be permitted to effect offsetting against our demands for payment or exercise a right of retention in the case of claims which are undisputed or recognised by declaratory judgement.

10. Retention of Title and Rights of Security

We reserve the title to the goods supplied by ourselves until the complete payment of all claims from an ongoing business relationship.

The ordering party shall be obliged to treat the goods with care.

The ordering party shall be obliged to grant us access to third parties to the goods, for instance in the event of attachment, and to immediately notify us of any damage or the destruction of the goods. The ordering party shall also provide immediate notification regarding any change in title or his own place of residence.

We shall be entitled, in the event of behaviour on the part of the ordering party contrary to the terms of the contract, to withdraw from the contract and to demand the return of the goods.

The ordering party shall be entitled to dispose of the goods further in the course of ordinary business. He hereby assigns to us all claims equivalent to the invoiced amount which accrue to himself against a third party through further disposal. We accept such assignment. Following assignment the ordering party shall be authorised to collect the sum due. We reserve the right to collect the sum due ourselves as soon as the ordering party fails to properly observe his obligations with regard to payment and is in default of payment.

The handling and processing of the goods by the ordering party shall always be carried out in our name and on our behalf. Where processing is carried out using items which do not belong to ourselves, we shall acquire the co-ownership to the new object in proportion to the value of the goods supplied by ourselves to other items processed. This shall also apply where the goods are combined with other objects not belonging to ourselves.

The ordering party shall concede to us a right of attachment for the material provided to ourselves for execution of the contract and claims superseding same as security for all current and future claims ensuing from the business relationship with himself.

Where the ordering party is in default as regards a payment or a loan, we shall be entitled to realise the material forming the subject of attachment at the stock-market quoted value or at the customary market value.

Should the value of the security exceed our claims by more than 20%, we shall be obliged on request to release the above security in this regard at our discretion.

11. Warranty

The goods supplied by ourselves shall be examined by the ordering party immediately on receipt at their destination with the care of a prudent businessman. The obligation of the ordering party regarding examination shall also exist where reference samples and/or a test certificate confirming the performance of quality control have been provided.

Obvious defects and those which can be identified by the performance of a proper examination shall form the subject of written notification of defect by the ordering party within 2 weeks after receipt of the goods.

Non-obvious defects and those which cannot be identified by the performance of a proper examination shall form the subject of written notification of defect by the ordering party within 7 days after discovery, however at the latest within 6 months after receipt of the goods.

Any failure to comply with the requirement to make a complaint in respect of a defect immediately on receipt of the goods shall preclude assertion of the warranty claim. Timely dispatch shall be sufficient for compliance with the time period. The full burden of proof as regards all prerequisites for the submission of a claim shall rest with the ordering party, in particular in respect of the defect itself, for the time of discovery of the defect and for the timeliness of the complaint pertaining to the defect.

We shall initially provide a warranty for defects in the goods at our discretion involving repair or replacement delivery. Defects in part of a delivery cannot result in a complaint involving the delivery as a whole where it is possible to separate the defective and non-defective parts using reasonable means.

Where subsequent fulfilment fails, the ordering party may basically be entitled to demand a reduction in price or withdrawal at his discretion. In the case of only minor breaches of contract, in particular only minor defects, the ordering party shall however hold no right of withdrawal.

Where the ordering party claims withdrawal from the contract due to a deficiency in title or defect as to quality after the failure of subsequent fulfilment, he shall hold no additional entitlement to compensation for the defect.

Where the ordering party claims compensation after the failure of subsequent fulfilment, the goods shall remain with the ordering party where this can reasonably be expected of same. The compensation shall be limited to the difference between the purchase price and the value of the defective item. This shall not apply where the contractual violation was caused fraudulently by ourselves.

The warranty period shall be 1 year after delivery of the ordered goods. This shall not apply where the ordering party fails to notify us of the defect in a timely manner.

As regards the nature of the goods only our product description shall apply in all cases as agreed. The contractual nature of the goods shall not be additionally represented by public declarations, recommendations or our publicity.

The ordering party shall receive no guarantees in the legal sense from ourselves. Manufacturer guarantees for goods used by ourselves shall thereby remain unaffected.

We do not guarantee that the goods are suitable for the purposes intended by the ordering party, except where specific qualities have been explicitly warranted in writing.

No warranty shall be provided in respect of damage which has occurred for the following reasons: Inappropriate or improper use, incorrect installation or commissioning by the ordering party or a third party, natural wear, improper or negligent treatment; unsuitable equipment, defective construction work, unsuitable ground, mechanical, thermal, chemical, electrochemical or electric influences except where same were specified by the ordering party and resistance to such influences was then explicitly confirmed by ourselves.

12. General Limitation on Liability

In all cases where we are obliged to pay compensation by virtue of a contractual or statutory basis for the claim, we shall only be liable where we can be charged with intent or gross negligence.

Where we undertake the contractual obligation to examine our products as regards the existence of certain qualities, we shall only be liable in this regard where the damage can be attributed to ourselves having breached test conditions agreed in writing at least for want of care.

All claims for compensation against ourselves shall expire by limitation at least 1 year after delivery or service.

The foregoing limitations on liability shall also apply to claims which are directly addressed at our employees.

13. Drawings, Drafts, Construction Drawings, Tools and Other Preliminary Works

Where tools are provided by the ordering party, the cost of maintenance, modification and replacement of his tools shall be borne by same. The ordering party shall be liable for the technically correct construction and the design of the tools permitted the production process to be carried out, although we shall be entitled to make any modifications technically required. Without a special agreement we shall not be obliged to check the compliance of the tools, designations or samples provided.

Construction drawings or other tools and moulds manufactured by ourselves shall only be stored for 12 months after the last usage. The ordering party shall be notified beforehand of their destruction. This shall also apply to all drawings and drafts. By the payment of partial costs for tools, moulds, printing blocks, printing and embossing rollers etc. the ordering party shall acquire no title to the tools themselves. These shall remain our property, notwithstanding any claims of the ordering party in terms of copyright in designs.

14. Copyright

We shall retain the title or copyright to all drawings, illustrations, cost estimates and designs attached to our quotations. Such documents may not be made available to third parties without our prior approval or used for commercial purposes and shall be returned immediately on request.

The ordering party shall be responsible for the examination of the right of reproduction and copyright in respect of all copy, drafts, drawings and production samples, except where he has explicitly asked us to perform same. We shall draw the Client's attention to any conflicting rights known to ourselves.

In the case of delivery according to drawings or specifications of the ordering party he shall indemnify us from all property rights of third parties. In the event of breach of contract by the ordering party his property rights shall not prevent utilisation of the goods by ourselves.

15. Marking

We reserve the right to apply our company slogan, company logo or other works identification number according to industrial practice and regulations and the space available to consignments of any kind.

16. Partial Invalidity

Where parts of the present conditions are or become invalid, the other provisions shall nevertheless remain valid. The partially or entirely invalid provision shall be replaced by such provision whose financial objective comes as close as possible to that of the invalid provision.

17. Place of Performance and Legal Venue

The place of performance for delivery and payment shall be Goslar.

The legal venue shall be Goslar where legally permitted.

The law of the Federal Republic of Germany shall apply. The provisions of the UN Law on the International Sale of Goods are not applicable.