

General Terms and Conditions of Elco AG

1. General

All transactions between Elco AG («manufacturer») and a customer concerning the manufacture, purchase and delivery of goods shall be exclusively regulated by the individual contract between the manufacturer and the customer, as well as by these General Terms and Conditions, which in all cases shall prevail over any existing general terms and conditions or contractual conditions of the customer.

2. Quotations

2.1 Quotations issued by the manufacturer shall not be binding if they are based on inaccurate information supplied by the customer. The prices contained therein shall be understood as recommended prices only.

2.2 Binding quotations issued by the manufacturer that do not state a time limit for acceptance shall be binding for the manufacturer for 30 days after dispatch of the quotation.

3. Prices

3.1 The prices offered or confirmed by the manufacturer are understood net, excluding value-added tax. All additional costs, e.g. for insurance, licences for export, transit, import and other authorisations, as well as for certifications, shall be at the customer's charge. Furthermore the customer shall pay all taxes, fees and customs duties.

3.2 The prices quoted or confirmed by the manufacturer are based on the material prices and rates of exchange in force at the time of issuing the quotation or the order confirmation. The manufacturer expressly reserves the right to increase the confirmed or quoted prices proportionately if the material prices or the rates of exchange have increased by the date of manufacture.

3.3 In addition to the quoted or confirmed prices, the customer shall be invoiced for any additional outlay occasioned by him or his agent through failure to supply documentation or supplying documentation that is insufficient or unsuitable for reproduction, e.g. the subsequent preparation, correction or revision of documentation, or the additional processing of data carriers or text/picture data.

3.4 Author's corrections, such as the subsequent modification of texts, colour changes, rearrangement of pictures or changes to the cutting form are not included in the quoted or confirmed prices and shall be invoiced additionally, according to actual outlay.

4. Terms of payment

4.1 The invoice amount is to be paid in full, in the invoiced currency, without deductions within 30 days from date of invoice to the payment office indicated by the manufacturer. Payment shall be considered complete when the manufacturer freely disposes of the entire invoice amount.

The invoice shall be issued when the goods leave the production premises, or upon notification of readiness for dispatch.

4.2 The manufacturer expressly reserves the right at any time to request advance payment to cover his expenses, even after the contract has been concluded, and especially if contracts involve reserving large sums of money, e.g. for materials or third party work, or else if the contract will take more than two months to process.

4.3 Materials purchased at the customer's request that are not used within three months after arrival at the manufacturer's plant shall, after a period of three months, be invoiced by the manufacturer, plus all extra work and costs connected with the order and the storage of the goods.

4.4 The payment periods shall remain binding for the customer if dispatch, transport, delivery or acceptance of the goods is delayed or made impossible for reasons beyond the manufacturer's control, or if unimportant parts are missing or defects are noticed that will neither make it impossible to use the goods, nor necessitate extra work or replacements.

4.5 Retention of payment by the customer or setting off payment with counter-claims of any kind is not allowed without the express written agreement of the manufacturer.

4.6 Should the customer fail to settle within the required period, he shall be liable to pay - as from due date and without a separate reminder - default interest on the invoice amount at the rate in force for unsecured overdrafts on current bank accounts at the domicile of the manufacturer.

4.7 The manufacturer expressly reserves the right to request security for the purchase money after the contract has been concluded. Should security not be provided within the period stipulated by the manufacturer, the latter shall be entitled to suspend further performance of the contract, whereby the costs incurred by the manufacturer up to this date shall become payable immediately.

5. Call orders

5.1 Upon expiry of the agreed storage period all the remaining stored goods shall be invoiced.

5.2 Storage after expiry of the agreed period shall be invoiced to the customer according to the storage costs.

6. Customer's material and documentation

6.1 Material required for the manufacture of the goods that is supplied by the customer must be shown to be suitable for manufacturing according to contract.

The customer undertakes to pay in full all damages to the manufacturer that are caused through defects of the material supplied or unsuitability of the material.

6.2 The customer shall deliver such material to the production or storage premises designated by the manufacturer. The customer shall bear all the costs connected with delivery.

6.3 The customer shall be responsible for the insurance of material provided by him for manufacture of the goods, as well as manuscripts, data carriers, slides, photographs, printing documents etc. supplied to the manufacturer.

7. Delivery schedule

7.1 The delivery periods or deadlines agreed between the parties do not represent a due or fixed date. It is not the parties' intention that the manufacturer should, without the customer's agreement, only deliver at the agreed date or at expiry or the agreed period.

7.2 Delivery times shall begin upon receipt of the order documentation (pictures, texts, manuscripts or data carriers, "good for printing", print run, page layout etc.) at the manufacturer's plant. Delivery periods or deadlines are considered to have been kept if the goods have left the place of production or readiness to deliver has been notified before expiry date.

7.3 Delivery periods shall be appropriately extended if impediments occur that the manufacturer cannot eliminate with a reasonable amount of effort, e.g. epidemics, mobilisation, war, uprisings, serious breakdowns, failure of essential production equipment, industrial disputes (such as strikes and lock-outs), delayed or defective supply of the necessary raw materials, semi-finished or finished goods, measures or prohibitions on the part of the authorities, or acts of God, insofar as such impediments influence the manufacture or delivery of the goods. This condition shall apply, irrespective of whether the impediments occur at the manufacturer's plant, the customer's works or with third parties. Moreover, the manufacturer shall not be held responsible for such circumstances if they occur during an already-existing delay in delivery.

7.4 The manufacturer shall no longer be bound by the agreed delivery periods or deadlines if the necessary documentation from the customer (pictures, texts, manuscripts or data carriers, "good for printing", print run, sorts etc.) are not received by the manufacturer at the latest on the agreed date, if the customer subsequently wishes to modify this documentation leading to a delay in delivery, if the customer is in arrears with payments or with the performance of other contractual duties, or if the "good for printing", "good for execution" etc. are not given within the period stipulated by the manufacturer.

7.5 If the delivery of goods is delayed on the instructions of the customer or delayed by the customer, the manufacturer may charge - in addition to any default interest and beginning one month after notification of readiness for dispatch - the costs of storage at the manufacturer's premises, however at least ½% of the invoice amount for each month.

8. Acceptance

The customer undertakes to accept goods offered according to the agreement. If acceptance of the goods does not take place within a reasonable or agreed period after notification of readiness for dispatch, the manufacturer shall be entitled to warehouse the goods at the customer's account and risk. Furthermore, the manufacturer shall be entitled to dispose of the goods otherwise after expiry of a reasonable period and corresponding warning, and to deliver to the customer within a reasonable further period other goods, as similar as possible to the first.

9. Proprietary rights

9.1 The manufacturer shall retain the proprietary rights to the goods until all payments under the contract have been received. The customer undertakes to keep the manufacturer informed of the whereabouts of the goods and of any relocation thereof. The manufacturer shall be entitled to enter the proprietary rights in the corresponding register at customer's cost, insofar as this is foreseen by local regulations at the place where the goods are kept. The customer hereby authorises the manufacturer to proceed with the other formalities necessary for the establishment of proprietary rights at the place where the goods are kept, in the customer's name.

9.2 The customer may neither pledge goods that are subject to proprietary rights nor offer them as security. In the case of pledging, seizure or other dispositions taken by third parties concerning the goods that are subject to proprietary rights, he shall notify the manufacturer without delay.

9.3 In the case of action by the customer that contravenes this contract, especially payment arrears, the manufacturer - after reminder and appropriate warning - shall be entitled to take back the goods and to oblige the customer to surrender them. The enforcement of proprietary rights and the pledging of the goods by the manufacturer shall not be considered as a withdrawal from the contract.

10. Warranty

The manufacturer shall guarantee the following, any further claims being excluded:

- 10.1 The guarantee obligation shall be 6 months. It shall begin at departure of the shipment from the production premises. Should departure of the shipment from the production premises be delayed for reasons beyond the manufacturer's control, the entire guarantee period shall expire at the latest 9 months after readiness for dispatch of the goods, or notification of readiness for dispatch.
- 10.2 The customer shall undertake to check the control- and test documents submitted to him before finishing of the goods (imprints, proofs, copies, data files etc.) and to return them to the manufacturer with the "good for printing" and any instructions for correction within the agreed period. Any errors or divergences not notified by the customer shall be considered as accepted.
- Corrections and modifications that the customer communicates by telephone must be confirmed by him in writing within 24 hours. Otherwise all guarantee rights with regard to these corrections and modifications shall lapse.
- If it is agreed to waive the necessity for control- and test documents, the manufacturer shall not accept liability for defects on the goods that cannot be proved to be the result of grossly negligent performance of the contract on the part of the manufacturer.
- 10.3 The customer shall inspect the goods for errors immediately upon receipt and shall notify the manufacturer in writing of any errors detected within 8 days after receipt. If the customer fails to do so, the goods shall be considered as accepted, unless hidden defects are present which could not be detected during careful inspection of the goods.
- Such hidden errors are to be notified to the manufacturer within 8 days of their detection, otherwise the goods will be considered accepted, also in respect of these errors.
- 10.4 The manufacturer undertakes, if the complaint is made within the agreed period, to eliminate the defect at no charge within a reasonable period or, if he prefers, to supply a new delivery against return of the goods said to be defective.
- 10.5 Divergences in the execution and material of the goods that are in line with branch practice, especially with regard to cutting precision, likeness of the reproduction to the original, tone intensity and quality of printed matter (paper, cardboard, etc.) do not represent defects. They shall not entitle the customer to claim under guarantee.

11. Additional or short deliveries

Unless otherwise agreed, additional or short deliveries of up to 10% of the ordered amount (for special executions up to 20% of the ordered amount) are not deemed a reason for complaint, unless an agreement has been made to the contrary. The effectively delivered quantity shall be invoiced.

12. Copyright / right of reproduction

- 12.1 The manufacturer is the exclusive owner of all copyright, as well as all connected proprietary rights for work created during manufacture that are due to him under copyright law. In particular, he shall have the exclusive right to determine whether, when and how his work is to be used.
- 12.2 The reproduction and printing of all pictures, texts, samples etc. supplied by the customer to the manufacturer shall be made under the assumption that the customer possesses the corresponding reproduction and printing rights. This applies also for the re-use of pictures, texts, samples etc. previously supplied by the customer to the manufacturer and which the manufacturer has kept in his files according to the agreement.
- 12.3 The customer shall undertake, upon notification, to release the manufacturer from all liability towards third parties and to assume responsibility for all legal disputes ensuing through the reproduction and printing of the pictures, texts, samples, etc. supplied by the customer to the manufacturer.

13. Reproductions / tools

All reproductions made by the manufacturer (photographs, data carriers, type matter, montage, printing plates etc.) and tools (punching forms, embossing stereotypes etc.) shall remain the property of the manufacturer, even if the costs of producing the documentation and tools have been invoiced to the customer.

14. Safe-keeping of the working documents

- 14.1 The manufacturer is not obliged to keep working documents such as data files, negatives, chromatic components, lithographs, films, type matter, proofs and tools after completion of manufacture and delivery of the goods, unless other conditions have been agreed in writing.
- If data has been kept for purposes of technical security, this is to be deleted 6 months after delivery of the goods.
- 14.2 If it has been agreed in writing to keep the working documents, the ensuing costs, (e.g. for archives, new processing, formatting and copy) shall be invoiced according to actual cost. The safekeeping of the working documents shall be at the customer's risk. The manufacturer shall not guarantee that the documentation can be produced again later in a perfect state.

15. Limitation of liability

- 15.1 The manufacturer shall, at the most, be liable to the extent of the agreed or confirmed price of goods for direct damage incurred by the customer, that he or his personnel have caused through gross negligence or with illegal intention while performing their duties under the contract.
- 15.2 The manufacturer shall accept no responsibility for data supplied by the customer (via data carrier or modem) which are defective in content or incomplete. Moreover, all liability is refused if the data supplied cannot be processed or used by standard systems, resulting in quality defects of the products ordered.
- The manufacturer shall accept no liability for the loss of data that has been supplied or that is to be further processed.
- 15.3 The right of the customer to claim damages shall not exceed the above mentioned compensation entitlement. In particular, the manufacturer shall accept no liability for indirect or consequential damage, financial loss or damage due to loss of orders or loss of profits by the customer, etc.

16. Modifications, additions and partial invalidity

- 16.1 Modifications and additions to these General Terms and Conditions or to a contract between the manufacturer and a customer, as well as any other legally relevant declarations made by the parties to this agreement, must be in writing in order to become valid.
- 16.2 Should a condition of these General Terms and Conditions or of a contract between the manufacturer and a customer be invalid or unenforceable, the condition in question is to be replaced by a new, valid condition that approximates it as closely as possible in its legal or commercial objective. The validity of the other conditions of the contract and of these General Terms and Conditions shall not be affected.

17. Place of performance and jurisdiction

- 17.1 The place of performance for both parties shall be the domicile of the manufacturer.
- 17.2 For any disputes arising in connection with the individual contract between the parties to the contract and from these General Terms and Conditions, including disputes concerning validity of formulation, legal validity, modification or annulment, the courts at the domicile of the manufacturer shall have exclusive jurisdiction. The manufacturer shall also be entitled to submit a claim at the domicile of the customer or one of his subsidiaries. The customer expressly waives the right to his own place of jurisdiction at his domicile or that of his subsidiary, as well as any other places of jurisdiction.

18. Law applicable

The transactions of the parties under this agreement shall be subject to Swiss law. This shall apply in addition to the contract and the present General Terms and Conditions. The application of the United Nations Convention concerning contracts for the international purchase of goods (Vienna Sales Regulations) is in all cases excluded.

January 2011