

GENERAL TERMS AND CONDITIONS FOR BUSINESS, DELIVERY, QUOTES AND PAYMENT OF ELTEC ELEKTRONIK AG

Status September 1, 2015

I. General

1.1

These General Terms and Conditions for Business, Delivery, Quotes and Payment shall apply to all contracts made between **ELTEC** and the Buyer and to all other agreements made within the scope of the business relationship between **ELTEC** and the Buyer.

No other terms and conditions of business than these, in particular, the Buyer's general terms and conditions of business shall apply, even if **ELTEC** does not expressly object to them.

1.2

The Buyer shall be deemed to have recognized these General Terms and Conditions at the latest upon issuance of the written order confirmation by **ELTEC**.

1.3

In addition to these General Terms and Conditions, the relevant legal requirements set forth in the German Civil Code (BGB) and the German Commercial Law (HGB) shall apply accordingly.

1.4

ELTEC retains all copyrights for patterns, quotes, drawings and similar information of tangible and intangible nature – also in electronic format. Documents may not be made available to third parties without **ELTEC**'s prior consent. In the event that an order should not be placed with **ELTEC**, **ELTEC** shall be entitled to the return of the quotation documents.

1.5

ELTEC undertakes not to make any information and documentation that the Buyer classifies as confidential available to third parties without the Buyer's permission.

II. Conclusion of the Contract

2.1

These General Terms and Conditions shall be an integral component of every **ELTEC** proposal and offer.

2.2

ELTEC's proposals and offers shall principally not be deemed binding unless the commitment is made expressly in writing.

2.3

An order for delivery shall become effective only upon **ELTEC**'s written order confirmation. The invoice replaces the written confirmation of the order if **ELTEC** carries out the order immediately.

2.4

For any and all contract negotiations between the parties, all agreements made by telephone and any other agreements, especially alterations to the contractual agreements, to be effective, they shall be made in writing and if same should contain any deviations from the originally agreed upon contract, they shall also be subject to **ELTEC**'s written consent.

2.5

Orders the Buyer gives to **ELTEC** shall be considered requests for quotations to be made by **ELTEC**. **ELTEC** shall be under no obligation to deliver if the order is made in the form of a circular and/or price list. The contract first comes into effect with the confirmation of order by **ELTEC**.

III. Prices

3.1

Prices given are in Euro from the plant in Mainz, without packaging and dispatch costs, plus the statutory value added tax valid on the day of invoicing and the statutory delivery charges.

3.2

Unless otherwise expressly stated in individual cases, the price applies as stated in the **ELTEC** price list at the time of the confirmation of the order by **ELTEC**. On making the order the Buyer recognizes this price list and its contents.

3.3

In the event of a change in production or delivery conditions or of a verifiable change in prices resulting from third party costs due to an increase in raw material prices, labor tariffs or any other cost increases, such as those for instance caused by unforeseeable currency fluctuations and in the event of force majeure – in particular, due to events that occur in cases of general/master/skeleton supply agreements between the time the order was placed and the request of performance of services or deliveries, provided same occur more than 4 months after the placement of the order, **ELTEC** shall have the right to charge a price surcharge that is reasonable and congruent with the market situation as well as the retroactive cost surcharges of the sub-supplier.

The new price shall be valid for all orders and partial orders requested after the price increase. The Buyer shall have the right to terminate the individual request agreement to which the price adjustment pertains provided the parties fail to arrive at an agreement with regard to the price increase, unless the Buyer is responsible for the delay in requesting delivery. The right to terminate may be exercised by the Buyer only within 4 weeks upon issuance of the price increase notification.

3.4

If the purchase price is calculated in a foreign currency, the customer shall bear the risk of a worsened exchange rate ratio in relation to the euro from the time when the contract is concluded until payment.

IV. Delivery

4.1

Delivery dates stated by **ELTEC** shall principally not be binding upon **ELTEC** unless the former has explicitly confirmed such delivery dates in writing in individual cases.

4.2

Whenever fixed delivery dates have been agreed upon, **ELTEC** shall be required to comply with same only if all commercial and technical questions pertaining to the subject of the delivery have been clarified between the contracting parties and the Buyer has fulfilled the incumbent obligations, such as provision of approvals or payment of agreed down payments etc. Otherwise the delivery date will be extended until such obstacles have been removed.

4.3

The adherence to promised delivery dates shall be subject to correct and timely deliveries to **ELTEC**.

4.4

If expressly agreed delivery dates are not adhered to due to force majeure, industrial action, disruption of operations for reasons outside **ELTEC**'s control, non-delivery by **ELTEC**'s suppliers or any other events beyond **ELTEC**'s control, the delivery period will be extended suitably. **ELTEC** shall notify the Buyer in writing and without delay when they learn of circumstances that will cause the delay of delivery dates that have been agreed upon in writing, as to the duration of the delay in delivery and will agree on a new delivery date.

4.5

If a probable delivery date suggested by **ELTEC** will be delayed for the Buyer, without a fixed delivery date having been agreed, the Buyer has the right to set **ELTEC** a further deadline. The length of the supplementary deadline shall depend on the state of handling, the scope of delivery, the reasons for delayed delivery and the Buyer's interest in scheduled delivery. As a rule the remedial period should be four weeks at a minimum. In any event, **ELTEC** shall be required to commit to a final and binding delivery date to the Buyer.

4.6

The period of delivery shall be deemed complied with if the object to be delivered has been dispatched by the deadline. Where official acceptance is necessary – except for a case of rejection – the acceptance date set by **ELTEC** shall be definitive.

4.7

If the dispatch and/or acceptance of the subject of delivery should be delayed for reasons for which the Buyer is responsible, the Buyer shall bear any additional costs incurred for **ELTEC** as a result of the delayed acceptance.

4.8

Partial deliveries by **ELTEC** are permissible as long as the total delivery of the order remains possible.

4.9

In the event that **ELTEC** should fail to deliver within a definite agreed delivery period without having agreed an extension of the delivery deadline, the Buyer shall have the right to rescind from the contract if it will finally not be possible for **ELTEC** to make full delivery or if a partial delivery is not possible and a partial delivery is verifiably not of interest to the Buyer. If the impossibility or inability of the performance occurs during the delay of acceptance by the Buyer, the latter shall remain obliged to provide a service in return in the event of a rescission.

4.10

Further claims by the Buyer concerning damages due to nondelivery or delayed delivery shall be based on Article IX below.

4.11

Dispatch of the goods shall be made at the Buyer's expense. The risk of accidental loss and depreciation of the goods shall be transferred to the Buyer when the goods are handed over to the carrier. **ELTEC** undertakes to take out transport insurance for the goods to a location determined by the Buyer for a policy amount that covers the purchase price unless the Buyer expressly declines to have transport insurance taken out. The Buyer shall bear the cost of transport insurance.

V. Payments

5.1

Payments are to be made within 10 days of invoicing and delivery without any discount. Should there be a delay in payment, the Buyer will owe **ELTEC** interest on the arrears at 5 % above the current basic rate of interest.

5.2

Bills of exchange and predicated checks will only be accepted after prior written consent and only in fulfillment. Bank, discount and collection expenses will be charged to the Buyer. If several bills of exchange are given in payment, all the bills of sale are due if the next bill of sale due is not redeemed on schedule.

5.3

If the Buyer is in the arrears with a payment due, or declared insolvent, or if insolvency proceedings are initiated against Buyer's assets or those of Buyer's representative all of **ELTEC**'s pending entitlements shall be rendered due for payment immediately, regardless of any payment terms agreed.

5.4

The exercising of the right of withholding by the Buyer against the claims for payment by **ELTEC** on the basis of claims that have no legal connection with the contract of sale shall not be permitted. The setting off of any claims for payment against the claim of the right to withhold payment shall be permitted only for uncontested claims or those found legally final by a court of law.

VI. Retention of Title, Pledging, Assignment of Accounts Receivable

6.1

ELTEC expressly retains ownership of the goods delivered until complete payment of the sale price has been made. Until ownership of the goods has been transferred, the Buyer may not pledge the goods nor transfer ownership of the goods to a third party as security. Any assignment of the Buyer's rights to a third party shall be subject to **ELTEC**'s written consent.

6.2

If the title retention goods delivered by **ELTEC** are seized or confiscated by any third party, the Buyer shall be required to notify **ELTEC** without delay. The Buyer shall absorb all costs that arise in conjunction with efforts to obtain the release of the goods.

6.3

The Buyer shall have the right to sell the goods in the course of regular business operations, provided Buyer is not in the arrears with the fulfillment of Buyer's obligations to **ELTEC**. The risk of loss, damages or wear and tear during the period of retention of ownership shall be borne by the Buyer. When the Buyer combines the goods with other objects, **ELTEC** shall receive co-ownership of the objects with which it is combined equivalent to the value of the ratio of the other things combined with the **ELTEC** goods.

6.4

The Buyer cedes his claims resulting from the transfer of the retained goods up to the sum total of the respective net bill value of the reserved goods to **ELTEC** as security; **ELTEC** herewith accepts this cession.

6.5

ELTEC is authorized to cede or sell its claims resulting from deliveries and performances given to a bank for financing purposes.

VII. Withdrawal, Termination

7.1

The Buyer is entitled to terminate the contract of sale made with **ELTEC** at all times prior to its being executed and prior to delivery. If the termination is made for reasons outside **ELTEC**'s control, the Buyer is obliged to pay the full purchase price for goods already produced at the time of receipt of the termination. For products not yet produced at this point in time the Buyer shall owe **ELTEC** a flatrate compensation payment of 60 % of the purchase price if the termination is made within a period of 30 days prior to the expected delivery date. In other cases the Buyer shall owe **ELTEC** a flatrate compensation payment of 40 % of the purchase price unless the Buyer can prove lesser damages. **ELTEC** shall have the right to demand compensation for the damages that have actually been incurred instead of the flatrate compensation.

7.2

If the Buyer defaults with his payments or the fulfillment of any other obligations resulting from the contract with **ELTEC**, if the Buyer ceases to make payments or insolvency proceedings are initiated against Buyer's assets or if the Buyer or Buyer's representatives make an application for the opening of such proceedings, **ELTEC** shall have the right to terminate the contract with immediate effect and claim damages in lieu of full performance.

VIII. Warranty

For material and legal deficiencies pertaining to the goods or services, **ELTEC** shall offer the following warranty excluding further claims – with the exception of Article IX:

A. Material deficiencies

8.1

Only those quality details that are expressly agreed between **ELTEC** and the Buyer according to the performance specification and the written confirmation of order count as agreed upon. If the Buyer assumes performance characteristics that are contained in a brochure and not in the performance specification, the Buyer must notify **ELTEC** immediately after confirmation of the order, otherwise these shall not be deemed owed. Production deviations in the interest of market updates shall not be considered deficiencies.

8.2

Before putting the product into initial operation the Buyer shall carefully read the manuals, assembly instructions and instructions for use supplied. If the Buyer should have any doubts the Buyer shall have the right to receive immediate explanations and instructions. If an erroneous start-up in the absence of the Buyer's first obtaining additional technical instructions from **ELTEC** should result in damages to the purchase object, **ELTEC** shall be entitled to the reimbursement of the costs incurred as a result of the repairs; in this case any claims by the Buyer for consequential damages shall be excluded.



8.3

All parts that turn out to be defective shall be improved or replaced free of charge at **ELTEC's** discretion. **ELTEC** shall be notified of such defects immediately after they are detected; electronic transmission of the information by fax or email shall be deemed sufficient. The replaced parts shall become the property of **ELTEC**.

8.4

After written notification of defects the Buyer shall be required to give **ELTEC** sufficient opportunity for examining the defect and to undertake all the necessary improvements and replacement deliveries. To do so, an appointment shall be scheduled. In the absence of the former, **ELTEC** cannot be deemed in default of performance. Only in urgent cases where operational safety is endangered or in order to prevent disproportionately greater damage, whereby **ELTEC** is to be notified immediately, shall the Buyer have the right to repair the defects directly or have them fixed by a third party if **ELTEC** does not have time to carry out the repairs or cause them to be performed. In this case **ELTEC** shall be required to pay compensation for the proven costs of the repairs.

8.5

Within the scope of the statutory regulations the Buyer shall have the right to rescind from the contract if **ELTEC** – taking statutory exceptions into consideration – should ignore a reasonable period of notice for the repair or replacement delivery with respect to a material defect. The right to reduce the contractually agreed price in lieu of rescission from the contract remains unaffected in accordance with the statutory regulations. **ELTEC** shall still retain the right to avert the Buyer's exercising of the right to reduce the price by carrying out repairs or by making replacement deliveries.

8.6

Warranty coverage shall not be provided in the following cases: Unsuitable or improper use, incorrect assembly or putting into operation by the Buyer or a third party, natural wear and tear, incorrect or careless handling, improper maintenance, unsuitable resources, chemical, electrochemical or electrical influences – provided **ELTEC** is not responsible for such acts.

8.7

If the Buyer or a third party carries out repairs incorrectly, **ELTEC** shall not be liable for any resulting consequences. The same shall apply to any alterations to the subject of delivery made without **ELTEC's** prior written agreement.

8.8

Removal and destruction of the original technical labeling shall result in the voidance of the **ELTEC** guarantee.

8.9

ELTEC does not give any guarantee for defects in the subject of purchase that result accidentally or from any kind of improper handling by the Buyer or Buyer's representatives.

8.10

ELTEC shall not be liable for direct or indirect damage incurred by the Buyer in connection with defects in the subject of purchase unless **ELTEC** is guilty of deliberate action or gross negligence. In all cases in which **ELTEC** is liable for the replacement of secondary and/or asset damage the liability shall be limited to the sum of the insurance cover that **ELTEC** has agreed for the business liability. The Buyer shall have the right to demand proof of insurance coverage and the coverage amount at any time.

8.11

Where the delivery of software is concerned, **ELTEC** can demand that a product maintenance and adjustment contract be concluded. This may not, however, replace **ELTEC's** guarantee obligation to correct defects. It is, therefore, agreed upon that all problems that cannot be proven to be due to a fault in the subject of purchase is subject to chargeable maintenance after the end of the 6-month period laid down in § 476 BGB (German civil code).

8.12

No guarantee is given for software not manufactured by **ELTEC**. The rights that are apparent from the respective license agreement shall apply.

8.13

The period of guarantee for claims concerning defects made by the Buyer in accordance with §§ 437, 438 BGB is 24 months as of receipt of the goods. As far as regress claims as per § 479 BGB are concerned, a period of 6 months is agreed.

8.14

The sale of used hardware by **ELTEC** shall be subject to a warranty period of 24 months as of receipt of the goods.

B. Legal Defects

8.15

If the use of the subject of purchase leads to the violation of the domestic licensing rights of third parties, **ELTEC** shall indemnify the Buyer against any liability to pay costs of any resulting litigation and will obtain the rights for the Buyer to use the product freely at **ELTEC's** cost. In so far as it is reasonable to do so, **ELTEC** shall modify the subject of delivery in such a manner that no further copyrights belonging to third parties are violated.

If **ELTEC** cannot obtain the free usability without violating the copyrights belonging to third parties within a reasonable time, the Buyer shall have the right to rescind from the contract.

8.16

The above rights of the Buyer presume that

- » the Buyer will notify **ELTEC** of any claims of copyright infringements by third parties without delay

- » the Buyer will, within a reasonable scope, support **ELTEC** in deflecting any such claims made;
- » **ELTEC** reserves the right to retain protective measures including out-of-court settlements;
- » the legal defect is not due to the express instructions of the Buyer;
- » the infringement of rights was not due to the Buyer altering the subject of purchase without any authorization or has used it in a manner not conform to the contract.

IX. Compensation

9.1

In the event that the subject of purchase cannot be used or cannot be used in good time for reasons for which **ELTEC** is responsible as a result of failed, delayed or defective execution or the Buyer justifiable with draws from the contract, the Buyer can only claim compensation for further damages to Buyer's assets that exceed the subject of purchase if

- » the contract violation is due to deliberate action, fraud or gross negligence by an agent of **ELTEC** or a senior member of its management or if **ELTEC** cannot prove that the fault could not have been avoided even if the proper organization of the manufacturing process had been monitored by a senior employee.

9.2

If the object delivered is defective and **ELTEC** culpably fails to fulfill its obligation of later fulfillment or does so tardily, damages can be claimed to the same extent as set forth in Article 9.1.

9.3

The only minimally negligent violation of contractual duties and ancillary duties by organs or agents of **ELTEC** shall be subject to the following restrictions:

9.3.1

If **ELTEC's** obligation to pay compensation for damages should be based on minor negligent violation of cardinal contractual obligations (i.e. critical and primary delivery and contractual obligations), **ELTEC** shall limit its liability for damage compensation as well as the pertinent liability of its agents to the replacement of the contract typical and reasonably foreseeable, so-called cause-adequate damages under exclusion of any unforeseeable and remote consequential damages resulting from defects unless the damages have harmed the life of persons, caused personal injury or health damages.

9.3.2

In the event that **ELTEC's** obligation to pay compensation for damages should be based on minor negligent violation of contractual obligations or ancillary duties that are not cardinal in nature, **ELTEC** shall exclude any liability for damages on its part and on the part of its agents or statutory representatives unless the damages have harmed the life of persons, caused personal injury or health damages. This shall be without prejudice to **ELTEC's** liability under the product liability law.

9.4

ELTEC shall be liable only for damages that are caused as a result of handling at the plant or in the Buyer's building to other legally protected objects by **ELTEC** employees within the scope of the cost range that a similar businessman could normally insure against by obtaining liability insurance.

9.5

Additional claims shall be excluded.

9.6

The financial extent of **ELTEC**'s liability shall be limited to the policy amount covered by **ELTEC**'s business liability insurance, which as a rule, will be the highest amount that similar businesses can receive in coverage from German insurance companies.

X. Product Liability

10.1

The Buyer is released from liability in accordance with the EU directive on product liability in so far as compensation is claimed because of damages caused by the defectiveness of a product manufactured by **ELTEC**.

10.2

The release from liability only occurs in the event that the defectiveness of the Buyer's product occurred as a result of using the product supplied by **ELTEC**. The release from liability is not given in the event that **ELTEC** has manufactured a product according to the Buyer's specifications without knowledge of the end product or without having the opportunity to exercise influence with regard to its use.

10.3

The Buyer is not released from liability if there is a reason for exclusion from liability to **ELTEC's** advantage in accordance with Article 7 of the EU directive.

10.4

The limit of liability with regard to financial terms shall be equivalent to the limit set forth in Section 9.6.

10.5

In the event that **ELTEC** should be held liable for damages based on the manufacturer's liability pursuant to Article 823 German Civil Code (BGB; criminal basis for a claim), **ELTEC** shall limit its liability beyond the above provisions to the reimbursement paid by **ELTEC's** liability insurer. The coverage amount has been obtained on a damage/contract/object typical basis. In the event that the insurance company should not pay or should not pay in

full, this shall be without prejudice to **ELTEC's** liability, which shall remain limited to the insurance coverage amount. If the insurance coverage should not have been obtained on a damage/contract/object typical basis, **ELTEC's** liability shall be limited to the damage, contract and/or object typical damage amount.

XI. Statute of Limitation

All claims the Buyer may have against **ELTEC** – for whatever legal reasons – shall become invalid 12 months after acceptance or from the time the acceptance is fabricated according to this contract. Where claims concerning proven deliberate or fraudulent behavior are concerned or where claims under the product liability law are concerned the limitation periods apply as laid down in law.

XII. Licensing and Copyrights

12.1

If the scope of delivery includes software, this shall not entitle the Buyer to exclusive rights to use the software provided and the documentation pertaining to it for Buyer's own purposes. The license included shall be only for the use of the particular product supplied. Use of the software on more than one system shall be prohibited unless this is expressly contractually regulated.

12.2

The Buyer may only reproduce, update, translate the software, or transform the object code into source code within the scope legally permitted by the German copyright law (§§ 691 and subsequent UrhG). The Buyer shall be required not to remove manufacturer's details – especially copyright notices – without the prior written consent of **ELTEC**.

12.3

Sublicensing shall not be permitted without **ELTEC's** express approval.

12.4

Incidentally, copyrights, usage and exploitation rights to the product sold shall be retained by **ELTEC**, regardless of the provision of same to the Buyer. Copying of individual parts or systems of the **ELTEC** delivery shall be subject to the prior written consent of **ELTEC**.

XIII. Export and Re-export

The Buyer undertakes only to export or re-export the goods supplied by **ELTEC** when the relevant EU regulations and the provisions of the German foreign and commercial laws are adhered to. It is the Buyer's obligation to obtain insights into this area of the law.

XIV. Place of Jurisdiction

As long as is so agreed, the sole place of jurisdiction for all disputes resulting from contracts shall be Mainz, Germany.

XV. Final Clauses

15.1

The legal relationships between the parties shall be governed exclusively by the laws of the Federal Republic of Germany.

15.2

If the personal area of protection of the data protection law covers a Buyer, the Buyer herewith agrees to have Buyer data processed to the extent that this is necessary for the purpose of the contract.

15.3

In the event that one of the provisions of these General Terms and Conditions of Business, Sale and Delivery should be rendered ineffective, in particular, as a result of an objection under priority of law pursuant to the Act on General Terms and Conditions and as a result of the case law interpretation of individual provisions by superior courts, and if said ineffectiveness is determined by mutual agreement after the Buyer has objected or as a result of a legally effective ruling by a court of law, the pertinent ineffective provision shall be deemed to have been superseded by a provision that meets the intended content and purpose of the original ineffective provision as closely as possible with regard to the economic result and that can be agreed upon in a legally effective manner.

To this end, both parties shall be required to make a supplementary covenant to this Agreement pursuant to this severance clause.