

## GENERAL TERMS AND CONDITIONS OF PURCHASE

as of December 2018

### 1 SCOPE OF APPLICATION

These Terms and Conditions of Purchase shall apply to all purchase contracts and contracts for work and materials (hereinafter collectively referred to as „Supplies“) concluded by Suppliers with us. Deviating terms and conditions or supplemental terms and conditions shall not become part of the contract unless we expressly agree to them in text form. This shall also apply if we have unconditionally accepted the Supplier's offer despite being aware of the supplier's deviating terms and conditions. Our Terms and Conditions of Purchase apply only to merchants. They shall also apply to all future transactions with sellers and suppliers under contracts for work and materials (collectively referred to as „Suppliers“).

### 2 ORDER / CHANGES

In addition to these Terms and Conditions of Purchase, only the content of our order in text form shall apply. Orders or side agreements placed verbally or by telephone require our confirmation in text form in order to be effective.

If Suppliers who have a permanent business relationship with us do not reject an order by us in text form within 10 calendar days from the date of order at the latest, the order shall be deemed to have been accepted in accordance with our Terms and Conditions of Purchase.

For products, goods and work results (hereinafter collectively referred to as „Products“) which are manufactured specifically for our company, we are entitled to demand changes to the agreed product specifications at any time provided these changes can be implemented in the normal production process of the Supplier without considerable additional effort. We shall reimburse the Supplier for any documented reasonable additional costs arising as a result of such change. If such changes result in delivery delays which cannot be avoided with reasonable efforts in the normal production and business operations of the Supplier, the originally agreed delivery date shall be postponed accordingly. The Supplier shall notify us immediately in text form of any expected additional costs and delays in delivery which may be caused by such changes.

### 3 PRICES

The prices stated in the order are binding. Unless otherwise agreed, delivery shall be free to the place of delivery (DDP according to Incoterms 2010).

In the case of deliveries from abroad, the responsibility for duties, customs, packaging, transport and unloading as well as insurance shall be governed by the Incoterm codes (in accordance with Incoterms 2010) specified on the order, unless the parties agree otherwise. The costs for interim storage (demurrage) are borne by the party responsible for the interim storage.

All prices are fixed, unless the Supplier reduces the price in the period between the order and the delivery. In case of such price reduction our price must also be adjusted to reflect this. Reduced quantities do not entitle to price increases.

### 4 TERMS OF PAYMENT

Unless otherwise agreed, a payment period of 30 days net shall apply. A payment within a period of 10 days entitles us to deduct 3% discount. The discount period shall apply if the payment is made in accordance with the following rules of our central payment transactions. Pursuant to this the discount period shall begin as soon as a) the Products arrive at our premises complete and free of defects (unless we request – in text form - a partial delivery) and (b) we have received a due invoice.

CALCULATED END OF DISCOUNT PERIOD	DATE OF PAYMENT WITH DISCOUNT APPLIED
Between 1st and 10th of the month	10th of the month
Between 11th and 20th of the month	20th of the month
Between the 21st and monthend	monthend

A duly issued invoice requires that (i) a single copy is received by mail at the billing address stated in the order or by e-mail at the e-mail address [invoice@elten.com](mailto:invoice@elten.com) and (ii) the order number including the item number and material number, the VAT identification number and, if applicable, the applicable statutory VAT are stated. In the case of an intra-EU purchase, the goods tariff numbers and the weight must also be given.

## 5 PACKAGING / SHIPPING / TRANSFER OF RISK

Our separate packaging and transport regulations must be observed, which are available on our website at <https://elten.com/>. In all other respects, the Supplier has to ensure at its own expense that the packaging is appropriate for the delivery to the place of destination. The Supplier must take back packaging materials in accordance with the applicable legal regulations.

The order or PO-number must be stated in the dispatch notes, consignment notes, parcel labels and invoices as well as in any correspondence relating to the order.

Unless otherwise agreed, the Supplier's deliveries shall be made to the place of delivery and unloaded there by Supplier without any additional costs for ELTEN GmbH. All deliveries require a confirmation of delivery by an employee of ELTEN GmbH who is authorized to issue such confirmation at the place of delivery. The risk of transport, including the risk of unloading, shall be borne by the Supplier.

The risk of accidental loss or accidental deterioration shall pass to ELTEN GmbH when the goods are handed over to us as contractually agreed at the place of delivery. If shipment of the Products (Versendungskauf) has been agreed, the risk shall nevertheless only pass to us upon delivery to the agreed destination, unless expressly agreed otherwise. For work results under a contract for work, or when acceptance has been explicitly agreed, the transfer of risk shall not take place before acceptance.

## 6 DELIVERY PERIODS, DELAY IN DELIVERY

The delivery dates stated in the order are binding. Delivery periods begin at the time the purchase order is received by the Supplier.

If the Supplier realises that the contractually agreed delivery period cannot be met, the Supplier must inform us immediately in text form (e.g. by email), explaining the reason for the delay and its expected duration. We reserve our statutory rights due to delay on the part of the Supplier.

## 7 REQUIREMENTS FOR PRODUCTS

The Supplier shall ensure that the delivered Products correspond to the samples and the information supplied by the customer in prime quality and execution according to the placed order.

Hazardous and other substances requiring labelling shall be labelled in accordance with the statutory labelling requirements.

The Supplier must provide proof issued by a European testing institute accredited according to EN 17025 that the materials used comply with the then current SG test criteria catalogue (testing for harmful substances) of TÜV Rheinland Produkt und Umwelt GmbH, Cologne, the SGS Institut Fresenius GmbH, Taunusstein, and the Prüf- und Forschungsinstitut, Pirmasens, as well as with EN 20345 and EN 20347, respectively, as they are valid at the time of delivery. If the Supplier does not provide such proof, the Supplier shall make available the materials used available free of charge, and shall bear the costs for a corresponding material test initiated by us at a European testing institute accredited according to EN 17025.

The Supplier ensures that the delivered Products are in accordance with the respective state of the art and the applicable legal regulations (such as PCP - AZO - Chrome 6 - Regulations) and fully comply with DIN EN ISO 20345, 15090 (for fire brigade boots) or 17249 (for forest boots).

The Supplier is responsible for ensuring that the delivered Products, parts of Products or substances comply with the requirements of Regulation (EC) No. 1907/2006 (REACH) of 18 December 2006, as amended, and all national provisions adopted in implementation of this Regulation. The Supplier shall ensure that all obligations under this Regulation are fulfilled, in particular all requirements regarding the information of the Purchaser.

The Supplier warrants that the delivered products are his sole property and are free from third-party rights, in particular that they are not subject to any retention of title by third parties.

## 8 CLAIMS IN CASE OF DEFECTS

The Contractor's warranty obligations in case of defective deliveries or services are in accordance with statutory law, unless the following provisions stipulate otherwise.

To remedy a defect (Nacherfüllung) we may, at our discretion, demand the elimination of the defect (subsequent improvement) or delivery of a defect-free item (replacement delivery). The Supplier shall bear all expenses necessary to remedy a defect, in particular transport, travel, labour and material costs. If we have incorporated the defective Product in another object or attached it to another object in accordance with the Product's nature and intended use, the Supplier's obligation to remedy a defect comprises the obligation to reimburse us for our necessary expenses for removing the defective Product and for incorporating or attaching again the repaired or replaced defect-free Product.

The Supplier's remedy of a defect shall be deemed to have failed if the Supplier's first attempt is not successful within a reasonable period of time. In this case, we are entitled to remedy the defect ourselves and to demand compensation from the Supplier for the necessary expenses incurred. If remedying a defect is unreasonable for the Supplier or the Supplier refuses to remedy a defect, we are entitled to remedy the defect ourselves without setting a deadline to the Supplier.

## 9 TESTING / QUALITY CONTROL

For deliveries of Products manufactured by the Supplier specifically for our company, we may request information about the Products ordered at any time, in particular about the status of their manufacture. After prior notice we shall also be entitled to inspect materials, manufacturing processes and other activities serving the performance of the contract at the Supplier's business premises during normal business hours. Inspection of the Supplier's business secrets may be refused during such inspections, in which case we may have the inspection carried out at our expense by a third party contractually bound to secrecy in favour of the Supplier.

If the inspection is refused without due cause we are entitled to withdraw from the respective contract without any compensation for Supplier. The same shall apply if, due to defects or deviations from the contractual agreements, a delivery by the agreed delivery date is not possible.

## 10 NOTICE OF DEFECTS, STATUTE OF LIMITATIONS

In order to detect recognisable deviations in quality and quantity, we are obliged to examine incoming deliveries without undue delay as it is customary in the respective line of business. A notice of defects shall be deemed to have been made in good time if it is received by the Supplier within two weeks after our discovery of the defects.

The mutual claims of the contract parties shall become time-barred in accordance with the statutory provisions, unless otherwise stipulated below.

After a notice of defects, the period of limitation for our claims based on the defects shall be extended by the period of time between the notice of defects and the Supplier's remedy of the defect. If the delivery item is completely renewed, the limitation period begins anew; this also applies to partially renewed parts. The statute of limitations shall be suspended by the notice of defects to the Supplier until the Supplier rejects the warranty claims or refuses negotiations in text form. Insofar as we are (also) entitled to statutory claims for damages due to a defect, the regular limitation period pursuant to §§ 195, 199 German Civil Code (Bürgerliches Gesetzbuch, BGB) shall apply to these, unless the application of the special limitation periods of the law on sales or contracts for work and materials leads to a longer limitation period in the individual case.

## 11 MATERIALS AND INFORMATION

We reserve title and all intellectual property rights to the tools, samples, models and other objects or materials (collectively „Materials“) made available to the Supplier. Processing or transformation of Materials by the Supplier is carried out on our behalf. In the event of processing or mixing, we shall acquire ownership of the newly created items in proportion of the value of our Materials to the other processed items at the time of processing.

Upon request, the Supplier must return our Materials in their entirety and destroy copies made if they are no longer required by the Supplier in the ordinary course of business. Storage within the scope of statutory retention obligations as well as the storage of data for backup purposes within the scope of normal data backup procedures remain unaffected.

The Supplier is obliged to keep secret without any time limitation the terms and conditions of our orders as well as all information provided, in particular such information resulting from our Materials, and to protect it against access by third parties not involved in the contract. The obligation to maintain secrecy shall not apply to information of which the Supplier can prove that (a) it was already known prior to disclosure by us; (b) it was independently developed without recourse to, or use of, our information; (c) the Supplier has lawfully received the information from third parties who, to the best of the Supplier's knowledge, are not obliged to maintain secrecy to our benefit; (d) the Supplier or the public has become aware of it without breach of these provisions or of any other provision protecting our trade secrets; or (e) it must be disclosed by law or order of any government or court. In the latter case, the Supplier must inform us immediately in text form before disclosing the information concerned to third parties so that we can take measures against the imminent disclosure.

## 12 PRODUCT LIABILITY, INDEMNIFICATION

In the case of product liability claims by third parties against us for personal injury and/or property damage attributable to defects in a component supplied by the Supplier, we can demand indemnification from the Supplier, unless the product liability claims are based on an intentional or grossly negligent breach of duty on our part. Within the scope of this duty to indemnify, the Supplier must also reimburse ELTEN GmbH for expenses incurred as a result of a recall action which is carried out due to actual or imminent personal injury or damage to property. We shall inform the Supplier without undue delay about the matter and scope of impending product liability claims and/or recall measures and give the Supplier the opportunity to comment.

The Supplier is obliged to maintain adequate liability insurance.

## 13 INTELLECTUAL PROPERTY RIGHTS, RIGHTS OF USE

The Supplier shall ensure that delivered Products do not infringe any patents or other intellectual property rights of third parties. The Supplier shall indemnify us in full against any claims for damages by third parties due to such infringements of intellectual property rights.

Insofar as orders relate to Products which the Supplier manufactures specifically for us, the Supplier hereby grants to us a transferable and sublicensable right of use, processing and exploitation with regard to any copyrights and other intellectual property rights inherent in these Products, without any limitation as to time or territory. Compensation for granting these rights is included in the agreed prices.

## 14 LIMITATIONS OF LIABILITY

The Supplier's liability shall be governed by the statutory provisions unless otherwise agreed in these Terms and Conditions of Purchase. A limitation of liability is not agreed.

## 15 ASSIGNMENT / SET-OFF / RETENTION

The assignment of claims against us is only effective with our prior consent in text form; § 354a German Commercial Code (Handelsgesetzbuch, HGB) remains unaffected. We are entitled to offset the Supplier's claims against us. Our claims for such set-off do not have to originate from the same delivery relationship.

As long as we still have claims against the Supplier from incomplete or defective deliveries, we are entitled to withhold due payments.

The Supplier has a right of retention only in respect of such claims that derive from the same contractual relationship.

## 16 RIGHT OF WITHDRAWAL

In addition to other statutory and contractual rights of withdrawal, we are entitled to rescind the contract if

- the Supplier generally stops supplying customers;
- the Supplier generally suspends payments to its creditors;
- the Supplier is insolvent or overindebted; or
- a significant deterioration of the financial situation of the Supplier occurs or threatens to occur and the fulfilment of the delivery or service obligation towards us is thereby at risk.

## 17 PLACE OF PERFORMANCE / PLACE OF JURISDICTION / APPLICABLE LAW

The place of performance for deliveries shall be the place of delivery specified by us. If the Supplier is a merchant, the international jurisdiction of German courts shall be agreed. The place of jurisdiction shall be the courts responsible for Uedem, Germany. German law applies exclusively (excluding any references to other jurisdictions and excluding the UN Convention on Contracts for the International Sale of Goods).