

1 Scope of application

- 1.1 Unless otherwise agreed in writing by the contractual parties, the General Conditions of Purchase of Elsta shall apply exclusively for all orders, acquisitions, etc. of Elsta Mosdorfer GmbH (hereinafter referred to as "Elsta"), for quotations and payments made by Elsta or to Elsta, and for all deliveries, services and quotations made by the supplier.
- 1.2 The General Terms of Business or other Conditions of Sale of the supplier, which are indicated, for example, on quotations or other correspondence of the supplier, shall not form part of the contract with Elsta, unless Elsta has given its express written consent in advance. If, in exceptional cases, written consent is given to the application of other agreements, any deviations shall apply exclusively for this individual business case.

2 Quotations to Elsta

- 2.1 Quotations addressed to Elsta or cost estimates provided by the supplier shall be binding and free of charge – regardless of any necessary preliminary work – in the absence of any express proviso of the supplier that states otherwise. In the case of a quotation being made to Elsta, this quotation shall be binding for the supplier in relation to Elsta, unless it stipulates a longer period, for four weeks following receipt of this quotation.
- 2.2 A simple reference to quotations of the supplier, his Terms of Delivery or other Terms of Business in documents of Elsta shall not constitute recognition or acceptance of the latter, neither in full nor in any single part.

3 Order placement

- 3.1 Orders and changes to purchase orders shall only be valid if they are issued in writing by Elsta.
- 3.2 In the event of obvious errors, print, clerical, arithmetical errors and miscalculations on the part of Elsta, this shall not give rise to any obligation for Elsta. The supplier shall not be entitled to assert any claims of any nature whatsoever against Elsta on this basis.
- 3.3 Orders of Elsta shall be confirmed without delay by the supplier, no later than within two working days, in writing – and in advance by e-mail or fax. By sending the order confirmation the supplier gives his express, unconditional and legally binding consent to the currently valid version of these General Conditions of Purchase of Elsta and also accepts the latter as exclusively legally binding for all future orders as part of its business relationship with Elsta.
- 3.4 Regardless of the prompt transfer of the written order confirmation, the supplier shall be bound by the order submitted by Elsta and committed to perform the delivery in compliance with the contract. Elsta shall be entitled, however, to cancel the order without any obligations to perform and without stating any reasons if the order confirmation is not sent to Elsta within the above period. The same shall apply if the supplier objects to the acceptance of all or any individual provisions of the General Conditions of Purchase of Elsta. The supplier shall not be entitled to assert any claims of any nature whatsoever against Elsta on this basis.
- 3.5 If the order from Elsta differs from the quotation of the supplier and the supplier fails to confirm the order from Elsta within 2 working days, this shall not give rise to an effective contract in the first instance. However, the supplier shall continue to be bound by his original quotation. A contract including possible deviations from an order from Elsta contained in an order confirmation or including deviations from these General Conditions of Purchase of Elsta shall only arise if the supplier has made clear and detailed reference to the relevant deviation and Elsta has consented in writing to these deviations by means of a confirmation signed by the company. The unconditional acceptance of goods shall not under any circumstances constitute such consent.
- 3.6 The assignment of orders issued by Elsta, either in full or in part, in particular to subcontractors, shall require the express written consent of Elsta. Any violation of this provision shall entitle Elsta to the cancel the order without compensation, notwithstanding the assertion of further claims by Elsta.

4 Material supplies, drawings, tools, necessary resources for execution

- 4.1 Material supplies remain the property of Elsta and shall be stored, designated and administered separately and free of charge. Their use shall only be permitted for orders from Elsta.
- 4.2 Elsta must be informed immediately in the event of depreciation in value or loss. The supplier shall provide compensation on an unlimited basis.

- 4.3 Any materials, tools, patterns, samples, drawings, specifications, information, documents (copies, faxes, etc.), know-how or commercial property rights and similar provided by Elsta to enable execution of the order shall remain the property of Elsta and may not be passed on to third parties without the express written consent of Elsta or used for purposes other than those included in the contract. The supplier shall be bound to issue the tools, patterns, samples, etc. provided without delay upon first request from Elsta to the latter or to a third party designated by Elsta and to refrain from retaining any copies, data, etc. (in any form whatsoever).
- 4.4 Materials, tools, patterns, samples, drawings, specifications and similar that are produced at the expense of Elsta shall become the unconditional property of Elsta after they have been paid for.
- 4.5 All such materials, tools, patterns, samples, drawings, specifications and similar shall be labelled by the supplier as the property of Elsta and secured against unauthorised access and use, kept in perfect condition and, if necessary, repaired or replaced. In the event of third parties gaining access to these items that are the property of Elsta, the supplier must expressly refer to the property right of Elsta and inform Elsta without delay in writing of any imminent or actual interference.
- 4.6 The supplier may only plead the absence of necessary materials, tools, patterns, samples, drawings, specifications and similar to be supplied by Elsta, if this is challenged in writing and the necessary materials, etc. are not supplied within an appropriate period.
- 4.7 Materials, tools, patterns, samples, drawings, specifications and similar shall be returned to Elsta with the delivery or following any cancellation of the order at the cost and risk of the supplier.

5 Changes and withdrawal

- 5.1 The supplier shall be required to accept and implement materially justified and appropriate changes to the performance requirement or order from Elsta. If the implementation of the change within the framework of the operational efficiency of the supplier is unreasonable, however, or the change or extension is not feasible, the supplier shall inform Elsta without delay in writing. If the implementation of a change or extensions has effects upon the contractual performance framework (in particular payments, subject of the contract and/or time schedule), such effects shall be taken into account, as appropriate, by both parties.
- 5.2 Elsta reserves the right to demand at any time the interruption without any charges of the further execution of the order for the maximum duration of three months – without any further effects upon costs.
- 5.3 In the event of an interruption lasting over three months, Elsta shall bear the resulting costs, provided they are indicated in detail and can be supported by evidence. The supplier shall be obliged to make every effort to minimise costs. Any additional claims of the supplier, in particular for compensation for loss profits, shall be excluded.
- 5.4 Elsta shall also reserve the right, without any culpable negligence on the part of the supplier, to withdraw from the contract at any time either fully or partially. In this event, Elsta shall bear any costs incurred by the supplier prior to the withdrawal in proportion to the total order volume, provided such costs can be indicated in detail and supported by evidence. Any additional claims of the supplier, in particular for compensation for lost profits, shall be excluded.
- 5.5 The supplier shall be bound, in the event of the termination of the contract or cancellation or withdrawal of an order or one part thereof, to make every effort to minimise costs. For these reasons, any benefits that are obtainable or obtained by the supplier shall be set against his claims.

6 Delivery

- 6.1 The delivery dates listed by Elsta are binding and refer to the time when goods are received at the named point of delivery or the acceptance of services as stipulated.
- 6.2 Unless otherwise agreed expressly and in writing or stipulated in these General Conditions of Purchase, DDP (to the delivery address indicated) shall be required in accordance with the valid version of the Incoterms.
- 6.3 Deliveries must be performed listing all order dates.
- 6.4 Part deliveries are only permitted with the express written consent of Elsta.

- 6.5 Elsta reserves the right to return deliveries that do not correspond to the order, particularly in terms of order dates, in their original state, at the cost and risk of the supplier or to store them at the cost and risk of the supplier. In this event, the delivery shall be not considered to have been performed.
- 6.6 If the supplier anticipates that he will exceed the agreed delivery dates, the supplier must inform Elsta without delay in writing and seek a solution by mutual agreement with Elsta. If the supplier fails to do so or if no agreement can be reached, Elsta shall be entitled, notwithstanding the assertion of other claims, in particular the right of withdrawal, to deduct a penalty of 1 % per calendar day, irrespective of which party is at fault, but subject to the maximum amount of 15 % of the relevant total delivery price. In this event, Elsta shall be entitled in particular to take steps at the cost and risk of the supplier (e.g. substitute performance by third parties) in order to obtain an appropriate (substitute) delivery.
- 6.7 In the event of default in delivery, for which he is responsible, the supplier shall be bound to use the fastest available means of transport – regardless of the mode of shipment stipulated in the order – in order to minimise damage. Additional costs for a measure required in order to fulfil the agreed delivery date (e.g. express delivery) shall be borne by the supplier.
- 6.8 Early or part deliveries, unless agreed in writing, shall only be permitted with the written consent of Elsta. In the event of early delivery Elsta shall be entitled to charge the supplier for any resulting additional costs, such as storage and insurance costs. However, payment periods shall only commence on the contractually agreed date.
- 6.9 Any compensation claims of Elsta shall not be limited by the acceptance by Elsta of a delayed delivery or service of the supplier.

7 Prices

- 7.1 All prices are stated – in the absence of an express written agreement stating otherwise – as fixed prices including all charges and additional costs including transport costs and cannot therefore be changed by any one party for the relevant order.
- 7.2 If prices and conditions are not already stipulated in the order and only specified at a later stage, they shall only become valid if expressly accepted in writing by Elsta.
- 7.3 The packaging costs and all charges required by the applicable version of Packaging Ordinance are included in the price.

8 Payment

- 8.1 Payments shall be made after receipt of a proper and auditable invoice and the delivery and/or service have been performed in full and accepted. Payments shall be made according to the preference of Elsta either within 30 days minus a discount of 3 % or within 60 days minus a discount of 2 % or within 90 days for the net amount.
- 8.2 Payments shall constitute either acknowledgement of the correctness of the delivery or service or the abandonment of rights, to which Elsta is entitled.
- 8.3 The assignment of claims and the transfer of the collection of debts against Elsta to third parties shall be excluded, unless Elsta has expressly agreed otherwise in writing.
- 8.4 In the event of justified notice of defects, the payment period shall commence when the defect has been rectified.
- 8.5 Elsta shall be entitled to set any counterclaims against claims of the supplier.

9 Invoices

- 9.1 Invoices shall be sent in two copies to Elsta indicating all order dates immediately after the relevant delivery or service has been performed in full. The second copy shall be marked as a duplicate.
- 9.2 Invoices should be prepared in such a way that auditing, in particular comparison with the order, can be conducted in a straightforward manner.
- 9.3 In the event of invoices failing to comply with statutory requirements or our own requirements – particularly in terms of order dates or tax regulations – Elsta shall reserve the right to return any such invoices unprocessed. In this event, the invoice shall be considered not to have been presented.

9.4 Any offsetting by the supplier shall be excluded, unless otherwise expressly agreed in writing.

10 Transfer of ownership

10.1 The ownership of deliveries shall be transferred to Elsta in accordance with the Incoterms. Any retentions of title of the supplier shall be deemed unfounded and without legal effect.

11 Transport and allocation of risk

11.1 If no agreements are reached concerning transport, the means of conveyance and shipping method – subject to the exclusion of all liability for Elsta – shall be determined according to the preference of Elsta. In principle, the risk shall be transferred to Elsta following the complete performance of deliveries and services without any defects; in the event of early deliveries, however, not prior to the agreed delivery date. If an acceptance test has been agreed and if the latter is conducted the risk shall only be transferred to Elsta following the issue of a positive written declaration of acceptance by Elsta.

12 Defects, warranty

12.1 The provisions concerning defect notification and the obligation to give notice of defects in accordance with §§ 377 f UGB (Commercial Code) shall not apply.

12.2 The acceptance of deliveries or services, their use or the transfer of payments shall not constitute either acceptance or the abandonment of rights, to which Elsta is entitled.

12.3 The warranty period for deliveries and services shall cover 36 months following acceptance of the delivery or service by Elsta. If a hidden defect exists or a defect, which can only be identified after the delivery has been used for a certain period due to its nature, the relevant full warranty period shall commence after identification of the defect by Elsta. The same shall apply for the existence of agreed characteristics.

12.4 According to the preference of Elsta, the supplier shall rectify without delay any defects that appear within the above-mentioned warranty periods at his own expense within the agreed period or replace the defective delivery, unless Elsta immediately requests a price reduction or cancellation of the contract.

12.5 In the event of improvement or exchange, the entire warranty period shall recommence following the improvement or exchange undertaken.

12.6 If the same defect appears in over five per cent of the delivered parts (production defects), Elsta shall be entitled to return the entire delivery of a series as defective without any obligations to perform.

12.7 The assertion of other claims, in particular compensation claims, by Elsta shall not be affected in the event of the assertion of warranty claims.

12.8 In addition, Elsta shall be entitled to claim back all costs associated with the rectification of the defect from the supplier.

12.9 In the event of risk of further delay, for example, so that it does not fail to meet its own deadlines or in the event of the supplier delaying to rectify defects, Elsta shall be entitled, regardless of the amount of costs, to make a replacement at the cost of the supplier or to improve or arrange for a third party to improve the defective item.

12.10 Elsta shall be entitled to rights of recovery in accordance with § 933b ABGB (Austrian Civil Code) against the supplier, even if the customer of Elsta is not a consumer but a contractor. In this respect, the supplier shall abandon the plea of delayed assertion of the right of recovery in accordance with § 933b(2) ABGB (Austrian Civil Code).

13 Exemption from liability

13.1 The supplier shall indemnify and hold Elsta blameless for all disputes arising from deliveries and services concerning patent, brand and copyright protection and guarantee unrestricted use of the produced supplied. This claim of Elsta shall exist regardless of any fault of the supplier.

13.2 The supplier shall – whichever party is to blame – indemnify and hold Elsta completely blameless in relation to any product liability claims of third parties.

- 13.3 The supplier shall be bound to compensate Elsta for all costs, including legal costs, incurred by Elsta due to the contesting of claims by third parties or payment of compensation to third parties.
- 13.4 These risks shall be adequately insured by the supplier. Upon first request by Elsta, the supplier shall provide appropriate evidence of this insurance.

14 Confidentiality

- 14.1 The supplier undertakes to keep secret and refrain from making accessible to third parties and outsiders, copying and in particular from using for financial, commercial or academic purposes either in his own name and for his own account or that of another party or in another name for his account or that of another party, of all business and industrial secrets, in particular information, knowledge, experience, document, materials, goods, experiments, patterns, samples, drawings, machinery, equipment, technical processes, etc. and all know-how, which has been or is disclosed concerning Elsta (in any form whatsoever), unless otherwise agreed in writing with Elsta. This shall also apply for the existence of the contractual and business relationship. This confidentiality obligation shall also continue to exist for an indefinite period in the future, regardless of the existence of a business relationship (and its termination) with Elsta and/or a company linked to Elsta. The supplier shall commit his employees and any subcontractors to confidentiality in writing.

15 Code of conduct

- 15.1 The supplier undertakes to inform Elsta without delay and in writing, if he or members of his board of directors have been legally convicted or accused of corruption within the last three years.
- 15.2 The supplier and the members of his board of directors undertake to comply with the laws of the relevant and applicable legal system(s) and refrain from becoming involved, either directly or indirectly, in any form of corruption, child labour and/or violation of the basic rights of his employees. He shall assume responsibility for the health and safety of his employees in the workplace and compliance with environmental protection laws.
- 15.3 In addition, the supplier shall ensure as far as possible that his suppliers comply with this code of conduct.
- 15.4 If the supplier culpably violates these obligations, Elsta shall be entitled – after provision of an appropriate extension period – irrespective of further claims – to withdraw from the contract.

16 General provisions

- 16.1 Any correspondence that fails to indicate the order number shall be considered unfounded and returned to the supplier.
- 16.2 By accepting the order, the supplier expressly declares that he holds all authorisations required for the performance of the agreed deliveries and services. If special authorisations, permits or certifications are required for individual orders, they must be obtained promptly by the supplier without any special payment.
- 16.3 If one or more provision(s) of these General Conditions of Purchase and/or the agreements made between Elsta and the supplier are or become wholly or partially invalid, ineffective or unenforceable, this shall not affect the effectiveness and enforceability of all remaining provisions. The invalid, ineffective or unenforceable provision should, if legally permissible, be considered to have been replaced by the effective and enforceable provision, which approaches the invalid, ineffective or unenforceable provision as closely as possible in terms of amount, time, place or scope of application. The same shall apply for any gaps in this contract.
- 16.4 Any changes and additions to these General Conditions of Purchase shall require the written form in order to be effective and must be signed by the contractual parties or their authorised legal successors. This shall also apply in particular for any deviation from this requirement of the written form.
- 16.5 Regardless of the duration of the contract, the contractual relationship with the supplier may be dissolved in writing by Elsta with immediate effect at any time by means of a registered letter in accordance with Sections 16.5.1.-16.5.3. and by the supplier in accordance with Sections 16.5.1. and 16.5.2.:
- 16.5.1 if the supplier violates authoritative contractual provisions and the breach of contract is not sustainably and completely rectified within an appropriate period following receipt of a registered letter and threat of termination including reasons or a warning,

- 16.5.2 if any insolvency procedure is instigated in relation to the assets of the supplier or the application is dismissed due to lack of cost-covering assets, if the supplier applies for abatement or respite, is liquidated or otherwise initiates judicial or extra-judicial composition proceedings with the creditors concerning an extra-judicial legacy of debt.
- 16.5.3 if the ownership structure of the supplier changes decisively or if the control of the supplier or a significant part of his assets is transferred to other natural or legal persons and Elsta cannot reasonably be expected to tolerate this change.
- 16.6 The language of the contract shall be German. Any translations shall be provided solely for information purposes. In the event of conflicts of interpretation between the German version and the individual translations, the German text shall always prevail.
- 16.7 Austrian substantive law shall apply subject to the exclusion of the reference norms of the IPRG and EVÜ. The application of the rules of the UN Convention on Contracts for the International Sale of Goods (CISG) shall be excluded.
- 16.8 For any disputes arising from the contractual relationship between Elsta and the supplier, including the matter of the valid conclusion of the contract and the contractual relationship and its pre and after-effects, it is agreed that the competent court with jurisdiction *ratione loci* and *ratione materiae* for Elsta at its company headquarters shall have jurisdiction.