

#### **Clause 1 General Provisions**

- (1) The following terms and conditions of purchase shall apply exclusively to all orders of products and procurement of services of whatever kind that Elkamet Kunststofftechnik GmbH and Elkamet s.r.o. (hereinafter "Ordering Party") undertake in relation to the Supplier. The contractor, service provider and other contractual partners shall also be referred to as Supplier below.
- (2) The Ordering Party shall not recognize any terms and conditions of the Supplier that conflict with or differ from these terms and conditions of purchase, unless it gives its express written consent to their validity. If the Ordering Party takes receipt of the delivery/service without express objection, the acceptance of divergent terms and conditions may not be derived herefrom.
- (3) The Ordering Party's terms and conditions of purchase shall also apply to all future business transactions with the Supplier even if they are not expressly agreed again.
- (4) Execution of the purchase order shall be deemed to be recognition of these terms and conditions.
- (5) All agreements that are made between the Ordering Party and the Supplier for the purpose of execution of the Agreement shall be recorded in writing. Oral arrangements shall require written confirmation.
- (6) Remuneration or compensation for visits or the preparation of quotations, projects, plans etc. shall not be granted by the Ordering Party unless a purchase order is issued. Any agreements that state otherwise must be made in writing.

#### **Clause 2 Purchase Order and Order Confirmation**

- (1) In any correspondence, the order number or the name of the Ordering Party shown on the purchase order shall be quoted. Elkamet shall not be liable for any delays due to a failure to comply with this obligation.
- (2) The Ordering Party's technical documents, drawings, article geometries, work specifications and other information enclosed with the purchase order shall be an essential component of said purchase orders.
- (3) The Ordering Party may revoke the purchase order if the Supplier has not accepted it in writing within a deadline of 1 week following receipt (order confirmation).
- (4) If the order confirmation diverges from the purchase order, the Ordering Party shall be bound only if it has agreed in writing to the divergence. The acceptance of deliveries or services or payments shall not signify agreement.
- (5) The transfer of orders to third parties shall not be permitted without the express consent of the Ordering Party and shall entitle the Ordering Party to rescind the Contract in whole or in part and to demand compensation. If the Ordering Party gives its consent, the third party shall be deemed to be a vicarious agent of the Supplier.
- (6) Amendments or addenda to the purchase order shall take effect only if they have been confirmed in writing by the Ordering Party. Should the Supplier have (specialist or technical) reservations about the manner of execution requested by us, they must be conveyed in writing without delay.

#### **Clause 3 Prices**

- (1) The price shown on the purchase order shall be binding. Price increases shall be permitted only if written agreements in respect of the price have been made between the Parties.
- (2) The agreed prices plus the prevailing statutory value added tax shall apply. In the absence of written agreements to the contrary, the price shall include "carriage paid" delivery. Transport, shipping and packaging costs shall be borne by the Supplier. Any return of packaging shall require special agreements.
- (3) In the event of pricing ex works or ex sales depot of the Supplier, dispatch shall be made at the lowest costs in each case, providing the Ordering Party has not prescribed a particular transportation type. Additional costs due to a failure to comply with dispatch regulations shall be borne by the Supplier.

#### **Clause 4 Delivery**

- (1) In the context of the delivery and transportation of hazardous substances pursuant to the Act on the Carriage of Dangerous Goods dated 6 August 1995 (Federal Law Gazette, p. 212 ff.) and any ordinances, the contractor shall undertake to fulfil the statutory regulations.
- (2) Excess deliveries and partial deliveries shall not be permitted, unless Elkamet has expressly agreed to them in writing. Acceptance of excess deliveries or partial deliveries shall not signify consent.
- (3) The contractor shall provide, free of charge and in a form that is capable of duplication, all documents required for the acceptance inspection, operation, maintenance and repairs, particularly test reports, factory certificates, drawings, plans, operating instructions and repair handbooks.
- (4) Our goods receipt office is open Mo – Thu 7.00am to 2.30pm and Fri 7.00am to 2pm.

#### **Clause 5 Delivery Period, Delayed Delivery**

- (1) The delivery period specified in the purchase order shall be binding and shall, unless a fixed date has been agreed, commence from the date on which the purchase order is issued. The data on which the goods are received at the shipping address specified by us shall determine the timeliness of delivery.
- (2) The Supplier shall be obliged to notify the Ordering Party immediately in writing, specifying the reasons and the anticipated duration of the delay, if circumstances occur or if the Supplier becomes aware of circumstances which imply that it will be unable to fulfil its contractual obligation in whole or in part or in good time. If the Supplier fails to inform the Ordering Party, it may not invoke the obstacle vis-à-vis the Ordering Party.
- (3) If the Supplier does not fulfil its contractual obligation within the agreed delivery period or on a specific fixed date, the Ordering Party shall be entitled to charge a contractual penalty of 0.2%, but in any case no more than 10%, of the total delivery or service value for each calendar day or part thereof in which the Supplier is in default. This shall not affect further statutory claims. In addition to the contractual penalty, the Ordering Party may demand compensation for any direct and indirect damages in excess of this, including consequential damages, incurred as a result of the delayed delivery. The Ordering Party shall also be entitled, once an appropriate grace period has expired without success, to demand compensation in lieu of performance. This shall not affect the agreed contractual penalty. The contractual penalty incurred shall, however, be offset in these cases.
- (4) The unqualified acceptance of a delayed delivery or service shall not signify waiver of the claims to which we are entitled on account of the delayed delivery or service; this shall apply until the fee owed by us has been paid in full.
- (5) The contractual penalty may – in addition to fulfilment – be asserted if the Ordering Party makes a reservation, pursuant to section 341 (3) of the *Bürgerliches Gesetzbuch* (German Civil Code - BGB), vis-à-vis the Supplier within 10 working days of having taken receipt of the delayed delivery.
- (6) A delivery that is made early without our consent shall not affect the payment obligations based on the agreed delivery dates.

#### **Clause 6 Transfer of Risk**

- (1) Unless otherwise agreed in writing, risk shall pass upon "DAP Incoterms® 2010" delivery.
- (2) In the event of delivery involving installation or assembly and in the event of services, risk shall pass upon acceptance; in the event of delivery without installation or assembly, it shall pass when the delivery is received at the point of receipt designated by the Ordering Party.

#### **Clause 7 Force Majeure**

- (1) Cases of force majeure shall release the contractual partners from performance obligations for the duration of the disruption and to the extent of its effect. The contractual partners shall, within the scope of what is reasonable, be obliged to provide the required information without delay and to adjust their obligations to the changed circumstances in good faith.
- (2) In cases of force majeure and events over which we have no control, we shall also be entitled, without prejudice to our other rights, to rescind the Contract in whole or in part, providing these events are not of negligible duration and our requirements are considerably reduced owing to the necessary procurement elsewhere or our interest in the delivery wholly ceases as a result.
- (3) An event of force majeure experienced by the Supplier may not be due to a lack of personnel, production materials or resources, strike, breach of contract by third parties engaged by the Supplier or financial problems of the Supplier, or to an inability to obtain the necessary licences for the software to be supplied or the necessary legal or official approvals or authorizations for the goods or services to be supplied.

#### **Clause 8 Defect Analysis and Warranty / Liability for Defects in Quality**

- (1) The Supplier shall warrant that all deliveries and services are of the agreed quantity and quality, are state of the art in terms of technology and comply with the relevant national and international legal provisions, particularly those relating to the prohibition of child labour and the regulations and guidelines of authorities, professional associations and trade groups. If divergences from these regulations are necessary in individual cases, the Supplier must obtain the Ordering Party's written consent hereto. The Supplier's liability for defects shall not be limited by such consent. If the Supplier has reservations about the manner of execution required by the Ordering Party, it shall inform the Ordering Party thereof without delay.
- (2) The Supplier shall also warrant that, as far as is economically and technically possible, it uses environmentally friendly products and methods in respect of its deliveries or services. It shall be liable for the environmental compatibility of the supplied products and packaging materials and for any and all consequential damages incurred as a result of any breach of statutory disposal obligations. At the request of the Ordering Party, the Supplier shall be obliged to issue a quality certificate for the supplied goods.
- (3) The liability of the Supplier shall always extend to wilful intent and negligence.
- (4) Unless otherwise expressly agreed, the warranty period shall be 2 years. It shall commence upon transfer of the delivery item to the Ordering Party or a third party designated by it at the point of receipt or use prescribed by the Ordering Party. In the event of delivery of the goods received – individually or in processed state – to customers of the Ordering Party, the deadline for hidden defects shall commence upon delivery to the corresponding customer. Claims for defects in quality, however, shall become time-barred in these cases no later than upon expiry of 36 months from the time of transfer of the delivery item to the Ordering Party or a third party designated by it.
- (5) In the case of devices, machinery and equipment, the warranty period shall commence upon the acceptance date that is specified by the Ordering Party in its written declaration of acceptance. If the acceptance inspection is delayed through no fault of the Supplier, the warranty period shall be 2 years after the delivery item has been duly made available for the purpose of acceptance.
- (6) With regard to delivery parts which were unable to remain in operation during the investigation of a defect and/or defect removal, any warranty period that is in process shall be extended by the period for which operation was interrupted. The warranty period for newly delivered parts shall re-commence upon their delivery. Any idle periods that are due to defects in the delivery/service shall be added to the warranty period.
- (7) Notwithstanding section 377 of the *Handelsgesetzbuch* (German Commercial Code - HGB), goods receipt shall be subject to a subsequent goods receipt quality control. The Ordering Party shall examine the delivery/service in terms of any quality or quantity variances within a reasonable deadline in accordance with the conditions of the ordinary course of business. Obvious defects shall be reported in writing to the Supplier immediately upon their identification. The notification of defects shall be deemed to be timely if it is provided within a deadline of no more than 14 days after the Ordering Party receives the delivery. The Ordering Party shall report, and object to, hidden defects in writing to the Supplier no later than within 14 days from the time at which they come to its notice.
- (8) Any defect that exists within the first 6 months of delivery shall be assumed to have existed already upon transfer of risk.
- (9) The Ordering Party shall be fully entitled to the statutory warranty claims. It shall be entitled, at its option, to demand that the Supplier remove the defect or provide a new delivery. In this case, the Supplier shall be obliged to bear all the expenses required for removing the defect or providing a new delivery. The Ordering Party shall expressly reserve the right to rescind the Contract or reduce the price and to claim damages or compensation for the wasted expense.
- (10) If the Supplier does not comply with its obligation arising from the liability for defects within a reasonable deadline set by the Ordering Party, the Ordering Party may itself take the required measures, or have them taken by third parties, at the Supplier's expense and risk. In urgent cases, the Ordering Party may, in consultation with the Supplier, remedy the defect itself or have such remedy performed by third parties.
- (11) The Ordering Party may, in fulfilment of its duty to mitigate loss, remove minor defects itself without prior consultation, without the Supplier's obligations arising from its liability for defects being limited thereby. The Ordering Party may charge the required expense to the Supplier in this case. The Ordering Party shall have the same right in urgent cases and/or if unusual high losses are impending. The Ordering Party shall exercise due care and diligence in deciding whether a case of this type exists.
- (12) The Supplier shall be obliged to report any claims for recourse to its upstream suppliers immediately such claims are asserted by the Ordering Party. Regardless of this, the Supplier's own obligation in relation to the Ordering Party shall continue to exist.
- (13) The statutory provision (sections 478, 479 of the BGB) shall apply to the Ordering Party's rights of recourse on account of defective goods, whereby the Ordering Party shall also have the rights to recourse if the delivery is only partial and/or the purchase is not deemed to be a purchase of consumer goods. Furthermore, the Ordering Party's rights to recourse shall, notwithstanding section 479(2) of the BGB, become time-barred no earlier than 6 months after the moment in time at which the Ordering Party fulfilled the claims of its purchaser.

#### **Clause 9 Product Liability – Indemnification**

- (1) If the Ordering Party is held liable, on account of the defectiveness of a product, based on a breach of official safety regulations or due to product liability provisions or laws in Germany or abroad and if said defectiveness is due to the Supplier's goods, the Supplier shall be obliged to compensate the Ordering Party for the damages or to indemnify it, on first demand, against third-party claims for damages, insofar as the cause has been deemed to fall within its area of control or organization. The damages shall also include the cost and expense of a recall campaign as well as those of any legal defence required in Germany and abroad.
- (2) The Supplier shall designate the delivery items in such a way that they are identifiable, in the long term, as its products. It shall carry out quality assurance that is appropriate in terms of type and extent and is state of the art in terms of technology and provide evidence thereof to the Ordering Party upon request. The Supplier shall, where the Ordering Party deems such to be necessary, enter into a corresponding quality assurance agreement.

#### **Clause 10 Property Rights, Defects in Title**

- (1) The Supplier shall warrant that, in connection with its delivery, no domestic or international commercial property rights or third-party copyrights are infringed, in particular by the manufacture, processing, use or onward sale of the offered and supplied goods and other services.
- (2) A limitation period of 10 years shall apply to defects in title.
- (3) If the Ordering Party is held liable by a third party on these grounds, the Supplier shall be obliged, on first demand, to indemnify the Ordering Party against such claims.

- (4) The Supplier's obligation to indemnify shall also extend to all expenses that we incur as a result of, or in connection with, the claims made by a third party, including the costs and expenses of any legal defence required in Germany and abroad.
- (5) The Ordering Party shall also be entitled, at the Supplier's expense, to obtain the required licences for delivery, commissioning, use etc. from the owner of the property rights.

#### **Clause 11 Retention of Title, Tools, Moulds, Samples, Materials Supplied**

- (1) We shall not recognize expanded retentions of title. The same shall apply to contractual pledging of our claims against our customers in the context of an extended retention of title.
- (2) Materials supplied shall remain the property of the Ordering Party and shall be stored, designated and managed separately without cost to the Ordering Party. The Supplier shall be permitted to use said materials only for the Ordering Party's orders. The contractor shall provide compensation in the event of reduction in value or loss. A list of materials shall be submitted to the Ordering Party on request.
- (3) Any processing or transformation of the material by the Supplier shall be carried out on behalf of the Ordering Party. If the goods subject to retention are processed with other objects that do not belong to the Ordering Party, the Ordering Party shall acquire co-ownership of the new object proportionately to the value of the Ordering Party's objects in relation to the other processed items at the time of processing.
- (4) The Ordering Party shall retain the right of ownership and copyright to all illustrations, cost estimates, drawings, samples, models, moulds, profiles, standard specifications sheets, calculations, tools etc. prepared for the Supplier or submitted to it. They may not, without the Ordering Party's express written consent, be copied, duplicated or made accessible to third parties. They shall be used solely for the purpose of manufacture for the Ordering Party. They shall be secured against unauthorized access and use and kept secret from third parties. Once the purchase order has been processed, they shall be returned to the Ordering Party without charge to it and without a request for such action.
- (5) Subject to further rights, the Ordering Party may demand surrender if the Supplier is in breach of these obligations.

#### **Clause 12 Confidentiality**

- (1) Irrespective of the scope of Clause 11 (4), all business or technical information that we make accessible to the Supplier shall, as long as and to the extent that it is not demonstrably in the public domain, be kept secret from third parties. This information shall remain our exclusive property; we reserve all rights to it. Said information may not, without our prior written consent, be duplicated or used commercially save for contractual performance to us.
- (2) The Supplier shall, on request, return all information that we have supplied (including, where appropriate, copies or recordings) and items that we have loaned without delay and in complete form or destroy same.
- (3) Products that have been manufactured in accordance with documents prepared by us, such as drawings, models, formulations or such like, may not be used by the Supplier for its own purposes, or offered or supplied to third parties.

#### **Clause 13 Liability/Insurance Policies**

- (1) To cover general liability risk and all risks arising from product liability including recall risk, the Supplier shall be obliged to take out liability insurance with sufficient cover and to provide evidence of such cover at the request of the Ordering Party. In other respects, the statutory provisions shall apply.
- (2) Transport insurance shall be taken out solely by the Supplier.

#### **Clause 14 Invoicing**

- (1) Invoices shall be submitted separately following completed delivery, quoting the order and article number shown on the purchase order.
- (2) If the invoice is received later than the goods, calculation of the discount period shall be determined by the date of receipt of the invoice and not the date of receipt of the goods. Where partial deliveries have not been expressly agreed, a total invoice shall be issued (in duplicate) for each purchase order following complete delivery.
- (3) Receivables from the Ordering Party may be assigned only with its written consent.

#### **Clause 15 Payments**

- (1) Unless otherwise agreed in writing, payments shall be made within 14 days, with deduction of 3% discount or 30 days net.
- (2) The payment period shall commence as soon as the delivery or service has been provided in full and a properly issued invoice has been received.
- (3) Deduction of discount shall also be permitted if the Ordering Party sets off or withholds a reasonable amount of payments due to defects; the payment period shall commence once the defects have been completely removed.
- (4) The Ordering Party shall have the statutory rights of set-off and retention.

#### **Clause 16 Place of Performance, Applicable Law, Place of Jurisdiction, Severability**

- (1) The place of performance for the deliveries and services shall be the point of receipt designated by the Ordering Party. Unless otherwise stated in the order confirmation, the place of performance shall be the business domicile of the Ordering Party. The law of the Federal Republic of Germany shall apply to these terms and conditions of purchase and to the entire legal relationships between Ordering Party and Supplier. Application of the United Nations Convention of 11/04/1980 on Contracts for the International Sale of Goods (CISG) shall be excluded.
- (2) Where the Supplier is a merchant within the meaning of the German Commercial Code, a corporate body under public law or a special fund under public law, the court of jurisdiction for any disputes arising directly or indirectly from the contractual relationship shall be established at the domicile of Elkamet GmbH. The Ordering Party reserves the right to sue the Supplier at its general court of jurisdiction.

#### **Clause 17 Validity Clause**

- (1) Should a provision in these terms and conditions of purchase or a provision in the context of other agreements be or become invalid, this shall not affect the validity of any other provisions or agreements. In place of the invalid provision, the legally valid provision that comes as close as possible to the economic intent of the invalid provision shall be agreed.

#### **Clause 18 Privacy Policy**

You can find our Data Protection Policy here: <https://www.elkamet.com/en/infopoint/data-protection>