

**This English translation of the general and standard terms and conditions of ELWE Technik GmbH has been prepared as a guide. The German version of the terms and conditions as submitted to the customer represents the legally binding version and takes precedence over this English version.**

## **General and standard terms and conditions of delivery and payment of ELWE Technik GmbH**

**(Status September 2010)**

### **I. Scope**

1. The terms and conditions of sale set out below apply to all contracts concerning the delivery of goods entered into between the buyer and ourselves. The terms and conditions also apply to all future business relationships even in the event that they are not explicitly agreed for whatever reason. Any deviating terms and conditions of the buyer which we do not explicitly accept and acknowledge are non-binding even in the event that they are not explicitly contradicted. The terms and conditions of sale set out below shall also apply even in the event that we unconditionally fulfil a customer order despite being aware of the customer having contradictory or deviant terms and conditions.
2. The contracts shall specify in writing all agreements existing between the buyer and ourselves concerning the performance of sales contracts.

### **II. Offer and conclusion of contract**

1. Any order prepared by the buyer and deemed an offer for the conclusion of a contract of sale may be accepted by ourselves within two weeks by submitting a confirmation of order or by dispatching the ordered products within the same period.
2. Our offers are conditional and non-binding unless they are explicitly marked by ourselves as being binding.
3. We reserve all rights to ownership, copyright and other industrial property rights on all diagrams, calculations, drawings and other documents. The buyer may only disclose these/forward these to third parties with our prior written consent irrespective of whether the documents are marked as confidential or not.

### **III. Terms of payment**

1. Our prices are ex works without packaging, unless otherwise specified in the confirmation of order. Our prices are net and do not include the valid rate of value added tax. VAT shall be itemised on the invoice at the valid rate on the date of billing.
2. Discounts are only authorised subject to explicit written agreement between ourselves and the buyer. The net purchase price (i.e. without deductions) is subject to immediate payment upon receipt of the invoice by the buyer unless other dates of payment are specified in the confirmation of order. A payment is considered fulfilled when we have full disposal over the amount. In the event of payment by cheque, the payment shall only be considered fulfilled upon full redemption.
3. If the buyer is in default of payment, the legal provisions shall apply.

4. The buyer is only entitled to set off, also if asserting complaints for defects or counter-claims, if the counter-claims are legally stipulated as valid, are acknowledged by us or are not disputed. The buyer is only authorised to exercise withholding rights provided the counter-claim is with respect to the same business relationship.

### **IV. Delivery and performance deadlines**

1. Delivery deadlines or times not explicitly agreed as binding are for information purposes only. The delivery time specified by us shall only apply after all technical issues have been clarified. Similarly, the buyer shall correctly and punctually fulfil all respective obligations.
2. In the event that the sale contract is a fixed transaction in the sense of § 286 section 2 no. 4 BGB (German Civil Code) or § 376 HGB (German Commercial Code), our liability shall be in accordance with the legal provisions. Similar applies if the buyer is entitled, due to our being in default of delivery, to assert discontinuance of his interest in subsequent contract fulfilment. Accordingly, our liability is limited to the foreseeable, typical damages if the delay in delivery is not due to a deliberate breach of contract on our part, whereby we may be deemed responsible for the culpability of our representatives or agents.

In accordance with legal provisions, we may only be held liable by the seller in the case of delivery delay if this is due to intent or a grossly negligent breach of contract for which we are responsible, whereby we may be deemed responsible for the culpability of our representatives or agents. Our liability is limited to foreseeable technical damages if the delivery delay is not due to an intentional breach of contract for which we are responsible.

3. In the event that a delivery delay for which we are responsible is due to a culpable breach of a cardinal contractual obligation, whereby we are deemed responsible for the culpability of our representatives and agents, we shall be liable in accordance with the legal provisions to the extent that the liability for the damages is limited to foreseeable, typical damages.
4. A further going liability on our part for the occurrence of delivery delay is excluded. Further legal rights of the buyer in addition to damages for a delivery delay for which we are responsible are unaffected by this.
5. We are entitled to partial delivery and partial performance at any time insofar as this is reasonable for the customer.
6. If the customer is in breach of acceptance, we are entitled to demand compensation for damages incurred and any additional expenses. Similar applies if the buyer is culpable for breaches of cooperation obligations. The risk of accidental

deterioration and accidental loss transfers to the buyer at the time of acceptance or mora debitoris.

## **V. Transfer of risk – shipment and packaging**

1. Loading and shipment takes place without insurance at buyer's risk. We shall make all efforts with respect to type of shipment and shipment route to reflect the wishes and interests of the buyer; any additional costs resulting – also in the case of agreed free freight – shall be at buyer's expense.
2. We do not accept the return of transport or any other packaging in accordance with the packaging regulations. The buyer is responsible for ensuring proper waste management of packaging at his own expense.
3. If shipment is delayed at the wish of or the fault of the buyer we shall store the goods at buyer's expense and risk. In this case, the advice of readiness to ship shall be deemed as actual shipment.
4. At buyer's request and expense we shall also insure shipment by way of a transport insurance policy.

## **VI. Warranty/liability**

1. Any deficiency claims of the buyer shall only arise if the buyer has fulfilled his inspection and complaint obligations correctly in accordance with § 377 HGB.
2. We are obliged in the case of justified complaints and excluding the buyer's right to withdraw from the contract or to reduce the purchase price (reduction) to subsequent fulfilment unless we are entitled refuse subsequent fulfilment pursuant to legal provisions. The buyer shall grant us a reasonable period for subsequent fulfilment. Subsequent fulfilment may be undertaken at the buyer's discretion by rectifying the deficiency (rework) or delivery of new goods. We shall in the case of defect rectification bear any necessary expenses insofar as these are not made higher by the goods being located in a place other than that of place of fulfilment. If the subsequent fulfilment is unsuccessful, the buyer may at his discretion demand reduction in purchase price (reduction) or declare his withdrawal from the contract. The rework shall be considered unsuccessful after the second failed attempt insofar as further rework attempts are deemed unreasonable because of the properties/characteristics of the goods and are deemed unreasonable for the buyer. Claims for damages may first be asserted by the buyer because of the defect subject to the terms and conditions set up below only after subsequent fulfilment has failed. The rights of the buyer to assert further going claims to the terms and conditions as below are unaffected.
3. The buyer's warranty rights expire one year after delivery of the goods to the buyer, unless defects have been wilfully concealed; in this case legal provisions apply. Our obligations as arising from Section VI number 4 and Section VI number 5 are unaffected by this.
4. Irrespective of the restrictions to liability specified below, we shall be liable in accordance with legal provisions for damage to life, body and health as a result of dereliction of duty due to intent or negligence by ourselves, our legal representatives

or agents, as well as for damages covered by liability in accordance with product liability act. We shall be liable pursuant to legal provisions with regard to damages not specified in line 1 above and due to contractual breaches caused by intent or gross negligence or wilful concealment by us, our legal representatives or agents. In such cases, however, compensation for damages is limited to foreseeable, typical damages insofar as we, our legal representatives or agents have not acted with intent. With respect to the scope to which we have extended warranties regarding properties and/or durability of goods or parts of same, we shall be liable as per the provisions of this warranty. With respect to damages based on defects in warranted properties or durability but which do not arise directly on the goods we shall only be liable if the risk of such damage is obvious and apparent from the warranted properties or durability.

5. We shall also be liable for damages caused by breaches due to simple negligence of such cardinal obligations the fulfilment of which is a prerequisite for proper execution of the contract and compliance with which customers may expect in the normal course of events. In this regard we are, however, only liable for typical and foreseeable damages associated with the contract.
6. Further going liability is excluded irrespective of the legal nature of the asserted claim, in particular with respect to tort claims or claims for compensation of claimed expenses in lieu of performance; this does not affect our liability as specified in Section IV no. 2 through Section IV no. 3 of this contract. Insofar as our liability is excluded or limited, this also applies to the personal liability of our employees, representatives and agents.
7. Buyer's claims for damages due to defects have a period of limitation of one year from delivery of the goods. This does not apply to cases relating to damages to life, body and health for which we, our legal representatives or agents are culpable or if we or our legal representatives have acted with intent or gross negligence or if our simple agents have acted with intent.

## **VII. Reservation of title**

1. Goods shall remain our property (conditional goods) until such time as fulfilment of all claims in our favour from the buyer including all current account balance claims, both now and in the future. In the event of buyer being in breach of this contract, i.e. default of payment, we have the right after previously specifying a reasonable deadline to recover the conditional goods. Should we recover the conditional goods this shall be deemed as a withdrawal from the contract. If we detain the goods under reservation of title, this represents withdrawal from the contract. We are entitled to utilise the conditional goods after recovery. After deduction of a reasonable sum for the utilisation costs, the income from the utilisation shall be netted out against the buyer's outstanding debt.
2. The buyer shall treat conditional goods with all due care and attention and insure said goods at his expense against damage due to fire, water and theft to their new value. The buyer shall in good time undertake any necessary maintenance and inspection work at his own expense.

3. The buyer is entitled to sell and/or use the conditional goods in regular business transactions provided he is not in payment default. Pledges or granting of collateral interests on the conditional goods are not permitted. Any claims arising with respect to the conditional goods from the resale or other legal reason (insurance, non-permitted actions) (including all current account balance claims) are herewith for reasons of prudence assigned to us by the buyer in their full amount; we herewith accept the assignment. We herewith revocably authorise the buyer to collect moneys from the claims assigned to us to his account and in his own name. This debt collection authorisation may be revoked at any time if the buyer does not correctly satisfy his payment obligations. The buyer is not authorised to assign these claims, also not the for the purpose of debt collection by way of factoring, unless this takes place simultaneously with the obligation of the factoring party to transfer the consideration equal to the amount outstanding directly to us for that period in which the buyer still has debts outstanding.
4. The processing or reformation of the conditional goods undertaken by the buyer takes place on our behalf. If the conditional goods are combined with items not our property we are granted herewith co-ownership rights on the new items to the ratio of the value of the conditional goods (invoice amount including VAT) with the other items processed at time of processing. Similar applies to the new item resulting from the processing. In the event of the conditional goods being mixed with other goods not belonging to us in a way such that they are inseparable, we herewith acquire co-ownership of the new item in the ratio of the value of the conditional goods (final invoice amount including VAT) to the other mixed items at time of mixing. If the item of the buyer is considered the major portion after mixing, the buyer and ourselves concur that

the buyer assigns to us a proportionate co-ownership of that item. The assignment is accepted herewith. The buyer shall safe keep our sole or co-ownership in the article so resulting.

5. In the event of third parties seizing the conditional goods in particular by way of distraint, the buyer shall advise of our ownership and advise us immediately such that we can assert our ownership rights. Insofar as the third party is not able to compensate us for any incurred legal or out-of-court costs in this connection, the buyer shall be liable for such.
6. We are obliged to release collateral in our favour as soon as the realisable value of such collateral exceeds the outstanding amounts being secured thereby by more than 10 % whereby we may release items at our discretion.

#### **VIII. Place of fulfilment, jurisdiction, applicable law**

1. Place of fulfilment and jurisdiction for deliveries and payments (including cheques and bills) and all disputes arising between us and the buyer relating to contracts of sale entered between us and the buyer shall be our place of domicile. We are, however, entitled to litigate against the buyer at his place of residence and/or corporate domicile.
2. The relationships between the contractual parties shall be regulated exclusively under German law. The assertion of the UN convention on contracts for the international sale of goods is excluded.