



General Terms and Conditions of Delivery

of Elschukom

for use in business dealings with companies

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I. General provisions

1. Elschukom's General Terms and Conditions of Delivery shall govern exclusively with respect to all deliveries made to it. They shall likewise apply to transactions concluded in future without any need for any other express incorporation of them by reference.
2. Any terms and conditions of procurement or other general terms and conditions of the Purchaser shall not be deemed to be incorporated into the parties' contract as a result of Elschukom's silence or of the making of a delivery. Elschukom hereby objects to application of any such terms and conditions.
3. Addenda, amendments or ancillary agreements made by telegram, telephone or orally shall not be effective unless Elschukom confirms them in writing.

II. Offers, formation of contract

1. Elschukom's offers are always made on a non-binding basis, subject to sale of the item in the interim.
2. Contracts are only deemed to be formed pursuant to and upon receipt of Elschukom's written confirmation of order.

III. Scope of goods and services

1. The scope of Elschukom's goods and services is comprehensively determined by the properties and workmanship of the subject-matter of the delivery as described in Elschukom's data specifications. Other public statements are not deemed to constitute any supplement or change to the descriptions of the subject-matter of delivery.
2. Oral agreements, commitments, undertakings and express warranties in connection with the parties' contract shall not be binding until such time as Elschukom confirms them in writing.



IV. Prices

1. Elschukom's prices are quoted in Euros and ex-works, exclusive of packaging for shipment (for which Elschukom shall invoice the client at cost).
2. The prices shall be those in effect on the date of delivery, net of VAT at such rates as are then in effect.

V. Deliveries

1. Elschukom shall carry out all orders with the greatest reasonable degree of care. Elschukom shall, to the extent it is able to do so, comply with such delivery periods as it has stated or the Purchaser has stated, but is shall not be liable for failure to comply with such delivery periods. A promise to deliver shall at no time constitute a firm deal [*Fixgeschäft*].
2. Where Elschukom's performance of orders is rendered more difficult, delayed or made impossible as a result of events for which Elschukom does not bear responsibility, Elschukom is entitled to defer making the delivery in whole or in part, or to rescind the contract in whole or in part. The Purchaser shall have no claims for compensatory damages or rights of rescission due to delays in delivery.
3. Where Elschukom states delivery periods, these are approximate. Delivery periods shall begin to run as of the date Elschukom confirms the order, and they shall only be deemed to apply subject to the condition precedent that all of the details of the order have been clarified in a timely fashion and all of the Purchaser's obligations have been fulfilled in a timely fashion.
4. For purposes of determining compliance with delivery periods and deadlines, the date of shipment ex-works or ex-stock shall be deemed determinative. Where, without fault on the part of Elschukom, it is not possible to ship the subject-matter of delivery in a timely manner, delivery periods and deadlines shall be deemed to have been complied with at such time as Elschukom notifies the Purchaser of its readiness to ship.
5. Elschukom shall, in any event, only be deemed in default where, for reasons for which it bears responsibility, it fails (despite a written reminder of the Purchaser) within a reasonable grace period to render its contractual performance. A further condition precedent to default by Elschukom is that the Purchaser must not itself be in default with any obligation arising from the parties' business relationship.
6. Elschukom is entitled to make partial deliveries to a reasonable extent. Excess deliveries and delivery shortfalls of up to 5% of the quantities agreed which are customary in the business sector shall be permissible and invoiced accordingly.



VI. Payment

1. Elschukom's invoices are payable, strictly net, within 30 days of the date they were issued.
2. Elschukom grants purchasers whose registered office is located in the Federal Republic of Germany a 2% cash discount on invoiced amounts of over € 100.00, where the invoices are paid within 14 days from the date of issue.
3. An agreed cash discount shall in all cases be deemed to pertain only to the amount of the invoice exclusive of freight, packaging or of metal prices shown separately, and it is subject to the condition precedent that all liabilities of the Purchaser in existence at the time the discount was granted have been first completely settled.
4. The Purchaser's failure to comply with payment deadline shall entitle Elschukom to charge interest, without any special notice, with such interest to run from the date the invoice fell due. Such interest shall be charged at a rate of 3% over the discount rate of the German Bundesbank. Elschukom's further and other claims, in particular including claims arising from the provisions of law with respect to default interest, shall remain unaffected by the foregoing.
5. Where the Purchaser is in default with respect to a payment, then all of Elschukom's other outstanding receivables shall be deemed immediately due and payable, even if Elschukom may have previously granted a deferral of payment or if Elschukom has previously accepted a bill of exchange or a cheque. The same shall also apply where Elschukom becomes aware of facts or circumstances which cast doubt on the Purchaser's creditworthiness.
6. In addition, in such cases, Elschukom shall be entitled to demand advance payments or the furnishing of security, and shall be entitled, following a reasonable grace period, to rescind the contract or to demand compensatory damages for breach.

VII. Reservation of title

1. All goods delivered shall be deemed to remain the property of Elschukom (reservation of title goods) until full payment of all outstanding receivables, in particular including payment for all claims for outstanding balances to which Elschukom is entitled in connection with the parties' business relationship (*Saldovorbehalt* or retention of title until payment of all outstanding balances), and including claims asserted unilaterally by the trustee in insolvency under the trustee's power of novation [*Erfüllungswahl*]. The foregoing shall also apply to claims which may arise in future and to contingent claims, e.g. from acceptor's bills, and they shall likewise apply where payments have been made or are made in respect of specially designated claims. This reservation of title until payment of all outstanding claims shall be deemed to finally cease and be



of no further effect at such time as all of the receivables which are still open at the time of the payment and covered by this reservation of title have been fully and finally satisfied.

2. The Purchaser's handling and processing of the reservation of title goods shall be deemed to be effected on behalf of Elschukom as the manufacturer thereof within the meaning of sec. 950 of the German Civil Code, without giving rise to any obligation on Elschukom's behalf. The goods which are so handled and processed shall be deemed 'reservation of title goods' within the meaning of clause 1 hereof. In the event of the reservation of title are processed, combined and commingled with other goods by the Purchaser, Elschukom shall be entitled to a *pro rata* co-ownership share in the new items of property of such proportion as the invoiced value of the reservation of title goods bears to the invoiced value of the other goods used thereby. Where Elschukom's ownership ceases as a result of combination or commingling, the Purchaser is deemed to assign to Elschukom, now and in advance, all such ownership rights in the new item or piece of property as the Purchaser is or would be entitled to assert, to the extent of the invoiced value of the reservation of title goods, and the Purchaser shall gratuitously store the same for Elschukom's benefit.

Elschukom's co-ownership rights shall be deemed to constitute 'reservation of title goods' within the meaning of clause 1 hereof.

3. The Purchaser may only sell the reservation of title goods in the ordinary course of business pursuant to its normal terms and conditions of business and only so long as the Purchaser is not in default, provided that the claims arising from the Purchaser's re-sale thereof pursuant to clauses 4 to 6 hereof are deemed to pass to Elschukom. The Purchaser is not entitled to effect other dispositions with respect to the reservation of title goods.

4. The Purchaser's claims arising from the re-sale of the reservation of title goods are hereby assigned to Elschukom, , now and in advance, together with any and all security interest which the Purchaser may acquire with respect to such claims. These shall be deemed to be for purposes of securing Elschukom's claims to the same extent as the reservation of title goods are. If the Purchaser resells the reservation of title goods together with other goods not sold by Elschukom, then the Purchaser's claim from its re-sale is deemed to be assigned to Elschukom *pro rata* in proportion to the invoiced value of the reservation of title goods relative to the invoiced value of the remaining goods sold. Where goods are sold to which Elschukom has a co-ownership share pursuant to clause 2 hereof, the Purchaser is deemed to assign a share therein corresponding to Elschukom's right of co-ownership. Where the Purchaser uses the reservation of title goods to perform a contract for works and services [*Werkvertrag*], then the Purchaser's claim under such contract for works and services is hereby deemed, now and in advance, to be assigned to Elschukom to the same extent.

5. The Purchaser is entitled to collect on claims arising from such re-sale. This collection authorisation shall be deemed to cease in the event of a revocation by Elschukom, but in any event no later than at such time as the Purchaser is in default of payment, or where a bill of exchange is not honoured or an application for the opening of insolvency proceedings is made by the Purchaser. Elschukom shall only make use of its right of revocation where, following formation of



the parties' contract, it becomes apparent that its claim for payment under this or other contracts with the Purchaser is put at risk due to the Purchaser's lack of ability to pay. Upon Elschukom's request, the Purchaser shall immediately inform parties effecting purchases from it with respect to its assignment to Elschukom and shall surrender to Elschukom such documents as are necessary to collect thereon.

6. The Purchaser is not permitted to assign claims from re-sales, except where the assignment is made by way of true factoring, of which Elschukom is given notice and where the factoring proceeds exceed the amount of Elschukom's secured claims. At such time as the factoring proceeds are credited to the Purchaser, Elschukom's receivable shall immediately fall due.

7. The Purchaser shall inform Elschukom without delay of any attachments or other impairments of the goods by third parties. The Purchaser shall bear all of the costs necessary to cause the third-party interference to be eliminated or to transport the reservation of title goods back to Elschukom, provided that such costs are not paid by third parties.

8. Where the Purchaser is in default of payment or where the Purchaser fails to honour a bill of exchange upon maturity, Elschukom shall be entitled to recover its retention of title goods, and, where necessary, it shall be entitled to access the Purchaser's premises for these purposes. The foregoing shall likewise apply where, following formation of the contract, it becomes apparent that Elschukom's claim for payment under this or other contracts with the Purchaser is placed at risk due to the Purchaser's lack of ability to pay. Recovery of the goods shall not be deemed rescission of the contract. The legal norms from the German Bankruptcy Code shall not be deemed affected by the foregoing. Elschukom may, in addition, prohibit the Purchaser from re-selling, processing and secreting the goods delivered to it.

9. Where the invoiced value of the existing collateral exceeds Elschukom's secured claims, including ancillary claims (interest, costs and the like) by more than 50% in total, Elschukom shall, upon the Purchaser's request, be obliged to release, to the extent thereof, such collateral as Elschukom may select.

VIII. Complaints, warranty, liability

1. Justified complaints of any kind whatsoever may only be asserted in writing within eight days of the date the goods were received. Where the Purchaser fails to give such notice, the goods are deemed to have been approved. The foregoing shall not apply to defects which a careful examination would not have revealed.

2. Where a defect is later discovered which a careful examination did not reveal, such defect must be asserted in writing within eight days from the date of its discovery. The Purchaser shall immediately cease any handling or processing of the subject-matter of delivery following such discovery. The goods shall otherwise be deemed to have been approved.



3. In the event of demonstrable deficiencies in a delivery, replacements will be provided free of charge following return of the goods complained of and subject to a reasonable grace period. Where supplemental performance is to no avail or refused by Elschukom, the Purchaser may abate the purchase price or, following the expiry to no avail of a reasonable grace period set by the Purchaser, the Purchaser may rescind the contract. Where the defect is not a material defect, the Purchaser shall only be entitled to abatement. To the extent permitted by law, it is hereby agreed that the Purchaser may not assert any other warranty claims or claims for damages of other kinds against Elschukom and/or its vicarious agents.

4. Where the Purchaser does not, without delay, afford Elschukom the opportunity of investigating the material defect, where, in particular, the Purchaser does not furnish Elschukom upon Elschukom's request with the goods complained of or samples thereof without delay, all of the Purchaser's warranty rights with respect thereto shall be deemed to be forfeited.

5. Elschukom shall only bear responsibility for expenditures in connection with its supplemental performance to the extent that they are reasonable in the individual case, in particular, that they are reasonable relative to the purchase price of the goods.

6. In the event of complaints of defects, the Purchaser may withhold payments of such scope and extent as is reasonable in relation to the defects which have arisen.

7. This warranty does not cover natural wear and tear or damage arising following the passage of the risk as a result of incorrect or negligent handling, excessive strain, unsuitable equipment or which arise due to special external impacts not intended under the contract. Where the Purchaser or a third party makes improper modifications, no warranty will apply to these or the consequences arising therefrom.

8. Warranty claims and claims for recourse pursuant to sec. 478 of the German Civil Code shall be prescribed twelve months from the date the subject-matter of purchase was delivered.

9. The warranty period for remediations, replacements goods or services shall be six months. It shall run at least until such time as the original twelve-month warranty period for the subject-matter of the delivery was to expire. For such parts as may not be utilised in an expedient fashion due to interruption, the warranty period shall be deemed extended by the period of the interruption to operations caused by Elschukom's supplemental performance, replacement delivery or service.

IX. Limitation of liability

1. The Purchaser shall have no claims for damages, irrespective of the legal basis thereof, and in particular it shall have no claims based on a positive breach of a contractual obligation [*positive Forderungsverletzung*], based on breaches of obligations in contractual negotiations, based on entrepreneur's recourse pursuant to sec. 478 of the German Civil Code, and based on tortious acts.



2. The foregoing shall not apply to the extent liability is prescribed mandatorily e.g. under the German Products Liability Act or in cases of intentional acts or omissions, gross negligence or breach of material contractual obligations.

3. However, claims for damages for the breach of material contractual obligations are limited to such losses as are foreseeable and typical for the contract, unless an intentional act or omission or gross negligence is shown.

4. The foregoing provisions do not entail any shift of the burden of proof to the disadvantage of the Purchaser.

X. Intellectual property rights

1. Claims for damages for infringement of intellectual property rights and/or copyrights of third parties by standard Elschukom products which Elschukom has delivered and which are used in accordance with the parties' contract may only be asserted against Elschukom where the Purchaser informs Elschukom without delay in writing of the third party claims, where the Purchaser does not acknowledge the infringement *vis-à-vis* the third party, and where the right to take all defensive measures and undertake all settlement negotiations is reserved to Elschukom. Where the Purchaser gives a negative undertaking to the third party and/or ceases its use of Elschukom's product in order to mitigate damages or for other reasons, it is obliged to alert that third party the provision of a negative undertaking and/or its termination of use does not entail any acknowledgement of any infringement of legal rights. In all further and other respects, the limitations on liability pursuant to clause IX hereof shall apply.

2. In terms of patent, utility model, industrial design and trade mark and copyright law, special designs and other design wishes pursuant to the Purchaser's specifications and drawings are carried out at the risk of the Purchaser. If such designs should entail an infringement of third parties' intellectual property rights, then the Purchaser shall compensate Elschukom for all costs and damages arising in this context. The Purchaser shall have no right to assert any contributory negligence on the part of Elschukom.

XI. Modifications

In all cases, Elschukom reserves the right to make modifications to the products of Elschukom which become necessary in connection with technical advances, and to make associated modifications of drawings, diagrams, specification sheets and illustrations published by Elschukom, provided that such are reasonable to the Purchaser and are at least of equal value.

XII. Set-off



The Purchaser may only set off claims against Elschukom where such claims are undisputed by Elschukom or have been determined by *res judicata* judgment.

XIII. Assignment of claims

Elschukom hereby expressly reserves the right to assign its claims against the Purchaser to third parties.

XIV. Data protection

Data arising as a result of Elschukom's business relationships with its customers shall be stored, processed, modified and, where appropriate, deleted in compliance with the provisions of applicable law.

XV. Miscellaneous

1. This contract is governed exclusively by German law, but excluding application of the United Nations CISG and German conflicts of law rules [*Internationales Privatrecht*].

2. For both parties, the place of performance is 98669 Veilsdorf, Federal Republic of Germany, and jurisdiction and venue for disputes (including for bill of exchange matters and measures serving the purposes of securing claims) shall lie with the courts with jurisdiction over 98669 Veilsdorf, Federal Republic of Germany. Elschukom's right to bring an action against the Purchaser in the courts with jurisdiction over the latter's registered office shall remain unaffected by the foregoing, except in cases covered by clause XIX. 3.

3. Where the Purchaser has its registered office outside the European Union and where no judicial assistance treaty exists between that country and the Federal Republic of Germany with respect to recognition and execution of foreign court judgments, and if the country in which the Purchaser has its registered office has acceded to the New York Convention on the Recognition and Enforcement of Foreign Arbitral Awards, then in such case the parties hereby agree that the Chamber of Commerce in Hamburg [*Handelskammer in Hamburg*] shall be the court of arbitration for disputes between them. The applicable substantive law is German law, excluding application of the United Nations CISG and German conflicts of law rules [*Internationales Privatrecht*]. The language of the arbitral proceedings shall be German. The parties shall both acknowledge the arbitral award as binding upon them, excluding all recourse to the ordinary courts.

4. In the event of litigation initiated by the Purchaser before non-German courts, the Purchaser shall be obliged to bear the costs of the litigation and to reimburse Elschukom for all costs incurred



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by it in this context, in particular including its costs for its lawyers, court costs, travel costs and accommodation expenses.

5. The sole binding language of the contract is German. The foregoing shall also apply where, in addition to the German version, this text has been prepared in a language other than German.

6. If one of the terms and conditions set forth above is found to be invalid, the validity of the remaining terms and conditions hereof shall remain unaffected thereby.