General Conditions of Sale of Elastotec GmbH
as of January 2021

§ 1 General, Scope

(1) These General Conditions of Sale (GCS) apply to all of our business relationships with our customers ("buyers"). The GCS only apply if the buyer is an entrepreneur (Section 14 BGB), a legal entity under public law or a special fund under public law.

(2) The GCS apply in particular to contracts for the sale and / or delivery of movable objects ("goods"), regardless of whether we manufacture the goods ourselves or buy them from suppliers (§§ 433, 651 BGB). Unless otherwise agreed, the GCS apply in the version valid at the time of the buyer's order or at least in the version last communicated to him in text form as a framework agreement also for similar future contracts without having to refer to them again in each individual case.

(3) Our GCS apply exclusively. Deviating, conflicting or supplementary general terms and conditions of the buyer will only become part of the contract if and to the extent that we have expressly agreed to their validity. This consent requirement applies in any case, for example even if we carry out the delivery to the buyer without reservation with knowledge of the GTC of the buyer.

(4) Individual agreements made with the buyer on a case-by-case basis (including side agreements, additions and changes) always take precedence over these GCS. A written contract or our written confirmation is authoritative for the content of such agreements, subject to proof to the contrary.

(5) Legally relevant declarations and notifications which the buyer must submit to us after the conclusion of the contract (e. g. setting of deadlines, notifications of defects, declaration of withdrawal or reduction in price) must be in written form to be effective.

(6) References to the validity of legal regulations only have a clarifying meaning. The statutory provisions therefore apply even without such a clarification, unless they are directly amended or expressly excluded in these GCS.

§ 2 Conclusion of Contract

(1) Our offers are subject to change and non-binding. This also applies if we have provided the buyer with catalogues, technical documentation (e. g. drawings, plans, calculations, references to DIN standards), other product descriptions or documents – also in electronic form – to which we have property rights and copyrights reserved.

(2) The order of the goods by the buyer is considered a binding contract offer. Unless otherwise stated in the order, we are entitled to accept this contract offer within 2 days of receiving it.

(3) The acceptance can either be declared in writing (e. g. by order confirmation) or by delivery of the goods to the buyer.

§ 3 Delivery Period and Delay in Delivery

(1) The delivery period is agreed individually or specified by us when accepting the order. If this is not the case, the delivery period is 16 weeks from the conclusion of the contract.

(2) If we cannot meet binding delivery deadlines for reasons for which we are not responsible (unavailability of the service), we will inform the buyer of this immediately and at the same time notify the expected new delivery deadline. If the service is also not available within the new delivery period, we are entitled to withdraw from the contract in whole or in part; We will immediately reimburse any consideration already provided by the buyer. A case of non-availability of the service in this sense is in particular the late delivery by our supplier if we have concluded a congruent hedging transaction, neither we nor our supplier are at fault or we are not obliged to procure in individual cases.

(3) The occurrence of our delay in delivery is determined by the statutory provisions. In any case, however, a reminder is required from the buyer. If we are in default of delivery, the buyer can demand lump-sum compensation for the damage caused by the delay. The lump sum for damages is 0.5 % of the net price (delivery value) for each completed calendar week of delay, but no more than 5 % of the delivery value of the delayed goods. We reserve the right to provide evidence that the buyer did not suffer any damage or that the damage was significantly less than the above flat rate.

(4) The rights of the buyer according to § 8 of these General Terms and Conditions and our statutory rights, in particular in the event of an exclusion of the obligation to perform (e. g. due to impossibility or unreasonableness of the service and / or subsequent performance), remain unaffected.

§ 4 Delivery, Transfer of Risk, Acceptance, Default in Acceptance

(1) Delivery takes place ex warehouse, which is also the place of performance for delivery and any subsequent performance. At the request and expense of the buyer, the goods will be sent to a different destination (sale shipment). Unless otherwise agreed, we are entitled to determine the type of shipment (in particular transport company, shipping route, packaging) ourselves.

(2) The risk of accidental loss and accidental deterioration of the goods is transferred to the buyer at the latest upon handover. In the case of sales shipment, however, the risk of accidental loss and accidental deterioration of the goods as well as the risk of delay are transferred to the freight forwarder, the carrier or the person or institution otherwise assigned to carry out the shipment. If an acceptance has been agreed, this is decisive for the transfer of risk. The statutory provisions of the law on contracts for work and services also apply accordingly to an agreed acceptance. Default of acceptance by the customer shall be equivalent to delivery or acceptance.

(3) If the buyer is in default of acceptance, if he fails to cooperate or if our delivery is delayed for other reasons for which the buyer is responsible, we are entitled to demand compensation for the resulting damage including additional expenses (e. g. storage costs). For this we charge a lump sum compensation in the amount of 100 EUR per calendar day, starting with the delivery period or – in the absence of a delivery period – with the notification that the goods are ready for dispatch.

The proof of a higher damage and our legal claims (in particular reimbursement of additional expenses, reasonable compensation, termination) remain unaffected; however, the lump sum is to be offset against further monetary claims. The buyer is allowed to prove that we did not suffer any damage or that we suffered only a significantly lower damage than the above flat rate.

§ 5 Prices and Terms of Payment

(1) Unless otherwise agreed in individual cases, our current prices at the time of the conclusion of the contract apply, ex warehouse, plus statutory sales tax.

(2) In the case of sale shipment (§ 4 Paragraph 1), the buyer bears the transport costs ex warehouse and the costs of any transport insurance requested by the buyer. If we do not invoice the transport costs actually incurred in individual cases, a flat-rate transport cost (excluding transport insurance) of EUR 1000 is deemed to have been agreed. Any customs duties, fees, taxes and other public charges are borne by the buyer.

(3) The purchase price is due and payable within 14 days of invoicing and delivery or acceptance of the goods. However, even in the context of an ongoing business relationship, we are entitled at any time to carry out a delivery in whole or in part only against prepayment. We shall declare a corresponding reservation at the latest with the order confirmation.

(4) When the above payment period has expired, the buyer is in default. Interest is to be paid on the purchase price during the period of default at the applicable statutory default interest rate. We reserve the right to assert further damage caused by default. Our claim to commercial maturity interest (Section 353 of the German Commercial Code) remains unaffected with regard to merchants.

(5) The buyer is only entitled to set-off or retention rights insofar as his claim has been legally established or is undisputed. In the event of defects in the delivery, the buyer's counter-rights, in particular in accordance with Section 7 (6) sentence 2 of these GCS, remain unaffected.

(6) If, after the conclusion of the contract, it becomes apparent (e. g. through an application to open insolvency proceedings) that our claim to the purchase price is jeopardized by the purchaser's inability to perform, we are entitled to withdraw from the contract and in accordance with the statutory provisions to refuse performance – if necessary – after setting a deadline entitled to the contract (§ 321 BGB). In the case of contracts for the production of non-representable items (custom-made items), we can declare our withdrawal immediately; the legal regulations on the dispensability of setting a deadline remain unaffected.

§ 6 Retention of Title

(1) We reserve title to the sold goods until all of our current and future claims from the purchase contract and an ongoing business relationship (secured claims) have been paid in full.

(2) The goods subject to retention of title may not be pledged to third parties or assigned as security before the secured claims have been paid in full. The buyer must notify us immediately in writing if an application is made to open insolvency proceedings or if third parties have accessed the goods belonging to us (e. g. seizures).

(3) If the buyer acts contrary to the contract, in particular if the purchase price is not paid, we are entitled to withdraw from the contract in accordance with the statutory provisions and / or to reclaim the goods on the basis of retention of title. The request for surrender does not also include the declaration of withdrawal; rather, we are entitled to only demand the return of the goods and reserve the right to withdraw from the contract. If the buyer does not pay the due purchase price, we may only assert these rights if we have previously unsuccessfully set the buyer a reasonable deadline for payment or if such a deadline is dispensable according to the statutory provisions.

(4) The buyer is authorized until revocation in accordance with (c) below to resell and / or process the goods subject to retention of title in the ordinary course of business. In this case, the following provisions also apply.

(a) The retention of title extends to the full value of the products resulting from the processing, mixing or combining of our goods, whereby we are deemed to be the manufacturer. If, in the event of

processing, mixing or combining with goods of third parties, their ownership rights remain, we shall acquire co-ownership in proportion to the invoice values of the processed, mixed or combined goods. Otherwise, the same applies to the resulting product as to the goods delivered under retention of title.

(b) The buyer hereby assigns to us as security the claims against third parties arising from the resale of the goods or the product in the amount of our possible co-ownership share in accordance with the preceding paragraph. We accept the assignment. The obligations of the buyer named in Paragraph 2 also apply with regard to the assigned claims.

(c) In addition to us, the buyer remains authorized to collect the claim. We undertake not to collect the claim as long as the buyer fulfils his payment obligations to us, there is no defect in his performance and we do not assert the retention of title by exercising a right according to paragraph 3. If this is the case, however, we can demand that the buyer notify us of the assigned claims and their debtors, provide all information required for collection, hand over the associated documents and notify the debtors (third parties) of the assignment. In this case, we are also entitled to revoke the buyer's authorization to resell and process the goods subject to retention of title.

(d) If the realizable value of the securities exceeds our claims by more than 10 %, we will release securities of our choice at the request of the buyer.

§ 7 Claims for Defects by the Buyer

(1) The statutory provisions apply to the buyer's rights in the event of material defects and defects of title (including incorrect and short deliveries as well as improper assembly or inadequate assembly instructions), unless otherwise specified below. In all cases, the special statutory provisions for the final delivery of the goods to a consumer remain unaffected (supplier regress according to §§ 478, 479 BGB).

(2) The basis of our liability for defects is primarily the agreement made on the quality of the goods. All product descriptions that are the subject of the individual contract are deemed to be an agreement on the quality of the goods; it makes no difference whether the product description comes from the buyer, from the manufacturer or from us.

(3) Insofar as the quality has not been agreed, the statutory regulation must be used to assess whether or not there is a defect (Section 434 (1) sentences 2 and 3 BGB). However, we assume no liability for public statements made by the manufacturer or other third parties (e. g. advertising statements).

(4) The purchaser's claims for defects require that he has complied with his statutory inspection and notification obligations (§§ 377, 381 HGB). If a defect becomes apparent during the examination or later, we must be notified of this immediately in writing. The notification is deemed to be immediate if it is made within two weeks, with timely sending of the notification being sufficient to meet the deadline. Irrespective of this duty to examine and notify, the buyer must report obvious defects (including incorrect and short deliveries) in writing within two weeks of delivery, whereby the timely dispatch of the notification is sufficient to meet the deadline. If the buyer fails to properly examine and / or report defects, our liability for the defect that has not been reported is excluded.

(5) If the delivered item is defective, we can first choose whether to provide supplementary performance by eliminating the defect (subsequent improvement) or by delivering a defect-free item (replacement delivery). Our right to refuse supplementary performance under the legal requirements remains unaffected.

(6) We are entitled to make the subsequent performance owed dependent on the buyer paying the purchase price due. However, the buyer is entitled to withhold part of the purchase price that is reasonable in relation to the defect.

(7) The buyer must give us the time and opportunity required for the subsequent performance owed, in particular to hand over the rejected goods for inspection purposes. In the case of a replacement delivery, the buyer must return the defective item to us in accordance with the statutory provisions. The supplementary performance does not include either the removal of the defective item or the reinstallation if we were not originally obliged to install it.

(8) We shall bear the expenses required for the purpose of testing and subsequent performance, in particular transport, travel, labour and material costs (not: removal and installation costs), if there is actually a defect. Or else we can demand reimbursement of the costs arising from the unjustified request for the removal of defects (in particular testing and transport costs) from the buyer, unless the lack of defect was not recognizable to the buyer.

(9) In urgent cases, e. g. if operational safety is at risk or to prevent disproportionate damage, the buyer has the right to remedy the defect himself and to demand reimbursement of the objectively necessary expenses from us. We are to be notified immediately of any such self-action, if possible, in advance. The right to carry out the work does not exist if we would be entitled to refuse a corresponding subsequent performance in accordance with the statutory provisions.

(10) If the supplementary performance has failed or a reasonable period to be set by the buyer for the supplementary performance has expired without success or is dispensable according to the statutory provisions, the buyer can withdraw from the purchase contract or reduce the purchase price. In a minor defect, however, there is no right of withdrawal.

(11) Claims of the buyer for damages or reimbursement of wasted expenses only exist in the case of defects in accordance with § 8 and are otherwise excluded.

§ 8 Other Liability

(1) Unless otherwise stated in these GCS including the following provisions, we are liable in the event of a breach of contractual and non-contractual obligations in accordance with the statutory provisions.

(2) We are liable for damages – regardless of the legal reason – within the framework of fault liability in the event of wilful intent and gross negligence. In the event of simple negligence, we are only liable, subject to a milder standard of liability in accordance with statutory provisions (e. g. for care in our own affairs):

a) for damage resulting from injury to life, limb or health,

b) for damage resulting from a not inconsiderable breach of an essential contractual obligation (obligation, the fulfilment of which enables the proper execution of the contract in the first place and compliance with which the contractual partner regularly relies and may trust) in this case, however, our liability is limited to compensation for the foreseeable, typically occurring damage.

(3) The limitations of liability resulting from Paragraph 2 also apply in the event of breaches of duty by or in favour of persons whose fault we are responsible for in accordance with statutory provisions. They do not apply if we have fraudulently concealed a defect or have given a guarantee for the quality of the goods and for claims of the buyer under the Product Liability Act.

(4) Because of a breach of duty that does not consist of a defect, the buyer can only withdraw or terminate if we are responsible for the breach of duty. A free right of termination of the buyer (in particular according to §§ 651, 649 BGB) is excluded. In addition, the legal requirements and legal consequences apply.

§ 9 Limitation Period

(1) Contrary to § 438 Paragraph 1 No. 3 BGB, the general limitation period for claims arising from material and legal defects is one year from delivery. If an acceptance has been agreed, the statute of limitations begins with the acceptance.

(2) However, if the goods are a building or an item that has been used for a building in accordance with its normal use and has caused its defectiveness (building material), the statute of limitations is 5 years from delivery (§ 438 Paragraph 1 No. 2 BGB). Other special statutory regulations on the statute of limitations remain unaffected (in particular § 438 Paragraph 1 No. 1, Paragraph 3, §§ 444, 479 BGB).

(3) The above limitation periods of the sales law also apply to contractual and non-contractual claims for damages by the buyer that are based on a defect in the goods, unless the application of the regular statutory limitation period (§§ 195, 199 BGB) would result in a shorter limitation period in individual cases. Claims for damages by the buyer in accordance with Section 8, Paragraph 2, Clause 1 and Clause 2 (a) as well as under the Product Liability Act, however, shall only become statute-barred according to the statutory limitation periods.

§ 10 Choice of Law and Place of Jurisdiction

(1) For these GCS and the contractual relationship between us and the buyer, the law of the Federal Republic of Germany applies to the exclusion of uniform international law, in particular the UN sales law.

(2) If the buyer is a merchant within the meaning of the Commercial Code, a legal entity under public law or a special fund under public law, the exclusive – also international – place of jurisdiction for all disputes arising directly or indirectly from the contractual relationship is our place of business in Marktheidenfeld. The same applies if the buyer is an entrepreneur within the meaning of Section 14 of the German Civil Code (BGB). In all cases, however, we are also entitled to take legal action at the place of fulfilment of the delivery obligation in accordance with these GCS or a priority individual agreement or at the general place of jurisdiction of the buyer. Overriding statutory provisions, in particular those relating to exclusive responsibilities, remain unaffected.