

Elumic Standard Terms and Conditions of Sale and Delivery

General

All quotations, sales and deliveries by Seller are subject to the following General Terms and Conditions of Sale and Delivery.

Seller shall not be bound by any general terms contradictory to the ones as set forth below, particularly not by such issued by the Purchaser, irrespective of whether those are specifically reputed by Seller or not. Purchaser's general terms are also not accepted by Seller if Seller accepts an order of the Purchaser having the Purchaser's general terms attached and/or mentioned. Amendments to this Terms and Conditions of Sale and Delivery by accepted agents, representatives of or other third parties in the name and on behalf of Seller shall only be binding upon Seller if confirmed by Seller in writing.

1. Price

- a. All quotations are made and orders are accepted on the basis of Seller's prices in effect at the time of shipment except where otherwise specifically agreed in writing.
- b. Any taxes or fees, which the Seller may be required to pay or collect, will be charged to the Purchaser.
- c. Unless otherwise stated, all prices are ex works Seller's factory in accordance with Incoterms 2000 and do not include insurance, costs of delivery, taxes and similar charges.

- d. All payments shall be made in Euro.
- e. Purchaser is not entitled to set-off any amount owed by Seller to Purchaser against any amount owed by Purchaser to Seller hereunder.

2. Terms

- a. The terms of payment are 3 % discount for payment within 14 days, net for payment within 30 days from the date of invoice except as otherwise stated. [According to the Austrian Commercial Law past due accounts shall bear interest at the legal rate of 5 % per year except to the extent otherwise required by written agreement .
- b. Seller shall retain title to all products sold to Purchaser until final settlement of any and all amounts owed by Purchaser to Seller in connection with the sale.

3. Shipping and delivery

- a. The Seller shall have no responsibility to obtain or maintain insurance, and all responsibility on the Seller shall cease when the products have been delivered to the appropriate carrier for shipment to the Purchaser, properly addressed or with the proper bills of lading attached, whether or not freight is prepaid.
- b. Unless specific shipping instructions are received from the Purchaser substantially before the shipment date, the Seller reserves the right to use his judgement in

selecting the means of shipment. Additional shipment costs incurred at the request of the Purchaser will be charged to the Purchaser.

4. Warranty

- a. Seller warrants that at the day the products are prepared for collection by Purchaser the products manufactured and sold by Seller are free from defects in materials and workmanship. Seller will replace or repair any products which shall prove to be defective, providing the Purchaser immediately after collection has (i) diligently inspected products collected and (ii) notified Seller of any apparent defects in writing. Hidden defects must also be notified in writing immediately after discovery. In any case Seller's warranties shall cease to exist and shall be of no further force and effect after the elapse of a 90 (ninety) days period, commencing at the day of collection of products. In case of defect Seller can choose between replacement or repair. Seller can grant a reduction in price or a recession if replacement or repair is impossible or unreasonable. The same rules of priority apply to all forms of claims for damages. Except as stated above seller makes no other warranty, in particular but not limited to, does not warrant for merchantability or the products or their fitness for particular purpose.
- b. Products sold by Seller shall not be considered as defective if they substantially fulfil Purchaser's performance requirements and are in accordance with approved samples, specifications or drawings.
- c. No liability will be assumed by Seller for any repairs made by Purchaser without prior written consent of Seller.
- d. Seller shall not, in any event, be liable for damages in respect to the sale or use of any products sold hereunder, in any amount greater than the amount of the purchase price received by Seller for such products.
- e. Seller shall not, in any event, be liable if the damage was caused by its negligent or gross negligent behaviour.
- f. Seller shall not be liable for any damages, direct, indirect, punitive, incidental, exemplary, compensatory or consequential, arising out of or in connection with the use, inability to use, performance of the products or the misrepresentation of warranties.
- g. Any affirmation of fact or promise made by the Seller to the Purchaser which relates to the products sold hereunder shall not be regarded as part of the basis of the bargain and shall not be deemed to create an express warranty that such products will conform to the affirmation or promise. There are no warranties which extend beyond the description on the face hereof. Any use of the products purchased hereunder which could result in contact between the goods and a living being or flammable object voids all warranties.

5. Substitution of raw materials

Any raw materials or raw materials supplier changes that are verified to meet requirements and do not affect the fit, form, or function in the application shall not be subject to approval by the Purchaser.

6. Claims and returns

- a. All claims for shortages, differences in the products shipped, or poor quality must be made in accordance with the provisions set forth in Point 4.a.
- b. No return shall be shipped to the Seller except after securing written instructions from the Seller. Seller shall have the sole right to determine whether returned articles or parts shall be repaired or replaced. Seller agrees to assume round-trip transportation costs for defective or non-conforming articles or parts in an amount not to exceed normal railroad shipping charges within the European Union, provided, however, that if Seller's inspection discloses that the returned article or part does not require repair or replacements Seller's usual charges will apply and the Purchaser shall assume round-trip shipping charges.
- c. Damage incurred at the Purchaser's location such as in the process of inspection, handling, and repacking shall be the sole responsibility of the Purchaser.

7. Liability for loss, damage in connection with delay

The Seller shall not be liable for any loss or damage suffered by the Purchaser, resulting directly or indirectly from or through, or arising out of any delay in fulfilling an order or in shipment or in delivery of any products, or resulting directly or indirectly from or through delay arising out of any form of force major.

8. Cancellation, alteration or delay requested by the Purchaser

- a. Requests by the Purchaser to cancel to temporarily or permanently or stop work or delivery must be made in writing. Acceptance to be effective must be in writing. Seller reserves the right to accept or refuse any such request and to set the additional charges and other conditions under which a request is granted. Any such additional charges will be due and payable 30 days after notification to Purchaser by Seller.
- b. All products, parts or materials ordered or held by the Seller at the Purchaser's request shall be at the risk and expense of the Purchaser. The Seller, at its option, may invoice the Purchaser for all costs and expenses resulting from such a request. Such invoices are due and payable 30 days from issuance.

9. Tools, dies, designs, jigs and fixtures

- a. The Seller shall retain ownership, possession and control of all tools, dies, designs, drawings, jigs and fixtures prepared for the manufacture of products subject to any order except where other arrangements are specifically made between the Seller and the Purchaser.
- b. The Seller shall not be responsible for problems resulting from errors in artwork, drawings, and/or specifications supplied by the Purchaser.

10. Under and over shipments

The Seller reserves the right to over-ship or under-ship any order by any amount not to exceed five (5) percent of the amount ordered, payment to be based on the products shipped.

11. Patents, trademarks and copyrights

- a. The Seller shall indemnify and hold harmless the Purchaser for damages for infringement of patents, trademarks or copyrights relating solely to products sold hereunder which are products of the Seller's design, and the Purchaser shall so indemnify and hold harmless the Seller for products of the Purchaser's design. No indemnity shall apply to liability resulting from the manner of use of the products by the Purchaser or from combining the products with any other equipment. Each party shall give the other reasonable notice of any

charge of infringement to which this indemnity applies and offer to allow the other to defend any suit resulting therefrom, otherwise, the party who did not receive notice shall not be liable, directly or indirectly, for any damages from such infringement.

12. Reproduction right, non disclosure

- a. Drawings, specifications, reports, photographs and other data of Seller relating to this order and all proprietary rights and interest therein and the subject matter thereof shall remain the property of the Seller. The Purchaser agrees that it will not use the Seller's drawings, specification's, and other materials and information above this order or any similar article from any other source, or reproduce the same or otherwise appropriate them without the written authorisation of the Seller.
- b. The Purchaser agrees that it will not disclose or make available to any unauthorised party any drawings, data, or other information pertaining to this order which is proprietary to Seller without obtaining Seller's prior consent.

13. Warning

- a. Please be advised that the product, which you are purchasing, can cause death or serious injury if contact is made between a living being and the product while the product is connected with a power source. In addition, if the product comes into contact with a flammable object while connected to a power source,

there is a serious risk of a resulting fire. By accepting the delivery of this product, you are acknowledging that you fully understand these risks and will not use the product in a manner that could result in direct contact between the product and either a living being or flammable object while the product is connected to a power source. You agree to convey this warning to anyone who may have cause to come into contact with the product while it is connected to a power source, including but not limited to employees, Purchasers to whom you resell the product and end user.

- b. In case of non-observance of this warning by Purchaser, its successor entities or distributees, Seller shall not be liable in any form such as for instance debts, claims, actions, losses, damages and attorney's fees related thereto.

14. Choice of law

This agreement is governed in all respects exclusively by the laws of Austria. The application of the United Nations Convention on Contracts for the International Sale of Goods as well as the Austrian Conflict of Laws Act is expressly excluded. Any litigation arising out of or relating to this agreement shall be subject to the exclusive jurisdiction of the court of proper venue in Vienna, Austria, or at the Seller's discretion, of the court of proper venue of the Purchaser.

15. Assignment

Neither party shall assign the whole, or any part of this agreement, without the prior written consent of the other party.

16. Authority

Each party warrants that it has the authority to enter into this agreement and that the person signing on this behalf, if any, is duly authorised to do so.

17. Heading

The headings in this agreement are inserted for convenience only, and do not define, limit or expand the intent, scope or meaning of this agreement.

18. Attorney's fees

Purchaser shall indemnify and hold harmless Seller for any and all costs (including lawyer's and debt collecting agency fees) incurred in connection with the enforcement of Seller's rights hereunder.