

General Terms and Conditions of ELMET Elastomere, Produktions- und Dienstleistungs- GmbH Company Number 351869f, national court of Linz/Austria

ELMET Elastomere, Produktions- und Dienstleistungs- GmbH (公司编号: 351869f, 奥地利林茨国家法院) 《一般销售条款》

<p>1 Preamble</p> <p>1.1 These General Terms & Conditions of Sale shall be applicable for all transactions of ELMET Elastomere, Produktions- und Dienstleistungs GmbH ("Seller") with respect to the supply and delivery of products and / or services to a contractual partner ("Buyer"), including all change requests or following orders, also if a reference to these General Terms & Conditions of Sale is not expressly made.</p> <p>1.2 These General Terms & Conditions of Sale shall be applicable in its current version, which can be downloaded under www.elmet.com.</p> <p>1.3 Any Terms & Conditions of the Buyer as well as any changes or additions to these General Terms & Conditions of Sale shall only be valid if expressly approved by the Seller in writing.</p> <p>2 Offer / Contract</p> <p>2.1 Offers by the Seller shall not be binding, unless the offer of the Seller includes a different regulation. A contract between the parties shall be established, when the Seller confirms in writing (also per email) or executes the order of the Buyer.</p> <p>3 Plans and documentations</p> <p>3.1 All information are enclosed in our catalogues brochures, price lists etc. ex. weight, measures, prices etc. are only relevant if they are expressly confirmed within the contract.</p> <p>3.2 All plans, catalogues, brochures, documentations etc. shall always remain the sole property of the Seller.</p> <p>4 Packing</p> <p>4.1 Unless otherwise agreed: a.) all prices are understood without packaging b.) packaging is made in normal way without risk of damaging. The costs are according to expenditure for the buyer.</p> <p>5 Transfer of risk</p> <p>5.1 Unless otherwise agreed products of the Seller are sold FCA „Free Carrier“ (FCA according to INCOTERMS 2010). In this case the transfer of risk shall be issued at that moment when Buyer receives access to the products at the Seller's premises.</p> <p>6 Retention of title</p> <p>6.1 Title shall pass to the Buyer only upon full payment by the Buyer to the Seller for the products. Buyer shall, at Seller's request, take any measures necessary under applicable law to protect Seller's title in the products. In the event of resale the Buyer hereby assigns to the Seller by way of security his future claim against his customer arising from such resale.</p> <p>6.2 The Buyer is permitted to process or remodel the goods subject to retention of title clause or to combine them with other articles. Processing or remodelling shall be on the Seller's behalf. Seller shall become the direct owner of the product produced by processing or remodelling. The Buyer shall keep the new product on the Seller's behalf with the care of a regular businessman. The processed or remodelled product shall be deemed to constitute products subject to retention of title clause.</p> <p>7 Terms of delivery</p> <p>7.1 The agreed delivery period shall start under following requirements: a.) constitution of the contract, and b.) clarified order, including a confirmed undersigned article drawing or technical checklist from the Buyer, and c.) receiving of the down payment and if applicable opening of a bank confirmed Letter of Credit.</p> <p>7.2 Seller is authorized to make part or pre-deliveries.</p> <p>7.3 If the delivery period has not been complied with by Seller, despite a reasonable grace period has been granted by the Buyer, the Buyer is entitled to cancel the order with respect to the products which have not been delivered or which cannot be used. In this case, the Buyer has the right to get reimbursed for the payments already made and is entitled to be compensated for justified expenses in case of a delay caused by gross negligence of the Seller. Already delivered and not useable products shall be sent back to the Seller. Any further claims out of a delay, especially for claims due to a non-default, shall be excluded.</p> <p>8 Prices</p> <p>8.1 Unless otherwise agreed prices are ex works, not packed and without loading. If shipment is included the price is without discharge.</p> <p>8.2 The prices are based on actual costs when issuing the offer. If there are different actual costs of shipment the difference shall be attributable to the Buyer. If it is agreed between the parties to have an open price for the shipment, Buyer shall have to pay actual costs of shipment at the day of delivery.</p> <p>9 Payment</p> <p>9.1 Unless otherwise agreed 1/3 of total amount is to be paid within 8 days after sending the order confirmation of Seller, 1/3 with finishing of first molded parts and 1/3 after giving information to the Buyer that the products are ready for delivery.</p> <p>9.2 Buyer shall not be allowed to withhold payments because of warranty claims which have not expressly been accepted by the Seller.</p> <p>9.3 Default of payment shall automatically postpone the delivery terms for the Seller.</p> <p>9.4 In case of default of payment one percent p.m. on arrears shall apply.</p>	<p>1 序言</p> <p>1.1 本《一般销售条款》适用于 ELMET Elastomere, Produktions- und Dienstleistungs GmbH (以下简称为“卖方”)关于向合作伙伴(以下简称为“买方”)供应和交付产品和/或服务,若《一般销售条款》未明确提及,还包括所有变更请求或后续订单。</p> <p>1.2 《一般销售条款》以最新版本为准,下载地址:www.elmet.com。</p> <p>1.3 买方的任何条款及对本《一般销售条款》的任何变更或补充,须经卖方明确书面批准方可生效。</p> <p>2 报价/合同</p> <p>2.1 除非卖方报价含不同规定,否则卖方报价不具有约束力。卖方以书面形式确认(也通过电子邮件)或执行买方订单时,双方应订立合同。</p> <p>3 计划书与文件</p> <p>3.1 公司产品目录、小册子、价目表等中所附的所有信息,例如重量、尺码、价格等,仅在合同中明确确认后方可生效。</p> <p>3.2 所有计划书、产品目录、小册子、文件等始终为卖方唯一财产。</p> <p>4 包装</p> <p>4.1 除非另行规定: a.) 所有价格均不含包装费 b.) 包装采用正常方式,无损坏风险。费用根据买方支出计算。</p> <p>5 风险转移</p> <p>5.1 除非另行规定,卖方产品均以工厂价出售(EXW 根据《2010年国际贸易术语解释通则》)。此情况下,风险转移应于买方在卖方所在地获得产品使用权时交付。</p> <p>6 所有权保留</p> <p>6.1 买方向卖方支付全部货款后,方可将所有权转移给买方。买方应按照卖方要求,根据适用法律采取一切必要措施保护卖方的产品所有权。</p> <p>6.2 若出现转售,则买方特此以担保的方式,将未来因转售而产生的对客户的索赔转让给卖方。</p> <p>6.3 允许买方根据保留所有权条款规定,加工或改造货物,或将货物与其他物品合并。加工或改造将代表卖方进行。卖方为加工或改造后产品的直接所有人。买方应代表卖方保管新产品,并由一位普通商人负责保管。根据所有权保留条款,加工后或改造后的产品视为组装产品。</p> <p>7 交货条件</p> <p>7.1 约定的交货期限应按照以下要求进行: a.) 合同章程,及 b.) 明确的订单,包括买方确认的技术清单,及 c.) 收到预付定金,若适用的话,开立银行保兑信用证。</p> <p>7.2 卖方有权部分交付或采用预交付的方式。</p> <p>7.3 若卖方未按照交货期交货,尽管买方已给予合理宽限期,买方有权取消未交付或不可使用的产品订单。此情况下,买方有权获得已付款项的赔偿,并有权获得因卖方重大过失而延误支付的合理费用。将已交付的产品及不可用的产品送回卖方。因延迟交货导致的进一步索赔,尤其是非违约的索赔除外。</p> <p>8 价格</p> <p>8.1 除非另有规定,产品价格均按工厂价,不含包装费、装货费。若包括装运费,则价格不含卸货费。</p> <p>8.2 价格根据发出报价时的实际成本计算。如果实际运费不同,则差额应由买方承担。若协议双方就运费按公开价格达成一致,则买方须在交货当天支付实际装运费。</p> <p>9 支付</p> <p>9.1 除非另有规定,1/3 费用将在卖方发出订单确认后 8 天内支付,1/3 费用将在首批模制部件交付后支付,剩余费用将在告知买方产品已备好交货后支付。</p> <p>9.2 买方不得因卖方未明确接受担保要求而拒绝付款。</p> <p>9.3 逾期付款,卖方将自动延期交货。</p> <p>9.4 若出现逾期付款,每延期一月,则违约金为欠款的 1%。</p>
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<p>10 Warranty</p> <p>10.1 The Seller shall be obliged according to these terms and conditions to remedy a defect which affects the usability of a product, based on a default of the Seller concerning the construction, the material or the execution. Claims for defects shall not be possible for minor deviations or only insignificant impairment of usability. Wear and tear shall be excluded from any warranty.</p> <p>10.2 This warranty obligation applies only for such defects, which have already been existing at the time of delivery. The warranty period is 12 months from delivery. Unless otherwise agreed the date of delivery is when the Buyer has taken over the service or the products or has refused the takeover without any legitimate reason. The Buyer shall bear the burden of proof that the defect already existed at the time of delivery.</p> <p>10.3 The Buyer is obliged to inspect the delivered products immediately upon delivery at his own expense and shall notify Seller from any defects, as well as incorrect deliveries or minor quantities in writing. Warranty claims shall only be possible if the Buyer notifies the Seller from a defect within a maximum of 7 working days after delivery. Any hidden defect must be reported immediately after the discovery by the Buyer. Defects have to be remedied by the Seller at Seller's choice due to:</p> <p>a.) Repair of defect products where they are; or</p> <p>b.) The products must be sent to Seller to solve the problems. Costs of transportation shall be paid by the Buyer; or</p> <p>c.) Seller will replace parts or he will replace the products in total. The warranty time shall not be extended due to a replacement.</p> <p>10.4 Repair services for a defect shall always be performed at Seller's place of business. In case of replacement services abroad, the Buyer shall bear the shipping costs and travel expenses for the installation team.</p> <p>10.5 The performance of remedy services does not constitute a recognition of a defect by the Seller. Replaced or defective products or parts are at the disposal of the Seller.</p> <p>10.6 The Seller shall only pay for costs incurred by the Buyer for remedy services if the Seller has approved such remedy services in advance in writing.</p> <p>10.7 The warranty obligation of the Seller requires the compliance of the Buyer the operating and maintenance of the products during normal production under normal conditions.</p> <p>10.8 The Seller shall be liable for products or parts which the Seller has purchased from a sub-supplier only within the framework of the warranty claims which the Supplier itself has against the sub-supplier.</p> <p>10.9 If a product is manufactured by the Seller on the basis of design specifications, drawings or models provided by the Buyer, the Seller's liability shall not cover the correctness of the construction, only to the fact that the execution is in accordance with the said specifications. The Buyer shall hold harmless Seller for such case.</p> <p>10.10 In the case of repair orders or alterations of old or third-party products, the Seller shall not assume any liability whatsoever.</p> <p>10.11 Unless not otherwise agreed, the products shall be finally accepted by the Buyer at the Seller's premises, for which no separate costs are charged. The necessary processing material required for the test run (sampling and debugging) shall be made available free of charge by the Buyer in twenty or two hundred litres containers. After final acceptance the Buyer shall not be entitled to claim that the products do not have the agreed characteristics.</p> <p>11 Limitation of Liability</p> <p>11.1 The Seller shall be liable in case of wilful misconduct or gross negligence without any limitations.</p> <p>11.2 In case of slight negligence the Seller shall be liable – with the exception of any liability for personal injuries – solely to the extent that the Seller breaches material contractual obligations. The total liability, in the aggregate of the Seller, shall not exceed 50% of the contract value, of the part of the delivery, which was responsible for the damage.</p> <p>11.3 Under no circumstances and with the exemption in case of personal injuries, the Seller shall be liable for consequential or indirect damages and / or for pure financial losses such as but not limited to loss of profit, loss of production, loss of contracts or any other financial losses.</p> <p>11.4 All claims for damages must be enforced by law in front of a court within one year after the knowledge of a claim, otherwise any right to claim shall be deemed to be expired.</p> <p>11.5 In deviation from article 1298 ABGB the Buyer bears the burden of proof that products are not conform with the contract due to a default of the Seller.</p> <p>12 Force Majeure</p> <p>12.1 The Seller shall be released in part or in general from the timely performance of the contract if Seller is prevented by events of Force Majeure. Events of Majeure can be such events which the Seller is unable to foresee and avoid and that are beyond its control like work-conflicts, fire, embargo, general absence of goods etc.</p> <p>13 Non-Disclosure</p> <p>13.1 Buyer shall undertake to keep strictly confidential any information on the technical or commercial knowledge of the Seller, which may have been obtained in the course of the business relationship with the Seller, and Buyer shall use such information only for the purpose of the respective contract. This obligation shall be valid for a period of 5 years after the termination of the respective business relationship between Seller and Buyer. The confidentiality obligation shall be excluded for information which was already in the public domain without breaching this confidentiality regulations.</p> <p>14 Non-Assignment</p> <p>14.1 The Buyer may not assign any rights or interest arising out of a contract against the Seller, in whole or in part, without the consent of the Seller.</p>	<p>10 保修</p> <p>10.1 卖方有义务根据本条款约定, 就卖方在施工、材料或执行方面的违约, 对影响产品可用性的缺陷进行补救。对于轻微偏差或对产品可用性影响不大的缺陷, 不得提出索赔。保修不包括磨损。</p> <p>10.2 本保修义务仅适用于交货时已存在的缺陷。保修期为自交货之日起 12 个月。除非另有规定, 交货日期为买方接收或无任何正当理由拒绝接受服务或产品之日。买方应负举证责任, 表明于交货之日起缺陷已存在。</p> <p>10.3 买方有义务在交货后立即就已交付的产品进行检验, 费用由买方承担, 并以书面形式通知卖方任何缺陷、交货有误或交货数量不够。买方只有在交付后最多 7 个工作日内通知卖方缺陷, 才能提出保修索赔。买方一旦发现任何潜在缺陷, 应立即通知卖方。因以下原因, 卖方必须根据卖方选择来补救缺陷:</p> <p>a.) 在缺陷产品的所在处进行维修;或</p> <p>b.) 必须将产品运回卖方解决问题。运输费用由买方承担; 或</p> <p>c.) 卖方将更换零件或整个产品。保修期不因更换而延长。</p> <p>10.4 缺陷维修服务始终在卖方营业点进行。如需在国外进行更换服务, 则由买方承担安装团队运费和差旅费。</p> <p>10.5 履行补救服务不得视为卖方承认缺陷。更换后的产品或缺陷产品或零件均由卖方处理。</p> <p>10.6 如果卖方事先以书面形式批准缺陷补救服务, 则卖方只需支付买方因补救服务而产生的费用。</p> <p>10.7 卖方保修义务要求买方在正常生产条件下, 遵守产品的操作和维护规范。</p> <p>10.8 卖方仅在供应商自身对次级供应商提出的保证期索赔范围内, 对从次级供应商所购买的产品或部件承担责任。</p> <p>10.9 若产品按照买方提供的设计规范书、图纸或模型生产, 则卖方责任不包括施工正确性, 仅包括施工是否符合上述规范书。此情况下, 买方应使卖方免受损害。</p> <p>10.10 若对旧产品进行维修或更换第三方产品, 则卖方不承担任何责任。</p> <p>10.11 除非另行规定, 买方最终在卖方场所验收产品, 无需单独收费。喷涂所需的必要加工材料将装在 20 升集装箱中, 应由买方免费提供。验收后, 买方无权称产品不具有约定特性而提出索赔。</p> <p>11 责任范围</p> <p>11.1 如果出现故意不当行为或重大疏忽而无任何限制, 则卖方应对此负责。</p> <p>11.2 如果出现轻微过失, 则卖方应在违反重大合同义务时承担责任(个人伤害除外)。卖方对交付产品受损的赔偿责任的总额不应超过合同总金额的 50%。</p> <p>11.3 任何情况下(在人身伤害除外), 卖方应对间接损害和/或纯粹的财产损失承担责任, 包括但不限于利润损失、生产损失、合同损失或任何其他经济损失。</p> <p>11.4 所有损害赔偿须在得知索赔后一年内在法庭上由法律强制执行, 否则, 任何索赔权将视为到期。</p> <p>11.5 与 ABGB 第 1298 条规定不同, 买方承担因卖方违约而导致产品不符合合同的举证责任。</p> <p>12 不可抗力</p> <p>12.1 如果卖方因不可抗力事件受阻, 无法及时履行合同, 则卖方应部分或全部解除合同。不可抗力事件是指卖方无法预见, 不能避免, 且不能控制的事件, 如工作冲突、火灾、禁运、缺货等。</p> <p>13 保密</p> <p>13.1 在与卖方的业务关系中可能获得的有关卖方技术或商业信息的任何信息, 买方确保对此严格保密, 且仅将该等信息用于各合同的目的。本义务自买卖双方业务关系终止后 5 年内有效。保密义务不包括对在未违反本保密规定的情况下已公开的信息保密。</p> <p>14 不转让</p> <p>14.1 未经卖方同意, 买方不得将本合同产生的任何权利或利益全部或部分转让给卖方。</p>
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<p>15 Non-Solicitation</p> <p>15.1 The Buyer shall not directly or indirectly, on its own behalf or on behalf of or in conjunction with any person or legal entity, recruit, solicit or induce, or attempt to recruit, solicit or induce any employee of the Seller with whom the Buyer had contact during the business relationship with the Seller, to terminate their employment relationship with the Seller. In case of the Buyer breaching this obligation, the Buyer shall pay a penalty to the Seller (with reference to article 23 AngG), at the amount of the last gross salary of such employee per year paid by the Seller; in case of a shorter period of employment the extrapolated amount of the yearly gross salary.</p> <p>16 Applicable court and law, place of fulfillment, Severability Clause</p> <p>16.1 The place of jurisdiction for all disputes arising between a Buyer with its registered office within the European Union shall be the court having subject-matter jurisdiction over the place of the Seller. The Seller shall be entitled to bring in a lawsuit also to any other court having subject-matter jurisdiction over the place of the Buyer. Discrepancies between the Seller and a Buyer with its registered office outside the European Union shall be finally settled.</p> <p>16.2 For all business between Seller and Buyer the Austrian law with the exclusion of the UN Convention on Contracts of the International Sale of Goods (CISG) and the conflict of law rules.</p> <p>16.3 Place of performance for delivery and payment shall be the Seller's principal place of business.</p> <p>16.4 The contract concluded by and between the Seller and the Buyer shall remain binding also in the case that individual provisions of the contract or these General Terms and Conditions of Sale are legally ineffective. Ineffective provisions shall be replaced in good faith by a regulation that comes as close as possible to the purpose of the ineffective provision and ensures that the economic purpose of the contract can be achieved.</p>	<p>15 竞业禁止</p> <p>15.1 在与卖方存在业务关系期间, 买方不得直接或间接以自身名义, 或代表或连同任何个人或法律实体, 进行招募、招揽或诱导, 或试图招募、招揽或诱导卖方的员工, 使其与卖方终止雇佣关系。若买方违反该项义务, 则买方应向卖方支付违约金(参见 AngG 第 23 条规定), 金额为卖方每年支付该雇员的最后总工资; 若不满一年, 则为估计的年度总工资。</p> <p>16 适用法院和法律、履行地点、可分割条款</p> <p>16.1 卖方与买方(其注册办事处处于欧盟境内)间发生的所有争端的管辖地为卖方所在地具有标的管辖权的法院。另外, 卖方有权向买方所在地的有管辖权的其他法院提起诉讼。卖方与买方(其注册办事处为欧盟境外)间的争端应最终得以解决。</p> <p>16.2 对于买卖双方之间的所有业务, 奥地利法律不包括《联合国国际货物销售合同公约》(CISG) 及法律规则冲突。</p> <p>16.3 交货地点与付款地点均为卖方的主要营业地。</p> <p>16.4 若本合同或《一般销售条款》的个别规定在法律上无效, 买卖双方签订的合同仍具有法律约束力。无效条款应本着诚信原则, 以尽可能接近无效条款目的的规定取代, 并确保合同的经济目的得以实现。</p>
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OFFERING, 2019-05-21

OFFERING, 2019 年 5 月 21 日