

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

- 1 Preamble**
- 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.
- 1.2 These General Terms & Conditions of Sale shall be applicable in its current version, which can be downloaded under www.elmet.com.
- 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.
- 2 Offer / Contract**
- 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.
- 3 Plans and documentations**
- 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.
- 3.2 All plans, catalogues, brochures, documentations etc. shall always remain the sole property of the Seller.
- 4 Packing**
- 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.
- 5 Transfer of risk**
- 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.
- 6 Retention of title**
- 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.
- 6.2 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.
- 6.3 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 Sellers 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.
- 7 Terms of delivery**
- 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.
- 7.2 Seller is authorized to make part or pre-deliveries.
- 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.
- 8 Prices**
- 8.1 Unless otherwise agreed prices are ex works, not packed and without loading. If shipment is included the price is without discharge.
- 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.
- 9 Payment**
- 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.
- 9.2 Buyer shall not be allowed to withhold payments because of warranty claims which have not expressly been accepted by the Seller.
- 9.3 Default of payment shall automatically postpone the delivery terms for the Seller.
- 9.4 In case of default of payment one percent p.m. on arrears shall apply.
- 10 Warranty**
- 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.
- This warranty obligation applies only for such defects, which have already been existing at the time of delivery.
- 10.2 The warranty period is 12 months from delivery. Unless otherwise agreed the date of delivery is when the Buyer has taken over 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.
- 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:
- a.) Repair of defect products where they are; or
- b.) The products must be sent to Seller to solve the problems. Costs of transportation shall be paid by the Buyer; or
- c.) Seller will replace parts or he will replace the products in total. The warranty time shall not be extended due to a replacement.
- 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.
- 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.
- 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.
- 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.
- 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.
- 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.
- 10.10 In the case of repair orders or alterations of old or third-party products, the Seller shall not assume any liability whatsoever.
- 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.
- 11 Limitation of Liability**
- 11.1 The Seller shall be liable in case of wilful misconduct or gross negligence without any limitations.
- 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.
- 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.
- 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.
- 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.
- 12 Force Majeure**
- 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.
- 13 Non-Disclosure**
- 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.
- 14 Non-Assignment**
- 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.
- 15 Non-Solicitation**
- 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.
- 16 Applicable court and law, place of fulfillment, Severability Clause**
- 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 by one or more arbitrators appointed in accordance with the Rules of Arbitration of the International Chamber of Commerce in Paris. The place of arbitration is Vienna, the language to be used in the arbitration is German or English.
- 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.
- 16.3 Place of performance for delivery and payment shall be the Seller's principal place of business.
- 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.