

## **General Terms and Conditions on the Sale of Goods ELBTAL PLASTICS GmbH & Co. KG**

**[English version for informational purposes; only the German version shall be legally binding]**

### **1. Scope of Validity of these Terms and Conditions**

#### **1.1**

All sale and purchase transactions of ELBTAL PLASTICS GmbH & Co. KG (hereinafter: „ELBTAL“) with Customer shall be exclusively subject to the following general terms and conditions on the sale of goods (hereinafter: “General Terms”).

#### **1.2**

These General Terms also apply in its current version to all future contracts between the Parties in a running business connection without another respective note being required, unless the Parties agree otherwise. This also applies if Customer received knowledge of these General Terms only after the first conclusion of a contract between the Parties.

#### **1.3**

Agreements deviating from these General Terms shall require ELBTAL’s explicit written consent (Sec. 126 German Civil Code, “Sec. 126 BGB”) to become valid and have to be accepted separately in writing (Sec. 126 BGB) for every individual contract. Such conditions shall not be binding upon ELBTAL, even if ELBTAL fails to explicitly contradict them, or if ELBTAL, being fully aware of such conditions, delivers to Purchaser without reservations.

#### **1.4**

ELBTAL shall inform Customer in written form about modifications of these General Terms at the latest four (4) weeks before they become valid. Customer’s consent is deemed to be given if he does not communicate his rejection in textual form until the date of the modifications coming into force. ELBTAL shall expressly advert Customer to this effect of deemed consent in its information about the modification of these General Terms.

### **2. Offers and Conclusion of Contract, Order of Validity**

#### **2.1**

Offers of ELBTAL shall not be binding unless expressly indicated or confirmed otherwise by ELBTAL in written form (Sec. 126 BGB). Drawings, depictions, dimensions, weights or other performance data, e.g. in cost estimations, shall only be binding if explicitly agreed upon in writing or if this is laid down in a product related technical data sheet.

#### **2.2**

Customer’s offer, which is a legal offer according to Sec. 145 German Civil Code, must comply with ELBTAL’s inquiry and expressly specify any potential deviations.

### 2.3

The contract comes about through acceptance of customer's order by ELBTAL in textual form, in the form of an order confirmation, the latest at provision of the performance ELBTAL. ELBTAL may accept this offer within a period of two (2) weeks.

### 2.4

Orders of associated companies are completed on their own behalf and at their own expense.

### 2.5

Unless otherwise agreed in the individual contract, in case of conflicting provisions the following order applies:

- a). the individual contract with Customer based on these General Terms including potential additional agreements,
- b) if available - performance description arranged with Customer
- c) if available - technical specification arranged with Customer
- d) if available - technical data sheet,
- e) essential contractual parts of ELBTAL's offer (e.g. price, amount).

### 2.6

A product related technical data sheet shall be made available to Customer once with the first order of a respective product. Follow-up orders of the same product do not imply another transmission of the technical data sheet. Customer may request the technical data sheet already beforehand.

### 2.7

ELBTAL reserves rights of ownership and copyrights with respect to drawings, depictions, dimensions, weights or other performance data etc.

## **3. Customer's Duties and Obligations**

### 3.1

Customer shall ensure that ELBTAL is provided with all necessary informational and provision performances in good time, to the necessary extent, and without charge. If Customer does not, not in time or not in the agreed manner provide necessary informational and provision performance, Customer solely has to bear the consequences resulting therefrom (e.g. delays, additional expenditures).

### 3.2

If Customer purchases goods for certain purposes, Customer shall inform ELBTAL about these purposes no later than when conducting the order, in order for ELBTAL to propose suitable products to Customer. If Customer fails to inform ELBTAL, Customer may not appeal to the missing suitability of the product for a certain purpose.

### 3.3

Customer shall, prior to processing the delivered goods, be obliged to inspect them for their suitability for the purposes of use, even if samples of goods or a technical data sheet have been supplied before. This especially includes welding test works and weldseam density tests on the concrete processing

object as well as examination of the goods regarding non-minor color deviations before actual processing of the delivered goods.

#### 3.4

Customer has to take care of monitoring informational changes in the technical data sheet or the existence of newer versions of the technical data sheet in further Purchases autonomously.

### **4. Delivery**

#### 4.1

Deliveries shall be effected ex works "Grenzstraße 9, D-01640 Coswig/Dresden" (Incoterms 2020: EXW Coswig/Dresden) unless explicitly agreed otherwise in textual form.

#### 4.2

Upon completion of orders distributed on EXW basis, Customer is required to pick up his goods at the delivery destination pursuant to Sec. 4.1 within 5 (five) days (Monday to Friday, bank holidays excluded) from the delivery date stated in the order confirmation unless indicated otherwise by ELBTAL. Upon Pickup, customer is obliged to settle any transport and/or all other costs concerning the goods which arose after their finalization and provision by ELBTAL. Notwithstanding the aforementioned, delivery by ELBTAL through a third party to a place determined by Customer at Customer's expense may be agreed upon in textual form.

#### 4.3

Form, modality and scope of packaging are in the sole discretion of ELBTAL. If ELBTAL committed itself, in an individual case, beyond EXW Coswig/Dresden pursuant to Incoterms 2020, to send goods to Customer, the modality of dispatch is in the sole discretion of ELBTAL.

#### 4.4

ELBTAL shall be entitled to effect partial deliveries and invoicing, if (i) the partial delivery is usable for Customer within the intended purpose of the contract, (ii) the delivery of the remaining ordered goods is secured and (iii) no substantial additional expenses occur for Customer hereby (unless ELBTAL agrees in writing to bear these expenses) or if Customer has expressed his consent beforehand.

#### 4.5

Customer shall, at its sole responsibility, observe the import and export provisions applicable to the despatch of works and/or services. Customer bears all customs, fees and other costs accruing in case of cross-border despatch or provision of services. Customer shall also, at its sole responsibility, handle all statutory and/or administrative proceedings in conjunction with cross-border despatches or provision of services unless explicitly agreed otherwise in writing (Sec. 126 BGB).

#### 4.6

In case ELBTAL delivers upon Customer's request goods to a non-EU country without being provided with a certificate of export or other relevant information concerning the export of the goods subject to number 4.2 above, Customer is liable towards ELBTAL insofar as ELBTAL is held liable for payment of Value Added Tax (VAT) regarding the respective delivery, unless ELBTAL is responsible accordingly.

#### 4.7

ELBTAL reserves the right to have contractually owed services rendered by third parties. The rights of the customer against ELBTAL remain unaffected.

### **5 Time of Delivery and Delivery Delay**

#### 5.1

Specified delivery and performance dates are only binding if ELBTAL declared or confirmed them to be binding in written form (Sec. 126 BGB). ELBTAL shall regularly name a non-binding calendar week as prospective delivery date in the order confirmation.

#### 5.2

If an estimated delivery date is overdue by more than two (2) weeks, Customer shall be entitled to set ELBTAL an adequate subsequent period of time for delivery. If ELBTAL does not deliver within the subsequent period of time, Customer shall be entitled to withdraw from the contract. Withdrawal shall be declared in writing (Sec. 126 BGB). The right to withdraw from the contract shall only exist if ELBTAL is liable for not complying with the subsequent period of time set for delivery, and if it is not reasonable for Customer to adhere to the contract. If Customer chooses compensation for damages in lieu of performance, ELBTAL's liability is subject to the limitations as stipulated in provision 10 below.

#### 5.3

As long as Customer does not fulfill its cooperation and provision duties, a delay in delivery of ELBTAL is excluded.

#### 5.4

For the period of the existence of circumstances outside of the control of ELBTAL ("Force Majeure"), such as inability to source raw materials and transportation means, stoppages in production, strikes and lock-outs, fire, pandemics and natural catastrophes, ELBTAL shall be discharged from its delivery obligation. Delivery deadlines mentioned shall be extended by the period of the existence of the circumstances of Force Majeure.

#### 5.5

If the shipment is delayed at the request of the customer or through his fault, the goods will be stored at the customer's risk and expense. In this case, notification of readiness for dispatch is equivalent to dispatch. The goods invoice is due immediately upon storage. ELBTAL is entitled to charge the usual storage costs for the storage space used (on its own or on third-party premises).

### **6. Prices and Payment Conditions**

#### 6.1

Prices are ex works (that is, if the delivery item is an item of sale: "ex works", resp. hereinafter "EXW Coswig/Dresden" according to Incoterms 2020) and do not include freight, customs, import duties, ancillary levies; they are net prices plus statutory value added tax (VAT).

## 6.2

In the event that during the period between conclusion of the contract and delivery cost decreases or cost increases occur, unforeseen and uninfluencable by ELBTAL, especially due to changes in the raw material prices by more than 10 % (ten percent), ELBTAL and Customer are entitled to request of the respective other party an adjustment of the agreed prices by renegotiation. The validity of the remaining provisions shall not be affected by such renegotiations. If no agreement can be reached by the renegotiations, both ELBTAL and Customer are entitled to withdraw from the contract. The same applies in case that between conclusion of the contract and delivery the consumer costs index, as established for all of the Federal republic of Germany by the German Federal Statistics Office in Wiesbaden, changes, unforeseen and uninfluencable by ELBTAL, by more than 5 % (five percent) compared to the index as established at the time of Customer's order. The consumer costs index by the German Federal Statistics Office is visible to Customer anytime via their homepage under [www.destatis.de](http://www.destatis.de) If desired, Customer may request the percentaged price development of the basic raw materials used by ELBTAL as an overview (source: branch paper information for plastics (KI) – [www.kiweb.de](http://www.kiweb.de)) Calculation base for price changes are the prices as shown in the aforementioned KI raw materials price index at the time of Customer's order. In case that price increases or price decreases are due to price changes of special raw materials not shown in the KI raw material price index, ELBTAL will in each individual case prove towards Customer.

## 6.3

In case ELBTAL delivers or sends the goods to a location outside Germany upon Customer's request and expense, Customer shall, within five (5) working days of receipt of the goods at the destination, provide ELBTAL with a confirmation of receipt ("Gelangensbestätigung") or comparable alternative documentation in written form as proof of shipment abroad. If Customer does not provide such proof, Customer shall be liable internally to ELBTAL to the extent that ELBTAL is therefore required to pay Value Added Tax (VAT) on the delivery in question, unless ELBTAL is responsible accordingly.

## 6.4

In case of shipment of the goods to a non-EU country, Customer shall, on its own initiative, send ELBTAL as proof of shipment an export certificate in textual form within five (5) business days after receiving the goods in the no-EU country. In case of not providing the export certificate or any other relevant information concerning the shipment of the goods, Customer is liable pursuant to 4.6 above.

## 6.5

Invoices of ELBTAL are due immediately upon receipt and shall be paid without deductions and within ten (10) days to the account indicated on the invoice, unless other terms of payment are agreed. Timeliness of payment shall be determined by the date the whole amount is credited to one of ELBTAL's business accounts. In the event of default in payment, ELBTAL is entitled to charge default interest in the amount of seven (7) percentage points above the base interest rate.

## 6.6

Complaints against ELBTAL's charged level of price have to be addressed to ELBTAL by Customer immediately after receipt of invoice. Objections must be received by ELBTAL within eight (8) weeks following receipt of the invoice. Omission of timely complaints is deemed as approval of the level of

invoice. Customer's legal claims in case of complaints after expiration of the deadline remain unaffected.

#### 6.7

If Customer delays on payment with respect to carried out deliveries ELBTAL is, at its option, entitled to either withhold not yet carried out deliveries until Customer has performed advance payment accordingly, or to withdraw from the contract about the not yet carried out deliveries.

#### 6.8

If Customer deducts a cash discount from its payment which is unjustified due to non-execution of a payment within a set payment period, absence of a complaint by ELBTAL does not constitute a tacit acknowledgement of the deducted cash discount. Until expiration of the limitation period, ELBTAL is entitled to demand payment of the partial amount not paid by Customer due to the cash discount or to settle this partial amount with outstanding claims of other orders of Customer resp. to book it on Customer's receivables account.

#### 6.9

For each debit balance not realized or returned unpaid, Customer shall, to the extent he is liable for the event which triggered the costs, reimburse ELBTAL the costs incurred, including costs for the collection of the outstanding payments.

#### 6.10

Rejection of Bills of Exchange shall remain reserved.

#### 6.11

If, after the conclusion of a contract, there are reasonable doubts as to the solvency or credit standing of Customer or, if such circumstances are prevailing at the conclusion of the contract but become known at a later date, ELBTAL shall be entitled to demand advance payment or the posting of collateral prior to delivery, as well as to revoke payment terms granted and render all credited receivables immediately due for payment.

#### 6.12

ELBTAL shall be entitled to initially offset payments against older debts of Customer and shall notify Customer of the nature of any offset. If costs and interest have already accrued, ELBTAL shall be entitled to offset payments against these costs first, then against interest and finally against the principal debt.

#### 6.13

Despite possible conflicting or missing determinations of Customer, ELBTAL shall be entitled to initially offset payments against older debts of Customer and shall notify Customer of the nature of any offset. If costs and interest have already accrued, ELBTAL shall be entitled to offset payments against these costs first, then against interest and finally against the principal debt.

#### 6.14

Customer is entitled to offset ELBTAL claims with his counterclaims in case they are undisputed or have been legally established. The customer has a right of retention if and to the extent that his

counterclaims are based on the same contractual relationship and are undisputed or have been legally established.

## **7. Transfer of risk; Examination for transport damages**

### **7.1**

The risk of accidental loss of goods shall pass over to Customer in all cases (regardless of any Incoterms 2020 clause ELBTAL and Customer have agreed to) as soon as the consignment is handed over to the third party effecting the transport or has left ELBTAL's warehouse for dispatch purposes.

### **7.2**

Immediately after receiving the delivery, Customer shall examine its external condition, notify any transport damages to carrier, secure relevant evidence and immediately inform ELBTAL and the carrier by phone and in textual form. In case of a delivery to a deviating debtor's address, Customer shall ensure that the examination for any transport damage is carried out in accordance with this section 7.

### **7.3**

If dispatch cannot be carried out within the agreed delivery period for reasons for which ELBTAL is not responsible, the risk of accidental loss of the goods shall pass over to the Customer with expiration of the period subject to Sec. 4.2 or, if a further dispatch agreement between the parties exists, on collection of the goods by the person responsible for dispatch.

## **8. Obligation to Give Notice of Defects; Warranty; Period of Limitation**

### **8.1**

Obvious defects and defects noticeable upon proper inspection of the delivery shall be notified by Customer in written form immediately upon receipt of the goods. Defects that could not be discovered within this period, even upon proper inspection, shall be notified to ELBTAL immediately upon their discovery. The same applies to complaints because of wrong deliveries and discrepancies in quantities. If the period for notification is not observed, warranty claims shall be excluded.

### **8.2**

Minor discrepancies in dimensions and formats as well as coloration of the material and lacking suitability for purposes not priorly mentioned by Customer shall not entitle Customer to raise complaints for defects.

### **8.3**

Warranty rights may only be raised in respect of goods that are available for inspection or return. Without prior mutual agreement products may not be returned to ELBTAL. Taking back goods by ELBTAL does in no case constitute an acknowledgement that the goods taken back are defective.

### **8.4**

In case a defect appears after processing of the delivered good, ELBTAL themselves or a third party commissioned by ELBTAL shall be entitled to examine the delivered goods on-site within three weeks of receipt of a notice of defect subject to this sec. 8. In that case Customer shall complete a

questionnaire sent by ELBTAL and specify the defect. Customer shall be obliged to place the examination duties according to this sec. 8.4 upon Customer's customer.

#### 8.5

For defects notified in time pursuant to 8.1, ELBTAL grants rework or delivery of new goods free from defects. In case the cure by ELBTAL turns out to be unsuccessful, Customer shall, at its option, be entitled to reduce the price or to withdraw from the contract. There are no claims for compensatory damages, except as provided for in section 10 below.

#### 8.6

The warranty obligation shall expire if the goods delivered, also by third parties, are changed, processed or improperly handled. Improper handling also includes an improper storage of the goods.

#### 8.7

The warranty statute of limitations amounts to twelve (12) months from transfer of risk, unless another statutory term is prescribed by law (e.g. Sec. 438 para. 1 no. 2 BGB: five years for architectural structures) or unless the compulsory provisions of the purchase of consumer goods (Sec. 478, 479 BGB) apply. The aforementioned does not apply in cases ELBTAL is liable for culpable violation of life, limb or health, and in cases ELBTAL is liable for claims for damage based on intent or gross negligence, including intent or gross negligence of ELBTAL's representatives or vicarious agents.

### **9. Retention of Title**

#### 9.1

Until such time as all receivables from the business relationship between the parties including secondary claims, claims for compensation and encashment of cheques and bills of exchange have been paid, ELBTAL shall retain title (ownership) to the purchased goods.

#### 9.2

Customer is only entitled to process or treat goods taking into account the requirements as laid down in this Sec. 9.

#### 9.3

If goods subject to retention of title are being treated into a new tangible thing by processing, reshaping, assembling or mixing, this shall take place for ELBTAL and without any obligations for ELBTAL whatsoever. By processing, reshaping, assembling or mixing, Customer does not acquire ownership of the new thing. By processing, reshaping, assembling or mixing things not belonging to ELBTAL, ELBTAL acquires joint ownership at the ratio of the invoice value of the goods subject to retention of title in relation to the total value.

#### 9.4

If a centralized settlement authority is involved in business transactions between ELBTAL and Customer accepts del credere, ELBTAL transfers ownership to the centralized settlement authority with the dispatch of the good under the suspensive condition of payment of the purchase price by the centralized settlement authority. Customer shall become clear of debt only with payment by the centralized settlement authority.



9.5

Customer shall be entitled to sell or process the goods subject to retention of title only in the ordinary course of business and only if his pecuniary circumstances do not substantially worsen.

9.6

Customer shall already now assign to ELBTAL its payment claim including all ancillary rights deriving from the resale of goods subject to title of retention, including current account balance claims. If the goods were processed, reshaped, assembled or mixed and ELBTAL acquired joint ownership, the purchase price claim is due to ELBTAL in the ratio of ELBTAL's rights regarding the goods. If Customer sold the claim in a factoring transaction, Customer shall assign the claim replacing the original claim against the factor to ELBTAL and shall forward the amount realised to ELBTAL in the ratio of ELBTAL's rights regarding the goods. Customer is obliged to disclose the factor the assignment, if Customer is overdue by 10 (ten) days with the settlement of the invoice or his pecuniary circumstances do not substantially worsen. ELBTAL accepts the assignment of Customer according to this Sec. 9.6.

9.7

Customer is entitled to collect the assigned claims, as long as Customer complies with his payment obligations. The direct debiting mandate expires in case of payment default or if pecuniary circumstances substantially worsen. In that case ELBTAL shall be empowered by Customer to inform third party purchasers about the assignment and collect the claim in their own name. In order for ELBTAL to raise the assignment claims themselves, Customer shall provide ELBTAL with the necessary information and allow verification of the information. This especially includes handing over an accurate and detailed list of claims and any reserved goods with naming of the third party debtors, addresses, amount of individual claims and invoice date.

9.8

If and to the extent that the estimated value of the collateral exceeds the total receivables of ELBTAL to be secured respectively, permanently by 10 %, ELBTAL is obliged to release collaterals in their dutiful discretion.

9.9

Pledging or chattel mortgage of goods subject to title of retention is prohibited. ELBTAL shall in those cases be informed by Customer immediately specifying the garnisher.

9.10

Customer shall be obliged to keep the goods diligently in custody and sufficiently insure them against usual risks, like damage, theft, loss, fire, and water to usual terms and common extent. Customer herewith assigns to ELBTAL any claim against the insurer or other obliged third parties due to ELBTAL in those cases in the amount equivalent to invoice value of the goods subject to retention of title. ELBTAL accepts the assignment. In case the insurer does not cover the full damage, Customer may not compensate ELBTAL only partially.

## **10. Liability, Product Liability**

### 10.1

ELBTAL shall be liable under statutory regulations insofar as Customer raises claims based on intent or gross negligence, including intent or gross negligence of ELBTAL's representatives or vicarious agents.

### 10.2

To the extent ELBTAL is accused of the slightly negligent breach of an essential contractual obligation the fulfilment of which enables the proper execution of this agreement at all, and the violation of which puts the achievement of the contractual purpose at risk, and the observance of which Customer may regularly rely on, liability of ELBTAL for damages is limited to the foreseeable and typically occurring damage.

### 10.3

Liability for culpable violation of life, limb or health shall not be affected thereby.

### 10.4

Liability according to the German Product Liability Act shall not be affected thereby.

### 10.5

Customer shall, in the internal relationship to ELBTAL, take the sole risk as (co-)producer in accordance with the German Product Liability Act, insofar as the cause of damage falls within his domain of responsibility and organization, and if he, in his external relationship to the claimant, is liable as producer. Customer shall in the abovementioned cases indemnify ELBTAL explicitly from any third party claims and shall, when necessary, provide security insofar as his liability in the internal relationship is concerned. This shall apply especially but not exclusively in cases where ELBTAL delivered primary products to Customer.

### 10.6

Unless stipulated otherwise above, ELBTAL's liability shall be excluded.

## **11. Confidentiality**

### 11.1

The Parties mutually undertake to maintain silence about the content of this agreement, especially concerning the conditions agreed on. This obligation remains valid for another three years after the termination of this agreement.

### 11.2

Parties are mutually obliged to maintain confidentiality about company and business secrets as well as information designated as confidential ("confidential information") that came to their knowledge in the context of performing this agreement or which the Parties exchange and make available for each other. As confidential information, Parties especially understand e.g. knowhow, business relations, business strategies, business planning, financial planning, personnel matters. Information publicly known at the time of transmission, or later becoming publicly known not resulting from a wrongdoing of the party concerned is not deemed as confidential. The same applies if an information, without a

direct or indirect infringement of the concerned Party's duty to maintain confidentiality, becomes known to a third's party other than by the party concerned or its affiliates.

### 11.3

Parties only will make confidential information available to other persons and only insofar as it is necessary within the framework of their business relation. Confidential information may only be passed to persons not concerned with the implementation of the order after the other Party's prior written consent. Associated companies within the meaning of Sec. 15 et seqq. German Stock Companies Act (AktG) are not considered as third parties. The Parties will also impose this obligation on their employees and third parties involved.

## **12. Offsetting; Right to Retention**

### 12.1

Customer's right to offset is excluded. This does not apply insofar as the counterclaim is based on a violation of a main obligation of ELBTAL pursuant to Sec. 320 German Civil Code (BGB), or the counterclaim is assessed in a legally binding judgment, or is undisputed.

### 12.2

Customer shall have a right of retention only insofar as its counterclaim is connected with or arising from the same transaction and is assessed in a legally binding judgment, or is undisputed. Apart from that, Customer shall not have a right of retention

## **13. Written Form**

### 13.1

This agreement shall precede all prior agreements concerning its object, regardless of whether they were agreed in writing or verbally. No subsidiary verbal agreements exist.

### 13.2

Any Amendments, addendums and the annulment of this agreement shall be in writing in order to be effective. This also applies for amendments of this written form clause. The aforementioned requirement of written form shall not apply to oral agreements made after the conclusion of this contract. Also, in this case parties agree on the necessity of a written confirmation concerning the content of the oral agreement.

### 13.3

Unless otherwise agreed within these General Terms, to fulfill the written form requirement, textual form pursuant to Sec. 126b German Civil Code, e.g. email, fax is sufficient.

## **14. Applicable law, Court of Venue**

### 14.1

The contractual relationship of the Parties is governed by German law, excluding UN-Sales law.

#### 14.2

If Customer is an entrepreneur pursuant to the German Commercial Code or a government entity or special governmental estate, the seat of ELBTAL is exclusive – also international – venue for all disputes arising out of or in connection with these General Terms or the contract. However, ELBTAL is entitled to raise a claim at the Customer’s seat. Any exclusive legal jurisdiction is antecedent.

### **15. Final Provisions**

#### 15.1

Customer may only assign rights and obligations arising from the agreement after prior written (Sec. 126 BGB) consent by ELBTAL. ELBTAL shall only refuse consent for important reason. Customer shall immediately inform ELBTAL if he plans to assign rights and obligations arising from the agreement with ELBTAL.

#### 15.2

Should particular provisions of these General Terms be or become invalid, the validity of the remaining provisions shall not be affected hereby. This does not apply if an adherence to the agreement would present an unreasonable hardship to a contracting party.

#### 15.3

These General Terms shall be concluded in both German and English language. In case of any discrepancies between the German and English version, the German version shall prevail.