

## **General Terms and Conditions of Delivery and Trading of ELBAU® Elektronik Bauelemente GmbH**

The following terms and conditions of ELBAU® GmbH form a mutually agreed part of the contract; they take priority over deviating conditions by the client, relating to purchasing or similar: deviations and additions as well as special concessions require the written form to be effective.

### **1. Validity**

Our following terms and conditions of delivery and trading apply to all business transactions, in particular to all future transactions, even if they are not separately referred to, and regulate all transactions conclusively, unless deviating conditions have been agreed in writing. The acceptance of deliveries and partial deliveries will in every case be considered to constitute acceptance of our terms and conditions of delivery and trading.

### **2. Offers**

Offers are always non-binding. A purchase agreement is only made when we confirm the order in writing. If we deliver without supplying the customer with an order confirmation in advance, the agreement will be made when the goods are handed to the carrier or haulier or to any other person or entity designated with the execution of the dispatch of the goods.

### **3. Prices**

Unless agreed otherwise, all our prices are in the currency of the Federal Republic of Germany and refer to the agreed specification. All prices exclude the relevant applicable sales tax. Fixed prices require a special agreement. § 454 BGB (German Civil Code) does not apply. Should the actual costs increase due to a change in the costs for materials and labour, we are entitled to adjust the applicable valid prices accordingly. We are entitled to pass the price change on to the client at the earliest 4 months following formation of the contract, with a notice period of 3 months. The agreed specification is the specification described in our order confirmation. Changes to the specification are to be agreed in a written addendum to the contract. If the client requests any changes we will research the desired changes within a mutually agreed time period, establish the effects of the changes and draw up a written follow-up offer. The client has to inform us within a reasonable period, at the very latest within 14 days, whether he accepts the follow-up offer. Should we fail to reach an agreement on the implementation of the changes with the client, we will continue with the work agreed in the existing contract without the changes. Orders with a value under €150.00 net will incur a small order charge of €30.00. Initial costs for unchanged projects will only be incurred once for orders placed within 2 years from the date of the last order. During this period documents, programs, adapters, masks, etc. will be stored. After this period they will be disposed of and have to be prepared again.

### **4. Delivery and delivery period**

Delivery will be ex-works. We reserve the right to make partial deliveries. Delivery dates and delivery periods will be confirmed by us separately or agreed with the client in writing, and are only binding in those instances. Early delivery is permitted. The delivery period is subject to the client's compliance with his contractual duties. Should delivery of the goods be delayed, the client is entitled to set a final deadline of at least 14 days. The deadline has been complied with if the goods have been dispatched on time. In the case of non-compliance by the client we can demand compensation for any damages arising. The client must inform us without delay and in writing of any obviously incorrect or incomplete deliveries as well as obvious defects, otherwise we will not be liable.

### **5. Packaging**

We will deliver the goods in customary packaging suitable for normal dispatch. Packaging will be charged at cost price.

### **6. Dispatch and transfer of risk**

We reserve the right to choose the route and method of transport. Unless expressly agreed otherwise we will only deliver at the client's cost and risk. The transport risk will also be borne by the client if the transport costs are exceptionally borne by us. If desired, the goods can be insured against transport damages at the expense of the client.

### **7. Retention of title**

The goods will remain our property until all our demands arising from the contractual relationship with the client have been fully satisfied. If the client is a retailer, he is entitled to process and sell the goods that are subject to retention of title during the orderly conduct of business, providing he is not in default. The client preventatively fully assigns any claims arising from the resale or any other legal basis (insurance, misuse) in respect of the goods subject to retention of title to us now. The client is entitled to receive the claims assigned to us for his own accounts in his own name, providing this entitlement has not been revoked by us in writing. If the value of the assigned claims exceeds the client's liabilities towards us by more than 20%, the excess amount will be paid to the client once we are fully satisfied. In the case of processing, where applicable, ELBAU GmbH remains manufacturer in the sense of § 950 BGB.

### **8. Make-and-hold orders**

In the case of make-and-hold orders the client must accept the entire quantity of goods. The agreed partial quantities must be accepted within the agreed time periods. If the goods are not requested within these deadlines we are entitled to dispatch the as of yet unrequested goods and to invoice the client accordingly. The accounts receivable are subject to our normal payment terms (point 9 below).

### **9. Payment**

Unless agreed otherwise, invoices are to be paid net within 14 days of the invoice date. Development work and services are subject to a payment period of 30 days from the date of the invoice. In the case of bank transfers or cheque payments, the relevant date is the date the money is credited to our account. If the payment terms are violated or if, following formation of the contract it becomes clear that there are justifiable doubts regarding the client's ability to pay or financial standing, we are entitled – without prejudice to any of our other rights – to demand prepayment or

securities up to the full amount of the sum in question. Grounds for justifiable doubts regarding the ability to pay or financial standing exist if a considerable deterioration occurs (e.g. if a bill of exchange is protested) or if the client's financial situation is under considerable threat. If the client fails to comply with the requested prepayment or applicable security provision within a reasonable deadline we are entitled to withdraw from the contract. The client is not entitled to retain payment based on potential counter claims or to declare offsetting with his own claims, unless the counter claims or demands are undisputed or have been ascertained as being legally valid. If the client is in default of payment we will charge 5% above the applicable base rate in line with § 1 Diskontsatz-Überleitungs-Gesetz (DÜG) (Discount Rate Transition Act), announced by the Deutsche Bundesbank. The right to raise a further claim for damages arising from the default remains.

## 10. Guarantee

We guarantee our services and products to be free from defects that affect the usability to more than a negligible extent. The legal guarantee periods apply. The guarantee is limited to our choice of remedy of the defect or substitution. The client is entitled to request rescission of the contract or lowering of the purchase price (reduction), should remedy of the defect or substitution fail. The same applies if we are unable to remedy the defect or provide substitution. In the course of this all single-priced goods and items are considered to be individual articles and rescission and reduction can only be requested in view of these.

No guarantee is provided for software errors than cannot be reproduced. The right to make technical changes for the purpose of progress and general improvement of the product or to make changes that do not substantially impair the use remains. Particular attention should be paid to the following points when claiming under the guarantee:

- a) The packing slip must be included for processing.
- b) The item in question is to be made available to us in its original packaging and with a clear description of the error.
- c) The responsible transport company is to be notified without delay of any transport damages.

Rescission will always be based on the up-to-date sale price, not exceeding the sale price in the invoice. We are not liable for damages resulting solely from unauthorised interference and these are not included in the guarantee claims.

## 11. Liability

We are liable for damages, irrespective of their legal basis (e. g. unfulfilment, impossibility, delay, guarantee, violation of secondary obligations or unlawful acts) in the following instances:

- in full in the case of gross negligence, intent or absence of a guaranteed characteristic;
- limited to the typical and expected damages for the contract in the case of infringement of a fundamental contractual duty as a result of slight negligence.

We are not liable for the accuracy of technical data, prices and other information in the production brochures, unless expressly stated otherwise by us.

Our legal liability for personal injury and in line with the German Product Liability Law remains unaffected. We assume no further liability.

## 12. Confidentiality and data protection

We agree to treat all knowledge of industrial secrets gained as part of the contractual relationship as confidential for an unlimited period of time. The same applies to all information marked as confidential.

The confidentiality obligation does *not* apply to ideas, models, concepts, methods, techniques or other important know-how, nor does it apply to information already known to us or known without being connected to the contractual relationship.

We will maintain data protection and in line with § 5 BDSG (German Federal Data Protection Act) will only use associates who are bound to comply with data protection for the fulfilment of the contract. For the purpose of the business transaction, data will be recorded in files on suppliers, clients and interested parties. We are entitled to process the client's data or to have it processed by a third party, providing this is necessary or relevant for the fulfilment of the contract.

## 13. Obligation to return

Patent documentation, internal company documents and other material that has been made available to the client over and above ordinary company communication required for the fulfilment of the contract must not be made available to a third party and must be returned to us immediately, including any copies, following completion of the procedure.

## 14. Place of execution and place of jurisdiction

The place of execution for all obligations arising from the contractual relationship is BERLIN. The place of jurisdiction for all disputes arising from the contractual relationship as well as its preparation and implementation, providing the client is a trader or does not have a place of jurisdiction in Germany, is BERLIN. In the case of claims relating to cheques and bills of exchange, the statutory place of jurisdiction also applies.

## 15. Choice of law

The contractual parties agree to German law. The application of CISG (UN Convention on Contracts for the International Sale of Goods) is expressly excluded.

## 16. General

We are to be informed immediately of changes to the client's company, relocation of business operations and change of ownership or directors.