

# Terms and Conditions of Supply and Delivery

(applicable only to business transactions with undertakings, public law entities or public law special purpose entities)

of **Eltex Elektrostatik Gesellschaft mbH**, Blauenstrasse 67-69, 79576 Weil am Rhein, Germany

## § 1 – Scope of Application

- 1.1 These terms and conditions are a part of all offers and contracts for the supply of goods and services of Eltex for ongoing and future business transactions.
- 1.2 Eltex shall be bound by any differing terms and conditions of the purchaser only if Eltex has expressly accepted them as binding.

## § 2 – Offers

- 2.1 Offers are non-binding unless Eltex expressly states such offers to be binding.
- 2.2 Samples, patterns as well as other information and documentation (including samples, patterns, information and documentation contained in Eltex' promotion materials), such as photos, drawings, measurement and weight data, as well as references to DIN-norms, shall only be considered contractually binding descriptions of quality if Eltex has expressly confirmed these in writing. Any guaranties within the meaning of the law must be expressly granted in writing by Eltex. Eltex reserves the right of alterations in view of the continuous development and improvement of its products.
- 2.3 Orders shall only become binding upon Eltex' order confirmation. Modifications and amendments shall only be valid when they are in writing.

## § 3 – Purchase Price / Compensation

- 3.1 The purchase price / service fee (collectively referred to as "Compensation") shall be ex works (EXW, Incoterms 2010) Weil am Rhein, Germany, excluding packaging and to be increased by value added tax at the applicable legal rate. The Compensation shall only be firm and fixed if Eltex has confirmed this in writing. Packaging will be charged by Eltex at cost. To the extent that the purchaser returns the packing to Eltex, the purchaser shall bear the cost of transportation to and disposal of the used packaging by Eltex.
- 3.2 To the extent that the shipment of goods and/or the rendering of services takes place more than four months after the order confirmation, Eltex shall have the right to compute a new Compensation by taking into account new list prices and/or altered costs of material, other costs or wages.

## § 4 – Delivery

- 4.1 The supply period stipulated by Eltex shall begin only once all technical issues have been clarified. Moreover, in order for Eltex to keep the delivery dates, the purchaser must in turn timely discharge all its obligation and responsibilities. Delivery dates are generally contingent upon Eltex itself being supplied timely unless Eltex has expressly promised in writing a firm delivery date. In any event the delivery date shall be met if Eltex advises of its readiness for shipment on or prior to such date, even if shipment is impossible for reasons for which Eltex is not responsible.

- 4.2 The supply period shall be adequately prolonged – even if the delivery is already delayed – in the event of unforeseen obstacles which Eltex is unable to avoid by using such degree of care as can reasonably be required under the circumstances, regardless of whether such event takes place in the plant of Eltex or at a sub-supplier, e.g. industrial action or lock-outs, disruption of production, interventions by public authorities, disruptions of supply etc.

#### **§ 5 – Preparatory Work, Sale on Trial**

- 5.1 Recommendations, drawings, trials or other ancillary performances provided upon the request of the purchaser are provided “as is” without any liability on the part of Eltex. To the extent that they exceed in a given case the scope that can be expected under the circumstances to be provided free of charge, said ancillary performances shall be free of charge in the event of an order, otherwise they shall be invoiced at cost.
- 5.2 To the extent that Eltex supplies goods for trial, these are supplied ex works (EXW, Incoterms 2010) Weil am Rhein, and shall be returned by the receiving party delivered duty paid (DDP, Incoterms 2000) Weil am Rhein if the receiving party decides not to keep the goods.
- 5.3 If no acceptance period is agreed upon, said period shall be one month from the date of transfer of risk.
- 5.4 In the event that the receiving party returns the goods, Eltex reserves the right to request a reasonable handling fee as well as a usage fee if wear and tear of the returned goods exceeds what is normal.
- 5.5 The receiving party shall keep the goods which are supplied for trial at any time separate from its other assets and/or mark them as property of Eltex. § 7.8 shall apply mutatis mutandis. In the event of a cessation of payment, petition for the commencement of insolvency proceedings or a similar foreign proceeding where the receiving party loses the right to freely dispose of its assets, the goods supplied for trial shall be returned immediately.

#### **§ 6 – Assumption of Risk**

- 6.1 All deliveries are ex works (EXW, Incoterms 2010) Weil am Rhein. However, even in the event of a delivery where Eltex bears the cost of shipment, risk shall pass upon the tender of the goods to the transporting company. This shall apply even in the event of partial shipments and/or even if Eltex has assumed additional obligations such as organizing the shipment, the exporting formalities and/or the commissioning of the goods. In the event of a delay of the shipment due to reasons which the purchaser is responsible for, risk shall pass to the purchaser on the date of Eltex being ready for shipment.
- 6.2 Upon the purchaser's written demand, Eltex shall insure the goods against damages due to storage, theft, transport and fire. The cost of such insurance shall be borne by the purchaser who shall also be responsible to settle any claims directly with the insurance company.

#### **§ 7 – Title Reserve**

- 7.1 Title in the goods supplied by Eltex shall be reserved for Eltex until full payment of the Compensation and full discharge by the purchaser of all open claims of Eltex from the business transactions with the purchaser as well as any claims which will arise in connection with the goods supplied as well as all claims which will arise in the future. The fact that individual claims may be included in a current account and/or netted and the recognition of the net amount shall not affect the title reserve. In the event that the purchaser defaults on its payments Eltex shall have the right to repossess the goods upon providing the purchaser with a warning notice and the purchaser shall be obliged to hand over the goods to Eltex.

- 7.2 In the event that the purchaser incorporates or processes the goods in which title is reserved so that a new mobile good is created, this shall take place on account of Eltex which shall have title in the new good. If the goods in which title is reserved are combined with other goods which are owned by third parties, Eltex shall become joint owner of the new good in proportion of the value of the goods in which Eltex' title was reserved to the value of the other goods at the time of the processing.
- 7.3 In the event that the purchaser becomes owner of the goods in which Eltex' title was reserved by means of combination or commingling with other goods, the purchaser herewith assigns to Eltex part ownership in proportion of the value of the goods in which Eltex' title was reserved to the value of the other goods at the time of the combination or commingling. The purchaser shall in this case keep the new good of which Eltex is part owner in custody for Eltex. Such custody shall be free of charge for Eltex.
- 7.4 If the goods in which Eltex' title was reserved are sold and/or transferred otherwise to third parties either alone or together with other goods which do not belong to Eltex, the purchaser herewith assigns to Eltex the accounts receivable arising out of such sale and/or transfer up to the value of the goods in which Eltex' title was reserved. The assignment shall include all ancillary claims and shall have first rank and priority. Eltex herewith accepts the assignment. The value of the goods in which Eltex' title was reserved shall be the amount invoiced by Eltex plus a safety margin of 10%; the safety margin shall not apply to the extent that it infringes upon the rights of third parties. If Eltex is part owner of the goods sold and/or transferred, the respective account receivable shall be assigned partially in proportion of the value of Eltex part ownership to the value of the entire good.
- 7.5 Any promissory notes received by the purchaser in lieu of payment of any of the accounts receivable are herewith assigned to Eltex. The purchaser shall keep the notes in custody for Eltex.
- 7.6 The purchaser shall have the right to sell, use or process the goods in which title is reserved only in the usual and ordinary course of business and only if the accounts receivable are assigned to Eltex in accordance with §§ 7.2 to 7.4. The purchaser shall not in any other way dispose of the goods of which title is reserved and in particular shall not pledge them or provide other security interests in them.
- 7.7 Eltex herewith authorizes the purchaser to claim the accounts receivable assigned pursuant to §§ 7.2 to 7.4; Eltex reserves the right to revoke said authorization. Eltex shall not use its right to directly claim from the debtors of the accounts receivable as long as the purchaser is not in default of payment vis-à-vis Eltex or vis-à-vis third parties. Upon Eltex' request the purchaser shall advise Eltex of the identity of the debtors of the accounts receivable and advise said debtors of the assignment of the respective accounts. Eltex shall have the right to itself notify said debtors of the assignment.
- 7.8 In the event that third parties execute into the goods of which title is reserved and/or into the accounts receivable, the purchaser shall advise Eltex thereof immediately while at the same time providing Eltex with all documents necessary for Eltex to oppose such execution. The cost of any intervention of Eltex shall in any event be borne by the purchaser.
- 7.9 In the event of a cessation of payment, petition for the commencement of insolvency proceedings or a similar foreign proceeding where the purchaser loses the right to freely dispose of its assets, the purchaser's right to sell, use or process the goods in which title is reserved (§ 7.6 above) and the purchaser's authorization to claim the assigned accounts receivable (§ 7.7 above) shall end. The same shall apply in the event of a protest of a promissory note or a cheque.
- 7.10 To the extent that the value of the security interests provided by the purchaser exceeds the value of Eltex' claims by more than 20%, Eltex shall – at its choice – release or reassign security interests in the amount exceeding 20%. Upon full payment of all claims of Eltex out of the business transactions, title in the goods and the accounts receivable shall vest in the purchaser.

- 7.11 In the event that Eltex pursuant to the provisions of this § 7 repossesses the goods supplied under the title reserve, Eltex shall have the right to sell or auction off such goods. The repossession of the goods shall take place against the compensation thus achieved but shall not exceed the agreed upon Compensation.
- 7.12 Eltex shall have the right to claim additional damages, in particular lost profits.
- 7.13 §§ 7.1 to 7.12 shall always apply to deliveries within Germany. In the event of shipments abroad they shall apply only to the extent that they are not contradicted by mandatory law of the country of destination. To the extent that in order to constitute and/or perfect a title reserve or security interest in line with §§ 7.1 to 7.11 above, the national law of the place of destination requires registration in a register and/or other action, the purchaser shall upon demand of Eltex assist to the extent necessary.

### **§ 8 – Terms and Conditions of Payment**

- 8.1 Invoices shall be due and payable within 10 days from the date of the invoice with a discount of 2% or within 30 days from the date of the invoice in full. Payment shall be made in the manner specified by Eltex free of charge for Eltex.
- 8.2 Assembly/installation work, toll manufacturing and/or repairs shall always be paid in full without discount.
- 8.3 Payment by cheque or promissory note shall require Eltex' prior consent and shall discharge the purchaser of its payment obligations only after the cheque or note has been irrevocably credited in full to Eltex' bank account. All cost caused by such payment shall be borne by the purchaser.
- 8.4 In the event that the purchaser defaults on its payment obligations and/or if events or circumstances become known which adversely affect the credit worthiness of the purchaser, all open claims of Eltex shall become due immediately. In addition Eltex shall have the right to execute future deliveries only against prepayment, to invoice all open claims (even such claims where a respite has been granted) immediately and to return all promissory notes and cheques and claim cash payment or adequate securities instead. Eltex shall moreover have the right to set an appropriate period of time for remedying any defects and upon expiration of that period rescind any open agreements and/or claim damages, to interdict the sale of any goods in which Eltex' title has been reserved and/or to repossess such goods at the purchaser's cost.
- 8.5 In the event that the purchaser defaults on its payment obligations, any overdue payments shall bear interest as provided by law. Eltex shall however have the right to claim damages in excess of the amount of interest.

### **§ 9 – Warranty**

- 9.1 The purchaser shall examine the goods immediately upon receipt in view of defects and of the conformity of the goods supplied with the goods ordered.
- 9.2 Any claims that the goods supplied are defective shall only be raised in writing within 14 days from the date of the receipt of the goods it being understood that the respective claim must reach Eltex in writing within said 14 day period.
- 9.3 In the event of a defect which could not be detected by the inspection provided in § 9.1, such defect must be notified to Eltex immediately upon its being detected and in any event within the 12 months warranty period.

- 9.4 Leeway of measurement, amount, weight, quality, color etc. which are customary in the industry shall not be considered defects. With regard to the quality of the goods only the product description issued by Eltex shall be deemed as agreed upon. Public statements, praises or promotions concerning the products shall not be considered contractual quality descriptions. References to DIN-norms shall be deemed descriptions of the respective product but shall not be considered as guaranties.
- 9.5 In the event that a defect is timely notified by the purchaser and admitted by Eltex, Eltex at its choice shall either repair or replace the goods or (especially in the event of a legal defect) remove the defect within an appropriate period of time ("post-fulfillment"). If Eltex' efforts fail or can be undertaken with a disproportionate effort only, the purchaser shall have the right to claim a reduction of the Compensation or a rescission of the contract.
- 9.6 If the violation of the contract is only minor, in particular if the defects are only minor, the purchaser shall only have the right to claim a reduction of the Compensation.
- 9.7 Eltex shall not be liable for the consequences of any modifications and/or repairs undertaken by third parties and/or the purchaser without the prior consent of Eltex.
- 9.8 Eltex' liability shall be excluded in the following events unless these are due to the negligence of Eltex: unsuitable use or use for unsuitable purposes, faulty assembly/installation by the purchaser or third parties, natural wear and tear as as consequence of aging or use, faulty or superficial treatment of the goods notably by omission of the necessary regular cleaning and/or maintenance or due to the use of unsuitable operating means or replacement parts by the purchaser, unsuitable environment (e.g. unstable underground etc.), chemical, electro-chemical or electrical influences.
- 9.9 Of costs and expenses directly causes by the repair or replacement Eltex shall bear – provided the respective product is indeed defective – the cost of the replacement product including the cost of shipment, as well as the reasonable cost of removal and installation, moreover, if this is reasonable under the circumstances in any given case, the cost of Eltex installation and other personnel. With regard to these costs the purchaser and Eltex shall liaise and come to an agreement. Other cost shall be borne by the purchaser.
- 9.10 The warranty period for replacement goods and/or the repair shall be three months or up to the end of the initial warranty period of twelve months, whichever period is longer. The initial warranty period shall be prolonged by the duration of the stoppage of production caused by the repairs (if any).
- 9.11 The warranty period shall be twelve months from the date of the transfer of risk. This period is a statute of limitations and shall apply to all claims provided hereinbefore unless such claims are based in tort in which case the statute of limitations provided by German law shall apply.

## § 10 – Liability

Eltex can only be held liable, irrespective of the legal grounds for liability, in the case of:

- intent;
- culpable breach of major contractual obligations;
- gross negligence on the part of corporate bodies or executive officers;
- culpable bodily injury, death and damage to health;
- fraud;
- personal injury and property damage to personal items, provided that liability exists under the Product Liability Act for privately used items.

In the event of the breach of major contractual obligations Eltex shall also be liable for gross negligence on the part of non-executive employees or and for simple negligence on the part of corporate bodies and executive officers. In the event of simple negligence, Eltex' liability is limited to reasonably foreseeable damage typical to the given type of contract.

In particular where the performance of work in accordance with purchaser's specifications is concerned, and in case of modifications or utilization without Eltex' approval, any liability for the infringement of industrial property rights of third parties shall be excluded. Eltex shall not be obliged to verify whether industrial property rights of third parties are affected.

## **§ 11 – Protection Rights**

- 11.1 Eltex reserves all rights in and under all intellectual property, especially inventions, created by Eltex or to which Eltex is entitled to.
- 11.2 The full ownership and copyrights in any preliminary estimates of cost, drawings, software and/or other documentation shall remain with Eltex; these shall not be made accessible to third parties and shall only be processed within the framework of the provisions of §§ 69a et seq. of the German copyright act. Any drawings which are submitted by Eltex together with an offer shall be returned to Eltex immediately on demand by Eltex if Eltex does not receive the order.
- 11.3 If due to infringement of an intellectual property right a) Purchaser is obliged to cease to use or buy from Eltex the products and/or services or b) Eltex is obliged to cease to manufacture or supply to the Purchaser the products and/or services, then Eltex shall, at its own choice i) terminate the present agreement with no penalty and accept return of the infringing products and refund any and all amounts paid by Purchaser for the returned products; or ii) obtain the right for Purchaser to continue to use such products and/or services that are the subject of the present Agreement; or iii) to replace or modify the products and/or services that are the subject of the present Agreement so as to make the non-infringing.

## **§ 12 – Commissioning, Assembly/Installation**

- 12.1 Unless expressly agreed otherwise in writing, the purchaser shall be responsible for the commissioning and start-up of the goods supplied. To the extent that the purchaser desires the assistance of Eltex' specialists (technicians, engineers etc.), a separate agreement between the purchaser and Eltex shall be entered into which shall then be subject to Eltex' general terms and conditions of assembly and commissioning.
- 12.2 Said general terms and conditions of assembly and commissioning shall also apply to any other assembly/installation work of Eltex.

## **§ 13 – Set-Off and Retention, Assignment of Claims**

- 13.1 The purchaser shall have no set-off or retention rights vis-à-vis claims of Eltex which are due and payable, unless the purchaser's respective counter-claim undisputed or has been established in a legally binding manner.
- 13.2 The purchaser shall not assign claims against Eltex out of business transactions with Eltex without the express prior written consent of Eltex.

## **§ 14 – Miscellaneous**

- 14.1 German law shall apply exclusively even if the purchaser is not a German national and/or has its domicile or seat outside of Germany. The United Nations Convention on the International Sale of Goods (CISG) and/or choice of law rules shall not apply.

- 14.2 These terms and conditions shall be supplemented by the provisions of the German commercial code concerning business transactions amongst merchants and the provisions of the German civil code.
- 14.3 Place of performance for deliveries, services, and payments shall be the statutory seat of Eltex. In the event of a dispute arising between Eltex and the purchaser, the courts of the statutory seat of Eltex shall have exclusive jurisdiction. Eltex may choose to file legal action against the purchaser at the purchaser's registered office.
- 14.4 To the extent that individual provisions of these terms and conditions should be invalid, this shall not affect the remaining provisions.

Issue January 2018