

# Purchasing General Terms & Conditions of Elco AG

## 1. Definitions

- 1.1. „Partner“ means the party or parties in contractual relationship to Elco AG (hereinafter „Elco“).
- 1.2. „Merchandise“ means the object of purchase or service.

## 2. Purchase Orders

- 2.1. The following *Purchasing General Terms & Conditions* shall govern each contract under which *Elco* purchases merchandise from the *Partner*. Any other agreements that regulate the relations between the *Partner* and *Elco* (eg. agreements on quality assurance or confidentiality) shall prevail if they contradict these *Purchasing General Terms & Conditions*.
- 2.2. General Terms & Conditions of the *Partner* shall only apply if accepted by *Elco* in written form. They shall not apply if unilaterally communicated, transmitted or referred to by the *Partner* during the closing of the contract or during contractual execution, in particular as part of a delivery order or delivery receipt or invoice. Acceptance of purchased merchandise or payment of invoices by *Elco* shall at any rate not be understood as an acceptance of the *Partner's* General Terms & Conditions.
- 2.3. Any declaration of acceptance (even marginally) deviating from the order placed by *Elco* shall be considered as counteroffer by the *Partner* unless *Elco* a) has been particularly notified by the *Partner* regarding such deviation and b) confirmed acceptance with such deviation.
- 2.4. Orders and/or amendments/modifications of purchase or service orders shall be binding only if made in writing and signed by authorized representatives of the Parties. Orders transmitted by specific IT-tools, particularly Electronic Data Interchange, shall be considered as made in writing.

## 3. Drawings, other Documents, Intellectual Property

- 3.1. The *Partner* shall use his expertise independently, i.e. without *Elco's* request, to check all drawings, calculations, specifications and other requirements sent to him by *Elco* for errors, inconsistencies and discrepancies. Recognizable errors, inconsistencies or discrepancies shall be immediately communicated in writing to *Elco*.
- 3.2. In case of contracts whose subject is the solution of a technical problem, any intellectual property rights arising from such solutions shall belong to *Elco*, as shall other technical solutions or know-how which is not state of the art. The *Partner* herewith transfers any such intellectual property rights (e.g. patents, copy rights) to *Elco* free of charge or remuneration.

## 4. Time and Place of Performance; Partial Performance

- 4.1. The delivery time set by *Elco* in its order shall be binding. The *Partner* shall communicate to *Elco* any problem he might have with the delivery in writing and without delay on learning of such problem.
- 4.2. The merchandise shall be delivered DDP (Incoterms 2010). The place of destination shall be the domicile of *Elco*, unless otherwise agreed in writing. The merchandise shall be delivered in condition as agreed by the Parties. The delivery of the merchandise shall include all necessary verifications, certifications and documents of origin.
- 4.3. Shipments are to be made on time, according to the date specified in the order. *Elco* has the right to reject a shipment that is early or to send it back to the *Partner*, at the *Partner's* expense. Is the early shipment accepted by *Elco*, then its storage at *Elco* shall be at the *Partner's* risk and expense. In this case, payment of the invoice shall be governed by the due date (as opposed to the early shipment date).
- 4.4. *Elco* shall not be obliged to accept partial or incomplete deliveries.

## 5. Warranty

- 5.1. The *Partner* warrants the merchantability of the delivered merchandise. Furthermore, the *Partner* warrants its fitness both for the agreed purpose and for *Elco's* purpose which is recognizable to him.
- 5.2. The *Partner* represents that the delivered merchandise corresponds in quantity and quality to the order and the agreed specifications. The regulations about the buyer's obligation to examine delivered merchandise and notify the seller immediately of any defects is expressly waived. *Elco* may notify defects any time within the warranty period.
- 5.3. The *Partner* represents that the merchandise is compliant with all laws, all administrative regulations and all rules laid down by professional associations which apply at the place of delivery and the place of destination of the merchandise and which are in force at the time when *Elco* places the order, and to all environment, safety and worker protection rules.
- 5.4. In case of a breach of warranty or misrepresentation, *Elco* shall have the right, without prejudice to other remedies available to *Elco* under law, to choose between rectification, replacement, rescission, and price reduction. Because of the breach of warranty, the *Partner* shall get in case of rescission no remuneration for any use *Elco* has had of the merchandise. In addition *Elco* reserves the right to claim damages. Such damage claim shall not presume fault on the part of the *Partner*.
- 5.5. The warranty period shall be at least 24 (twenty four) months, starting with delivery of the merchandise. Deviating periods in technical data sheets or specifications prevail. The warranty period for buildings or for fixed installations into buildings shall be 5 (five) years, starting with the handover protocol duly signed by *Elco*.
- 5.6. The *Partner* shall indemnify *Elco* from all costs associated with product liability, provided the merchandise has been the cause of the product liability claim. On demand, the *Partner* shall document to *Elco* that the product liability risk is sufficiently covered by insurance.

## 6. Remuneration and Payment

- 6.1. The following payment term shall apply: 14 days 3% discount, 45 days net.
- 6.2. Without a correct and complete invoice and the receipt of the merchandise by *Elco*, the purchase price shall not become due. In particular, it should be noted that the invoice shall contain all legally required data, with special consideration to the Value Added Tax Law where applicable. Such data shall include at least the proper designation of the invoice recipient and the correct presentation of the Value Added Tax where applicable. In addition, the *Partner's* invoice must quote *Elco's* order number and *Elco's* reference and item number(s).
- 6.3. Once the final invoice has been submitted to *Elco*, the *Partner* may make no further belated claims for remuneration.
- 6.4. The *Partner* may assign claims against *Elco* to third parties only after prior written consent by *Elco*.
- 6.5. Set-off by *Elco* is permitted with claims that are due.

## 7. Third Party Rights, Know-How, Confidential Information

- 7.1. The *Partner* guarantees that the use or purchase of his merchandise by *Elco* does not infringe any third-party rights. Without prejudice to the right of *Elco* to demand rescission or damages in case of such an infringement, the *Partner* shall indemnify *Elco* from all such third party claims.
- 7.2. The *Partner* shall not make use, neither for himself nor for third parties, of any *Elco* know-how and any confidential information, which he has received from *Elco* in the course of contract negotiation or contract performance, in particular of documents handed over to the *Partner* by *Elco*. However, this obligation may be waived by *Elco* in a prior written statement. The *Partner* shall bind his employees to the same obligations regarding confidential information. Where *Elco* and the *Partner* have agreed differently on confidentiality matters, such different agreement shall prevail.
- 7.3. Both *Elco* the *Partner* will not disclose any confidential information received by the discloser to any person, firm, corporation, agency or other entity. This obligation shall survive the termination of the current agreement by 5 (five) years.
- 7.4. Documents handed over by *Elco* may not be copied by the *Partner* without prior consent by *Elco*. Upon the termination of the contract, the *Partner* has to return them without delay, and delete electronically recorded documents.

## 8. Miscellaneous

- 8.1. The law of the country in which *Elco* has its seat shall apply. For contracts for the international sale of goods the United Nations Convention on Contracts for the International Sale of Goods (Vienna, 1980; CISG) shall apply.
- 8.2. The parties agree to submit to the jurisdiction of the court of law at the seat of *Elco*.
- 8.3. If the contract between the parties has been issued fully or partly in different languages, the German version shall prevail. In case none of versions is issued in German, the English version shall prevail and the other version shall be considered a translated version.
- 8.4. Apart from what has been concluded in writing, no oral agreements exist. Contract amendments shall not be valid unless executed in writing.
- 8.5. Should one or more contract provision(s) be or become invalid, this invalidity shall not be constructed as affecting the validity of the whole contract. The invalid provision(s) shall be replaced so that the new text is both valid and its meaning as close as possible to the economical meaning and purpose of the provision(s) replaced.