

# General Business and Delivery Terms and Conditions of the EL-NE Elektrotechnik GmbH, Kalkofenweg 8, 5400 Hallein, Austria (for business transactions with companies)

## § 1 Scope of Application & General Stipulations

- All of our deliveries, services and quotations shall be made exclusively on the basis of these General Business and Delivery Terms and Conditions, which shall therefore be components of all contracts we enter into. Any General Terms and Conditions of the Buyer shall not apply and shall not become components of the contract even if we are aware of them or if they are used as a foundation, unless we have expressly consented to their applicability in writing.
- Our quotations shall at all times be subject to change and shall not become legally effective until we have issued a written order confirmation. Likewise, verbal agreements shall not become legally binding until confirmed by us in writing.

## § 2 Prices & Deliveries

- Deliveries shall be made and billed at the respectively effective price in accordance with the latest price list. If after an order is placed, price and payroll costs should increase for reasons beyond our control, or if production costs should change significantly, we may change and adjust our prices accordingly without prior notice.
- Prices are quoted without value added tax, packaged, ex warehouse.
- Orders with a net value greater than € 280.—within Austria or € 1500.—within Europe (all including the non-ferrous metal surcharge) shall be delivered freight prepaid; however, we do reserve the right to choose a different mode of transportation. If the Buyer should require a certain mode of transportation, the costs shall be for Buyer's account. In the event of postal shipping, the Recipient shall pay the service fee. Transportation shall always be implemented at Buyer's risk.
- Products are sold in packaging units only (size of units upon request). If units have to be broken up, a minimum volume surcharge of € 5.-- (once per order, not item) shall be charged.
- If the net order value is less than € 150.-- (incl. non-ferrous surcharge) a manipulation fee of € 10.—shall be charged.
- Quoted delivery times shall always be non-binding and for information only. The delivery time shall be extended, in particular by any time period for which the Buyer, based on the agreements made, fails to provide or to provide full information required for our delivery. Incidentally, especially delays by our suppliers, force majeure and operational interruptions may result in an extension of delivery times. In the event of delays, damage compensation claims may be made only to the extent that we can enforce them with the respective supplier. Any other damage compensation claims shall not be possible. In the event of unforeseeable impairments, such as operational interruptions, force majeure, war, import bans or the like, we shall have the right to rescind the delivery contract in full or in part without the Buyer being entitled to damage compensation.
- If complete delivery has not been expressly agreed upon, we shall have the right to also make partial deliveries.
- If the Buyer should fail to accept merchandise that has been provided in compliance with the contract at the time agreed upon in the contract, we shall have the right to demand full payment and to store the goods and implement a redelivery at Buyer's expense.
- We shall accept changes to an order only if we can execute the changes; however, this may result in price and due date changes as well as charges for any additional costs.
- We cannot accept returns of goods that have been firmly ordered. The only exception shall be special accommodations agreements with the Customer; however, a modification fee of no less than 10% shall apply to those orders.

## § 3 Warranty and Compensation for Damages

- The Buyer shall promptly inspect any delivery, at the latest prior to installation or further processing, for visible defects. Failure to do so shall void any claims. All defects, regardless of their nature must be claimed in writing within no more than 14 days after receipt by the Recipient, otherwise the Buyer shall not be in a position to file warranty claims (§ 922 et seq. ABGB), or to file damage compensation claims for the damage as such (§ 933a Sect: 2 ABGB) as well as for errors with regard to the object's freedom from deficiencies (§§ 871 f. ABGB). In the event of litigation, we may also cite the objection of failure to file a claim in the event that we have not made reference to it out of court.
- Concealed defects shall be claimed promptly upon their discovery if the claim is made during the warranty period; otherwise they shall be forfeited.
- Subject to the claim having been filed in a timely manner, the Buyer shall have the right to file warranty claims within the warranty period. For deficiencies inherent in goods we shall provide warranty services, at our discretion, either by improving or replacing the goods. If improvement should not be possible or practical, the Buyer may fundamentally either demand a reduction of the price or, if the defect is not merely minor, the alteration of the contract. It shall be a prerequisite for the return of the goods that the Buyer did not perform any manipulations or attempts to improve the goods.
- The warranty period shall be 6 months after the date of delivery and shall begin on the date of delivery of our products to the agreed upon delivery address. The applicability of § 924 Sentence 2 ABGB shall be excluded. Substitute deliveries or the elimination of defects

shall not prolong, hamper or interrupt the warranty period. Subrogation rights pursuant to § 933b ABGB targeting us shall not apply. The claiming of defects shall not entitle the Buyer to claim that the contract was not fulfilled or to change the payment terms.

- Our liability for damage compensation for material and pecuniary damages shall always be limited to acts of intent or gross neglect. Liability for minor neglect, reimbursement for consequential damages and purely pecuniary damages, savings that could not be realized, lost interest or damages arising from third party claims against the Buyer shall be excluded. The amount of damage compensation shall always be limited to the value of the delivered goods (part of goods).
- We expressly emphasize that for the production of components on the basis of customer stipulations (drawings, samples, etc.) we do not know the concrete designation for use or the stipulations compliant purpose and are therefore not in a position to assess whether the component specification ordered by the Buyer is in compliance with the designated purpose of use and whether it is sufficient. Hence, any liability at our end for potential erroneous designs and all resulting damages shall be excluded in its entirety.

## § 4 Title Retention

- All goods shall be delivered subject to title retention. We shall retain title to the former until full payment has been made.
- The right of the Buyer to sell or process such goods as part of proper business transactions shall be null and void any time a default of payment in our business relationship with the Buyer arises. This shall also apply if insolvency proceedings are initiated or whenever we assert our title retention right in writing.
- If our goods are processed by the Buyer or any third party, we shall obtain co-ownership in the product at the ratio of our product's value. If any dispositions are made with regard to goods or products in which our goods were processed, and especially if the goods or the products are sold, our title retention right shall also extend to the resulting accounts receivable of the Buyer or of any third party (extended title retention). Immediately upon their generation, these accounts receivable shall be deemed to have been irrevocably assigned to us. The respective customer shall be notified of our title retention right and the assignment of the accounts receivable. Upon our request, such notification of the customer shall be documented and, in the event that we claim a title retention right or extended title retention right, even if the customer or anyone else objects to the title retention, the Buyer shall provide us with all information required for the verification and enforcement of the right.
- Upon our request, the Buyer shall also undertake to make an entry into Buyer's accounting records with regard to the title retention right for any accounts receivable generated from the sale of our goods and to permit us to verify the advance assignment notification in the books. An absolute cessation ban shall be deemed agreed upon for all accounts receivables arising from the resale or processing of our goods or any processed product of our goods. This cessation ban shall also include any effects of prior cessations of the Buyer with regard to our title retention right and the former may be rendered void only subject to our written consent. In the event of late payment, we shall have the right to pick up our goods at the expense of the Buyer and the products made that involve our goods without any possession impairment objection being permissible and subject to the exclusion of any right to damage compensation. We shall subsequently have the right to sell the goods or product at our discretion, whereby the Buyer shall be credited the sales revenue, and in the event of co-ownership an amount equivalent to the value share of Buyer's coownership minus 20% reselling fees. In the event of late payment arising from the business relationship, we shall also have the right, without rescinding from the purchase contract and without surrendering or setting off a paid partial purchase price, to seize the goods or the product made with the involvement of our title retention goods on the basis of our title retention right until the payment delay has ended. These, as well as any other provisions set forth in our Terms and Conditions, shall also apply to the insolvency manager of the Buyer. If we accept checks or bank drafts, this title retention shall be in effect until the check or draft has been paid. We shall accept the former only in lieu of other forms of payment. Any discount fees shall be for Recipient's account.

## § 5 Payment

- The Buyer herewith declares Buyer's consent to all payments made by the Buyer being applied first to fees and expenses, next to interest and lastly to the primary debt.
- In the event of default of payment or if such circumstances arise with regard to the financial situation of the Buyer that appear to not sufficiently collateralize our accounts receivable (initiation of insolvency proceedings, or denial due to lack of assets, approval of an execution process based on pending payments due, etc.), we shall have the right to render any and all pending accounts receivable due for immediate payment while simultaneously stopping any further deliveries with immediate effect.
- The Buyer waves the option of setting off; any claims shall not entitle the Buyer to withhold the invoice amount due.

## § 6 Place of Fulfillment, Jurisdiction

- The place of fulfillment for payments, deliveries and any warranty claims shall be 5020 Salzburg, Austria.
- The place of jurisdiction shall be 5020 Salzburg, Austria. All our business transactions shall be governed exclusively by Austrian law with the exception of the UN Convention on the International Sale of Goods (CISG).