

General Terms and Conditions

(Version November2020)

1. Applicability, Validity

1.1 The following General Terms and Conditions apply to all business transactions, service provisions and deliveries between ELATEC GmbH (hereinafter "ELATEC") and companies (§ 14 BGB) as well as to legal persons under public law or public law special funds (hereinafter the "Customer"). ELATEC's offerings are not directed to consumers.

1.2 ELATEC does not accept the Customer's purchasing conditions or other terms and conditions which deviate in content from our own General Terms and Conditions. Such terms and conditions shall not apply to the contractual relationships between ELATEC and the Customer, even if ELATEC did not formally reject the Customer's terms and conditions.

1.3 The contractual language for business relationships with foreign Customers shall be German or English at the reasonable discretion of ELATEC. ELATEC's choice shall be determined by the language used by ELATEC with the Customer.

2. Contracts, Scope of supply

2.1 Our quotations are subject to confirmation.

2.2 A contract is concluded exclusively by our confirmation of order, either in writing or some other form of text message. The confirmation of order contains our supply obligations and determines the nature of the contractual products (hereinafter the "Goods") to be supplied. The product descriptions and data of our respective valid sales catalogue at the time of conclusion of the contract are intended to inform the Customer generally about the products and services described. They are only then considered to contain a promise of quality if the respective item number of the catalogue is listed in the order confirmation and referred to respectively. Promotional material and publications contain no promise of quality and are neither a part of the contract nor the basis for a transaction.

2.3 Promises and guarantees can only be agreed with the Customer outside the order confirmation in order for them to be effective in separate written form.

2.4 ELATEC is entitled to use sub-contractors for the performance of its contractual duties without prior approval of the Customer. Having its obligations performed by sub-contractors shall not relieve ELATEC from the duty to adhere to its contractual obligations.

3. Delivery time, Transfer of risks

3.1 The time of delivery shall be deemed to be agreed approximately. It shall only be deemed as a fixed date when this is expressly described as such.

3.2 If ELATEC is hindered or impeded in fulfilling its contractual duties by the occurrence of unforeseen circumstances outside of the control of ELATEC, e. g. a breakdown, measures undertaken by authorities, embargo, risk of war, force majeure or strike, then the delivery time shall be prolonged by the duration of the impediment, plus a reasonable extension for resuming the delivery or service. If the listed circumstances make the delivery or service impossible, ELATEC is no longer obligated to honor the delivery commitment. The contractual duties of ELATEC are subject to a correct and timely self-equipment of ELATEC with products and supplies required for the performance of ELATEC, provided that ELATEC has properly concluded contracts on such products and supplies, and the defective or delayed provision of such products and supplies is not attributable to ELATEC.

3.3 Shipment of the Goods to another location than the premises of ELATEC is always performed on behalf and on request of the Customer. The risk for respective deliveries passes to the Customer with dispatch of the Goods from the point of delivery Puchheim/Germany and transfer to the forwarding agent/freight carrier. All deliveries are made EX WORKS according to Incoterms 2010, unless otherwise agreed with the Customer.

3.4 Costs for packaging/shipping and handling shall be borne by the Customer. ELATEC shall be entitled to determine how the Goods are shipped in its reasonable discretion. Potential duties to be paid shall be borne by the Customer.

3.5 If possible, everything is delivered in one shipment. Partial deliveries and partial performance are possible and permitted. Additional costs will be borne by ELATEC. Partial deliveries and partial performance can be charged by ELATEC together with the delivery.

4. Duty of Inspection and Objection

4.1 Upon taking possession, the Customer shall immediately

(a) check quantities and packaging and record any objections thereto; and

(b) conduct quality checks on a spot check basis and, for such purpose, open the packaging (cartons, bags, tins, foils etc.) to check the quality of the Goods to be sold.

4.2 In case of a notice of defect the Customer shall comply with the following procedure and deadlines: The notification shall be made no later than five (5) working days after the date on which possession of the Goods has been taken. In the event of an objection to a hidden defect which, despite a first inspection in accordance with Section 4.1 above, remained undiscovered, a different deadline regime shall apply. In such case the objection must be raised within the five working days after the defect has been discovered. For keeping these deadlines, the sending of this objection in the time frame of the deadline is sufficient.

4.3 The detailed notice shall be delivered to ELATEC in writing. The notice must clearly specify the kind and amount of the alleged defect.

4.4 The Customer agrees to make available for inspection the objected Goods at the place of inspection; such inspections may be done by ELATEC or any other expert ELATEC may have designated.

4.5 Any Good to which objections shall not have been raised in accordance with the procedures and deadlines set out above shall be regarded as approved and accepted.

5. Return of products

5.1 With the exception of defective Goods, ELATEC only accepts the return of products if this has been expressly agreed and confirmed by ELATEC. Such deliveries have to be prepaid by the Customer; otherwise, they will not be accepted.

5.2 With the exception of defective Goods, the return of the Goods presupposes that we are notified of the batch number with the delivery note and that the product is returned in the undamaged original packaging, as we distribute products to our Customers.

5.3 For each product return, customer shall obtain an RMA number (Goods Return Authorization number) from ELATEC, which is to be indicated on the package in the case of returning.

6. Conditions of Payment

6.1 In general, ELATEC will issue invoices together with the delivery of the Goods or after performance of its services. ELATEC reserves the right to request pre-payments or perform deliveries and/or services on the basis of cash on delivery or a direct debiting scheme.

6.2 Invoices must be paid without any deduction in Euro currency. Exchange rates apply on the invoice issue date.

6.3 Prices of ELATEC do not include Value Added Tax (VAT) that may be applicable to the transaction.

6.4 If payments of the Customer are delayed, ELATEC shall, notwithstanding his other rights, have the right to claim interest payments of 9 percentage points over the current Base Lending Rate. The right of ELATEC to prove exceeding damages shall not be excluded.

6.5 In the absence of any express prior agreement to the contrary, ELATEC shall not be obligated to accept for payment any draft, cheque or other instrument. The costs for discounting and collection of such instruments shall be borne by the Customer. All such means of payment are accepted only conditionally pending receipt of the funds by the Supplier.

7. Offset, Withholding of payments

7.1 The Customer is only entitled to withhold payments on the basis of claims that are undisputed by ELATEC, or claims that have been held to be valid by a court of final jurisdiction.

7.2 ELATEC may offset on the basis of any claim which ELATEC may have against the Customer, irrespective of whether or not such payments are due and payable at that date.

8. Retention of title

8.1 ELATEC shall retain full title of any delivered Goods until the Customer has discharged all claims arising from the business relationship with ELATEC. In case of breach of contract by including, without limitation, default in payment, ELATEC is entitled to take possession of the Goods.

8.2 The Customer shall have the right to dispose of the Goods within the ordinary course of business. ELATEC may withdraw the sales authority of the Customer through a written notice if the Customer is in breach of any obligation owed to ELATEC in particular in payment default or if ELATEC shall become aware of other incidents that give rise to doubts about the creditworthiness of the Customer.

8.3 The Customer's right to process the Goods delivered shall also be subject to the limitations set out in 8.2 above. The Customer shall not acquire title to the fully or partly processed Goods; the processing shall be free of charge for ELATEC's benefit as manufacturer in the sense of Section 950 of the German Civil Code. If ELATEC should, for whatever reason, lose its right under the retention of title, then it is hereby agreed between the Parties that ELATEC shall acquire title upon processing of the Goods and the Customer shall remain custodian of the Goods which shall be free of charge.

8.4 If the Goods in which ELATEC has retained title are inseparably assembled or mixed with the Goods that are third party property, then ELATEC shall acquire co-title in the new Goods or the mixed stock. The proportion of title shall follow from the proportion of the invoice value of the Goods sold under retention of title and the invoice value of the other Goods.

8.5 The Goods in which ELATEC shall acquire sole or co-title in accordance with Subsection 8.3 and 8.4 shall, the same as with regard to the Goods delivered under retention of title according to Subsection 8.1 above, be regarded as Goods delivered under retention of title for the purpose of the following paragraphs.

8.6 The Customer hereby assigns to ELATEC all claims arising from the resale of the Goods delivered under retention of title. Such claims shall also include claims against the bank which, within the scope of such sale, shall have issued or confirmed a letter of credit for the benefit of the Customer. ELATEC hereby accepts such assignment. If the Goods delivered under retention of title shall be considered as processed Goods or mixed stock, where, in addition to the Goods under this Agreement, only such Goods exist that are either the Customer's property or a third party property as a result of a (simple) retention of title, then the Customer shall assign all of the claims arising from the resale. In the other case, i.e. in the event of a conflict between pre-assignment claims by other suppliers, ELATEC shall be entitled to receive a resale proceeds on a pro rata basis which shall be determined in proportion to the invoice value of the Goods and the other processed or mixed Goods.

8.7 Where ELATEC's claim shall be undoubtedly secured through the assignment and retention by more than 125 %, any surplus of receivables and/or Goods delivered under retention of title shall, upon demand of the Customer, be released.

8.8 The Customer shall be authorised to collect any receivables arising from the resale of the Goods. Such authority shall cease to exist in the event that there shall no longer be an ordinary course of business of the Customer. Moreover, ELATEC may withdraw the Customer's authority to collect, if the Customer is in breach of any obligation owed to ELATEC, in particular in case of payment default; or in case ELATEC becomes aware of other incidents which give rise to doubts about the Customer's creditworthiness. If the above authority shall cease to exist or be withdrawn by ELATEC, then the Customer shall upon ELATEC's demand immediately specify to ELATEC its debtors in the claims assigned and provide ELATEC with all information and documentation necessary for the collection of the receivables.

8.9 In the event of any third party action against ELATEC's Goods under retention of title or any receivables assigned to ELATEC, the Customer shall notify such third party of ELATEC's property/or right and immediately inform ELATEC about such action. The Customer shall bear the costs of any intervention.

8.10 If the Customer shall be in a breach of contract, in particular in payment default, then it shall, upon ELATEC's demand, immediately return to ELATEC all Goods transferred under retention of title and assign to ELATEC any repossession claims against any third party in conjunction with such Goods. Any repossession or enforcement proceedings with regard to the Goods delivered under retention of title shall not be regarded as a rescission of this Agreement.

8.11 In the event that there shall no longer be an ordinary course of business of the Customer, ELATEC may require the Customer, to inform ELATEC about the claims arising from the resale that have been assigned to ELATEC in accordance with Section 8.6 above including its debtors. Following such information, ELATEC shall have the right to disclose the assignment as ELATEC considers appropriate.

9. Warranty

9.1 In case of defective performance, breach of duty and/or material defects the Customer grants ELATEC the right to remedy this by replacement free of charge or by remedying the defect in any other way within an appropriate deadline. The Customer has the right to object against the chosen remedy for good cause. For clarification, the remedy does not include the removal of the defective Good or the re-installation if we were originally not obliged to install.

9.2 Unless otherwise agreed, the warranty period for all goods delivered by ELATEC shall be twelve (12) months.

10. Liability

10.1 ELATEC shall only be liable for damages – regardless of their legal basis – if ELATEC has caused any damage as a result of an intentional or grossly negligent act or if ELATEC has negligently breached a material contractual obligation („cardinal obligation“). Cardinal obligations are those obligations that are deemed to be substantial to the contract, upon the observance of which the Customer has generally relied and may have relied and which are deemed to be prerequisites for proper performance of the contract. For intentional and grossly negligent breaches, ELATEC's liability shall be unlimited. In the event that ELATEC is in breach of any cardinal obligations, and such breach has not been committed intentionally or with gross negligence, ELATEC shall only be liable for the damage related to and typically foreseeable under the particular contract at the time of entering into the contract. ELATEC shall not be liable for any damages caused as a result of a simple negligent breach of a non-material contractual obligation.

10.2 The Parties are in agreement that the typically foreseeable damage does not exceed the amount of fees paid by the Customer to ELATEC under this agreement, unless the Customer informed ELATEC on a higher damage risk prior to performance.

10.3 The liability limitation contained in Section 10.1, 10.2 shall not apply claims of Customer because of damage to life, person, or health; nor shall it apply for claims under a guarantee of ELATEC or claims based on intentional breach or on the German Product Liability Act.

10.4 Any person making claims under this contract shall without delay inform ELATEC in writing about any potential damage for which ELATEC could be liable. If claims for damages against ELATEC are excluded or limited, this shall extend to any personal liability of any statutory organs, employees, vicarious agents or any other auxiliary personnel of ELATEC.

10.5 Any damage claims of the Customer shall become time-barred after one (1) year after occurrence of the event causing the damage.

11. Cancellation of orders

11.1 Any cancellation request of confirmed orders needs to have the written approval from ELATEC, which will only be given in exceptional cases.

11.2 In case of approved cancellation the Customer has to cover the necessary cancellation cost.

11.3 In case of approved cancellation for the below mentioned products the costs to be borne by the Customer are based on the described calculation.

The cancellation time mentioned within this calculation is the difference between the actual from ELATEC confirmed delivery time (week) and the Calendar week when ELATEC received the cancellation requirement from the Customer.

The described cancellation procedure is applicable only for the product groups mentioned below.

Controller/Peripherie, Dev. Tools, PC-Boards/Module

Cancellation fee in % of the time week buying price

0 – 10 100 %

10 – 14 70 %

14 – 20 35 %

20 or more 0 %

For all other cancellation request a special settlement is necessary.

12. Data processing

ELATEC collects the Customer's data in conjunction with the execution of the contract. ELATEC hereby complies with the provisions of the applicable data protection statutes, in particular the German Federal Data Protection Act (Bundesdatenschutzgesetz) and the General Data Protection Regulation (GDPR) applicable at any time.

13. Cooperation Duties of the Customer

The Customer shall be obliged to fulfill cooperation duties vis-à-vis ELATEC which may be reasonably required for ELATEC in order to properly perform its duties vis-à-vis the Customer. ELATEC shall inform the Customer about such cooperation duties in a timely manner.

14. Final provisions

14.1 The laws of the Federal Republic of Germany shall apply to all contracts between ELATEC and the Customer, to the exclusion of the UN Convention on the International Sale of Goods (CISG).

14.2 If the Customer is registered trader, a legal person under public law or a public law Special Fund, the competent court with jurisdiction all disputes arising from the contractual relations between the Customer and ELATEC shall be the regional court in Munich (Landgericht München I).

14.3 Should provisions of the contract between ELATEC and the Customer be or become invalid this shall not affect the validity of the remaining provisions of the contract. In place of the invalid provision, the parties shall endeavour to agree a valid provision which comes closest to what was originally commercially intended. If agreement cannot be reached, the relevant statutory provisions shall apply.

14.4 In the case of export of ELATEC's products – unless otherwise agreed – ELATEC shall not be liable for the exportability, the requirement of state approval, or any foreign trade regulations of the intended export country, except for cases of intentional breach or gross negligence on behalf of ELATEC. The need to comply with the national regulations of the respective export country shall be subject to the scrutiny and the responsibility of the Customer. Potential applicable duties for the export of the goods shall be borne by the Customer.

14.5 The laws of the Federal Republic of Germany shall apply for orders and deliveries between us and foreign Customers (UN commercial law, subsidiary to national law) for all business relationships, regardless upon which legal foundation they are based.

14.6 The place of fulfillment for deliveries and payments shall be Puchheim/Federal Republic of Germany.

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