

## **§1 General**

- 1 These General Terms and Conditions apply exclusively for businesses, the legal representatives of public legal institutions or special publicly funded institutional funds accord. i. S. v. § 310 (1) BGB (Bürgerliches Gesetzbuch ~ German Civil Code). Purchaser conditions contrary or different to our general terms and conditions of sale are only recognized with the expressed written agreement of ELIAS GmbH.
- 2 These General Terms and Conditions are valid for all future business with the purchaser insofar it concerns legal contractual business of a similar nature.

## **§2 Offer and contractual completion**

- 1 If an order is placed as covered by § 145 BGB, then ELIAS GmbH can accept this order within 2 weeks.
- 2 An offer from ELIAS GmbH is valid for 30 days from the date of issue by the company.

## **§3 Documentation provided**

- 1 ELIAS GmbH retain the sole ownership and copyright to all documentation, such as calculations, drawings etc., involved in processing a purchaser's order. These documents may under no circumstances be made available to any third party unless otherwise expressly agreed in writing with ELIAS GmbH. Should ELIAS GmbH decline to accept an order within the deadline stipulated in § 2 (1), the purchaser is required to return all the relevant documentation without delay.

## **§4 Prices and payment**

- 1 Unless agreed otherwise in writing, prices plus value added tax at the appropriate rate valid on the date of service provision apply. Packaging costs are itemized separately in the invoice.
- 2 If, within the agreed time period for 'make and call' or 'standard' orders, only part of the original service package is accepted, ELIAS GmbH retains the right as it sees fit to set price for the part of the service accepted, or to deliver the part of the order not accepted and charge the full price as ordered by the purchaser.
- 3 Installation, training and other additional services are not included in the agreed price unless agreed otherwise in writing.
- 4 Purchase payment must be made to the account indicated on the invoice. Prompt payment discounts are only possible by prior agreement in writing.
- 5 Unless otherwise agreed in writing, the price as purchased must be paid within 14 days after delivery. Late payment is charged at an interest rate of 8 % above the basic annual bank interest. ELIAS GmbH retains the right to demand a higher late payment charges rate.
- 6 In the absence of a special fixed price agreement, ELIAS GmbH retains the right to make reasonable increases in price due increased labour, material or sales costs that occur 3 months or later after contract completion.

## **§5 Set off and lien**

- 1 The purchaser is only entitled to set off rights if their counterclaim is proven to be legally admissible or undisputed. The purchaser may only assert their right to lien if their counter claim involves the same contractual relationship.

## **§6 Delivery time**

- 1 The start of the delivery time specified by ELIAS GmbH is dependent on the purchaser fulfilling their commitments in a timely and correct manner. We reserve the right to lodge objection for non-fulfilment of the contract by the purchaser.
- 2 Dates for delivery are set in good faith, but are not legally binding unless agreed otherwise in writing. Part delivery is permitted.

Exceeding agreed delivery dates entitles the purchaser to withdraw only if they have previously unsuccessfully attempted to agree a revised delivery date with ELIAS GmbH under threat of refusal of acceptance.

- 3 If the purchaser defaults on acceptance of goods or violates any other obligations of cooperation, ELIAS GmbH reserves the right to demand compensation for damages incurred, included any additional expenses.

ELIAS GmbH reserves the right to press further claims.

If the above-mentioned conditions prevail, the risk of accidental loss or deterioration of goods passes to the purchaser from the time of refusal of acceptance or default in payment.

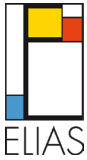
- 4 Should, due to circumstance beyond their control, ELIAS GmbH not be able to deliver on time or at all, the company is entitled to defer delivery of the services, either for whole or part of the period of the delay, or withdraw from completely or partially from the contract. ELIAS GmbH is not liable for faulty essential raw and operational materials, shortfalls in raw material and semi-conductors supplied, transport delays due traffic disruption and unavoidable events occurring in the company, their suppliers and any external companies that adversely influence operation of the company's activities.
- 5 In the case of delayed delivery not the result of misconduct or gross negligence, ELIAS GmbH is liable to make a fixed 3 % of the delivery valued per week of delay but not exceeding a total of 15 % of the delivery value.
- 6 Further legal claims and rights of the purchaser remain unaffected.

## **§7 Transportation**

- 1 If the goods are sent to the purchaser at the purchaser's request, the risk of accidental loss or damage to the goods passes to the purchaser from when the goods leave the factory / warehouse. This also applies if the goods are dispatched from the subsequent point of delivery, or who bears the transport costs.

## **§8 Retention of title**

- 1 ELIAS GmbH retains title (ownership) of goods delivered until the all demands have been settled in full. This also applies to all future deliveries, even when not explicitly stated as such.



ELIAS GmbH is entitled to recover goods sold if the purchaser behaves in a manner that contravenes the conditions of the contract.

- 2 The purchaser is obliged to treat the goods purchases with due care until ownership has passed to the purchaser. The purchaser is specifically required to insure at their own cost and to the value of new goods against damage or loss due to theft, fire and water. The purchaser is responsible for the costs of any inspection or maintenance work. Until ownership has been transferred, the purchaser is required to inform ELIAS GmbH without delay if goods are seized or requisitioned by any third party. If the third party is not in a position to reimburse ELIAS GmbH for legal and other costs incurred resulting from a claim according to gem. § 771 ZPO the purchaser is liable to compensate ELIAS GmbH for the losses incurred.
- 3 The purchaser is entitled to resell goods subject to retention of title within the normal business practice. At this juncture, the purchaser is required to transfer to ELIAS GmbH receivables from the resale of the goods subject to title retention at the agreed total invoice sum, including value added tax. This transfer of receivables is independent of whether the goods are resold with or without further processing. After transfer to ELIAS GmbH, the purchaser is still entitled to collect receivables due. This does not influence the right of ELIAS GmbH itself to collect receivables. However, ELIAS GmbH will defer collection of receivables due as long the purchaser meets payments from sales revenues, does not default on payment, file for bankruptcy or are declared bankrupt.
- 4 Any modification, processing or re-registration occurs in our name and on behalf of ELIAS GmbH. In this case, the purchaser's expectant right transfers from the original to remodelled object. If ELIAS GmbH goods are processed together with goods they do not own, then ELIAS GmbH acquires co-ownership of the new object proportional to the objective value of its original goods at the time of processing. This also applies in the case of mixing goods.

If the mixture object occurs such that the purchasers goods are seen to be the main component, it is understood as agreed that the purchaser assigns co-ownership proportionally to ELIAS GmbH and they hold sole or part ownership in trust on behalf of ELIAS GmbH. To secure the company's (ELIAS GmbH) claims against the purchaser, the latter will also transfer receivables they collect from third parties from the sales of real property incorporating components with conditional ownership. ELIAS GmbH hereby accepts this transfer.

- 5 ELIAS GmbH agrees to release the securities to which it is entitled on request from the purchaser if their value exceeds the receivables to be secured by more than 20%.

#### **§9 Warranty, Notice of Defect, Recourse / Manufacturer's Recourse**

- 1 Any warranty claims by the purchaser concerning obviously faulty goods (inspection on delivery) must be made in writing to ELIAS GmbH within a week of delivery of the goods.
- 2 Claims for faulty goods supplied by ELIAS GmbH are not considered 12 months after the date they were delivered to the purchaser. This specifically refers to goods with no apparent defects. The above agreements are not valid if goods and services are covered by § 438 (1) Nr. 2 BGB (Bauwerke und Sachen für Bauwerke, ~Buildings and building materials), § 479 (1) BGB (Rückgriffsanspruch ~Recourse rights) and § 634a (1) BGB (Baumängel ~Construction defects) where longer periods of warranty legally apply.

- 3 If the goods delivered exhibit a fault that escapes all provisions for their detection, ELIAS GmbH is entitled as they see fit to either repair or replace the goods free of charge as soon as reasonably possible, provisional on ELIAS GmbH receiving prompt notice of any such defects.

The above conditions do not prejudice the existing rights of recourse.

If the repair or replacement is unsuccessful, the purchaser may withdraw, without prejudice to any possible claims for damages, from the contract or reduce payment.

- 4 Claims for defective goods cannot be based on insignificant variation from the agreed properties of the goods supplied, for minor variations in use, natural wear and tear, damage caused after the transfer of risk arising from improper or careless use, unsuitable operational materials, exposure to excess load, faulty assembly or special external factors.

Claims for defective goods cannot be accepted in the case of unauthorized or inappropriate modifications or repair work, or the consequences thereof, done by the purchaser or any third party.

- 5 Claims on behalf of the purchaser relating to restitutive contractual fulfilment exclude transport, travel, labour and material costs incurred if the goods purchased from ELIAS GmbH have subsequently been moved to a site different to that of the original delivery to the purchaser. Costs thus incurred for installation, commissioning, inspection or repair will be charged according to the purchaser as stipulated in the ELIAS GmbH's customer service.
- 6 Statutory recourse rights of the purchaser against ELIAS GmbH only exist if the purchaser has no expressed additional agreements with their customers that extend beyond statutory claims for defective goods. The scope of statutory recourse rights of the purchaser against the supplier is described in Section (5).

Claims for damages against ELIAS GmbH not germane to the goods supplied are not admissible. The same generally applies to damage resulting from a defect. This does not affect mandatory liability based on wilful or gross negligence, or the lack of warranted properties.

#### **§10 Miscellaneous**

- 1 This contract and all legal relationships of all parties concerned fall exclusively under jurisdiction of the German law to the exclusion of United Nations Convention on Contracts for the International Sale of Goods (CISG).
- 2 The governing law and jurisdiction for all disputes arising from this contract is that prevalent in ELIAS GmbH's registered place of business unless otherwise agreed in the contractual agreement.
- 3 Should individual provisions of this contract be non-effective or contain a loophole, the remaining provisions are unaffected. Parties commit themselves to rectifying any loopholes or replacing ineffective contractual provisions with alternatives as close to the economic intention of the faulty provision as possible.