

AEG

ELUMI GENERAL SALES AND DELIVERY TERMS



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Section I General Scope / Offers

1. Our sales and delivery terms shall be exclusively applicable; terms to the contrary or terms deviating from those of the purchaser will not be recognized by us, unless we have expressly agreed to their validity in writing. Our sales and delivery terms shall also be applicable if aware of terms to the contrary or terms deviating from purchaser's terms we will without any proviso carry out the delivery to the purchaser. An assignment ban in the Buyer's conditions is expressly refuted.
2. Any agreements entered into between us and the purchaser with the intention of implementing the contract will have to be defined in writing.
3. Our purchasing and delivery terms shall also be applicable to all future transactions with the purchaser.
4. Our offers are net and free. Contracts will be entered into upon receipt of our written order confirmation, latest when the goods have been delivered. We can accept orders within four weeks.

Section II Prices, Freight Charges/Payment Terms

1. Prices are net plus German value added tax (V.A.T.) and freight charges ex works or ex warehouse, unless anything else has been expressly specified in writing.
For orders exceeding a net goods value of Euro 750.-, elumi GmbH will not charge any freight expenses. In case of a net goods value of Euro 750.- or less, elumi GmbH will charge a global freight rate of 7% of the goods net value for domestic deliveries, however at least Euro 25,00.
2. Payment of the purchase price shall take place within the agreed term, within ten days after receipt of invoice, unless agreed differently.
3. Bills (promissory notes), and checks will be accepted by us only upon prior agreement and provided they can be taken on discount. All discount fees shall be debited to the customer and have to remunerated to us at once. Bill or check amounts will be credited only upon definite receipt of the equivalent amount.
4. If payments are overdue, we shall be entitled to charge 8% interest for delay above the respective to as set out in § 247 of the German Civil Code. If we are able to claim higher delay damage, we shall be entitled to assert it. Purchasers on the other hand shall be entitled to provide evidence that due to such payment delays we have either not been suffering any damage or to a much lesser extent.
5. If the purchaser will not pay its money when due or if a serious deterioration in its financial position has been incurred, we shall be entitled to make payable the entire remaining amount due, even though we already have accepted bills or checks from the purchaser. In such particular circumstances we shall be entitled to ask for prepayments or securities and to refuse fulfillment of our obligations until we have received such prepayments or securities.
If such requests will not have been fulfilled within the suitable period specified by us, we shall be justified to withdraw from the contract and/or to claim damages because of non-performance. In case of cessation of payments or over-indebtedness, an additional period of time will not be granted.
6. The purchaser's setting off rights will be acceptable only if its counterclaims have been asserted to be legal, undisputed, and approved by us. For any disputed counterclaims, purchaser shall be not able to assert any right of retention.
7. In the case of a delay with more than one liability, the complete claim against the Buyer is immediately due for payment.
8. Our claims have been relinquished in favour of the Deutsche Factoring Bank, Bremen.

Section III Reservation of Proprietary Rights

1. All produce supplied shall remain our sole property until all outstanding accounts payable to us which we are entitled to against the purchaser for any legal reason have been paid.
If for exceptional reasons the purchaser receives from us an acceptor's bill, this reservation of proprietary rights shall secure our claims under our right of recourse against the purchaser in case of any recourse based on the bill.
2. Processing, converting and incorporating with other products shall be carried out for us as the manufacturer, yet without any risk on our part. If due to incorporation, our (co) ownership shall cease, it shall be agreed even now, that the (co) ownership in the new product shall devolve to us on the pro rata basis of its invoice value of our product to

the other products at the time of processing. Purchaser shall hold our (co) property in trust for us free of charge. Any products in which we have a co-ownership, shall be termed 'reserved goods'.

3. Purchaser shall be entitled to process and sell the reserved goods in the ordinary course of business, in as much as the purchaser discharges its business relationship obligations towards us in due time. Any authorization to transfer the sale to any third parties shall be excluded if between the purchaser of the reserved goods and its clients a covenant against assignment is in existence. The purchaser shall not be entitled to pawn the reserved goods, nor pledge them as collateral security. Purchaser shall assign to us even now by way of collateral security any outstanding accounts and rights in the sale goods or in any other respect, (e.g. insurance, illicit act regarding the reserved goods).
If we have only a co-ownership in any reserved product, the anticipatory assignment shall be limited to the part of the claim in keeping with the participation of our co-ownership (based on the invoice amounts).
4. Purchaser shall be authorized revocably by us to collect any outstanding accounts on its own account and in its own name. This collecting authority can be revoked if the purchaser does not discharge its contractual payment obligations towards us in due time. In case of a justified revocation, the purchaser shall be obliged to name any debtor/s of the assigned outstanding accounts and inform such debtor/s of the assignment.
This will apply particularly if any third party shall assert any warranty claim in opposition to the purchaser's accrued outstanding accounts.
Price reductions due to defects and set-offs due to compensation for damage have to be set off against any part of the outstanding accounts not assigned to us. In as much as the purchaser has agreed to a preferred partial assignment in favour of other trade creditor, this section shall apply with the purpose, that the purchaser may collect the partial outstanding accounts ceded to us jointly with the preferred partial outstanding accounts.
5. Purchaser shall be obliged to inform us without delay of any third party's execution enforced on the reserved goods and shall instruct such third party about their being our property.
6. If purchaser is in default - such as delay of payments - we shall be entitled to request a temporary surrender of the reserved goods without granting a grace period, and at purchaser's expense - in handing over or dispatching the goods to us - or possibly requesting assignment of purchaser's rights of recovery towards any third party.
Such surrender or seizure of the preferred goods to and by us does not imply contract withdrawal. This section shall also apply if a serious deterioration of the purchasers' assets becomes evident.
7. Upon purchaser's request we agree at our own discretion to release the above collateral securities, in as much as the amount exceeds the value of our claim to be secured by more than 10 %.
8. Purchaser shall also cede to us its claims to secure our claims against purchaser, which due to the connection of the purchased matter with a piece of real estate will be raised against any third party.
9. We shall be entitled to insure the reserved goods against all risks of any kind at purchaser's expense, unless upon being requested by us, the purchaser submits evidence of a respective insurance policy. Any part amount owing to us claimed and paid out of this insurance shall be ceded to us in advance when entering into any respective contract. We shall be entitled to inform the insurance company of such cession.
10. The Customer shall immediately inform us of any damage or other impairment of the goods under reservation. If the damage or impairment gives rise to claims of the Customer against third parties, the Customer hereby assigns such claims to us for reasons of security.

Section IV Delivery and Lead Time

1. Unless any deviating specification is to be found in the order confirmation, delivery shall be "ex works" e.g. "ex warehouse". The risk of loss or damage of the goods shall pass to the purchaser as soon as the goods have been handed over to the haulage contractor, latest when they are removed from our warehouse. This holds also true if "carriage or freight paid" has been agreed, and in case of partial deliveries or if any additional services of some other kind have been performed out by us.
2. Compliance with deadlines for goods and services presupposes the timely receipt of all specifications, documents, requisite approvals and releases, especially of plans, to be supplied by the Customer, as well as the compliance of the Customer with the agreed conditions of payment and other obligations. If these prerequisites are not provided in due time, the delivery deadlines shall be appropriately extended, provided that we are not responsible for the delay.
3. Insurance of the goods against any transport risks shall take place only upon purchaser's express request and at purchaser's costs.
4. Delivery quoted by us shall commence only when all technical details have been clarified and will not be binding, unless a commercial transaction at a fixed date has been expressly agreed. Lead times shall commence upon receipt of our order confirmation. Date of delivery shall mean receipt of the goods in the home country.
5. To an extent reasonable for the purchaser, we shall be free to carry out partial deliveries.
6. If the delivery or performance date or the delivery or performance period is not complied with on our part, the Customer shall set us a reasonable extended period of delivery in writing. If we culpably fail to supply or provide performance within the set extension of time, the Customer is entitled to withdraw from the contract.

7. We shall be entitled to delay or cancel delivery expected from us or to reduce the amount delivered if we are prevented from or hindered in or delayed through any circumstances beyond our control as for instance strikes, lock-outs, transport obstacles, shortage or out of stock of raw materials, measures taken by public authorities – also experienced by our suppliers – during any period such as force majeure, conditions will subsist. Damages – as far as legally permissible – may not be claimed under these conditions.
8. If purchaser suffers any damage due to any delay caused by us, purchaser shall be entitled to compensation. Such entitlement shall be justified if we have not observed a given period of grace granted by the purchaser to remedy any defects. The compensation amount shall be a maximum of 0.25 % per week, but not more than 5 % in total, of the delayed part of the overall shipment which has not been available in time. Any further claims shall be excluded, unless the delay is due to at least gross negligence.
If purchaser delays acceptance of the goods or violates any other of its duty to cooperate, we shall be entitled to request purchaser to remunerate any damage suffered by us including any possible additional costs. In this case the risk of loss or damage of the purchased goods will devolve to the purchaser, as soon as purchaser is in delay of acceptance of the goods.
9. Should the customer require a Proof of Delivery (POD) on the ordered goods, they will be required to pay a handling fee, provided that the goods were delivered to the consignee in accordance with the given instructions. A POD can only be requested by the customer within the usual retention period for the corresponding documentation of the haulier or carrier engaged. After this period the delivery requirements will be deemed to have been met.
10. If the Customer is in default of acceptance, culpably fails to cooperate or the delivery or service is delayed for other reasons which are not the responsibility of the Customer, we can demand compensation for the damage arising from this, including additional costs (e.g. storage costs). In this respect, a flat charge to the amount of 0.25 % of the invoice amount shall be invoiced for each commenced calendar week starting with the delivery or performance date or, in the absence of a delivery date, with the advice of the readiness for delivery of the goods, but no more than 5 % of the invoice amount. The contractual parties are at liberty to prove a higher or lower amount of damage. The flat charge shall be taken into account in case of further claims.

Section V Warranties and Limitation of Liabilities

1. Warranties are based on the proviso of tests and requirements to give notice of defects pursuant to § 377 of the German Commercial Code which have been carried out and complied with.
2. If the purchased goods have a defect for which we are responsible, i.e. defects which existed or whose cause existed on the date of the transfer of risk, we are entitled to remedy the defects or provide replacement delivery at our choice.
3. If we are not prepared or not able to remedy the defect /replace the defective product, or if due to any deficiency on our part such remedy is delayed beyond a suitable time, or if such remedy/replacement will miscarry for some reason or other, the purchaser shall have the option to withdraw from contract or to claim a respective reduction of the purchase price.
A reimbursement of expenses is excluded, insofar as the expenditure arises, due to the goods being brought to a different place following our delivery, unless this is required for the agreed use of the goods.
4. If improper changes or maintenance work are carried out by the Customer or by third parties, there shall be no any claims for defects based on this and the thereby arising consequences.
5. Unless in the following sections nothing to the contrary will be defined, any further purchaser's claims shall be excluded - irrespective of any legal reasons whatsoever. For any damage not incurred on the delivered product itself, we shall not be liable. Neither shall we be liable for any losses suffered in purchaser's profits or property.
6. A period of warranty for claims for defects of one year from delivery or, if agreed, from acceptance shall apply, provided that the statutory provisions concerning the sale of consumer goods (Sections 474 et sequentia of the German Civil Code (BGB)) especially with regard to the recourse liability (Sections 478 et sequentia of the BGB) are not used in the absence of the statutory requirements. Notwithstanding this, the statutory five-year-old period of warranty pursuant to Section 438, Sub-section 1, no. 2 of the BGB applies to defects in articles which are usually used for buildings and have caused them to be defective.
7. The customer's legal right to make a claim for compensation against us arises only when the customer has not reached an agreement with his purchaser that goes beyond his statutory rights. Clause 3 of the last sentence is additionally valid concerning the extent of the claims for compensation.
8. Section VI applies to claims for compensation in other respects. Further claims or claims other than the claims of the Customer regulated in this number and Section VI against us and our agents on account of a defect shall be excluded.
9. Any delivery is according to current law - and those legal provisions which will be effective at a later date - of the European Union and The Federal Republic of Germany, e.g. REACH-regulation (regulation EG no. 1907/2006) and the law of return and ecological disposal of electrical equipment (ElektroG) as national implementation of the directive 2002/95/EG (RoHS) and the directive 2002/96/EG (WEEE).

Section VI. Compensation for Damage/Joint and Several Liability

1. Any claims for compensation of the Customer, regardless of the legal grounds, especially on account of the breach of obligations arising from the contractual obligation and from wrongful acts shall be excluded unless there is a mandatory liability pursuant to the German Product Liability Act, in cases of liability for gross negligence or wilful misconduct, on account of the injury of life, body or health or on account of the breach of essential contractual obligations.
2. However, a claim for damage arising from the breach of essential contractual obligations shall be limited to the typical contractual foreseeable damage unless a limitation is excluded for another reason on account of gross negligence or wilful misconduct or on account of the injury of life, body or health.
3. In the event of an impossibility of performance which is our fault, the claim for compensation of the Customer shall be limited to 5 % of the value of that part of the delivery which cannot be put into operation which is fit and convenient for the purpose on account of the impossibility of delivery unless we can be blamed for gross negligence or wilful misconduct and no mandatory liability on account of the injury of life, body or health is invoked. The right of the Customer to withdraw from the contract shall remain unaffected hereby.
4. In the case that a claim for subsequent performance has been made against the Customer by the Customer's customer or the latter's customer with good cause, the Customer shall give us the possibility to provide the subsequent performance within a reasonable period ourselves, before the Customer procures replacement elsewhere. The Customer shall impose this obligation on the Customer's customer accordingly. If the Customer breaches these obligations, we reserve the right to reduce the reimbursement of expenses to the amount which the Customer would have incurred if the Customer had provided subsequent performance. Section 444 of the German Civil Code (BGB) shall not be affected hereby.
5. Furthermore, reimbursement of expenses for the provision of subsequent performance for the Customer's customer by the Customer shall be excluded if the Customer has not made use of the Customer's right to refuse this type of subsequent performance or both types of subsequent performance on account of disproportionate cost contrary to the Customer's obligation of mitigation of damage and/or has limited the reimbursement of expenses to a reasonable amount.
6. Any claims of the Customer on account of expenses required for the purpose of subsequent performance, especially transport, travel, labour and material costs, shall be excluded if the expenses increase because the object of delivery has subsequently been taken to a place other than the consignee address stated by the Customer unless the transport corresponds to its use in accordance with the terms of the contract. This applies accordingly with regard to recourse liability.
7. The binding limitation periods (cf. V.6.) for claims for damage and reimbursement of expenses in connection with the defectiveness of the goods or service shall apply to such claims. The statutory limitation periods shall apply to claims for compensation on the basis of liability pursuant to the German Product Liability Act, gross negligence and wilful misconduct as well as on account of the injury of life, body or health or on account of the breach of essential contractual obligations.
8. In as much as our liability is excluded, such an exclusion also applies to the personal liability of our staff, employees, agents and vicarious agents.
9. Any deviation in technology or construction of descriptions or specifications in sales literature, catalogues, and written documentation as well as any changes in prototypes, constructions, and materials, made in the course of technical progress, shall be reserved, without any interpretation of rights being permissible against us, in as much as this will still be acceptable to the purchaser.

Section VII Usage Rights for Images, Trademark Rights and Protection

1. Any kind of exploitation or other use of photographs or other copyrighted contents which elumi GmbH uses on a website it maintains or publicly reproduces or makes available in any other way is prohibited. However, use can be permitted by elumi GmbH in a separate agreement.
2. If the Customer is a trader, the Customer is entitled, but is also obliged to use the name „elumi“ and the brand name “AEG”. Both „elumi“ and “AEG” are protected as internationally registered trademarks. The provided “AEG Brand Guidelines“ shall be complied with without fail.

Section VIII Data protection

The data of the Customer shall be stored and processed by us in compliance with the statutory provisions.

Section IX Return of goods

1. The return of defect-free goods requires our prior written agreement; otherwise we are entitled to refuse to accept the goods.
2. If we have expressly agreed to the return of the goods in accordance with clause 1. above or we accept returned defect-free goods, we are entitled to invoice the Customer with processing costs to the amount of 30 % of the net sales price. Furthermore, the Customer shall pay all transport costs as well as the costs for packaging, surrounding packaging and any repair.

Section X Place of Performance, Legal Venue, and Applicable Law

1. Place of performance for our deliveries ex works shall be such selfsame works, if delivered ex warehouse, it shall be such selfsame warehouse. Place of performance for payments shall be Gnarrenburg.
2. We reserve the unrestricted right to ownership and copyright exploitation rights to quotations, drawings and other documents. Documents of this kind may only be made accessible to third parties after our prior agreement and shall be immediately returned at our request if the order is not placed with us. Clauses 1 and 2 apply accordingly with regard to similar documents of the Customer; however, these may be made accessible to third parties, to whom we have legitimately transferred the deliveries.
3. Place of jurisdiction for all payment matters and any other disputes arising directly or indirectly from this contractual relationship is Hamburg. We reserve the right however to take legal action against the purchaser at his general place of jurisdiction. Hamburg shall be the exclusive legal venue for any across border deliveries for all litigations arising from the contract relationship. (Art. 17, EU-GVÜ). We reserve the right to invoke any other competent EU-GVÜ court.
4. For all business relationships and all legal relationships between the purchaser and us, solely the law of the Federal Republic of Germany shall apply. The uniform law concerning the international purchase of movable objects (EKG), as well as the United Nations Convention regarding international contracts on the purchase of goods (CISG) shall not apply.

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