

Terms of Delivery, Payment, and Installation of ELOKON GmbH

Last revised: March 2019

I. General – Scope

1. The business relationship between ELOKON GmbH (hereinafter also referred to as “Supplier”) and its customers (hereinafter also referred to as “Buyer”) is governed exclusively by these Terms of Delivery, Payment, and Installation (hereinafter also referred to as the “Terms of Delivery”). No Buyer terms that are in conflict with or depart from these Terms of Delivery apply unless with Supplier’s express written consent. Supplier’s consent will be required in all events, including if Supplier, notwithstanding its knowledge of any deviating, conflicting or additional terms of Buyer, executes the contract or delivers to Buyer without reservation. These Terms of Delivery shall be deemed accepted no later than upon Buyer’s acceptance of the goods delivered by Supplier.

2. Any agreements made between Supplier and Buyer to perform a contract are to be put into writing. Any amendments to the contract require written form. Written form is also required for altering the clause providing for written form.

3. These Terms of Delivery shall only apply to business organizations, provided that the contract is made in the course of their business, as well as to legal entities under public law and to special funds under public law.

4. Until revoked, these Terms of Delivery shall also apply to all future business with Buyer in the course of the ongoing business relationship.

II. Offer, Execution and Subject Matter of Contract

1. An offer by Supplier is provisional unless Supplier has expressly stated otherwise in writing. Buyer’s order is not deemed accepted until Supplier has acknowledged the order in writing. Supplier is not bound by any agreements made with Supplier’s

field staff until Supplier has confirmed such subsidiary agreements in writing.

2. Supplier reserves its proprietary rights and copyrights to illustrations, catalogues, brochures, drawings, calculations, cost estimates, software and other material, and none of such material may be shared with third parties. Buyer requires Supplier’s express written consent before sharing such material with a third party.

III. Prices – Terms of Payment

1. Except as stated in the acknowledgment of order or as resulting from the contractual relationship, Supplier’s prices are quoted EXW (“ex works”, Incoterms 2010)

Gärtnerweg 49, 25436 Tornesch, Germany, inclusive of commercial packing and exclusive of the fees and expenses for any installation services that may have been agreed upon, which will be charged on a separate basis. Except as expressly agreed otherwise (DAP, for example), Buyer shall bear all expenses in connection with the shipment and transport of a consignment such as freightage, packing costs, customs clearance costs and insurance costs.

2. Fixed prices are subject to express written agreement. Otherwise, if the agreed delivery date is more than six (6) weeks after formation of the contract, Supplier may charge the price valid on the day of delivery.

3. Unless another period for payment has been allowed in writing, payment is to be made to Supplier’s designated accounts agent promptly. If Buyer does not prepay the purchase price and, if applicable, the installation fee, then Supplier may have the installation of delivered goods into vehicles, machines, buildings or other items (hereinafter also collectively referred to as “items”) not owned by Buyer or have its permission for such installation be contingent upon Buyer providing a written

declaration of consent issued by the owner stating that the owner undertakes towards Supplier to allow Supplier, in the event of non-payment of the purchase price and/or the installation fee, to de-install and recover the installed items without compensation. However, the owner of the item in question is allowed to pay the unpaid part of such price or fee to Supplier.

Either way, Buyer agrees to install the delivered goods into an item for temporary use only.

4. If Buyer is in delay of payment, Supplier is entitled to charge the default interest at the statutory rate applicable at the time. The right to claim further damages remains unaffected.

5. Supplier reserves the right to adjust the price to address any subsequent change requests of Buyer.

6. Buyer has no right to set off unless Buyer's counterclaim has been recognized by final judgment or has been uncontested or acknowledged. Buyer may not exercise a right of retention unless the above-mentioned conditions have been fulfilled and the counterclaim is based on the same contractual substance.

7. Notwithstanding any terms of Buyer to the contrary, Supplier may first deduct payments from earlier debts of Buyer, and Supplier will inform Buyer of the nature of the deduction made. If costs and interest have accrued, Supplier has the right to deduct the payment first from the costs, then from the interest, and finally from the principal claim.

IV. Delivery Period

1. Commencement of the delivery period quoted by Supplier is subject to clarification of all technical questions and compliance with Buyer's obligations. Except as agreed or as resulting from the contractual relationship, the quoted delivery period is always non-binding.

2. Except as otherwise agreed in writing, the delivery period has been observed if the goods to be delivered is ready for dispatch

and Supplier has notified that it is ready for dispatch before the delivery period has lapsed.

3. Where Supplier has agreed to install the delivered goods, Buyer shall use all efforts to perform the preparatory work necessary for such installation timely enough to observe the date of delivery. Supplier will give Buyer timely notice of the delivery date. If Buyer fails to comply with its obligations regarding the preparation of the space intended for the installation of the delivered goods, in particular if Buyer fails to heat and illuminate the space to Supplier's specifications and if it fails to carry out the preparatory work described in more detail in section VI for reasons in Buyer's control, Supplier may withdraw from the contract as a whole – including from the supply contract – or claim damages for non-performance, in each case, provided a period of at least four (4) weeks allowed by Supplier has expired without result. Supplier reserves the right to claim further statutory rights.

4. Where necessary for the installation, Buyer shall obtain an official certificate or approval that confirms that it is admissible to operate the delivered goods at Buyer's premises.

5. Delays in delivery resulting from force majeure or unforeseeable circumstances that are beyond Supplier's control and that Supplier had no reason to assume could occur, for example operational disruptions, strikes, lockouts, lack of means of transport, difficulties in procuring raw materials, governmental orders, late delivery by suppliers, will not cause Supplier to be in delay in delivery. An agreed delivery period will be extended by the duration of the interference. If the interference continues for more than two (2) months, Supplier or Buyer, upon expiry of a reasonable period allowed by the other Party, may withdraw from the contract as regards the non-performed part of the contract. No damage claims may be asserted in this event. The

same applies to agreed installation periods. Any delays resulting from any of the aforementioned circumstances will be notified to Buyer as soon as possible.

6. If Buyer is in default of acceptance or if shipping is delayed at Buyer's request or if Buyer violates other duties of assistance, Supplier may, without prejudice to its other rights, demand compensation for any additional expenses and losses Supplier may incur as a result.

7. Supplier may render partial performance except where this would be in conflict with an obvious legitimate interest of Buyer.

V. Shipping – Passing of Risk – Recovery of Delivered Goods

1. Except as otherwise agreed in writing, shipping EXW (“ex works”, Incoterms 2010) means ex works Gärtnerweg 49, 25436 Tornesch, Germany.

2. Buyer must arrange for sufficient transport insurance, at Buyer's expense. At Buyer's express request, Supplier shall obtain, and Buyer shall bear the cost of, transport insurance for a given shipment.

3. Supplier will determine the shipping route and the carrier unless Buyer issues special instructions. Extra costs arising from Buyer's instructions will be charged to Buyer.

4. If delivery has been agreed to include installation or assembly, the risk shall pass to Buyer on the day of ready-to-use installation or assembly or, if legally required, on the day of acceptance testing at the place of installation or assembly. If a trial run has been agreed upon, the risk will pass to Buyer upon a satisfactory trial run, which is to be carried out promptly upon ready-to-use installation or assembly. If Buyer does not accept Supplier's offer of a trial run or acceptance testing, the risk for the period of the delay shall pass to Buyer upon expiry of one (1) week after Supplier's offer. In all other respects, section VI subsection 8 shall apply additionally.

5. If shipping or any agreed installation or assembly is delayed as a result of

circumstances in Buyer's control, the risk for the period of the delay passes to Buyer, provided, however, that Supplier is obliged, at Buyer's request and expense (cash in advance), to take out any insurance Buyer may request.

6. Buyer's obligation to accept delivery is a principal obligation.

VI. Installation and Assembly; Servicing and Maintenance

Except as otherwise agreed in writing, if Supplier has agreed to carry out installation or assembly services, the following provisions apply:

1. Buyer, at Buyer's expense, shall provide the following in a timely manner:

(a) auxiliary staff and tools. Supplier will inform Buyer in due course of Supplier's requirements regarding qualified staff and special tools;

(b) preparatory work such as, in particular, (i) the laying and acceptance testing of electrical connections for commissioning stationary systems of Supplier, (ii) providing lifting platforms, (iii) closing off areas where Supplier's systems are to be installed and (iv) providing all vehicles on which Supplier's systems are to be installed. At the time of system installation, all preparatory work involving Supplier's vehicles must have been completed and all vehicles must be capable of running at maximum speed in all aisles;

(c) electricity and water and the necessary connections, illumination, heating and, where appropriate, climate control;

(d) lockable rooms in the immediate vicinity of the installation site that are sufficient for storing materials, tools, etc. as well as appropriate working and recreation rooms for the installation staff.

2. Prior to commencement of the work, Buyer, without request by Seller, shall inform Supplier of any admission formalities, providing all information and documents necessary for admission. Likewise, Buyer shall confirm to Supplier

that all necessary vehicles will be available and operational at the time of installation.

3. Prior to commencement of the work, the preparatory work to be carried out by Buyer or third parties must have been completed to an extent allowing Supplier to commence the work immediately.

4. If the work is delayed for reasons or omissions in Buyer's control, Buyer shall pay the reasonable expenses incurred as a result. The same applies to the cost of futile travelling.

5. Buyer is to certify the working hours of Supplier's staff weekly or, at Supplier's request, daily. Buyer is obliged to issue to Supplier's staff a statement certifying completion of the work promptly and without request.

6. Supplier disclaims liability for damage that may be caused (i) by Supplier's installation staff or other vicarious agents but does not relate to the delivery, installation or assembly or (ii) by instructions given by Buyer.

7. For installation work as well as service and maintenance work, Supplier charges the applicable hourly rates stated in its price list, plus VAT. Buyer or Buyer's agent shall sign off the hours worked. If Buyer has objections, such objections are to be noted in the service report or test report. For all other matters, service and maintenance work shall be governed by Supplier's Service Terms and Conditions and, if applicable, by a separate maintenance contract.

8. If the delivered goods are assembled or installed by Supplier or by a third party commissioned by Supplier, Supplier shall inform Buyer upon completion. At Supplier's request, Buyer is obliged to confirm the installation or assembly of the delivered good by written notice to Supplier and, if legally required, to carry out an acceptance test. If Buyer commissions the delivered goods (with the exception of a trial run), the delivered goods and the installation and assembly of the goods will

be deemed accepted through such actual commissioning.

9. Buyer is obliged to handle the delivered good with due care; in particular, Buyer is obliged to insure the delivered good sufficiently, at its replacement value, covering damage through fire, water and theft, at Buyer's expense. If maintenance and inspection work is required according to Supplier's instructions and/or statutory or official regulations, Buyer must carry out such work in a timely manner and at its own expense. Supplier may perform the relevant maintenance and inspection work on the basis of a separate maintenance contract.

VII. Retention of Title/Payment by Instalments

Where Buyer does not fully pay the purchase price and the installation fee concurrently with the installation/assembly, the following shall apply:

1. Supplier reserves title to all goods delivered until Supplier has received all payments from its business connection with Buyer. In the event of breach of contract by Buyer, in particular in the event of delay in payment, Supplier has the right to recover the delivered goods. This shall not apply if Buyer has already filed for insolvency or if insolvency proceedings have been opened which do not permit prompt recovery of the delivered goods by Supplier. Recovery of the delivered goods by Supplier will not constitute withdrawal from the contract unless Supplier has expressly declared its withdrawal in writing. After recovering the delivered goods, Supplier may realize the goods, and the realization proceeds shall be set off against Buyer's liabilities, less reasonable realization costs. The realization provisions contained in the German Insolvency Code (InsO) remain unaffected.

2. In the event of attachments or other third-party interventions, Buyer shall give prompt written notice to Supplier. In accordance with § 771 German Code of Civil Procedure (ZPO), Buyer shall be liable to

Supplier for the judicial and extrajudicial costs of a legal action.

3. Except as expressly agreed otherwise, Buyer may resell a delivered good in the course of Buyer's ordinary business. However, to address this event, Buyer hereby assigns to Supplier all claims in the amount of the final invoice amount (including VAT) out of any claims that will accrue to Buyer from such resale in relation to Buyer's customer or third parties, whether the delivered good was resold without processing or after processing. Buyer will remain to be entitled to collect the claim after the assignment. However, Supplier is entitled to collect its own claim. However, Supplier agrees not to collect the claim as long as Buyer properly discharges its payment obligations out of the collected proceeds and is not in default and, in particular, no application for initiating insolvency proceedings or similar proceedings has been filed and no suspension of payments has taken place. In such cases, Supplier may demand that Buyer should disclose the assigned claims and their debtors, provide all information necessary for collection, deliver the relevant documents and notify the assignment to the debtors (third parties).

4. Any processing or modification of the delivered good by Buyer is always carried out on behalf of Supplier. If the delivered good is processed together with other goods not owned by Supplier, Supplier will co-own the new goods at the ratio of the delivered good's value relative to the other processed goods at the time of processing. In all other respects, the goods created through processing shall be subject to the same provisions as the goods delivered under retention of title.

5. Buyer shall further assign to Supplier the claims securing our claims against Buyer which arise against such third party as a result of the combination of the delivered good with a good owned by a third party.

Reference is made to section III subsection 3.

6. Supplier undertakes to release security at Buyer's request insofar as the value of such security exceeds the claims to be secured by more than 20%. It is Supplier's responsibility to select which security to release.

7. If the delivered goods is located outside Germany, the following applies:

If the delivered goods were delivered prior to payment of all sums Buyer owes under the contract, such goods will remain Supplier's property until fully paid if this is permissible under the law in whose jurisdiction is located the delivered goods. If such jurisdiction does not permit retention of title while allowing Supplier to reserve other rights in respect of the delivered goods, Supplier may exercise any of such other rights. Buyer is obliged to assist with any measures Supplier will take to protect its title or similar right in respect of the delivered goods.

VIII. Intellectual Property Rights

1. Except as expressly agreed otherwise in writing, all IP rights attaching to the delivered goods, including any delivered software or electronic controls, shall remain with Supplier. Buyer may not grant any licences or sub-licences. Where Supplier has delivered software or electronic controls, Buyer may only use such software or controls for the systems they are intended for.

2. Supplier shall only be liable for the delivered good's freedom from third-party IP rights which are conflict with the agreed use or Buyer's use known to Supplier.

3. Buyer shall promptly inform Supplier once a third party has asserted rights against Buyer for infringement of their IP rights by the delivered goods. At Supplier's request, Supplier may oppose such third-party claims in the name and on behalf of Buyer, at Supplier's expense.

IX. Warranty for Defects

1. Warranty rights of a commercial Buyer presuppose that Buyer inspected the delivered goods promptly and notified any defects in a prompt and proper manner, provided that latent defects are to be notified once detected (§§ 377–378, 381 (2) German Commercial Code (HGB)). Defects are to be notified in writing, specifying the defect. If a commercial Buyer fails to satisfy these requirements, Buyer will forfeit its warranty rights in respect of defects.

2. Except as expressly agreed otherwise in writing, particulars regarding weight, dimensions, colour shades, or technical specifications contained in drawings, brochures, illustrations or other materials provided by Supplier are non-binding and, in particular, are no promised characteristics. Particulars provided by Supplier are to be understood as approximate values as is being practiced in the sector.

3. Except as expressly agreed otherwise, layout drawings or designs are merely considered dimensional specifications involving no liability of Supplier for static calculations or constructional practicality.

4. Buyer has no warranty rights if a defect is attributable to the vehicle, provided that the vehicle also includes the vehicle-side part of the interface connector (B-connector). If the B-connector was not fitted by the vehicle manufacturer or Buyer but rather is retrofitted by Supplier for Buyer, Buyer is obliged to examine the retrofitted B-connector promptly after installation and to approve it separately; subsection 1 of this section shall apply.

5. If the delivered good has a defect the Supplier is responsible for, Supplier may render subsequent performance (by remedying the defect or replacing the delivered good, as Supplier may opt). Subsequent performance will not include the de-installation and re-installation of the defective good whether wholly or in part unless Supplier was originally obliged to

install the delivered good. At Supplier's option and expense, Supplier may demand that (i) Buyer should send Supplier the defective part or equipment to allow repair or replacement or (ii) Buyer should hold the defective party ready for Supplier to carry out the repair or replacement on site.

6. In the case of an actual defect, Supplier shall bear the expenditures required for purposes of examination and subsequent performance, in particular the cost of transport, travel, labour and materials (but not the cost of de-installation and re-installation unless Supplier had an installation duty). If Buyer's request for rectification of a defect turns out to be unjustified, Supplier may recover its costs from Buyer. If Buyer requests that remediation work should be carried out at a place designated by Buyer and if such place is not Buyer's domicile or the contractually agreed place of destination of the delivered goods, Supplier may act on such request if Buyer agrees to pay any resulting additional working hours and travel expenses at Supplier's standard rates. The foregoing does not prejudice Supplier's right to refuse subsequent performance if the statutory prerequisites are met.

7. Except as otherwise provided below, any further claims of Buyer shall be excluded, whatever the legal foundation. Therefore, Supplier disclaims liability for damage not affecting the delivered good as such. In particular, Supplier disclaims liability for loss of profit or other financial losses Buyer may incur.

8. In urgent cases, for instance if operational safety is at risk or to prevent unreasonable damage, Buyer has the right to rectify a defect and to recover its objectively required and reasonable expenditures from Supplier. Buyer shall give Supplier prompt notice and, if possible, advance notice of Buyer's own rectification of the defect. Buyer has no right to remedy the defect where Supplier would be entitled

to refuse subsequent performance according to statutory regulations.

9. If subsequent performance fails after a reasonable period or if Supplier refuses to render subsequent performance, Buyer, notwithstanding any damage claims and at Buyer's option, may either reduce its payment if the prerequisites of section III subsection 6 are met or withdraw from the contract. Any liability for ordinary wear and tear shall be excluded.

10. Except as otherwise agreed otherwise, claims for subsequent performance become time-barred after a period of twelve (12) months of the date the statutory warranty period begins to run, and the same applies in the cases of withdrawal from the contract or reduction of the purchase price. That period does not apply to warranty claims under §438 (1) point 2 German Civil Code (BGB) (in relation to a building or a thing that has been used for a building) or claims under the German Product Liability Act or in the cases of fraudulent concealment of a defect or non-conformity with a guarantee as to quality. The foregoing is without prejudice to the statutory provisions concerning suspension of the statute of limitations and suspension and recommencement of limitation periods.

11. If Buyer fails to adhere to Supplier's operating or maintenance instructions or modifies the delivered goods or replaces any component parts or uses consumables that are not in conformity with the original specifications, no claims for defects in the goods can arise unless Buyer can disprove a substantiated claim that one of these circumstances has caused the defect.

12. Used parts are sold and delivered on an "as is" basis. Supplier does not warrant for any used parts or equipment.

X. Liability

1. In conformity with the statutory provisions, Supplier's liability shall not be limited in the events of (i) intent or gross negligence, (ii) injury to life, body or health if caused at least through negligence, (iii)

mandatory liability under the Product Liability Act or other statutory provisions, (iv) fraudulent conduct or (v) liability for absence of guaranteed qualities.

2. In the event of damage caused through gross negligence of vicarious agents of Supplier, Supplier's liability shall be limited to the typically foreseeable damage notwithstanding the events stated in subsection 1 (ii) to (v).

3. In the event of simple negligence, Supplier shall not be liable except for negligent breach of duties that are of the essence of the contract notwithstanding the events stated in subsection 1 (ii) to (v).

Duties that are of the essence of the contract are duties the very performance of which enables the proper completion of the contract as such and on the satisfaction of which a Buyer typically relies and may rely. For purposes of this definition, in particular the duty to deliver the goods or provide services on time and free from defects that significantly affect the functionality or usability of the subject-matter of the contract are of the essence. In these events, Supplier's liability is limited to the foreseeable damage typical of the contract. The foreseeable damage typical of the contract means the damage that Supplier, when entering into the contract, expected or, considering the circumstances Supplier was aware of or ought to have been aware of, ought to have expected as potential and direct effect of a material breach of duty.

Accordingly, indirect damage and consequential damage resulting from defects in the delivered goods shall not be compensable except where such damage is typically to be expected if the delivered goods are used in conformity with their intended use.

4. Insofar as Supplier's liability for damages is excluded or limited in accordance with the subsections 1 to 3 above, this shall also apply to all other claims, including claims based on culpa in contrahendo or breach of ancillary duties, in particular claims arising

from tortious product liability (§§ 823 ff. Civil Code).

5. Insofar as Supplier's liability is excluded or limited, this shall also apply to the personal liability of its employees, staff, associates, representatives and vicarious agents.

6. Where Supplier provides technical information or consultancy services that do not form part of the contractually agreed scope of performance, any liability will be precluded for such information or services notwithstanding the events stated in subsection 1 (i) to (v).

7. Except for claims arising from tortious product liability (§§ 823 ff. Civil Code) and except as provided otherwise, the period of limitation concerning claims between Supplier and Buyer shall be twelve (12) months.

3. Buyer assures the accuracy of the particulars concerning Buyer's name, address and VAT ID, which Buyer shall provide promptly and without request unless Buyer has already provided such particulars. Buyer undertakes to notify any change of name, address or VAT ID to Supplier and Buyer's domestic tax authority. If a delivery is taxable as a result of errors concerning the name, address or VAT ID, such tax is payable by Buyer. In the case of double taxation (purchasing tax in Buyer's country, VAT in Germany), Buyer shall refund the overpaid VAT amount to Supplier (because no VAT is owed if purchasing tax is payable in Buyer's country).

XI. Place of Jurisdiction – Place of Performance

1. If Buyer is a merchant or is not domiciled in Germany, Elmshorn shall be the exclusive place of jurisdiction for any disputes arising from the contractual relationship directly or indirectly. However, Supplier has the right to sue Buyer before the court having jurisdiction over Buyer's domicile.

2. Except as otherwise agreed in writing, Tornesch, Germany, shall be the place of performance for any delivery, performance or payment.

XII. Applicable Law – Severability – Miscellaneous

1. The Parties' legal relationship shall be governed by the law of the Federal Republic of Germany excluding German private international law and the Convention of 11 April 1980 on Contracts for the International Sale of Goods (CISG).

2. If any provision of the contract or these Terms of Delivery should be or become ineffective, such ineffectiveness will not prejudice the effectiveness of the remaining provisions.