

General Terms and Conditions (Sales, Delivery and Payment Terms)

ELMED Dr. Ing. Mense GmbH

Relevant for USA and Canada

As at August 2014

1. Introduction

ELMED Dr. Ing. Mense GmbH (Seller's) issuance of these terms and conditions and Seller's sale of Product to Seller's customer (Buyer) is expressly made conditional upon Buyer's assent that these terms and conditions constitute the sole and exclusive agreement (the Contract) between Seller and Buyer. The terms and conditions apply to all future sales of Product by Seller to Buyer, even if they are not expressly accepted again. Any additional or conflicting terms and conditions contained on, attached to, or referenced in any way by Buyer's purchase documentation, or other prior or subsequent communication from Buyer to Seller, shall have no effect on the purchase of Product by Buyer from Seller and are expressly rejected by Seller. Buyer's commencement of performance (including ordering, purchasing, or taking delivery of Product) shall constitute Buyer's unqualified and unconditional acceptance of these terms and conditions. Seller's offers are subject to confirmation.

2. Delivery

INCOTERMS 2010 apply to all deliveries. Unless otherwise agreed by the parties in writing, delivery is Free Carrier (FCA) Seller's plant or warehouse.

Any delivery dates indicated herein or otherwise set by Seller are estimates only. They do not operate to bind Seller to the dates indicated unless specifically agreed in writing by Seller, and even in the event of fixed delivery date, delivery within five business days shall be deemed substantial compliance. Seller reserves the right to make partial shipments and to submit separate invoices for each such partial shipment. If Buyer defaults in its obligations in regard to any partial or prior whole shipment, Seller may suspend any additional partial or whole shipments unless and until Customer cures such default. If Product is to be delivered more than forty-five days after the Contract is entered into, Seller may impose charges for storage and other additional costs. In the case of delivery on call, if Buyer fails to call for the goods within the periods agreed upon or, if no such period has been agreed upon, within one hundred eighty days from the date of the Contract, Seller may withdraw from the Contract and Seller has the right to liquidate the affected Product. Seller can further demand damages for non-performance of the entire Contract.

3. Inspection

Immediately upon Product receipt, at its sole cost and expense Buyer shall inspect, test, and evaluate Product to ensure that it conforms to Seller's warranty and that Buyer has received all ordered quantities. No later than five days after Buyer's receipt of Product and before the use or other change from the original condition of any part of Product, Buyer shall notify Seller in writing if Product is considered nonconforming or short in any respect. Buyer's failure to give timely written notice to Seller of any obvious non-conformance or shortage within such five-day period shall constitute an acceptance of the Product and a waiver by Buyer of all claims with respect thereto.

4. Payment and Pricing

Payment is due to be received by Seller within thirty days unless otherwise agreed in writing executed on behalf of Buyer and Seller. The currency for payment is EURO (€). Customer shall pay to Seller the invoice price of Product sold hereunder, in full and without any deduction or set-off of any kind whatsoever. If a partial payment is made, the payment shall first be applied to any charges, which Seller owes to third parties in connection with delivery of the Product, and the balance shall be applied to partial payment of the purchase price. Unless otherwise agreed in writing, Product price is exclusive of taxes, customs, duties, transportation, and insurance.

Cash discount deductions agreed on for individual cases must have payment received within fourteen days. Cash discounts are not possible if previous invoices have exceeded the thirty day payment due period. Any amount owed because of Buyer taking an unauthorized cash discount, as well as the deduction of forwarding charges and packing costs, must be paid in full.

Upon a delay in any payment by Buyer, Seller may charge interest on the amount due at the rate of one and a half percent per month compounded monthly or otherwise as permitted by law, whichever is less, on the outstanding amount of any unpaid invoice beginning on the day after the payment due date. Seller reserves the right to claim further damages due to such delays. Payment with a bill of exchange requires agreement by Seller. If Seller accepts the bill of exchange, then the bill of exchange tax as well as the discount charges and VAT must be paid by Buyer within ten days. If Seller becomes aware of circumstances whereby the payment of the full purchase price by Buyer appears to be seriously at risk, then Seller can require payment of the full purchase price for delivery, even if the original Contract anticipated delivery by Seller in advance of full payment.

5. Warranty

Seller's warranty is only that at the time of delivery: (i) Product conforms to the specification agreed in writing by Seller and Buyer, or if there is no written agreement as to specification, Seller's then current specifications for Product; and (ii) Seller will deliver good title to Product and Product shall be delivered free of liens and encumbrances. Buyer, having the expertise and knowledge in the intended use of Product, assumes all risk and liability for results obtained by the use of Product, whether used singly or in combination with other products or in any process. SELLER SPECIFICALLY DISCLAIMS ALL OTHER WARRANTIES, WHETHER EXPRESS OR IMPLIED, WHETHER ARISING BY OPERATION OF LAW OR OTHERWISE, INCLUDING WITHOUT LIMITATION ANY WARRANTIES OF MERCHANTABILITY OR FITNESS OF THE PRODUCT FOR A PARTICULAR PURPOSE. ANY DETERMINATION OF THE SUITABILITY OF THE PRODUCT FOR THE USE CONTEMPLATED BY BUYER IS BUYER'S SOLE RESPONSIBILITY. Seller offers no warranty for any system or product shipped with Product by Seller if that system or product is manufactured by a different company.

6. Limitation of Remedies and Liability

If Buyer believes that there is any breach of warranty or nonconformity of Product within one year of the date of purchase, then Seller must be notified immediately in writing. Buyer's exclusive remedy as to Seller, including for failure to deliver or late delivery, is, at Seller's option, limited to (i) replacement or repair of the non-conforming Product, as Seller elects; or (ii) refund to Buyer of the portion of the purchase price attributable to such non-conforming Product. Buyer must provide Seller with the necessary time, opportunity, and reasonable access to repair Product, including the ability to return Product to Germany for repair, if Seller desires to repair Product as Buyer's remedy and if Buyer refuses to do so then Seller has no liability for any alleged defect with Product. Liability for defects does not include damage which arises after delivery of Product or damage that is due to (i) natural wear and tear, (ii) faulty or careless operation or maintenance, (iii) excessive operational demands, (iv) unsuitable equipment, (v) defective construction work, (vi) unsuitable substratum, or (vii) chemical, electrochemical, or electrical influences. Seller is not liable for a non-conforming or short system or product manufactured by a different company.

NOTWITHSTANDING ANYTHING HEREIN TO THE CONTRARY, IN NO EVENT WILL SELLER BE LIABLE TO BUYER, WHETHER DIRECTLY OR BY WAY OF INDEMNIFICATION OR CONTRIBUTION, FOR ANY LOST OR PROSPECTIVE PROFITS, RECALL COSTS, INDIRECT, INCIDENTAL, CONSEQUENTIAL, SPECIAL, EXEMPLARY, OR PUNITIVE DAMAGES, INCLUDING WITHOUT LIMITATION LOST EARNINGS OR BUSINESS INTERRUPTION, WHETHER OR NOT BASED UPON SELLER'S NEGLIGENCE, BREACH OF WARRANTY, STRICT LIABILITY, OR ANY OTHER CAUSE OF ACTION. BUYER AGREES THAT THE RETURN OF THE FULL SALES PRICE FOR THE PRODUCT, WHICH WAS THE CAUSE OF THE ALLEGED LOSS, DAMAGE, OR INJURY, WILL PREVENT THE FOREGOING REMEDIES FROM FAILING THEIR ESSENTIAL PURPOSE, AND THAT SUCH REMEDY IS FAIR AND ADEQUATE. In no event shall Seller's cumulative liability exceed the price of Product that was the direct cause of the alleged loss, damage, or injury.

7. Excused Performance

The existence of *force majeure* conditions (such as acts of God, fire, explosion, flood, unusually severe weather, riots, wars, acts of terrorism or states, strikes, lockouts, impossibility of procuring transportation, failure of usual sources of raw materials or components, failure of computer systems to operate properly, failure of equipment, or plant shutdowns) that hinder the contractual parties either completely or partially in the fulfillment of their obligations set forth by these terms and conditions absolve both parties to the Contract from the fulfillment of the Contract (except Buyer's payment obligations) until the *force majeure* condition no longer exists. The party subject to the *force majeure* condition must inform the other party immediately thereof. Upon termination of the *force majeure* condition, the performance of any suspended obligation shall recommence. If, however, the *force majeure* condition prevents performance by either party for a period in excess of ninety days, then so long as the *force majeure* condition continues either party may terminate the Contract at once by delivering notice of the termination to the other party.

8. Further Handling and Use

Seller shall not be liable for, and Buyer shall indemnify, defend, and hold harmless Seller and its affiliates, and their respective officers, directors, employees, insurers, representatives, and agents (Indemnitees), from and against any and all claims, losses, liabilities, costs, and expenses (including attorneys' fees) arising out of or resulting from the handling or use of Product, or any other action or inaction with regard to Product. Buyer's obligations under this Section shall survive the termination, cancellation, or expiration of all orders delivered under these terms and conditions and the cessation of any business transactions between Seller and Buyer.

9. Compliance with Law

Buyer is responsible for compliance with all laws, regulations, and requirements applicable to Product once the Product has been delivered in accordance with these terms and conditions. Buyer agrees not to divert or resell the Product contrary to any laws, regulations, or requirements. If any license or consent of any government or other authority is required for the acquisition, carriage, or use of Product by Buyer, then Buyer will obtain the same at its expense and provide evidence of the same to Seller on request. Failure to do so will entitle Seller to withhold or delay shipment, but failure to do so will not entitle Buyer to withhold or delay payment of the purchase price. Any expenses or charges incurred by Seller resulting from such failure will be paid for by Buyer within ten days of receipt of Seller's written request. Buyer understands and agrees that it will comply with all applicable anti-bribery and anti-corruption laws, regulations, and requirements, including the United States Foreign Corrupt Practices Act (FCPA), and any other applicable laws, regulations, and requirements.

10. Confidentiality

Buyer shall treat as confidential all information supplied by Seller that is not in the public domain but is shared in connection with the sale of Product, including, but not limited to, price, commercial terms, specifications, or other technical, business, or sales data. Neither Buyer nor anyone acting on its behalf will reverse engineer Product.

11. Resolution of Controversy

Any controversy or claim related to these terms and conditions or the Contract, or the negotiation or breach thereof, and the sale of Product pursuant hereto and thereto, shall have applied to it the law of the state of New York (without regard to that state's conflict of laws jurisprudence) and will be settled by arbitration in accordance with the Commercial Arbitration Rules of the American Arbitration Association, and judgment upon the award rendered by the arbitrator may be entered in any court having jurisdiction thereof. The arbitration shall be held in New York, New York and shall be conducted before a single arbitrator who is a licensed attorney with at least ten years' experience in commercial transactions and who is mutually agreeable to Buyer and Seller, or if no agreement can be reached, then such a licensed attorney selected by the American Arbitration Association. The arbitrator shall render a reasoned written opinion in support of the arbitrator's decision, and shall award reimbursement of attorneys' and other experts' fees and disbursements and other costs of arbitration to the prevailing party, in such manner as the arbitrator shall deem appropriate.

Any discovery period shall be limited to sixty consecutive calendar days, and neither party may pose more than thirty interrogatories or depose more than two witnesses for more than seven hours each. The

United Nations Convention on Contracts for the International Sale of Goods (CISG) is excluded.

12. Modification of Material Furnished by Seller

All catalogues, specifications, and other material of Seller are subject to modification by Seller and are not binding and do not constitute warranties or representations unless so stated in writing by Seller. Seller reserves the right to correct clerical and typographical errors at any time. All prices listed in any catalogues, advertisements, price lists, or other materials issued by Seller are subject to modification by Seller and are not binding unless so stated in writing by Seller.

13. Only for Residents of Quebec

(Uniquement pour les résidents du Québec)

The parties declare that they have required that these terms and conditions and all documents related hereto, either present or future, be drawn up in the English language only. Les parties déclarent par les présentes qu'elles exigent que les termes et conditions et tous les documents y afférents soient rédigés seulement en anglais.

14. Miscellaneous

If any or several of the previous terms or conditions are found invalid, the other terms and conditions remain in effect. In such case, Seller and Buyer will replace an invalid term or condition with a valid one that comes closest to the economic purpose of the invalid term or condition. Buyer does not have a license to use any trademark or trade name of Product or of Seller. Seller and Buyer are independent contractors only and are not partners, joint venturers, or any other type of similar relationship. Buyer only may send an inspector or other Buyer's representative to Seller's manufacturing facility with Seller's permission and, if Seller does grant such permission, such an inspection would be entirely at Buyer's expense. Waiver by either Seller or Buyer of any breach of these terms and conditions will not be construed as a waiver of any other or continuing breach. Seller's internal operations, including the obtaining of insurance coverage, will be conducted in the matter that it deems appropriate in accordance with applicable laws and regulations. Buyer may not assign any interest in nor delegate any obligation under these terms and conditions without Seller's written consent. Any notice that must be provided to Seller must be in writing and (i) delivered by overnight courier to
ELMED Dr. Ing Mense GmbH
Weilenburgstr. 39
D-42579 Heiligenhaus
Germany
(ii) or sent by facsimile to +49 2056 9329-33