

Terms and Conditions of ELSÄSSER Filtertechnik GmbH

Object of Conditions, Scope of Applicability

1. Object of these conditions are the supply of goods and services of Elsässer Filtertechnik GmbH (hereinafter also referred to as "ELSÄSSER"), in particular the delivery of industrial filters and accessories, as well as the provision of services in this field for commercial customers.
2. The following provisions are part of all offers and agreements of ELSÄSSER, and, in permanent business relationship also for all future transactions, in relation to merchants if the contract belongs to running their business, and in relation to a legal entity under public law or a public fund. Other conditions of the customer shall only be valid if they are confirmed in writing by a person listed in the commercial register as an authorized representative of ELSÄSSER. This shall also apply if ELSÄSSER has not expressly contradicted to the other conditions if the customer made reference to the other conditions in his order.

Conclusion of Contract

All offers made by ELSÄSSER are subject to change. Contracts are concluded only with the order confirmation or the order fulfillment by ELSÄSSER. Supplementary agreements or any change of these terms and conditions shall require written form. This shall also apply for any change of this written form requirement.

Scope of Supply and Services

1. The exact scope of supply and services is defined in the order confirmation by ELSÄSSER.
2. All orders, agreements, quality specifications, assurances etc. including those of our representatives are only valid if confirmed in writing by ELSÄSSER.
3. Objections against our order confirmations shall be made immediately in writing.

Frustration of Contract

1. If, following the conclusion of the agreement, circumstances have changed dramatically or unforeseen events are affecting the production or procurement of the item to be delivered, such as force majeure, in particular mobilization, war, riots, boycotts or plant shutdowns, strikes and shutouts, government interventions, energy supply problems, difficulties in the procurement of materials, ELSÄSSER shall be authorized to demand a corresponding modification of the agreement or to withdraw from the agreement to its sole discretion.
2. If, following the conclusion of the agreement, the compensation right of ELSÄSSER appears to be in jeopardy, ELSÄSSER may demand payment in advance or security furnishment. Upon fruitless expiry of a reasonable time limit set by ELSÄSSER, ELSÄSSER is entitled to withdraw from the contract or to claim damages instead of performance. In this case, all claims of ELSÄSSER are due immediately in full irrespective of agreed payment due dates.

3. If, following the conclusion of the agreement, wages and/or material costs should increase by anything more than a small fraction, ELSÄSSER may adequately adjust the supply price and, if the customer refuses to accept the supply price increase, withdraw from the agreement.

Prices, Terms of Payment, Offset

1. Prices shown in the order confirmation include only the supply and services specified in the order confirmation.
2. Packaging, transport and other services are charged separately. The customer shall bear the costs for transport insurance. Crate packing and crates will be charged to the customer at cost price and credited under the condition that the customer returns the crate packing and the crates to ELSÄSSER in undamaged condition and at their own expense within one month from the date of delivery.
Travel expenses, costs for installation, familiarization, training and organizational discussions will be charged separately according to the then applicable conditions and hourly rates of ELSÄSSER.
3. Prices are based on labour, material and overhead costs applicable at the time of the order confirmation. For deliveries later than six months after the conclusion of the contract, ELSÄSSER shall be entitled to a price adjustment at its equitable discretion. In case the customer contradicts the price adjustment, ELSÄSSER is entitled to withdraw from the contract. If, following the conclusion of the agreement, taxes or governmental charges related to our supply or services are introduced or raised, ELSÄSSER is entitled to pass them on to the customer.
4. Prices are net prices and payable plus applicable VAT at the time of delivery.
5. Payments to be made to ELSÄSSER are due when the goods are ready for shipment. For custom-made goods, one third of the price is due and payable at the time of the order. Early payment or cash discounts will not be granted. Starting on the 15. calendar day after the due date, ELSÄSSER is entitled to charge interest in the amount of 9 % per annum above the base interest rate. The right to a higher default claim shall remain unaffected.
6. ELSÄSSER is entitled to demand advance payments or security deposits if the customer does not comply with the terms of payment. Upon fruitless expiry of a reasonable time limit set by ELSÄSSER, ELSÄSSER is entitled to withdraw from the contract or to claim damages instead of performance.
7. The customer may only offset against or justify any retention by undisputed or legally binding demands.

Delivery Periods, Default

1. Delivery periods provided by ELSÄSSER are always approximate and non-binding unless the order confirmation expressly provides otherwise. Their commencement requires prior clarification of all technical issues and receipt of all documents and information of the customer that are required for the production of the item to be delivered, timely and complete accomplishment of the customer's cooperation duties, as well as compliance with the terms of payment. If these requirements are not met, the delivery periods shall be extended appropriately, but at least by the period of the delay. ELSÄSSER shall not be responsible for force majeure, in particular mobilization, war, riots, boycotts, strikes and shutouts.
2. If, upon commencement of default, the customer sets ELSÄSSER an adequate extension including the threat of rejection it shall have the right to withdraw from the agreement after this time period has expired or to claim damages instead of the supply or services, if the default is the result of gross negligence or deliberate intent on the part of ELSÄSSER.
§ 286 sec. 2 BGB [German Civil Code] shall not apply.

Delivery

1. Delivery will be insured ex factory, warehouse or location and shipping will be at the expense and risk of the customer even if free delivery is agreed or if delivery is performed with own vehicles of ELSÄSSER. Mode of transport shall be determined by ELSÄSSER.
2. If the customer does not accept the product within 12 working days of the notice of availability of the product, or if the customer fails to inform ELSÄSSER of the dispatch address within this period, or if no calls are forthcoming in case of blanket purchase agreements, ELSÄSSER shall be entitled to demand immediate payment of its accounts receivable as well as storage fees to an adequate extent. ELSÄSSER shall also be entitled to withdraw from the agreement and to demand claim damages instead of performance.
3. In the event of call orders without delivery times, the product shall be accepted no later than three months after the date of the order confirmation.

Retention of Title

1. ELSÄSSER will retain title to the product delivered to the customer until such time as it receives payment in full of all claims existing at the time of delivery under the business connection between ELSÄSSER and the customer or arising later under the contractual relationship; if payment is made by check or note until such time as these are redeemed. The inclusion of individual claims into a current invoice and net balancing as well as their recognition shall not affect the retention of title.
2. The customer shall be entitled to sell the goods that are subject to the retention of title in the usual course of business. The customer shall not be entitled, however, to pledge, transfer or assign them as security. The customer shall be obligated to secure the rights of ELSÄSSER as a conditional seller in case of a resale of reserved goods on credit terms. The customer shall assign the customer's own claims arising from the resale of reserved goods to ELSÄSSER in advance; ELSÄSSER accepts this assignment. Notwithstanding the assignment and ELSÄSSER's collection rights, the customer shall be entitled to collect for as long as it meets its obligations to ELSÄSSER and ELSÄSSER's compensation rights are not placed in jeopardy. At the request of ELSÄSSER the customer shall provide the required details on the claims assigned required for collection and indicate the assignment to his debtors.
3. The customer shall treat or process the reserved goods on behalf of ELSÄSSER without any obligation arising for ELSÄSSER therefrom. In the event that reserved goods are processed, combined, blended and mixed with other goods not belonging to ELSÄSSER, ELSÄSSER shall be entitled to the resulting co-ownership share in the new product, directly proportionate to the delivery value of the reserved goods in relation to the other processed product at the time of processing, combining, blending or mixing. If the customer acquires sole ownership of the new product, the agreement exists between customer and ELSÄSSER that the customer shall grant ELSÄSSER co-ownership of the new product directly proportionate to the delivery value of the reserved goods processed or combined, blended or mixed and stores them on behalf of ELSÄSSER without charge. If the reserved goods are resold along with other products, irrespective of whether with or without processing, combining, blending or mixing, the assignment in advance shall be limited to the delivery value of the reserved goods.
4. If the value of the securities exceeds ELSÄSSER's claims by more than 20 %, ELSÄSSER will release securities at the customer's request at its sole discretion to the extent deemed necessary.
5. The customer shall advise ELSÄSSER without delay of executions by third parties against reserved goods or claims assigned in advance and submit any documentation to ELSÄSSER necessary for an intervention.
6. Moreover, the customer is under obligation to take out adequate insurance against all risks of accidental loss, destruction or deterioration for goods in ELSÄSSER's sole or co-ownership. The insurance cover shall be documented to ELSÄSSER upon request.

7. In the event of default on the part of the customer or a serious violation of due care and diligence, exercising the retention of title clause by ELSÄSSER shall not be considered a withdrawal from the agreement, unless ELSÄSSER expressly announces its withdrawal.

Duty of Inspection and Notification

1. The customer shall inspect delivered goods including documentation – if any - within 30 days of delivery, in particular with regard to completeness and operability. If defects are discovered, ELSÄSSER must be notified immediately in a comprehensible manner in writing by registered mail.
2. Defects not discoverable as part of the standard inspection must be indicated to ELSÄSSER within 30 days of their detection in compliance with the above-mentioned inspection and notification requirements.
3. Any violation of the duty of inspection or notification shall void any warranties with regard to the defect in question.
§ 377 HGB [German Commercial Code] shall apply additionally.

Defects

1. Non-acceptance of deviations customary in the trade requires an express written agreement. The same applies to any warranties. Minor, insignificant deviations of the item to be delivered from product samples, catalogs, prospectuses and price lists, etc. or previously delivered goods shall not be considered defects.
The customer shall check whether or not the ordered product is suitable for the use intended by him. Unsuitable goods shall only be considered unsatisfactory if ELSÄSSER has confirmed suitability to the customer in writing.
Wear and tear on consumable parts in the context of normal use shall not represent a defect.
2. If installation, mounting, distribution, user or maintenance instructions are not followed, changes made on the items delivered, parts replaced or substances or cleaners or care products used that are not compliant with the manufacturer's requirements, claims due to defects shall exist only if the customer furnishes proof that the defect was not caused by any of the above but had already existed upon the transfer of risk.

Limitation of Liability, Damages

1. If ELSÄSSER is in default of delivery for reasons for which ELSÄSSER is responsible, ELSÄSSER is liable for the damage incurred by the customer. The liability shall be limited to damages typical for comparable business transactions of this kind and in case of negligence to a maximum of 0.5 % for every completed week of delay subject to a maximum of 5 % of the order value.
2. If ELSÄSSER has negligently failed to meet an obligation essential for the fulfillment of the contract purpose, the liability shall be limited to damages typical for comparable business transactions of this kind foreseeable at the conclusion of the agreement or not later than at the time when the breach of duty occurred and shall be limited for each individual case to the amount of € 1,000,000.00 (in words: one Million Euros). § 444 BGB, claims for damages due to injury to life, body and health as well as claims as stipulated in the Product Liability Act shall remain unaffected by the limitations of liability provided herein.

3. Other claims for damages shall be excluded unless ELSÄSSER or its agents have acted with deliberate intent or gross negligence. In particular, ELSÄSSER shall neither be liable for damages sustained by the delivery items nor for any kind of consequential damages caused by defect, nor shall ELSÄSSER be liable for any lost profit or other economic losses of the customer.
4. Further-reaching warranty and damage claims on the part of the customer than those named in these terms and conditions shall be excluded, irrespective of type and legal reasoning used.
5. The liability of ELSÄSSER's agents shall be subject to the same limitations.

Statute of Limitations

The limitation period for claims against ELSÄSSER is one year. This limitation does not apply to claims due to injury of life, body or health or if ELSÄSSER or its agents have acted with deliberate intent or gross negligence; in such cases, the statutory limitation periods apply.

Place of Performance / Jurisdiction

1. Place of performance is the registered office of ELSÄSSER. In relation to merchants, to a legal entity under public law and a public fund, exclusive jurisdiction for all disputes arising out of legal relationships between ELSÄSSER and the customer is the place of business of ELSÄSSER, or - upon ELSÄSSER's sole discretion - the place of business of the customer.

Miscellanea

ELSÄSSER may use third parties to meet its obligations.

Only German law applies, excluding its conflict of law provisions. The application of the CISG is excluded. Should any of these provisions be or become, either in whole or in part, void, ineffective or unenforceable, such provision shall be deemed replaced by such valid, effective and enforceable provision that most closely reflects the economic purpose of the original provision. The validity of the remaining provisions shall not be affected.