

Sales Conditions 04.2008

The following conditions are valid for all offers, contracts and services by the companies ELAFLEX-Gummi Ehlers GmbH and ELAFLEX HIBY Tanktechnik GmbH & Co. KG. Conflicting conditions will only become valid if explicitly accepted by the seller in writing.

1. **Quotations** are subject to final reconfirmation and without commitment.

After an order has been confirmed, acknowledged prices are firm unless it is a scheduled call off order, or if price adjustments have explicitly been reserved.

Delivery times are without commitment. Incidents of force majeure, i.e. all kinds of interruption of operations, raw material shortage, strikes or equal incidents on subsuppliers side entitle the seller to cancel the contract without any liability to the buyer for claim for compensation damages.

2. **Net invoice values exceeding € 1.000,-** will be delivered freight prepaid in Germany, DAF German border, FCA Hamburg airport or FOB Hamburg seaport, including standard commercial packing. Orders below € 1000,- are to be understood ex works, including standard commercial packing.
3. **Minimum invoice value and discounts:** Our list prices are based on a minimum invoice value of € 100,-. In case of a lower value the seller will invoice a lump sum of € 100,- for handling costs. Agreed discounts can only be granted for net invoice values exceeding € 150,-.
4. **Shipments** are effected at buyers risk. The transport mode is chosen by the seller, unless otherwise agreed.

The acceptance of **delivery deviations** regarding quality and sizes, especially lengths, depend on the relevant DIN standard tolerances. Deviations in amount, weight and number of pieces are allowed up to 5% and at least one piece. The seller reserves the right to make amendments to quality, measurements and designs resulting from technical innovation. Quantity claims will only be accepted if the delivery weight of the shipment has been checked after receipt. Otherwise the seller has no possibility to re-examine the the shipment.

5. **The period for claims** is 14 days after receipt of shipment. Claims have to be made in writing.

The period of limitation for warranty claims is one year. If goods, which have been used in buildings according to their purpose cause its defect, the statutory limitation of warranty claims is two years.

Claimed goods have to be returned to the seller in the original or equal packing for examination.

If a claim is justified and within the guarantee period, the seller has the choice whether returned parts will be repaired or replaced free of charge. The seller is entitled to refuse the before mentioned warranty claim. If the warranty claim is refused by the seller, or if is not successful or unreasonable for the buyer, the buyer is entitled to withdrawal from contract, or reduction, according to the regulations of the following paragraph.

The buyer is only entitled to a withdrawal from the contract – as far as a withdrawal is not excluded by law – or the reduction of the purchase price after passing a reasonable deadline set by him for subsequent performance (remedial action), except setting a deadline is not mandatory according to the law (§ 323 clause 2, § 440 BGB, § 441 clause 1 BGB). In case of withdrawal the buyer is liable for the deterioration, loss or unused benefit of the goods. This is not valid if actions have been taken with due care and attention, but only for negligent and intentional fault.

Besides the legal reasons of refusal, the seller is entitled to refuse the warranty claim as long as the buyer has not returned the faulty goods or a sample to the seller upon request. Based on such a refusal, the buyer has no right of withdrawal or reduction. The seller is not obliged for the performance of the goods if the goods have been modified without his agreement, unless the buyer can prove that the claim reason is not caused by his modification.

6. **Reservation of ownership:** The seller remains the owner of the goods until the complete payment of the purchase price has been received, as well as all other due debts of the business relationship with the buyer.

All goods supplied under the contract between the buyer and the seller are supplied under the reservation that according to § 950 BGB the goods used in the production of a component manufactured by the buyer is considered to be jointly owned up to the value of the purchase price. The seller is therefore entitled to remove the purchased goods from aforementioned component or other equipment which are still in the stock of the buyer.

The seller has the right to enter the premises of the buyer in order to verify the goods for which ownership is reserved. This also applies in case of ongoing insolvency or bankruptcy proceedings over the capital of the buyer. The result of the verification has to be countersigned by the buyer.

The buyer is entitled to sell the goods which are under reservation of ownership in the ordinary course of business without mentioning the reservation of ownership. This approval is revocable by the seller at any time, and expires automatically in case of insolvency or in case of an impending insolvency of the buyer.

The claims of the buyer from a resale of goods which are delivered under reservation of ownership are assigned to the seller for securing the purchase price, as well as all other due debts of the business relationship with the buyer.

Extended reservation of proprietary rights: Also in case of modified goods the claims of the buyer from a resale of the newly created goods are assigned to the seller as far as they correspond to the invoice value of the modified goods and therewith to the co-ownership of the seller.

In any case, the seller strives to avoid excessive security interests. Should the above mentioned result in our receivables being excessively secured by more than 10%, the seller is willing to release the reservation of proprietary rights and extended proprietary rights.

7. **Terms of payment:** Payments have to be effected directly to the seller. As far as there are no other agreements between the seller and the buyer, the invoice value shall be paid within 14 days after invoice date less 2 % discount, or 30 days net. The delivery date, or – in case of collection – the date of handing over applies as invoice date. Non-compliance with the payment terms, or facts which become public afterwards that make a granting of credit inappropriate, entitle the seller to a withdrawal from the contract, or a revision of the payment terms.
8. **Return of goods** shall only be effected with the agreement of the seller. In case that the returned goods (as far as they are not cut lengths, custom made designs, or large quantities) are brand-new, originally packed and the return is carriage free, the seller credits the invoice value or the current value, less a handling charge of 10 %.
9. **Liability of compensation for damages, reimbursement of expenses:** In case of a pre-contractual, contractual or non-contractual breach of duty, also in case of defective delivery and manufacturer's liability, the seller is obliged to compensate for damages and the reimbursement of expenses. The aforementioned is only valid in case of intent, gross negligence, or slight negligence breach of an essential contractual duty which endangers the attainment of the contractual aim. The liability of the seller – except in case of intent – is limited to the typical contractual damage which has been foreseeable when the contract was concluded.

The seller is liable for damages in case of delay due to slight negligence, up to a maximum of 5% of the agreed purchase price. Apart from a breach of essential duties, a liability for damages and expenses caused by slight negligence is excluded; in any case it is limited to the sum of the purchase price. The contractual and non-contractual liability for compensation of damages to property, capital or for personal injury is excluded, as far as permitted by law. In particular, this also applies for the reimbursement of expenses for assembly, transport and labour. Number 9 paragraph 1 remains unaffected.

The aforementioned exclusions and limitations of liability are not valid in case of acceptance of a guarantee for the properties of the article in accordance with § 459 clause 2 BGB, in case of malicious concealment of a defect, as well as in the case of a mandatory liability according to the product liability law.

Any compensation claims against the seller, no matter under which legal justification, will become time-barred at the latest one year after delivery. In case of a law tort liability, claims will become time-barred from the time of knowledge. In case of gross negligent unawareness, claims will become time-barred depending on the circumstances which cause the claim and the person who is liable to compensate the damage.

The regulations of this paragraph are not valid in the case of liability for intention, for the mentioned cases in Number 9 paragraph 3, and as well in the case that consumer protection stipulates a longer limitation period. Any shorter legal periods of limitations have priority.
10. **Drawings, illustrations, charts, samples** and alike are subject to legal protection. Without the written permission of the seller, it is not allowed to copy them or make them available to third parties. Specification and construction changes are reserved by the seller.
11. **Mouldings, tools and models**, which are produced for the execution of an order, will remain in the ownership of the seller, even if proportional costs have been invoiced and paid.
12. **Place of jurisdiction** and **place of fulfilment** for deliveries and payment is Hamburg, Germany.

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