

Terms and Conditions of Purchase 11.2010

The following Terms and Conditions of Purchase of ELAFLEX-Gummi Ehlers GmbH and ELAFLEX HIBY Tanktechnik GmbH & Co. KG are valid with effect from 2 November 2010.

1. **General Aspects:** Our Terms and Conditions of Purchase have exclusive validity; we do not recognise any supplier terms and conditions which contradict or deviate from our Terms and Conditions of Purchase, the exception being cases in which we have granted our express prior written approval to them being valid. Our Terms and Conditions of Purchase also have validity if we accept a delivery from a supplier without reservation, despite us being aware that the terms and conditions of the supplier deviate or contradict our Terms and Conditions of Purchase.
2. **Confirmation of Order and Lead Times:**
 - a) Each order is to be confirmed by the supplier in writing without delay, stating our order reference.
 - b) The lead time stipulated in the order is binding.
 - c) The supplier has a duty to inform us in writing without delay, should circumstances arise or if he should discern such, which result in it not being possible to adhere to the lead time.
 - d) In the case of a default in delivery, we are entitled to demand lump-sum default compensation in the amount of 1.5% of the value of the goods which are not delivered per full week, not exceeding 30%; we reserve the right to assert legal claims over and above the foregoing (repudiation and compensation instead of the performance). The supplier has the right to furnish us proof that the default resulted in us suffering no loss or a fundamentally lower loss.
 - e) The punctuality of deliveries depends on the receipt of deliveries at our stipulated place of destination; in as far as the supplier is to carry out erection and assembly work, the notification of the acceptability forms the basis for punctuality.
3. **Passing of the Risk and Shipping:**
 - a) The risk for deliveries with erection or assembly and for performances passes upon acceptance and for deliveries excluding erection or assembly, upon receipt at the place of destination stipulated by us. The supplier is to take out reasonable transport insurance cover at his cost.
 - b) Should nothing to the contrary be agreed to in writing, the delivery is to be made carriage paid; it is especially the case that shipping and packaging costs, customs formalities and customs duties are to be borne by the supplier.
 - c) Each delivery is to include the shipping documents or delivery notes, stating the contents such as the order No., supplier No. and our article No. for each of the positions. The supplier has a duty to exactly quote our order number on all shipping documents and delivery notes; should he not do so, we cannot be held responsible for the resulting process delays.
 - d) The values which are determined in the scope of the incoming goods inspection have validity with regard to warranted properties, quantities, dimensions and weights. Excess deliveries are to be expressly approved by us.
4. **Invoicing:** Invoices are to be issued in duplicate, stating the order No., delivery No., date of delivery and our article No. and procurement entity for each of the positions. Invoices are not payable until such time as this information is provided. Duplicate invoices are to be marked as being duplicates. The supplier is responsible for all consequences arising from a non-adherence to the duty in as far as he is unable to furnish proof that he is not responsible.
5. **Terms of Payment:**
 - a) Should nothing to the contrary be contractually agreed to, payments are made 8 days after receipt of the invoice after deduction of a prompt payment discount of 3%, 14 days after receipt of the invoice after deduction of a prompt payment discount of 2% or within 30 days of receipt of the invoice net.
 - b) The time allowed for payment commences as soon as the delivery or performance has been completely provided and the correctly issued invoice has been received. In as far as the supplier is also to supply material test documents, inspection protocols, quality documents or other documents, the completeness of the delivery and performance is also deemed to include the receipt of these documents. A deduction of a prompt payment discount is also permissible if we set payments off or retain payments in a reasonable amount on the grounds of defects; the period allowed for payment commences after the defects have been fully remedied.
6. **Warranty, Defects Inspection, Liability for Defects, Product Liability:**
 - a) The supplier provides the warranty and assurance that all supplies/performances are in accordance with the latest state of the art, the pertinent legal positions and the rules and regulations issued by public authorities, occupational accident insurances and professional associations.
 - b) The supplier has a duty to presenting us with the safety datasheets which have validity for the products which are to be supplied 8 workdays after receipt of our order at the latest. The supplier indemnifies us for all recourse claims asserted against us by third parties on the grounds that the safety datasheets have not been supplied or have been supplied with a delay. This also has validity for any amendments which might be made at a later date.
 - c) We have a duty to inspecting the goods within a reasonable period of time in order to determine any quality and quantity deviations; defects complaints are deemed to have been made in a timely manner if they are received by the supplier within a time limit of five workdays, calculated as from receipt of the goods or as from the detection of any concealed defects.
 - d) Defects in the delivery/performance which are the subject of complaint, including the non attainment of warranted data and non-existence of warranted qualities, are to be remedied by the supplier without delay and free of charge upon demand, including all additional expenses, in the form of a subsequent improvement or new delivery, according to our choice. Should a reasonable deadline fixed by us for the reworking or new delivery expire without effect, we reserve the express right to avail ourselves of our legal rights. This also has validity for claims for compensation instead of the performance. Should the supplier be in default, we can also take the required measures ourselves, or have them taken by a third party at the cost and risk of the supplier, notwithstanding our right to assert liability for defects claims.
 - e) In urgent cases, we can also carry out the subsequent improvements ourselves or have them carried out by a third party, without consultation. Slight defects can be remedied by us in fulfilment of our duty to minimise damages, without this having an effect on the assertion of liability for defects claims. The supplier is to bear all necessary expenditure. This also has validity should unusually high damages be imminent.
 - f) Subsequent improvements can be carried out without the stipulation of a time limit and at the cost of the supplier should delivery be made after default has come into force and we have an interest in the immediate subsequent improvement in order to avoid our own default or as a result of other urgent interests.

- g) The supplier bears the costs and risk for the returning of defective items which have been delivered.
 - h) Liability for defect claims are deemed to be statute-barred after a period of 36 months, commencing with the passing of the risk, in as far as the compulsory provisions of sections 478, 479 BGB (German civil code) are to be applied.
 - i) Supplied parts which cannot remain in operation during the inspection of a defect and/or remedying of the defect are to be subjected to an extension of the statute-barred period for the assertion of claims for defects by the same period as the operation is interrupted. The statute-barred period regarding the assertion of defect claims for parts which have been repaired or replacement parts, recommences upon the completion of the repair or with the acceptance, should such have been agreed to. Written application is to be made to us for the acceptance, if appropriate.
 - j) The delivery items are to be labelled in accordance with our instructions in such a form that they are permanently recognisable as being a product from the supplier. The supplier has a duty to carrying out a quality assurance inspection which is of a suitable type and scope, in addition to it being the latest state of the art and he is also to furnish us with proof thereof when requested to do so. A corresponding Quality Assurance Agreement is to be concluded with us, should we deem this to be necessary.
 - k) The supplier has a duty to taking out reasonable insurance cover as protection against all product liability risks, including the risk of recalls and to presenting us the insurance policy for inspection upon demand.
 - l) Should the supplier be responsible for product damage, he has a duty to indemnify us from the assertion of claims for compensation by third parties upon first request in this regard, in as far as the cause thereof is within his control and organisation and he also assumes liability himself in his relationship with third parties.
 - m) In the scope of his liability for damaging events, the supplier also has a duty to reimbursing any expenditure pursuant to sections §§ 683, 670 BGB or pursuant to §§ 830, 840, 426 BGB has or incurred as a result of or in connection with a recall campaign which we carry out. Where possible and reasonable, we shall inform the supplier of the content and scope of the recall campaigns and provide him with the opportunity to make a statement. Other legal claims remain unaffected.
7. **Declaration of Origin and Customs No.:** Where possible, the supplier obligates himself to providing a declaration on the confirmation of order and the invoice that the goods supplied by him are original goods, which are subject to a preferential movement of goods between the EC-EFTA Member States / B / CY / E / IL / M (supplier declaration pursuant to Directive (EEC) No. 1908/73). The country of origin and the customs No. are to be provided in the case of goods from non-member states.
8. **Proprietary Rights**
 - a) The supplier warrants that all deliveries are free from third party proprietary rights and that the supply and use of the delivered objects does not infringe any third party patents, licenses or other proprietary rights.
 - b) The supplier indemnifies us and our customers from any infringements of proprietary rights upon first demand and also bears all costs incurred in connection herewith.
 - c) We are entitled to obtain the approval for the use of the delivered objects and performances concerned from entitled parties, at the cost of the supplier.
9. **Reservation of Title, Supplies, Tools, Non-disclosure:**
 - a) We reserve the title in any parts and materials which we supply. Processing or conversion on the part of the supplier is carried out for us. Should our goods which are subject to a reservation of title be processed together with other items which are not our property, we acquire co-ownership of the new object in the ratio of the value of our item (cost price net of value added tax) to that of the other processed items at the time of processing.
 - b) Should the item supplied by us be inseparably mixed with items not belonging to us, we acquire co-ownership of the new object in the ratio of the value of the item which is subject to the reservation of title (cost price net of value added tax) to that of the other mixed items at the time of mixing. Should the mixing be carried out in such a way that the item belonging to the supplier is deemed to be the main item, it is agreed that we are to be granted proportional co-ownership; the supplier retains the sole ownership or co-ownership for us.
 - c) Should a tool be manufactured for us in accordance with an individual agreement, the bearing of tool costs by us is to be the subject of a separate agreement. In this case, the one-off tool price includes the manufacturing costs with any corrective measures and sampling. We reserve the title in all tools, moulds, samples, models, profiles, drawings, printing copy and supplied materials which we supply. The supplier has a duty to exclusively using these items for the manufacturing of the goods which we have ordered and to not passing such on to third parties or encumbering the same with third party rights without our written approval. The supplier has a duty to insuring tools belonging to us against fire damage, water damage and theft at their value when new and at his cost, in addition to him also carrying out any maintenance and inspection work as might be necessary at his own cost and in good time. We are to receive immediate notification of any malfunctions. We reserve the right to assert claims for compensation should this not be adhered to through culpability.
 - d) The supplier is subject to a strict duty of non-disclosure with regard to all illustrations, drawings, calculations and other documents and information. They are only to be made known to third parties with our express approval. The duty of non-disclosure remains in force after fulfilment of this contract. It expires if and in as far as the production know how included in the supplied illustrations, drawings, calculations and other documents is deemed to be general knowledge.
 - e) Subject to other rights, we can demand surrender of the items defined under letters c) and d) if the supplier should be guilty of a breach of one of the above duties.
10. **Supplementary Provisions:** Amendments or addendums to these General Terms and Conditions of Purchase require the written form. This also has validity for amendments to the written form clause. Verbal collateral agreements are invalid. Should individual provisions in these General Terms and Conditions of Purchase be invalid in part or in their entirety or should this be the case in the future, this has no effect on the validity of the remaining provisions. The provision which is invalid in part or in its entirety is to be replaced by a provision which comes as close as possible to the purpose intended with the invalid provision.
11. **Legal Venue, Place of Performance:** The legal venue is Hamburg. The place of performance is the delivery address concerned.

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