

# General Terms and Conditions of Purchase of ELANTAS GmbH

(September 2010)

## 1. Field of application, Placing of Orders, Differing Conditions

- 1.1 Our Conditions of Purchase apply to all contracts to which the regulations governing purchase pursuant to the German Civil Code (BGB) and the German Commercial Code (HGB) apply. These terms and conditions also apply to all future orders. This also applies if, in future orders issued by our suppliers and customers (hereinafter also referred to as "Vendors"), we do not explicitly draw attention to the applicability of our General Conditions of Purchase. Our General Conditions of Purchase also apply alongside any special terms that may in addition be agreed upon individually. Any agreements or ancillary agreements that deviate from the above must be made in writing. This also applies to any amendments of this written form clause.
- 1.2 Only those orders that have been placed by us in writing (including fax or email orders) are binding. This also applies to subsequent ancillary agreements, additions and/or amendments. The Vendor shall confirm each order in writing.
- 1.3 Our Conditions of Purchase apply exclusively; any Vendor's sale and delivery terms and conditions worded differently shall not apply even if we do not expressly object to them. Differing conditions shall only apply if we expressly approve such conditions in writing. Our Conditions of Purchase also apply if we unconditionally accept a delivery supplied / service provided by the Vendor although we know that the Vendor's sale and delivery terms and conditions conflict with or deviate from our own Conditions of Purchase. Neither a failure to object thereto nor payment or acceptance of the goods shall be a recognition of any third-party general terms and conditions.
- 1.4 In the event that the Vendor makes a delivery in excess of the order quantity placed the contract will not be deemed to have been modified, nor will any additional payments be made thereon. The Vendor may require the return of excess deliveries at its own expense at any time. At our request, the Vendor is obliged to immediately take back any excess deliveries; in this case, the Vendor shall compensate us for the cost of warehousing and maintaining incurred between the time of receipt of our request for return of the excess deliveries and the respective collection. If a delivery/service is a commercial transaction for the Vendor and if the Vendor defaults on its obligation to take back the excess delivery, we are entitled, at our discretion, to utilize or sell the same in accordance with § 373 HGB.
- 1.5 Our General Conditions of Purchase only apply with respect to Vendors that are corporate clients in terms of § 14 BGB.

## 2. Breach of Obligations

The statutory claims regarding breach of obligations shall apply to the extent that nothing to the contrary or nothing supplementary is provided for in the following:

### 2.1 Delays in delivery

- 2.1.1 The agreed delivery dates and the agreed place of performance are binding. If not otherwise explicitly agreed in writing, delivery periods shall commence on the date of the order.
- 2.1.2 To allow us to make and facilitate necessary organizational preparations (e.g. creation of storage capacities), the Vendor is not entitled to deviate, without our prior written consent, from the delivery/performance dates or other terms specified in the order. This also applies to early deliveries. The criterion for compliance with the delivery/performance date is the proper transfer of the goods to a carrier that has been assigned to transport the goods.
- 2.1.3 Vendor shall inform us without delay including notification of reasons, if a (partial) delivery will or may be delayed or will or may not be fulfilled.
- 2.1.4 If Vendor fails to make the delivery in a timely manner we are entitled to assert any statutory claims. In particular, we are entitled, upon expiry of a reasonable grace period, to demand compensation instead of demanding performance of the contract and to withdraw – even only with regard to the part that has not been fulfilled – from the contract. If we demand compensation the Vendor is entitled to prove that the Vendor did not culpably breach any duties. The previously mentioned grace period is not necessary if we agreed on a fixed date.

### 2.2 Defective Deliveries/Services

- 2.2.1 The Vendor promises (§ 276 para 1 BGB) to furnish its deliveries/services in accordance with the agreed specifications, the current standard business practices, and to carry out a thorough function and quality check prior to delivery. The Vendor furthermore ensures that its deliveries/services are in compliance with all applicable laws and any regulations of authorities etc. If the Vendor delivers machinery and equipment, the Vendor in addition ensures that they comply with the regulations on the safety of equipments and products (*Geräte- und Produktsicherheitsgesetz*) and any related regulations and that they have a CE registration.
- 2.2.2 We inspect the delivered goods at the place of destination within our ordinary course of business. Our receiving inspection is restricted to obvious defects. Notices of defect are to be made within 8 working days of the delivery date. Payment of the goods is not to be construed as a waiver of our right to make a complaint. Goods which are the subject of a complaint are only accepted by us on the account of and at the risk of the Vendor; we are entitled to store such goods separately at the Vendor's costs.
- 2.2.3 If a good is defective, the Vendor shall (also) be liable for any losses that we incur in the ordinary course of business prior to the processing of the goods due to the fact that a defect has not been detected; the Vendor shall immediately hold us harmless from any such third-party claims for damages.
- 2.2.4 The Vendor shall be especially liable for any infringements of intellectual property rights which occur although we used the supplied goods as agreed upon.

### 2.3 REACH

- 2.3.1 The Vendor ensures that its deliveries comply with the EU (European Union) regulation (EC) 1907/2006 on the registration, evaluation, authorisation and restriction of chemicals (REACH).
- 2.3.2 The Vendor ensures that any substances in the goods of the Vendor are, if and to the extent necessary under the REACH regulation, pre-registered or, upon expiry of the transition period, registered unless the substance is exempted from registration.
- 2.3.3 The Vendor shall provide us with any material safety data sheets as provided for in the REACH regulation and with any further information required under Article 32 of the REACH regulation. Upon our request, the Vendor shall furthermore provide us with any information pursuant to Article 33 of the REACH regulation.
- 2.3.4 If the registered office of the Vendor is not within the EU, the Vendor is obliged to provide us with the registration number directly after registration, at the latest upon acceptance of the order, if the Vendor appointed an "Only Representative" (Article 8 of the REACH regulation) and if the agreed delivery is included by the registration of the Only Representative. If an Only Representative undertook a pre-registration or a registration which includes the respective delivery, the Vendor encloses a respective certificate to the delivery including the Only Representative's name and address within the EU.
- 2.3.5 If the Vendor does not comply with any of the foregoing provisions in this Article 2.3, we are entitled to cancel the respective order at any time and to refuse acceptance of the respective delivery at the Vendor's costs.

## 3. Damages and Indemnification for Third-Party Claims

- 3.1 We rule out accepting liability for breaches of our obligations due to negligence to the extent the breaches in question do not concern material contractual obligations, guarantees or losses that result from injury to life and limb or from injuries detrimental to health and to the extent claims under the Product Liability Act or under any other mandatory legislation are concerned. The same applies to violations of obligations on the part of our employees and statutory representatives. "Material contractual obligations" are understood to be obligations that protect any Vendor's material contractual legal situations which are especially protected pursuant to the spirit and the purpose of the contract. "Material" are furthermore any of our obligations which are essential for the fulfilment of the contract and the fulfilment of which the Vendor may rely upon. If we are liable for damages our liability is limited to such damages which are typical and foreseeable. We exclude our liability for any indirect damages to the extent we did not breach any material contractual obligations and to the extent we, our executive management or our representatives did not act intentionally to cause a breach.
- 3.2 If the Vendor is responsible for a product-related loss, the Vendor undertakes to hold us harmless from third-party claims for damages in this respect (including reasonable legal proceedings and defence costs, expenses, fees, taxes, and reasonable advance payments, etc.) if the reason for such claims (in relation to us) falls within the Vendor's control and organizational sphere.
- 3.3 If third-party claims are lodged against us due to alleged infringement of intellectual property rights in respect of the deliveries/services furnished or due to alleged infringement of a reservation of title or other tangible entitlements to the goods(s) delivered or service(s) provided, the Vendor undertakes to hold us harmless from these third-party claims in this respect (including reasonable legal proceedings and defence costs, expenses, fees, taxes, and reasonable advance payments etc.).

#### 4. Warranty Periods

The statutory warranty periods shall apply. If the Vendor intentionally misrepresented a defect by omission, the warranty period shall be extended to 10 years.

#### 5. Transport/Packaging

- 5.1 The Vendor shall, on its own account, contract transportation of the goods in the customary fashion and via typical routes, up to the specified destination and shall hand over the goods to the appointed carrier. Prior to the surrender of the goods to the carrier, the Vendor shall bear all the risks associated with the loss of or damage to the goods. The risk shall pass to us upon the goods being surrendered to the carrier.
- 5.2 The Vendor shall take out transport insurance for the goods at its own expense. The insurance policy shall entitle us to file any claims directly with the insurance company. The Vendor will provide us with a copy of the insurance policy or any other proof of insurance.
- 5.3 Prior to the surrender of the goods to the carrier, the Vendor shall bear all the costs relating to the goods, and also the freight charges and all costs incurred due to the activities detailed in Article 5.1, including the cost for loading of the goods and for unloading at the destination. Furthermore, the Vendor shall bear all the costs arising under Article 5.2.

#### 6. Assignment and Set-Off

- 6.1 The rights and duties arising from the contract may not be assigned by a contracting party without the approval of the other party. This shall not apply to the assignment of monetary claims. We may, in addition, assign any claims to any company affiliated with us; the Vendor will be notified thereof and will be granted the right to withdraw from the contract.
- 6.2 The Vendor may only set off claims against counterclaims or assert a right of retention if the Vendor's entitlements are due and uncontested or are due and have become final and legally binding.

#### 7. Retention of Title

Since the goods we order normally pass into our products as a result of treatment or processing and any retention of title thereby expires, all goods delivered to us must be free of such reservations and third-party rights (such as liens, other creditors' rights based on the assignment of claims, the ownership-transfer of goods for security, or other forms of security for loans, the sale of claims, lease-purchase arrangements, purchases subject to reservation of title etc.). Therefore, we explicitly do not accept any Vendor's retention of title.

#### 8. Documents, Confidentiality

- 8.1 Models, tools, printers' copies, drawings, documents, etc. which we provide for the execution of an order shall remain our property and must be kept secret. They may not be entrusted to third parties without our prior approval; neither for inspection nor may they be used for the manufacture of third-party goods or be reproduced. They must be returned to us immediately upon completion of the order.
- 8.2 The provisions of Article 8.1 also apply correspondingly to confidential information.
- 8.3 This obligation regarding secrecy is to be imposed on all legal representatives, employees, and third parties employed by the Vendor for the purpose of discharging its obligations deriving from our order.

#### 9. Payment

- 9.1 Prices shall be fixed prices excluding value added tax. Unless different arrangements are made explicitly and in writing, offers, cost estimates and other price calculations made by the Vendor will not be reimbursed by us.
- 9.2 Payment shall be made upon receipt of the proper invoice and acceptance of the goods, these being free of defects - the period shall commence on the later date in each case - within 14 days with 2% discount or net within 15 days upon the expiry of the month following the invoice.
- 9.3 The Vendor is asked to invoice each order separately, in duplicate, and stating our order number. Payment of the invoice will be made only to the Vendor specified in the order.

#### 10. Withdrawal from the Contract/Cancellation

We are entitled to withdraw from or cancel the contract for proper cause. Such cause shall be, among others, if the Vendor has issued an affidavit under § 807 ZPO (Code of Civil Procedure), the Vendor's assets are subject to a foreclosure procedure and such procedures are not cancelled within 4 weeks, if a petition that is not abusive is made for the opening of insolvency proceedings regarding the Vendor's assets, or if insolvency proceedings are instituted or the institution of the same is rejected due to a lack of assets.

#### 11. Force Majeure

We are entitled to withdraw in whole or in part from the contract if any *force majeure* events, labour disputes, breakdowns through no fault of our own, civil commotions, measures of authorities or any other comparable inevitable events through no fault of our own occurred and if such an event continues for a material duration and if such an event results in a material reduction of our demand.

#### 12. Further Obligations of the Vendor

- 12.1 The Vendor is obliged to manufacture any goods under the contract in compliance with any applicable laws and regulations on health and safety and on protection of employees and the environment. Subject to other obligations, Vendor will apply the guidelines of ALTANA's Code of Conduct which the Vendor may read on the following website: [http://www.altana.com/code\\_of\\_conduct](http://www.altana.com/code_of_conduct) and which we shall upon request send to the Vendor free of charge.
- 12.2 The Vendor shall comply with our applicable safety regulations if the Vendor enters our factory premises while fulfilling the contract.

#### 13. Place of legal jurisdiction

In the event of disputes, the place of legal jurisdiction is Düsseldorf, Germany.

#### 14. Partial Ineffectiveness

The legal ineffectiveness of individual provisions of these terms and conditions shall not affect the effectiveness of the other provisions.

#### 15. Applicable Law

This contract is governed by the laws of the Federal Republic of Germany excluding the UN Convention on Contracts for the International Sale of Goods.

#### Special Note:

Pursuant to the provisions of the German Data Protection Act (*Bundesdatenschutzgesetz*), we inform you that our book-keeping is performed via a computer system and that we in this regard also record data of the Vendor that we receive in the course of our business relationship.