Terms of service

General Terms and Conditions of the

Elma Schmidbauer GmbH for the Elma Store

(Status: 01.10.2021)

I. Scope of the General Terms and Conditions

1. For all contracts concluded via our web shop between us, Elma Schmidbauer GmbH, and the customer, the following General Terms and Conditions (hereinafter: GTC) shall apply exclusively in the version valid at the time of the order.
2. Individual agreements between the contracting parties take precedence over these GTC. Any deviating terms and conditions of purchase of the customer are expressly rejected.
3. These GTC apply only to persons who, when concluding the contract, act in the exercise of their commercial or independent professional activity (entrepreneurs) as well as to legal entities under public law or a special fund under public law. They do not apply to natural persons who conclude the contract for a purpose that cannot be attributed to their commercial or self-employed professional activity (consumers).

II. Conclusion of contract

1. The presentation and advertising of goods in our web shop do not constitute a binding offer to conclude a purchase contract.
2. The customer can select products from our range and collect them in a virtual shopping cart by clicking the “Add to cart” button. By sending an order via the web shop by clicking the button “Order subject to payment”, the customer places a legally binding order.
3. Before submitting the order, the customer can change and view the data at any time. However, the order can only be placed and transmitted if the customer has accepted these contractual conditions by clicking on the button “Accept GTC” and has thereby included them in his order. The contract shall be concluded in English.
4. The customer is bound to the order until the expiry of the working day following the submission of the order.
5. We will confirm receipt of the customer’s order immediately by e-mail. Such an e-mail does not constitute a binding acceptance of the order unless, in addition to the confirmation of receipt, the acceptance is declared at the same time.

6. A contract is only concluded when we accept the order by means of an express declaration of acceptance or by delivering the ordered goods. The terms of the contract shall be stored by us in compliance with data protection.
7. If the delivery of the ordered goods is not possible, for example because the corresponding goods are not in stock, we shall refrain from issuing a declaration of acceptance. In this case, no contract shall be concluded. We will inform the customer of this immediately and refund any consideration already received without delay.
8. Errors, typing, printing or calculation errors in our non-binding offer as well as in our catalogues and brochures may be corrected by us without us being liable for damages resulting from these errors. Unless otherwise agreed, the documents belonging to the non-binding offer, such as illustrations, drawings, invoices, weights or dimensions, are only approximate. Such details, in particular also those concerning the performance and usability of the products supplied as well as DIN standards, shall only be deemed to be contractually agreed if we expressly declare this to the customer.

III. Prices

1. All prices quoted in the web shop are net prices plus VAT. They apply in Euro FCA (Incoterms 2020) ex our warehouse in 78224 Singen, Germany, or the designated warehouse of our logistics partners plus packaging, freight and shipping costs, unless otherwise agreed in writing. Additional costs for expedited shipping will be invoiced separately.
2. The shipping costs are indicated in the price details in the web shop. The price including VAT and applicable shipping costs is also displayed in the order mask before the customer confirms the order.
3. If we fulfil the order in accordance with § 3 para. 1 by partial deliveries, the customer shall only incur shipping costs for the first partial delivery. If the partial deliveries are made at the request of the customer, shipping costs shall be charged for each partial delivery.

IV. Terms of payment

1. The customer may choose to transfer the purchase price and the shipping costs to our account stated in the web shop, to grant us a direct debit authorisation or to pay by PayPal or credit card. A direct debit authorisation granted shall also apply to further orders until revoked.
2. Payments shall be due 14 days net after the date of invoice; thereafter, interest on arrears shall be payable at a rate of 9 percentage points above the base rate of the European Central Bank until the occurrence of default.

3. Offsetting or retention of payments is only permitted for claims arising from the same contractual relationship or for recognised or legally established claims of the customer.

4. In the case of orders from customers with their place of residence or business abroad or in the case of justified indications of a risk of non-payment, we reserve the right to deliver only after receipt of the purchase price plus shipping costs (reservation of advance payment). If we make use of the reservation of advance payment, we will inform the customer immediately. In this case, the delivery period shall commence upon payment of the purchase price and the shipping costs.

5. If, after conclusion of the contract, it becomes apparent that our claim for payment is jeopardised by our customer's inability to pay, we shall be entitled to refuse our performance or actions preparatory to performance. The right to refuse performance shall not apply if payment is made or security is provided for the payment. We may set the customer a reasonable deadline for payment/providing security. After unsuccessful expiry of the deadline, we are entitled to withdraw from the contract.

6. We are entitled to assign our claims against the customer.

V. Delivery periods, deliveries and delay

1. The delivery period for deliveries within the Federal Republic of Germany is approximately five (5) working days, unless otherwise agreed. It shall commence - subject to the provision in para. 3 - upon conclusion of the contract.

2. The following delivery restrictions apply: We only deliver to customers who have their habitual residence (billing address) in the European Union and can provide a delivery address in the European Union.

3. An execution or delivery deadline shall be extended - even within a delay - appropriately in the event of force majeure (e.g. natural disasters, war, uprising, strike, epidemics, pandemics) and in the event of all unforeseen obstacles occurring after conclusion of the contract for which we are not responsible, insofar as such obstacles impede or prevent the performance of our service. This shall also apply if these circumstances occur at our suppliers, subcontractors, carriers or subcontractors. We shall inform the customer immediately of the beginning and end of such obstacles.

4. If the impediment lasts longer than three months or it is determined that it will last longer than three months, both the customer and we may withdraw from the contract. In the event of withdrawal due to such hindrances, claims for damages are excluded. Any services already rendered by the customer shall be returned unless the customer was responsible for a delay or postponement

of the delivery schedule which enabled or caused the aforementioned delay or hindrance; in this case, the following paragraph 4 shall apply accordingly.

5. We are entitled to make partial deliveries insofar as the customer has an objective interest in the partial delivery in accordance with the purpose of the contract and the customer does not incur any significant additional expense as a result.

6. The customer shall ensure the possibility of undisturbed delivery. Otherwise, this must be notified to us at least 10 days before the agreed or announced delivery date. If deliveries have already been initiated by us at this time and are returned to us due to circumstances which the customer is responsible for, we shall be entitled to invoice our additional expenses separately. The agreed delivery period shall be extended accordingly. This shall also apply in the event of changes or new orders by the customer which are placed after conclusion of the contract.

7. If the customer is in default with the acceptance of the goods or with the payment of the purchase price, we may withdraw from the contract and/or claim damages instead of performance after the fruitless expiry of a reasonable grace period set by us. When asserting the claim for damages instead of performance, we may demand 20% of the net order value as lump-sum damages; the parties are at liberty to prove higher or lower actual damages. In addition, we shall be entitled to charge the expenses incurred, in particular storage costs, if the customer is in default of acceptance. In the event of storage on our own premises, we shall charge storage costs customary at the place of storage.

8. If we are in default with the delivery due to simple negligence, our liability for damages due to the delay in delivery shall be limited to 0.5% of the net order value for each full week of the delay, but not more than 5% of the net order value. If the customer claims damages instead of delivery in the aforementioned cases, this claim for damages shall be limited to 10% of the net order value. The limitations of liability according to the above sentences 1 and 2 shall not apply in the event of a delay due to intent or gross negligence, nor in the event of injury to life, limb or health, nor in the event of a transaction for delivery by a fixed date, i.e. in the event of a transaction in which the transaction is to stand or fall with the observance of the fixed time of performance.

VI. Transfer of risk

1. The transfer of risk shall be governed by FCA (Incoterms 2020) unless otherwise agreed in writing.

2. It is the customer’s responsibility to insure the goods against insurable risks, in particular against theft, breakage, fire, water, transport or other damage, at his own expense from the transfer of risk.

VII. Retention of title

1. We reserve title to the goods until complete fulfilment of all - including future - claims (including all ancillary claims such as e.g. financing costs, interest) arising from the business relationship with the customer. If a current account agreement has been agreed with the customer, the retention of title shall exist until full settlement of the recognised current account balance. Insofar as payment of the claim has been agreed with the customer on the basis of the cheque bill of exchange procedure, the retention of title shall also extend to the redemption of the bill of exchange issued by us by the customer and shall not expire by crediting the cheque received by us.

2. The customer is obliged to treat the goods subject to retention of title with care, in particular to insure them at his own expense against damage by fire, water and theft at their replacement value and to inform us immediately in the event of seizure, confiscation, damage and/or loss; a breach of this obligation gives us the right to withdraw from the contract. The customer shall bear all costs which have to be incurred in particular within the framework of a third-party action in the event of the lifting of an attachment and, if applicable, in the event of a replacement of the delivery items, insofar as they cannot be confiscated by third parties.

3. In the event of seizure, confiscation, damage and/or loss of the delivered goods, the customer shall inform us immediately; a breach of this obligation as well as other conduct of the customer in breach of contract, in particular non-payment of the purchase price due, shall give us the right to withdraw from the contract. The customer shall bear all costs that had to be incurred, in particular in the context of a third-party action, to successfully lift an attachment and, if applicable, to successfully recover the delivered items, insofar as they cannot be confiscated from third parties.

4. If we have effectively withdrawn from the contract, we shall be entitled to take back the goods subject to retention of title if the taking back has been threatened with a reasonable period of time. Our statutory rights and obligations following a withdrawal from the contract shall otherwise remain unaffected.

5. The costs arising from the exercise of the right of return, in particular for transport and storage, shall be borne by the customer.

6. The customer hereby assigns to us the purchase price, remuneration for work or other claims arising from the resale or for any other legal reason (e.g. in the event of an insurance claim, in the event of tortious acts or due to loss of ownership by combining the delivery item with real estate) with regard to the reserved goods, including the recognised balance from a current account agreement in the amount of the invoice value of the reserved goods; we accept the assignment. The assignment of claims in accordance with sentence

1 serves to secure all claims - including future claims - arising from the business relationship with the customer.

7. The customer is revocably entitled to collect claims from the resale of the goods for us in his own name. This collection authorisation can only be revoked if the customer does not properly fulfil his payment obligations. At our request, the customer shall in such a case provide the information on the assigned claims required for collection, provide the corresponding documents and notify the debtor of the assignment.

8. If the realisable value of the securities granted to us in accordance with the aforementioned provisions exceeds our claims against the customer not only temporarily by more than 10%, we shall release securities to this extent at our own discretion at the customer's request. This cover limit of 110% shall be increased by this value added tax amount insofar as we are charged with value added tax on the realisation of the collateral, which arises from a delivery by the customer to us subject to value added tax. The customer is also entitled to demand the release of collateral if the estimated value of the goods assigned as collateral is more than 150% of the claims to be secured. The selection of the securities to be released is incumbent upon us.

9. In the event of cessation of payments, application for or opening of insolvency proceedings against the customer, the customer's right to resell and to use the reserved goods as well as the authorisation to collect assigned claims shall expire. The statutory rights of an - also provisional - insolvency administrator shall remain unaffected.

VIII. Notice of defects, rights in the event of material defects

1. The customer shall notify defects of any kind - with the exception of hidden defects - in writing immediately after delivery to the customer, at the latest after the expiry of seven working days (Saturday does not count as a working day); otherwise the goods shall be deemed to have been approved. Hidden defects must be notified in writing (e.g. in writing or by e-mail) immediately after discovery, at the latest after the expiry of seven working days (Saturday does not count as a working day); otherwise the goods shall be deemed to have been approved also with regard to these hidden defects.

2. By negotiating a complaint, we shall in no case waive the objection of late, insufficient or unfounded notice of defects.

3. The customer is obliged to give us the opportunity to ascertain the defect complained of on the spot. In the event of transport damage or breakage, the goods must be left in the condition in which they were when the damage was detected.If a defect cannot be detected after the customer's complaint, the customer shall reimburse us for the costs incurred in connection with the inspection of the goods.

4. Insofar as the goods have a defect, we may, at our discretion, either remedy the defect (rectification) or deliver a defect-free item (replacement) as subsequent performance, unless otherwise agreed between the parties or a special guarantee has been granted by us (para. 7 below). If we are not prepared or not in a position to rectify the defect/replacement delivery, in particular if this is delayed beyond reasonable periods for reasons for which we are responsible, or if the rectification/replacement delivery fails in any other way, the customer shall be entitled, at his discretion, to withdraw from the contract or to reduce the consideration owed, provided that further attempts at rectification/replacement are unreasonable for him. The customer may only withdraw from the contract due to an insignificant defect with our consent.

5. Material defect rights can only arise if the goods have a material defect at the time of transfer of risk. No material defect rights shall arise in the event of unsuitable or improper use, faulty assembly or commissioning by the customer or third parties commissioned by the customer, natural wear and tear, faulty or negligent handling or maintenance in accordance with the documentation, defective construction work, unsuitable building ground, chemical, electrochemical or electrical influences, provided that these are not attributable to fault on our part, as well as in cases of force majeure.

6. We shall only be liable for damages due to defective goods within the limits specified in Clause. IX.

7. Guarantee agreements apply independently of the provisions of these GTC.

IX. Liability

1. We shall be liable for damages in cases of intent or gross negligence by us, our legal representative or our vicarious agent, in the event of the assumption of a guarantee, in accordance with the provisions of the Product Liability Act and in the event of injury to life, limb and health for which we or our legal representatives or vicarious agents are responsible.

2. If we or our legal representatives or vicarious agents violate an essential contractual obligation with simple negligence, i.e. an obligation the fulfilment of which makes the proper execution of the contract possible in the first place and on the observance of which the contractual partner may regularly rely, our obligation to pay compensation shall be limited to the foreseeable damage typical for the contract. The limitation of liability in the event of delays in delivery in accordance with Clause A. III.7. remains unaffected by this.

3. In all other cases of liability, claims for damages due to the breach of an obligation arising from the contractual obligation as well as due to tort are excluded, so that in this respect we are also not liable for consequential damages, additional expenses, lost profit or other financial losses of the customer.

4. Insofar as our liability is excluded or limited on the basis of the above provisions, this shall also apply to the personal liability of our employees, workers, staff, representatives and other vicarious agents.
5. The terms “damage” or “claims for damages” in these GTC also include claims for reimbursement of futile expenses.

X. Limitation

1. In the case of supplier recourse in the supply chain of a consumer goods purchase, in the case of statutory strict liability, in particular under the Product Liability Act and in the case of warranty liability, the statutory limitation period shall apply.
2. In the event of damage resulting from injury to life, limb or health due to a negligent breach of duty by us or an intentional or negligent breach of duty by our legal representative or vicarious agent, in the event of other damage, which are based on an intentional or grossly negligent breach of duty by us or on an intentional or grossly negligent breach of duty by our legal representative or vicarious agent, as well as in the case of damages which are based on an intentional or negligent breach of material contractual obligations under the respective contract by us or our legal representative or vicarious agent, the statutory limitation period shall also apply.
3. In all other cases, the limitation period shall be one year.

XI. Software

Insofar as software is included in the scope of delivery, the respective licence conditions for the use of the software shall apply.

XII. Copyright

All images, texts and videos published in this web shop are protected by copyright. Use of these works is not permitted without our express consent or that of the respective copyright holder.

XIII. Data protection

The Customer agrees that we may store, use or process personal data in accordance with the European Data Protection Regulation to the extent necessary for the performance of the contract.

XIV. Labelling

1. Unless expressly agreed, the goods and the associated documentation are labelled or written in German and the goods comply with the statutory requirements applicable to Germany with regard to labelling and approval.

2. The customer shall be exclusively responsible for fulfilling any further requirements of other legal systems outside Germany with regard to labelling or approval, unless the parties have agreed otherwise.

XV. Final Provisions/Court of Jurisdiction

1. Unless otherwise agreed, the place of payment and performance for all obligations is 78224 Singen, Germany.
2. The law of the Federal Republic of Germany shall apply to contracts between us and the customer to the exclusion of the UN Convention on Contracts for the International Sale of Goods. The statutory provisions on the restriction of the choice of law and on the applicability of mandatory provisions, in particular of the state in which the customer has his habitual residence as a consumer, shall remain unaffected.
3. Insofar as the customer is a merchant within the meaning of the German Commercial Code, a legal entity under public law or a special fund under public law, the place of jurisdiction for all rights and obligations of the parties to the contract arising from transactions of any kind - including disputes over bills of exchange and cheques - shall be 78224 Singen, Germany. The same shall apply if the customer does not have a general place of jurisdiction in Germany, moves his place of residence or habitual abode out of Germany after conclusion of the contract or his place of residence or habitual abode is not known at the time the action is brought. However, we are also entitled to sue the customer at his general or special place of jurisdiction.
4. Should provisions of these GTC be or become invalid in whole or in part, this shall not affect the validity of the remaining provisions. The contracting parties undertake to replace the invalid provision with a valid provision that comes as close as possible to the purpose intended by the invalid provision.

01.10.2021

Elma Schmidbauer GmbH