

**General Terms and Conditions of Sale  
of ELORA Werkzeugfabrik GmbH  
Current as of July 2008**

**Para. 1 Applicability**

1. All deliveries and services made by ELORA Werkzeugfabrik GmbH (ELORA) are understood to be exclusively on the basis of the following conditions. These General Terms & Conditions of Sale also apply to all future contracts and transactions with the buyer. The buyer's Terms & Conditions will not be recognised by ELORA unless and until ELORA explicitly approves them in writing. These present General Terms & Conditions of Sale are deemed to apply even if ELORA is aware that the buyer's General Terms & Conditions of Sale contradict them or deviate from them and, despite this, makes delivery to the buyer without reservation.
2. These General Terms & Conditions of Sale apply only to business enterprises, public-law legal entities and public law special entity as defined under Para. 310(1) German Civil Code.

**Para. 2 Quotations, contract conclusion**

1. Contracts come into existence if ELORA expressly accepts an order or dispatches the goods ordered or if ELORA fails to refuse a buyer's order in writing without delay, at the latest with 14 days of receipt.
2. The details and illustrations shown in brochures, catalogues, advertisements and price lists are not to be considered declarations, representations or guarantees of any kind and are not integral parts of the contract. They are only intended to provide a general impression of the goods described therein. Deviations or modifications effected on the basis of legally prescriptive regulations or resulting from technical improvements are permitted provided they do not impair the usability of the product as described in the contract.

**Para. 3 Contract amendment**

1. Contracts not limited to a specific duration can be cancelled by either Party by giving 3 months' notice.
2. If in connection with a long-term contract due to run for more than 12 months and those with no set limit, a material change in wage, material or power costs takes place, both contractual parties are entitled to require a reasonable adjustment to the price to reflect these factors.
3. If no specific order quantity has been agreed, ELORA will base its pricing on the non-binding quantity expected by the buyer for a specific period of time.
4. If delivery contracts are of a call-up nature, ELORA reserves the right to communicate binding quantities at least 2 months before the agreed delivery date by means of the call-up. Additional costs occurring due to delayed call-ups or subsequent amendments to the call-up regarding the time or quantity by the buyer will be charged to the buyer. The pricing calculations carried out by ELORA will be deemed to be binding.
5. Material amendments, additional requests and additional performance details communicated after conclusion of the contract will require the Parties to make reasonable changes to the payment, dates and description of the functions. This applies by analogy to any technical problems not foreseeable at the time of contract signing.

**Para. 4 Confidentiality, documents**

1. Both contractual parties undertake to use any documents (which is deemed to include samples, models and data) and knowledge received during the business relations exclusively for the agreed joint purposes and to treat these with the same care and confidentiality as they would their own documents and knowledge and not to make them available to vis a vis Third Parties if the other Party defines the documents as confidential or is evidently keen to maintain confidentiality with regard to them. This obligation comes into force the moment the first document or information is received and is not restricted in time.
2. These obligations do not apply to documents and knowledge which are in the public domain or which were already known by the other contractual party when they are received without being subject to confidentiality restrictions, or if they are communicated by a Third Party who is entitled to make them available or if they were developed independently by the receiving contractual party without recourse to any confidential documents or knowledge belonging to the other contractual party.
3. If one partner makes drawings or other technical documents concerning the products to be supplied or their manufacture available to the other party, these documents remain the property of the providing party.
4. The costs of production of samples and production aids (tools & dies, moulds, templates etc.) will be invoiced separately from the products supplied unless otherwise agreed. This applies also to production aids which need replacing due to wear and tear.
5. If the partner cancels or postpones the contractual agreement during the manufacturing period for the samples or production aids, all production expenses incurred up to that point will be charged to the partner.
6. The production aids will remain in the possession of ELORA, even if the buyer has paid for them, at least until the contract for delivery has been properly wound up. After that, the buyer is entitled to demand delivery of the production aids when agreement has been reached on the moment of hand-over and after the buyer has met all its contractual obligations in full.
7. Enduser-specific production aids may only be used by us for supplies to Third Parties after prior written approval by the buyer.

**Para. 5 Prices, terms & conditions of payment**

1. Prices are understood to be in euros and do not include value added tax, packaging, freight, postage or insurance.
2. The minimum order value for domestic orders (within Germany) is 50,00 EUR net and for foreign orders is 250,00 EUR net. If the minimum order value is not reached, ELORA reserves the right to add a small-order surcharge amounting to 10,00 EUR net to each order.
3. Invoices showing a net product value of less than 25,00 EUR are payable immediately on receipt of the goods in the full amount. For all other invoices, if payment is made within 10 days of the date of invoice, a cash discount of 3% may be deducted. All other invoices are due in full within 30 days of the date of invoice. The consequences of defaults in payment are covered by legal provisions.
4. If it is agreed that ELORA has supplied non-conforming product, our buyer is still required to make payment for the conforming part of the delivery unless the partial delivery is of no interest to him.
5. The buyer is only entitled to offset payments against other claims if these are legally enforceable or non-litigious. Furthermore, the buyer is only entitled to a right of retention if the counterclaim results from the same contractual agreement as our original claim.
6. In the event of payment arrears, ELORA reserves the right to charge interest on arrears at the level laid down by law in accordance with §§ 288(2), 247 German Civil Code (8 percentage points above the valid base rate). This without prejudice to any other remedies.
7. Where the buyer is in default of payment, ELORA may, after notifying the buyer in writing, hold performance of our obligations in abeyance until the payment has been received.
8. If the buyer fails to make payment even after two reminders, all remaining unpaid invoices become due immediately.
9. Bills of exchange and cheques are accepted after mutual agreement in payment of debts on condition that they are discountable. Discount fees are charged from the due date of the invoice. No guarantee is accepted for presentation of bills of exchange or cheques in a timely manner or for the issue of a bill protest.
10. If, after conclusion of a contract, we become aware that the buyer is likely to be unable to pay as a result of his inability to do so, ELORA reserves the right to withhold performance and to define a reasonable period within which the buyer must pay in partial amounts in exchange for the ordered goods or provide collateral. If the buyer refuses to comply or if the deadlines pass without delivery, ELORA reserves the right to withdraw from the contract and claim damages.

#### **Para. 6 Delivery, transfer of risk**

1. Unless otherwise agreed, delivery will be made *ex works* (Incoterms 2000). Adherence to the delivery date or delivery period is determined by the date of notification by ELORA that the consignment is ready for shipping or pick-up. Unless otherwise agreed, ELORA will select the means of transport and the route.
2. The delivery period commences when the confirmation of order is sent. If delivery is delayed due to circumstances covered by these Terms & Conditions or by action or omission of the buyer, the delivery period will be extended in favour of ELORA in a manner commensurate with the circumstances.
3. Partial deliveries are permitted in reasonable amounts. These are invoiced separately.
4. Within a tolerance of 10 per cent of the total order quantity, production-related over- or underdeliveries are permitted for special-purpose production runs. The total price will be adjusted to match the quantities.
5. Consignments notified as ready for shipping must be taken over by the buyer without delay. Otherwise ELORA reserves the right to dispatch them at our discretion or to put them into storage at the expense and risk of the buyer.
6. Risk is transferred to the buyer when the products are handed over to the railway company, forwarding agents or truck driver or when storage begins, however at the latest when the goods leave our factory or warehouse, even if ELORA has undertaken to carry out the delivery.
7. All consignments above a net goods value of 400,00 EUR are dispatched within the Federal Republic of Germany carriage paid including packaging. Any express or other surcharges will be charged to the buyer. Any postage and parcel service charges will be charged. If the value of the goods is less than 400,00 EUR, freight costs will be charged.
8. If ELORA realises that the goods cannot be delivered within the agreed delivery period, ELORA will notify the buyer without delay and in writing quoting the reasons for the delay and the anticipated new delivery time.
9. The buyer is only entitled to withdraw from the contract if ELORA is responsible for the non-compliance with the delivery date and the buyer has granted ELORA a reasonable extension period which ELORA has allowed to pass without delivering.

#### **Para. 7 Liability for defects**

1. Claims by the buyer relating to ELORA's liability for defects presume that the Buyer has properly complied with his duty of inspection and complaint in accordance with § 377 German Commercial Code. Any invisible defects are to be notified by the buyer without culpable loss of time as soon as they are discovered, but not later than one year after receipt of the goods and hand-over of the products in question to ELORA. The date on which the notification is dispatched is deemed to be decisive in terms of adherence to the response period.
2. The quality of the goods is governed exclusively by the agreed technical delivery regulations. The buyer bears the responsibility for determining the suitability of the goods for the intended purpose. The moment of transfer of risk is decisive as regards determining the contractually agreed state of the goods.
3. ELORA is to be given the opportunity to investigate the defects. Any non-conforming products must be returned to ELORA without delay if the buyer so requested. ELORA will bear the transport cost if the complaints about defects are substantiated. If the buyer does not comply with these obligations or makes any modifications to the products subject of the complaint without prior consent, all entitlement to a remedy becomes void.
4. ELORA must in all cases be given the opportunity for remedial performance or replacement deliveries at its discretion. The buyer undertakes to provide ELORA with this opportunity to a reasonable extent. If the remedial performance or replacement deliveries do not solve the problem or if ELORA refuses to remedy the problem due to the considerable effort involved, the buyer may insist on a reduction in the price or withdraw from the contract. Reimbursement of expenses is excluded if the expenses increase because the goods have been removed to a different location after delivery, unless this is in keeping with the intended purpose of the goods. The buyer's right to remedial performance in the event of minor defects is excluded.
5. ELORA is not responsible for material defects which occur through inappropriate or improper use, incorrect installation or start-up by the buyer or Third Parties, standard wear and tear, incorrect or negligent handling, the consequences of inappropriate modifications or modifications or repairs carried out without our consent by the buyer or Third Parties. The same applies to defects which only slightly detract from the value or suitability of the goods.
6. Claims for remedies due to material defects expire 12 months after transfer of risk. This does not apply where legislation prescribes otherwise, in particular for defects in building constructions and for products which were used in accordance with their usual purpose for construction purposes and which have caused defects in the construction. In cases of a limitation period for recourse against the supplier of consumer goods, the period of limitations is governed by Paras. 478, 479 German Civil Code.
7. The buyer is only entitled to take recourse action against ELORA if the buyer has not come to an agreement with its own customers regarding warranties in excess of the legal warranty requirements. The extent of the recourse is governed by these General Terms & Conditions of Sale.

#### **Para. 8 Retention of title**

1. ELORA reserves title in the goods delivered until all claims from the business transactions with the buyer and any future claims arising have been settled. If a current account has been agreed between ELORA and the buyer, ELORA retains title in the goods until such time as all claims from that current account have been settled.
2. The buyer is entitled to resell these goods in the course of its normal business activities and to collect receivables provided it meets its obligations arising from the business relations with ELORA in a timely manner. Where the buyer includes the claim in a current account agreement with his own business partners, he agrees herewith to assign all claims to the final payment to ELORA as provided by Para. 355 German Commercial Code in the amount of the due claims. If the goods delivered are resold together with other goods, the advance assignment only applies to that portion of the value of the goods delivered. The buyer is however not entitled to mortgage the goods delivered or assign them as collateral. The buyer undertakes to ensure ELORA's rights when reselling the goods delivered.
3. The buyer herewith assigns to ELORA as security all its claims and rights arising from the resale or rental of the goods, where this has been permitted by ELORA, to which we have property rights. ELORA hereby accepts that assignment.
4. If the buyer violates its obligations, in particular regarding default of payment, ELORA is entitled to recover the goods and withdraw from the contract if the buyer has not responded to a reasonable grace period for payment. The statutory provisions that it is not necessary to set a time limit remain unaffected. ELORA is entitled to dispose of the recovered goods at its discretion. Any funds received from the disposal is to be offset against the buyer's unpaid amounts after payment of reasonable disposal costs. The buyer is obliged to surrender the retained goods. ELORA is entitled to withdraw from the contract if an application is made to instigate insolvency proceedings against the buyer.
5. ELORA reserves the right to withdraw its authorisation for the resale and seizure of assigned claims if the buyer fails to meet his payment obligations from the revenues earned by the resale, is in default of payment, or if an application is made to commence insolvency proceedings or payments cease to be made. If this happens, the buyer is required, at the request of ELORA and if the direct debit agreement has been cancelled, to notify ELORA of all the assigned claims and the identity of the debtors, to notify those debtors of the assignment, to make available to us all the information and documents required by ELORA for recovering the claims.
6. Any processing of the goods delivered by the buyer is performed on behalf of ELORA but without entering into any obligations in the name of ELORA. If the goods delivered by ELORA are processed or inextricably combined with other products which do not belong to ELORA, ELORA acquires joint title to the new object in proportion to the invoiced value of the products supplied compared with that of the other objects processed or inextricably combined, the latter being the value at the time of processing or combination. If goods become an integral part of a mobile object and if that object is considered to be the main item, ELORA becomes joint owner of the main item to an extent which is proportionate to the value of ELORA's property in the new item in so far as the buyer is the owner of the main item. The buyer undertakes to care for the property or joint ownership free of charge on behalf of ELORA. The same applies to the item created by the processing or combining as to the goods delivered.

7. The buyer undertakes to notify ELORA without delay of any enforcement orders by Third Parties relating to the goods delivered and for which assigned claims or other collateral exist, quoting all the documents required for ELORA to intervene. This is deemed to apply equally to distraint orders and other legal or factual impairments by Third Parties. The buyer undertakes to notify the Third Parties of ELORA's retention of title. Where the Third Party is not in a position to repay to ELORA the costs of the action both in court and out-of-court under § 771 of the German Code of Civil Procedure (ZPO), the Buyer becomes liable for any losses incurred by ELORA.

8. ELORA undertakes to release the collateral in its favour at the request of the buyer to the extent that the recoverable value of the collateral exceeds the value of the receivables by more than 10%. The choice of which collateral is to be released is at the discretion of ELORA.

9. If the goods sold have passed into the sovereignty of a different State, the buyer undertakes to ensure before the delivery and at its own expense that the rule of law of the importing country recognise a retention of title comparable with the provisions of these General Terms & Conditions of Sale regarding the retention of title laid down herein. To this extent, the buyer undertakes to take all steps required to ensure the property rights of ELORA in the goods sold. To this aim, ELORA undertakes to support the buyer with all the legal activities available to it and to provide the buyer with all the necessary information and documents it requires. The buyer is liable to ELORA for any damage resulting from a lack of secured property in the goods sold or if the retention of title is not recognised in whole or in part by the legal system in the importing country.

#### **Para. 9 Liability**

1. No claims for damages by the buyer, whatever their legal foundation, will be entertained. The only exceptions are cases of criminal damage, gross negligence, danger to life & limb, violation of health and the infringement of a warranty under Para. 444 of the German Civil Code resulting from the violation of material contractual obligations. Any damages payable for the infringement of material contractual obligations is, however, restricted to those foreseeable damages typically awarded in contractual cases provided there is no evidence of intent or liability for gross negligence resulting from danger to life & limb, violation of health and the infringement of a warranty under Para. 444 of the German Civil Code. The above provisions do not involve a modification to the burden of proof to the detriment of the buyer. Absolute liability under product liability legislation remains unrestricted.

2. ELORA does not accept liability for any material defects resulting from inappropriate use and storage, non-conforming installation or natural wear and tear.

3. Where ELORA's liability for damages has been restricted or excluded, the same exclusions and restrictions apply personally to its employees, workers, representatives and agents.

#### **Para. 10 Force majeure**

1. Force majeure, such as labour disputes, social unrest, actions by the Authorities, import & export restrictions, lack of raw materials and fuels, fire and other circumstances beyond the control of ELORA will release ELORA from its obligations under these Terms & Conditions for the duration of the disturbance and to a corresponding extent. The foregoing is deemed to apply equally whether they affect ELORA directly or one of its suppliers. A declaration provided to ELORA by a supplier relating to the circumstances of the disturbance are deemed sufficient evidence to show that ELORA was prevented from delivering on time for no fault of its own.

2. The buyer is entitled to require ELORA to provide a declaration as to whether it will be able to deliver within a reasonable time period or whether it will withdraw from the contract. If this declaration is not forthcoming within a reasonable time period, the buyer is entitled to withdraw from that part of the delivery not yet effected.

#### **Para. 11 Conclusions**

1. The Court of jurisdiction for all legal disputes, including those relating to bills of exchange and cheques, is in Remscheid. Irrespective of this, ELORA is entitled to file proceedings at the buyer's place of residence.

2. The contractual agreements are subject exclusively to the laws of the Federal Republic of Germany. UN commercial law (United Nations Convention on Contracts for the International Sale of Goods) is deemed not to apply.

3. If any clause in this contract should be or become ineffective during the existence of this agreement, or if a gap should become apparent in the phrasing of the contract, the remaining clauses are considered to be unaffected.