GENERAL TERMS AND CONDITIONS OF PURCHASE

ELOPAK GMBH
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D - 41199 Mönchengladbach

1 Scope, General Provisions

1.1 These General Terms and Conditions of Purchase ("Terms") govern all orders concerning deliveries and performances associated with purchase, work, delivery or service contracts ("deliveries") of ELOPAK GMBH ("Elopak"); they only govern the relationship with business persons in the meaning of Section 14 of the German Civil Code [BGB], legal entities under public law and public law funds ("Contractual partner"). Any terms that conflict with or deviate from these General Terms & Conditions or the statutory provisions do not form part of the contract, including where they were previously known, unless Elopak expressly acknowledges their applicability in writing. This requirement to obtain Elopak’s acknowledgement also applies if Elopak accepts the deliveries from the contractual partner or makes unconditional payments to the contractual partner.

1.2 During the course of an on-going business relationship, these Terms will also govern all future purchase, works, work performance, service or other type of contract (collectively "contract") with the contractual partner, without Elopak being required to formally make reference to these Terms in each individual case.

1.3 To the extent these Terms require the written form, such requirement may be complied with by issuing a written document in the meaning of Section 126b of the German Civil Code (e.g., a fax or email).

1.4 Trade terms are to be interpreted in accordance with the Incoterms version applicable at the time the contract is concluded.

2 Compliance

2.1 Elopak expects its contractors to conduct themselves in accordance with ELOPAK’s ethical values. The Supplier therefore guarantees that all products and/or services are in accordance with all applicable local and international laws and regulations. The Supplier shall possess all necessary approvals, certificates and licenses for their company, and show such documentation to Elopak upon request within reasonable time.

3 Responsible Business Conduct

3.1 The Supplier by entering into this Agreement confirms that it will act in accordance with the principles outlined in Elopak Global Supplier Code of Conduct, SCtC, (a copy of which is available on Elopak homepage or upon request). This includes the UN Guiding Principles for Business and Human Rights and the OECD Guidelines for Multinational Enterprises. The Supplier shall actively communicate and promote the expectations and principles set out in the Code to their sub-suppliers.

3.2 The Supplier shall, when acting in connection with this Agreement, always act in compliance with all applicable state, national, and international laws, rules and regulations relating to ethical and responsible standards of behavior, including but not limited to those dealing with human rights, environmental protection, corruption, fraud, anti-money laundering, applicable sanction regimes, and other economic crimes. The Supplier shall ensure that all employees, representatives and affiliates comply with the above requirements.

3.3 Elopak reserves the right to assess compliance with the SCtC. At Elopak’s request the Supplier must be able to document compliance through self-assessment, follow-up meetings and/or inspection at supplier’s production sites. In case Elopak identifies or suspects a non-compliance with or breach of the principles in the SCtC, the Supplier shall provide all reasonable assistance in investigating the non-compliance. If the non-compliance is material, Elopak may terminate the business relation by written notice. If the non-compliance is immaterial, Elopak and the Supplier shall jointly prepare a plan for remedial actions. Corrective actions must be taken within reasonable time. If upon the expiry of the correction period, the non-compliance has not been improved or remedied, the business relation may be renegotiated or terminated by Elopak.

4 Conclusion of a Contract, Use of Subcontractors

4.1 The conclusion of a contract between Elopak and the contractual partner presupposes a written order or written order confirmation from Elopak.

4.2 The contractual partner must accept orders from Elopak in writing within a period of 14 calendar days. Receipt of the acceptance declaration by Elopak is authoritative for timely receipt. To the extent the acceptance declaration from the contractual partner differs from the order placed by Elopak, the contractual partner must clearly highlight such differences in the acceptance declaration; such differences will only form part of the contract to the extent they are accepted by Elopak in writing. A contract between Elopak and the contractual partner is also concluded if the contractual partner renders unconditional performance the deliveries stated in an order.

4.3 Any drawings or other documents referred to in an order will form part of the order. They become part of the contract to the extent nothing to the contrary has expressly been provided for in the contractual partner’s corresponding acceptance declaration;

Clause 4.2 sentence 2 applies accordingly.

4.4 In as far as Elopak specifies a certain intended use of the deliveries in an order, the contractor is under a pre-contractual obligation to notify Elopak in writing in the event the delivery specified in an order is not fully suited for the intended purpose specified in the order.

4.5 Elopak may accept a tender by the contractual partner within 14 calendar days from submission by issuing a written order confirmation. The contractual partner is bound by its tender until the expiry of this period. Elopak’s silence does give rise to the implied conclusion of a contract. The contractual partner will promptly inform Elopak of a tender being accepted by Elopak out of time.

4.6 The contractual partner is not entitled to assign the performance of the deliveries to third parties (e.g. to subcontractors) without the prior written consent from Elopak. Persons carrying out transport are not considered third-parties.

5 Prices and Payment Terms

5.1 The prices agreed between Elopak and the contractual partner are binding and include at the applicable rate. Costs for packaging, insurance, freight and storage costs, duties other incidental costs (e.g. assembly costs) are also included in the agreed prices, unless agreed otherwise in writing between Elopak and the contractual partner.

5.2 Invoices must contain the required commercial information. Invoices must in particular state the order no. (if applicable), the item no., supplied quantity and the delivery address. In the case of work paid at an hourly rate, signed evidence of the hours of work must be enclosed with the invoice.

5.3 Unless agreed otherwise, Elopak will make payment within 30 days of receipt of the deliveries (including the required documentation, test certificates or factory certificates and other required documents) or, if acceptance of deliveries is required, their acceptance and receipt of a conforming and auditable invoice. Elopak is granted a discount of 3 % for payments made within 14 days. This period entitling to a discount does not commence in the event of Elopak accepting partial deliveries.
5.4 The timely receipt of the payment owed by Elopak is determined on the basis of the date Elopak instructs its bank with the corresponding transfer. Payments from Elopak do not constitute acceptance of the delivery or confirmation that the deliveries are free from defects and made in due time.

5.5 The contractual partner is not entitled to interest prior to a default. In the event of payment default, Elopak shall not pay default interest at the rate of five percentage points above the base interest rate of the European Central Bank.

5.6 Elopak is without limitation entitled to the statutory rights to offsetting and withholding. The contractual partner is only entitled to offsetting and withholding rights to the extent its claims against Elopak are uncontested, have been established in a final court ruling or are in a reciprocal relationship to the respective claims of Elopak.

6 Delivery, Delivery Dates, Delays in Delivery, Force Majeure

6.1 The deliveries are made DDP to the delivery location ("delivery location") specified in the contract, unless agreed otherwise. The contractual partner shall include the test certificates or factory certificates and other required documents with the deliveries. The contractual partner is required to securely pack the deliveries and insure them for transportation. The contractual partner is not entitled to make partial deliveries or partial performance, unless otherwise agreed.

6.2 Each delivery must be accompanied by a delivery note. The delivery note shall list the place of delivery and the individual items delivered together with their dimensions, weight, quantity and order numbers (if applicable) as well as the delivery location. Partial, backorder and replacement deliveries must be designated as such in the delivery note.

6.3 The agreed delivery dates and deadlines ("Delivery dates") are binding. If the contract does not specify a delivery date, the deliveries must be made within 14 calendar days. Adherence to the delivery date presupposes that the deliveries can be handed over to Elopak at the delivery location at the delivery date. In as far as the deliveries require confirmation of receipt, the respective delivery date is kept if the contractual partner makes the goods available to Elopak in a condition that is ready for acceptance on the delivery date. Early deliveries are not permitted.

6.4 If the contractual partner realizes that a delivery date cannot be adhered to, Elopak must be informed immediately in writing together with the associated reasons and expected duration of the delay. This is without prejudice to the contractual partner’s obligation to adhere to delivery dates.

6.5 If the contractual partner suffers from delivery delays, Elopak has the right to demand payment of a contractual penalty from the contractual partner for each calendar week or part thereof at a rate of 0.5% of the agreed net price up to a total amount corresponding to 5% of the agreed net price of the delayed deliveries. The right to claim further damages remains unaffected. Any contractual penalties already paid are to be offset against further claims for damages. Elopak may also claim the contractual penalty if the deliveries are accepted unconditionally, but only for an amount exceeding the final payment for the delivery if Elopak has reserved the right to do so upon making the final payment.

7 Documentation, Documents

7.1 The Contractor shall separately and without incurring a charge furnish ELOPAK with, one complete technical documentation for the delivered goods, comprising at least the documentation stated in Annex 1.A. or 1.B. to the Machinery Directive 2006/42/EC (valid version) for the delivered goods. A CE label must be affixed to all eligible products. The contractor guarantees ELOPAK that the goods comply with the applicable accident prevention regulations / work safety regulations and the occupational health care and safety-related requirements applicable in the Federal Republic of Germany. If the contractor is aware of the goods’ destination country / country of use at the time of concluding the contract, the goods must also comply with the rules and regulations applicable in such country and be approved for delivery to such country. The contractor is in particular liable for the goods’ compliance with the relevant EU rules, the EC Machinery Directive, the German Product Safety Act (ProdSG) and the ninth ordinance to the Product Safety Act (Machinery Regulation, 9th ProdSV) in their current version as well as for the performance of the conformity assessment procedures prescribed in the respective regulations.

7.2 The ELOPAK order numbers and part numbers must be stated on all correspondence, freight notes, invoices, etc. that pertain to the order. Dispatch notices and invoices must not be enclosed in the consignment.

7.3 The Contractor is not entitled to claim payment from ELOPAK for the preparation of tenders, acquisition planning, drafting or any other preparation work. ELOPAK is entitled to use the business documents and information (including data sheets) made accessible by the Contractor at its sole discretion, provided the Contractor has not expressly designated them as confidential or secret.

The Contractor must provide ELOPAK with a separate declaration in accordance with Annex 1.A. or 1.B. of the Machinery Directive 2006/42/EC (valid version) for the delivered goods. A CE label must be affixed to all eligible products. The contractor guarantees ELOPAK that the goods comply with the applicable accident prevention regulations / work safety regulations and the occupational health care and safety-related requirements applicable in the Federal Republic of Germany. If the contractor is aware of the goods’ destination country / country of use at the time of concluding the contract, the goods must also comply with the rules and regulations applicable in such country and be approved for delivery to such country. The contractor is in particular liable for the goods’ compliance with the relevant EU rules, the EC Machinery Directive, the German Product Safety Act (ProdSG) and the ninth ordinance to the Product Safety Act (Machinery Regulation, 9th ProdSV) in their current version as well as for the performance of the conformity assessment procedures prescribed in the respective regulations.

7.4 If a third party claims liability from Elopak due to non-compliance with the regulations set out in Clause 7.3, the Contractor must indemnify ELOPAK from such claims upon Elopak’s initial written request. ELOPAK is entitled to indemnification regardless of whether the contractor is at fault. The right of ELOPAK to be indemnified by the contractor also includes the costs incurred by Elopak in pursuit of legal rights and claims, as well as any other expenses necessarily incurred by Elopak as a result of or in connection with claims made by a third party.

7.5 Calculations, diagrams, plans, tendering procedure documentation, requirement profiles, performance specifications, drawings, other documents and data carriers as well as models and other tools are only made available to the Contractor by ELOPAK on a temporary basis and must be returned to ELOPAK immediately after completion or termination of the contract without making any copies of them, or be destroyed by the Contractor upon ELOPAK’s request with suitable evidence of their destruction to be presented to ELOPAK.

7.6 All models, devices and other tools created by the Contractor for the purpose of performing the contract are the property of ELOPAK. With regard to the aforementioned property and all intellectual property rights associated with them, ELOPAK will retain sole ownership and have sole power of disposal. This property must be returned to ELOPAK after completion or termination of the contract and without making any copies of them.

8 Acceptance, Transfer of Risk and Title

8.1 Deliveries only require acceptance if explicitly agreed between Elopak and the contractual partner, or if acceptance is a statutory requirement.

8.2 Unless agreed otherwise, Elopak may declare acceptance within 14 calendar days after the goods are declared ready for acceptance. Partial acceptance is categorically excluded. In all other respects, Elopak’s rights and obligations pertaining to acceptance are governed by the statutory provisions.
9 Claims for Defects, Contractor’s Liability

9.1 The Contractor is liable to ELOPAK for the delivered goods being free from defects and free from defective title from the time of the risk passing until expiry of the limitation periods for defects.

9.2 In cases where the above obligation is infringed against and the delivered goods are defective, the rights of ELOPAK are based on these Terms and Conditions as well as the statutory provisions pertaining to claims for defects.

9.3 ELOPAK may, at Contractor’s expense, remedy defects itself, have them remedied by third parties, or arrange for replacement where – upon written request – the Contractor fails to remedy the defects within a reasonable period set by ELOPAK, or if insolvency proceedings over the assets of the Contractor are commenced. This also applies without requiring a prior request in urgent cases where there is a risk to operational safety or to prevent disproportionately large damage, where the special urgency prevents Elopak from notifying the Contractor about the defect and the risk of damage and from setting a deadline for remedying the defect.

9.4 ELOPAK may remedy minor defects, or have them rendered on its behalf, immediately and at the cost of the contractor. Any defect rectification measures may be implemented without a deadline and at the expense of the Contractor if delivery is made after the original deadline and ELOPAK has an interest in immediate remedy of the defect in order to prevent delays on its own part.

9.5 The Contractor must be notified immediately in the event of a case falling under Clauses 9.3 and 9.4. ELOPAK will provide the contractor with a defect report on the type and extent of the defects and the works performed.

9.6 The Contractor shall bear all costs of subsequent performance, in particular the costs incurred for troubleshooting, retrofitting, assembly and disassembly, as well as transport, travel, labor and material costs and customs duties, including the costs resulting from the subsequent transportation of the goods to a location other than the delivery location (property location).

9.7 The Contractor is liable for the delivered goods being free of third-party rights, in particular third-party industrial property rights, which would rule out or impair their use by ELOPAK, or for holding the authority to assign such rights of use, and that no existing property rights published within the European Economic Area, the USA and Japan, are infringed against. Where a third party holds ELOPAK liable on any of the aforementioned grounds, the Contractor shall indemnify ELOPAK from any such claims at ELOPAK’s initial written request. The contractor’s obligation to indemnify Elopak extends to all expenses necessarily incurred by ELOPAK as a result of or in connection with claims made by a third party. This does not apply if the violations of (property) rights are result from plans, drawings, models or other equivalent descriptions provided by ELOPAK.

9.8 ELOPAK may claim damages and rescind the contract if the Contractor fails to adequately ensure the conforming use of the services.

9.9 ELOPAK demand the contractor to indemnify it against all claims by Elopak customers if and to the extent the accrual of liability is attributable to the contractor’s delivery. This only applies to the indemnity against claims for damages asserted against ELOPAK outside of the scope of the German Product Liability Act if and to the extent the contractor is at fault for the cause of the damages.
12.4 The contractual partner must insure own supplies against fire, water, theft and breakages at its own expense and furnish Elopak with corresponding evidence upon request. The contractual partner hereby assigns all future claims from the insurance policy to Elopak. Elopak hereby accepts the assignment.

12.5 The contractual partner undertakes to surrender own supplies to Elopak at any time upon request, unless agreed otherwise.

13 Obligation to Provide Information, Confidentiality and Data Protection

13.1 Where the delivery relationship is of longer duration, the contractor owes Elopak the obligation to inform it about any circumstances of potential relevance; this includes, in particular, information about quality problems that may not have been fully resolved, foreseeable difficulties with deliveries, and concerning all changes in product characteristics that may affect their use by ELOPAK, including changes that do not render the delivered item defective.

13.2 If a contractor supplying spare parts intends to discontinue the production of such parts ("discontinuation"), either partially or wholly, it must inform Elopak giving at least six months prior notice of such intent, stating the ELOPAK material number as well as setting out alternative procurement options (incl. the corresponding data sheets). The Contractor grants ELOPAK the option of placing a "final order" by giving eight weeks written notice of the intention to discontinue production; this gives ELOPAK the option of placing a final order with a minimum quantity of up to 25 % of the total order quantity of the past ten years with an average delivery time that is valid until the discontinuation and at the previously agreed commercial conditions.

13.3 The Contractor must treat all non-apparent commercial and technical information obtained during the course of the business relationship as business secrets. The Contractor shall in particular keep all calculations, illustrations, plans, tender documents, specifications of requirements, performance specifications, drawings, other documents and any other data carriers, models or other tools strictly confidential. Such information may only be disclosed to third-parties and/or used by the contractor for its own purposes outside of this contract with the express consent from ELOPAK. The obligation to confidentiality continues to have legally binding effect after the contract has been completed; it will lapse if and to the extent the knowledge, experience and information contained in the aforementioned calculations, illustrations, plans, documents, etc., becomes part of the public domain. ELOPAK remains the sole owner of and has sole power of disposal over the aforementioned property and all intellectual property rights associated with them. The contractor may only disclose its contractual relationship with ELOPAK to third parties after obtaining Elopak’s written consent.

13.4 The Contractor is liable for all persons involved in the performance of the contract being in compliance with the statutory data protection requirements. They shall give the required undertaking to observe data secrecy no later than upon commencing their respective activities, with Elopak to be furnished with corresponding evidence upon request. The Contractor hereby consents to ELOPAK storing and automatically processing any personal data disclosed during the course of the business relationship in its IT systems.

14 Export Controls Clause, Customs Affairs

14.1 Elopak is only required to render the contractually agreed performances subject to the condition that it is not prevented from rendering the performances under applicable national or international foreign trade regulations, embargoes and/or other sanctions.

14.2 The Supplier must do everything necessary to allow Elopak to evaluate any applicable delivery-related licensing requirements and prohibitions under applicable customs and foreign trade regulations of Germany, Europe or the United States of America. This applies in particular in the case of exports or reselling of the deliveries in another way. The Supplier must for this purpose provide Elopak with at least the following information and data immediately or no later than two weeks after conclusion of the contract: a. The export list number for the German Foreign Trade Ordinance; b. The list number as per the EC Dual Use Regulation; c. The "Export Control Classification Number" in accordance with ECCN for goods subject to the EAR; d. The statistical goods number (HS/CN-Code); e. The country of origin or origin marking; f. Upon request the supplier declaration on the preferential origin.

In as far as necessary for an evaluation pursuant to Clause 14.2, Elopak is entitled to request further information and data from the Supplier.
15.1 The place of performance for the deliveries to be made by the con-
tractual partner is the delivery location specified in the contract with
Elopak, unless provided for otherwise. In all other respects, the place
of performance is at the place of Elopak’s registered office in
Mönchengladbach.

15.2 The exclusive place of jurisdiction for all disputes arising from or in
connection with these Terms is at the place of Elopak’s registered
office in Mönchengladbach. Elopak is however entitled to bring legal
action at the contractual partner’s place of general jurisdiction or any
other court of law holding jurisdiction. The previous stipulations do not
apply if an exclusive place of jurisdiction is prescribed by law.

15.3 These Terms and all contracts concluded between Elopak and the
contractual partner are governed by the law of the Federal Republic
of Germany under exclusion of United Nations Convention on
Contracts for the International Sale of Goods (UN purchasing law/
CISG).

15.4 In the event one or a number of provisions stipulated in these Terms
are or become ineffective or void, the effectiveness of the remaining
provisions will remain unprejudiced.

Place, date
Supplier (company seal, signature of
authorized representative)