

## **Terms and Conditions of Purchase for ELEKTRA Tailfingen Schaltgeräte GmbH & Co. KG**

Brunnenstraße 48 D-72461 Albstadt (As of January, 2018)

### **1. Validity of Terms and Conditions of Purchase**

- a. The following terms and conditions shall apply to all orders and contracts through ELEKTRA Tailfingen Schaltgeräte GmbH & Co. KG (hereinafter referred to as ELEKTRA), unless expressly agreed otherwise in writing with the supplier. We hereby oppose any and all other deviating terms and conditions of sale, purchase and delivery with the supplier, even if these are known to ELEKTRA. ELEKTRA accepts deviating terms and conditions of sale, purchase and delivery from the supplier only with written confirmation.
- b. The terms and conditions for sale from ELEKTRA shall apply to all future transactions with the supplier.

### **2. Orders**

Orders can be sent by e-mail, fax or in writing. Orders sent by e-mail are valid without a signature. Agreements reached by telephone or verbally require written confirmation.

### **3. Prices and Payment**

- a. All prices are fixed prices.
- b. The statutory value-added tax is not included in the price.
- c. Retrospective price increases must be acknowledged in writing by ELEKTRA, and we reserve the right, to withdraw the order if necessary.
- d. Invoices are paid according to the terms and conditions of payment agreed.  
If terms and conditions of payment have not been agreed, payment shall occur either within 14 calendar days after receipt of the invoice and goods with a deduction of 3% of the net price, or within 30 calendar days of receipt of the invoice and goods.
- e. All invoices shall be initially paid under reservation of all rights.
- f. Credits or debits arising from any audit will be offset with any subsequent payment and identified accordingly.

### **4. Delivery Time and Shipping**

- a. All contractually stipulated delivery dates are binding. If ELEKTRA does not receive notification to the contrary, the delivery dates specified shall be deemed as being accepted.
- b. The supplier shall immediately advise of any delivery delays specifying the reason for the delay and the expected length of said delay.
- c. Force Majeure, industrial action with the exception of unlawful lockouts, riots, war, operational interruptions caused through no fault of the operator or any other unforeseen event concerning ELEKTRA shall entitle us to withdraw from the contract or parts thereof, insofar as these are not of an insignificant duration. As soon as the obstacle has been removed, the supplier shall be entitled to obtain a declaration of whether we wish to withdraw from the contract or accept the goods within a reasonable period of time. If we do not provide notice of our intention within a reasonable time frame, the supplier shall be entitled to withdraw on the basis of non-fulfilment of the contract part.
- d. In the event of a delay in delivery, ELEKTRA has the following statutory rights: If the supplier is responsible for exceeding the arranged delivery deadline, the supplier is obliged to pay a contractual penalty equating to 1 percent of the value of goods for every week commenced of the deadline overrun; however, not more than 5 percent of the value of the goods.
- e. Insofar as no other agreement has been reached, the cost of delivery including packaging delivery and associated risk shall be borne by the supplier. We shall bear the costs for a transport insurance policy, only in the event of us having specifically requested such insurance.

- f. ELEKTRA shall only accept the ordered amounts or quantities. Over- or short delivery of 10 percent is accepted for Elektra custom parts. Other over- or short deliveries shall be discussed beforehand with ELEKTRA along with unsolicited partial deliveries.
- g. The return of goods subject of complaint shall occur at the expense and risk of the recipient. Replacements shall be made with carriage paid.

## **5. Claims for Defects**

- a. ELEKTRA shall inspect delivered goods upon receipt exclusively for identity, completeness and transport damage, insofar as this is customary during the course of business. Typically, ELEKTRA limits this to a sample test.
- b. ELEKTRA shall undertake to report defects within 10 day to the corresponding supplier pursuant to Section 377, HGB (German Commercial Code).
- c. If the delivery is defective, ELEKTRA shall be entitled to choose to have the goods repaired or redelivered from the supplier. In the event of the repair or redelivery failing, ELEKTRA shall be entitled to make an appropriate price reduction or withdraw from the contract.
- d. Any claims made by ELEKTRA as a result of defects shall lapse after 24 months, insofar as there is not a longer statutory period of limitation. The period of limitation is suspended by a written notice of defects from ELEKTRA.
- e. If the supplier repairs unsatisfactorily delivered parts within the limitation period, the limitation period shall restart from new after removal of the defect.

## **6. Product Liability**

- a. If the supplier has caused a product defect and/or is responsible for said defect, he is obliged to pay compensation or indemnify ELEKTRA against any third-party claims, if and insofar as the damage has been caused by a defect in the contractual object delivered by the supplier.
- b. In this case, the supplier shall be obliged to reimburse expenses pursuant to Sections 683 and 670 BGB (German Civil Code) incurred from any recall action conducted by ELEKTRA and the statutory costs of legal action.
- c. The supplier undertakes to carry sufficient product liability insurance.
- d. ELEKTRA shall be indemnified against any liability towards the supplier, unless it is caused by ELEKTRA through intent or negligence, or there is a case of mandatory liability, particularly an injury to life, limb or health, or breach of contract. In case of a breach of essential contractual obligations, the buyer's liability is limited to damages that could be reasonably foreseen.

## **7. Conformity and conflict minerals**

- a. The supplier shall comply with the provisions concerning "conflict minerals" as defined in Section 1502 of the "Wall Street Reform and Consumer Protection Act" ("Dodd-Frank Act"). Should conflict minerals be necessary for the production or functioning of the products delivered by the supplier, their origin shall be disclosed. In accordance with the provisions of the Dodd-Frank Act, the supplier shall, upon request, provide any documentation required regarding the use and origin of conflict minerals used by ELEKTRA Tailfingen Schaltgeräte GmbH & Co. KG in full and without delay.
- b. Furthermore, the supplier shall ensure that the contractual objects (including packaging) comply with the RoHS Directive (Directive 2002/95/EC of the European Parliament and of the Council of 27 January 2003) and the "REACH Regulation" (Regulation [EC] No. 1907/2006 of the European Parliament and of the Council of 18 December 2006).
- c. Where claims are asserted against us by customers, competitors or authorities due to our use of non-conflict-free materials within the meaning of the Dodd-Frank Act, or violation of the REACH regulations, we shall be entitled to demand either that the supplier exempt us from these claims or compensation for the respective damages insofar as said use is due to a product from the supplier.

## **8. Industrial Property Rights**

- a. The supplier shall warrant that the supplied goods are free of intellectual property rights, utility patents, patents and third-party licences.

- b. The supplier shall exempt ELEKTRA and its customers from any third-party claims arising from any infringement of property rights, and shall bear all costs and expenses accrued by ELEKTRA in this context.
- c. The supplier shall indemnify ELEKTRA from all third-party claims arising from the violation of patent rights and bear all costs related to such claims.
- d. The right of ELEKTRA for cancellation of the contract remains untouched.

#### **9. Confidentiality**

- a. All production planning means such as drawing, models, tools etc. provided by us to the supplier for executing orders remain our unrestricted property and shall not be disclosed to third parties.
- b. Goods and products manufactured pursuant to these means may only be supplied to third parties with our consent. In the event of violation, the supplier shall be liable for any damages incurred.
- c. Scales, drawing, tools etc. that can no longer be returned for any reason for which the supplier is responsible shall be replaced at the cost of replacement.

#### **10. Tools and Equipment**

- a. If costs are assumed for tools or equipment to manufacture the goods ordered by us or for the execution of services, it shall be deemed to be agreed that these become our sole property, irrespective of the fact whether the costs have been specifically mentioned or included in the purchase prices of the goods
- b. The vendor shall be obliged to keep these tools and equipment properly, obtain insurance against loss, and surrender these at our request. Deliveries to third parties using these tools and equipment are only permitted with our express written consent.
- c. The assumption of costs for such tools and equipment by us shall only occur with our express written agreement.
- d. Costs incurred for sampling a tool or equipment until our written approval shall be borne by the respective supplier or tool manufacturer.

#### **11. Assignment of Receivables and Reservation of Title**

- a. The assignment of a receivable shall require the written consent of ELEKTRA.
- b. No reservation of title by the supplier extending beyond the basic reservation shall be accepted.

#### **12. Place of Performance and Court of Jurisdiction**

- a. Place of performance for service and delivery obligations for the supplier including any ancillary obligations shall be the destination of delivery specified us or the place where services shall be rendered.
- b. Court of jurisdiction is the registered office of ELEKTRA. ELEKTRA reserves the right to file claims at any other permissible place of jurisdiction.

#### **13. Final Provisions**

- a. If nothing to the contrary has been agreed, the laws of the Federal Republic of Germany shall apply with the exception of the UN Law on International Sales in addition to the legal requirements.
- b. If individual parts of these procurement provisions are invalid, the application of the remaining provision shall remain unaffected.
- c. In the event of the supplier suspending payments, insolvency proceedings against its assets are initiated, a temporary insolvency administrator appointed or if bills of exchange or cheques issued by the supplier are contested, ELEKTRA shall be entitled to withdraw from the contract or parts thereof without thereby creating cause for any claims against us.