



General Terms of Business

(As of 06/2016)

I. General Provisions

1. Mutual written declarations shall be applicable for the scope of supplies or services (hereinafter: Supplies). EL-CELL GmbH (hereinafter: EL-Cell) exclusively performs supplies or services based on the present General Terms of Business. Customer's deviating, conflicting or supplementary general terms of business shall not apply even in case of notification by EL-Cell unless expressly agreed in writing. The present General Terms of Business apply for corporate clients (§14 BGB – German Civil Code).
2. Upon conclusion of the purchase contract, Customer also agrees to receive electronic messages from EL-Cell, such as e-mails for invitations to trade fairs, for product presentations, etc. Customer shall be entitled at any time to revoke this service with EL-Cell without notification of reasons and without keeping a term.

II. Quotations/Supplies

1. Quotations and cost estimates of EL-Cell are subject to change. Orders shall only be deemed to be accepted by EL-Cell if they have been executed or are confirmed in writing.
2. Tolerances of dimension, weight or performance, technical or design changes as well as deviations of brochures and other documents in the course of technical progress shall be reserved. They shall be accepted by the Customer unless they are fundamental and if they are reasonable for the Customer.
3. Partial supplies shall be allowed as far as they are acceptable for the Customer. If a partial delivery extends to more than two weeks, EL-Cell shall further have the right to invoice the delivered products.

III. Prices and Terms of Payment

1. Prices shall be ex works (EXW, according to Incoterms), exclusive packaging, red inspection and maintenance work) plus the respectively applicable statutory value added tax (VAT).
2. If EL-Cell has taken over the installation or mounting and unless otherwise agreed upon, Customer shall bear – aside from the stipulated compensation – all required additional expenses, (e.g. travel costs, costs for transporting the tools).
3. Payments shall be made free EL-Cell-EL-Cell's point of payment. Date of required payment: net, 30 days after date of invoice, or according to agreement.
4. Customer may only set off with receivables which are uncontested or legally binding. Customer shall be entitled to exercise a right of retention insofar as his counterclaim relies on the same contractual relationship.
5. In case the Customer does not meet its obligation to pay or circumstances arise which cause major doubts in the Customer's liquidity or creditworthiness, EL-Cell is entitled to call due the remainder of the debt or demand a reasonable security deposit.

IV. Retention of title

1. EL-Cell shall reserve the ownership and title in all delivered goods until the Customer has paid all current and future incurred claims from the business connection.
The retention of title shall also include spare or replacement parts such as motors, control devices etc., even if they are installed and if they become essential component parts thereby as defined by § 93 BGB (German Civil Code).
In performing the check/bill of exchange procedure, retention of title shall continue to exist even after check payment until release from the liability under bills of exchange.
In case of a current account relationship (business connection), EL-Cell shall reserve ownership until the receipt of all payments under the existing current account relationship; this reservation shall relate to the acknowledged balance; in these cases, the provisions of this Article shall apply analogously.
2. In case of Customer's conduct in violation of the contract, especially in case of default of payment, EL-Cell shall be entitled to take back the goods after an unsuccessfully expired, reasonable period of time. The mere retraction shall be considered a rescission from the contract only if a reasonable due date for performance which EL-Cell had set passed unsuccessful and if the rescission has been explicitly declared.

Customer shall bear the costs (especially transport costs) incurred by EL-Cell due to such retraction.

EL-Cell shall furthermore be entitled to prohibit Customer from any further sale or processing of the goods delivered under retention of title and to revoke the right of direct debiting service (Number 5).

Only after complete payment of the purchase price and all costs, Customer may demand delivery of the goods which have been taken back without explicit declaration of rescission.

3. Customer shall be obligated to treat the goods with care (including any required inspection and maintenance work).
4. Customer may neither pledge, nor assign as security, nor transfer the delivery object and the debts claims applicable for it.

In case of distress or other interventions by third parties, the Customer shall immediately notify EL-Cell so that he can bring action according to § 771 ZPO (German Code of Civil Procedure).

Customer shall bear any costs of this action which remain despite EL-Cell winning the legal action according to § 771 ZPO.

5. In the proper course of business, the Customer shall be entitled to further sell, process or mix the purchased goods; however, Customer shall now already assign to EL-Cell all claims from further sale, processing, mixing or for other legal reasons (especially insurances or unlawful act) in the amount of the final amount of the stipulated invoice (including value-added tax). If the delivered goods are sold further together with other goods which do not belong to the Customer, the Customer shall assign to EL-Cell the resulting receivables in the amount of the stipulated gross price.

Even after the assignment, Customer shall remain entitled to collect these receivables, without affecting EL-Cell-EL-Cell's right to collect the receivables himself.

EL-Cell shall agree, however, not to collect the receivables as long as the Customer meets the payment obligations from the proceeds collected, as long as Customer is not in default of payment, and as long as there is no application for the institution of bankruptcy proceedings or any stoppage of payment.

If this is the case, however, Customer shall advise upon request about the receivables assigned and the debtors; Customer shall provide all information required for collection, hand over the pertinent Documents and inform the debtor (third party) of the assignment.

6. Retention of title shall also extend to the full value of those products which are created by processing or modification of the delivered goods. If the ownership rights of third parties remain in existence during the processing or conversion with their goods, Customer shall grant EL-Cell co-ownership in relation to the objective value of these goods; it shall be agreed now already that Customer will carefully safeguard the goods for EL-Cell in this case.

If the conditional goods are combined with other movable goods to homogeneous goods or inseparably mixed and if the other goods are to be considered as the principal thing, Customer shall grant EL-Cell proportionate co ownership as far as the principal thing is his; Customer shall safeguard the resulting (co-)ownership for EL-Cell.

The same shall otherwise apply for goods resulting in this manner as for those delivered under retention of title.

7. Customer shall also assign to EL-Cell the claims for safeguarding EL-Cell's claims which arise against a third party due to the connection of the delivery objects with a piece of real estate.
8. The securities to which EL-Cell is entitled shall not be taken into account as far as the estimated value of the securities exceed by 50% the nominal value of the receivables to be secured; it shall be EL-Cell's decision which securities are released in this respect.
9. As far as the validity of the retention of title in the destination country is tied to special prerequisites or special requirements of form, Customer shall take care that they will be complied with.

V. Delivery Periode, Default

1. Compliance with the delivery periods shall require the on-time receipt of all Documents to be supplied by the Customer, the required permits and releases, especially of plans, as well as compliance with the stipulated payment terms and other obligations by the Customer. If these prerequisites are not complied within due time, the periods shall be reasonably extended; this shall not apply if EL-Cell is responsible for the delay. For the rest said delivery periods shall be binding only if they are expressly confirmed by EL-Cell in writing.
2. Upon occurrence of unforeseeable obstacles which are outside of EL-Cell's sphere of influence and which EL-Cell had been unable to avert – despite the diligence reasonably to be expected according to the circumstances of the case – regardless of whether they occur with EL-Cell or his subcontractor – such as force majeure (e.g. war, mobilization, riots, fire and natural disasters), delays in the delivery of essential preliminary products and raw materials, etc. – EL-Cell shall be entitled to rescind the delivery contract entirely or in parts or extend the delivery period by the duration of the obstacle. EL-Cell shall have the same rights in case of strike or lock-outs at his facilities or his subcontractors. EL-Cell shall notify the Customer immediately of such circumstances. Under these circumstances contractual penalties shall not be forfeited. In case of rescission EL-Cell shall reimburse said provided consideration without delay.
3. Proper and on-time self-delivery shall be reserved. Customer shall be notified of any delays promptly. As far as EL-Cell is not supplied correctly or on-time by his suppliers and if EL-Cell is not responsible for it, the time of performance shall be shifted by a corresponding period of time. In this case, EL-Cell can also optionally declare rescission from the contract with regard to the items not delivered. As far as allowed under competitive law, EL-Cell shall assign to the Customer his claims against the subcontractor for the non-contractual supply. Under these circumstances contractual penalties shall not be forfeited. In case of rescission EL-Cell shall reimburse said provided consideration without delay.

4. In case of default of delivery, Customer can rescind the contract after an unsuccessfully expired, reasonable period; in the event that performance is impossible, Customer shall have this right even without setting a period of time.
5. Upon EL-Cell's request, Customer shall be obligated to declare within a reasonable period of time whether he rescinds the contract due to the delay in delivery or insists on the supply.
6. If shipment or delivery is delayed upon the Customer's request by more than one month after notification of the readiness for shipment, Customer can be charged – for every month started – for storage in the amount of 0.5 % of the price of the objects of the deliveries; however, a total of 5% at maximum. EL-Cell shall be free to prove higher damage or expenditures; Customer shall be free to prove that no damage or expenditures were incurred or only considerably lower damage or expenditures.

VI. Passing of Risk

1. Even with freight-free delivery, the risk shall pass to the Customer as follows:
 - a) For supplies without installation or mounting when they were brought to shipment or have been picked up. At the Customer's request and costs, supplies shall be insured by EL-Cell against the usual transport risks;
 - b) For supplies with installation or mounting on the day of acceptance in own facility or, as far as stipulated, following proper trial operation.
2. If the shipment is delayed or precluded without EL-Cell's fault, the risk shall pass to the Customer as of notification of readiness for shipment.
3. If the Customer is in default of acceptance, the risk shall pass to the Customer.

VII. Installation and Mounting

Unless otherwise agreed upon in writing or unless special mounting conditions are included, the following provisions shall apply for installation and mounting:

1. Customer shall accept at his own expense and provide on time:
 - a) All earthworks, construction work and other side work from outside the industry, including the correspondingly required skilled workers and unskilled workers, construction materials and tools;
 - b) the necessary items and materials required for mounting and commissioning, such as scaffolding, hoisting equipment and other devices, fuels and lubricants;
 - c) energy and water at the application site, including the connections, heating and lighting;
 - d) at the place of mounting, sufficiently large, suitable, dry and lockable rooms for storing machine parts, apparatuses, materials, tools, etc.; and for the mounting personnel suitable workrooms and common rooms, including sanitary installations which are reasonable for the circumstances; Customer shall otherwise take measures for the protection of the property of EL-Cell and the mounting personnel at the construction site which Customer would take to protect his own property;
 - e) Protective clothing and protective devices which are required due to special circumstances at the place of mounting.
2. Prior to the beginning of the mounting work, Customer shall provide – without being requested to do so – the necessary information about the location of concealed power, gas, water lines or similar installations as well as the required information on statics.
3. Prior to the beginning of the installation or mounting, the provisions and items required for commencing the work shall be at the place of installation or mounting, and all preliminary work must have progressed so far, prior to the beginning of the setup, that the installation or mounting can be started according to agreement and be performed without interruption. Approach roads and the place of installation or mounting must be levelled and cleared.
4. If installation, mounting or commissioning is delayed due to circumstances which EL-Cell is not responsible for, Customer shall bear to a reasonable extent the costs for the waiting period and additionally required traveling by the mounting personnel.
5. Customer shall weekly and immediately certify the duration of work by the mounting personnel as well as the termination of the installation, mounting or commissioning.
6. If EL-Cell demands acceptance of the delivery after completion, Customer shall provide same within two weeks. If this is not done, the acceptance is deemed to have been effected. With request of acceptance EL-Cell will indicate the Customer the consequences of his silence. Acceptance shall also be deemed to have been effected if the supply has been taken into use – possibly after conclusion of a stipulated test phase – by Customer. EL-Cell will indicate the Customer the consequences of his silence.

VIII. Test Run/Test Version

1. A test run can be agreed upon with EL-Cell. For this purpose EL-Cell supplies test equipment to the Customer. EL-Cell

explicitly points out that test equipment is provided exclusively to that purpose that enables the Customer to evaluate his desired application. EL-Cell only warrants the technical data which are specified in the product documentation (e.g. data sheet, quotation, manual) provided that the basic conditions described therein are observed. EL-Cell grants no warranty that the test equipment is qualified for the desired purpose and/or a special application by the Customer unless it is confirmed by EL-Cell in writing.

2. It is the Customer's duty to perform the test run observing ordinary care and under the conditions of the real application. The Customer is obliged to verify whether the test equipment is suitable for his application and the desired purpose.
3. If the Customer decides to purchase a product from EL-Cell, EL-Cell is not liable that the purpose/result (e.g. savings) occurs which is desired by the Customer unless EL-Cell has confirmed this in writing and/or EL-Cell is liable for Customer's damage.

IX. Warranty

EL-Cell shall be liable as follows for defects in delivery as far as Customer is a merchant, but only in case of proper compliance with the obligations of examination and objections under § 377 HGB (German Commercial Code) (the complaint shall be made in writing):

1. Customer may not reject receipt of supplies because of petite defects.
2. As far as a defect of the purchased goods is concerned, EL-Cell shall be entitled, at his option, to either remedy the defect or to deliver non-defective goods (subsequent performance).

Prerequisite shall be that a not insignificant defect is concerned.

Should one of the two or both types of this subsequent performance be impossible or unreasonable, EL-Cell shall be entitled to refuse it.

3. Should the subsequent performance indicated in paragraph 2 be impossible or should it fail, the Customer shall have the optional right to either reduce the purchase price accordingly or to rescind the contract according to the statutory provisions; this shall apply especially in case of culpable delay or refusal of subsequent performance, also if it is unsuccessful for a second time.
4. No warranty shall be accepted for damages due to the following reasons: Unsuitable or improper use; faulty mounting by the Customer and/or third parties; natural wear; faulty or negligent handling by the Customer and/or third parties; unsuitable operating materials; deficient construction work; unsuitable subsoil; substitute materials; chemical, electrochemical or electrical influences (as far as EL-Cell is not responsible for them); any modifications or repair work on the part of Customer or third parties which are improper and have been carried out without prior approval by EL-Cell.
5. Any claims for defects shall be statute-barred in one year after delivery of the purchased goods.

The statutory limitation shall be 5 years for a product which has been used according to its usual application for a building and has caused its defectiveness.

6. Warranties and guarantees shall only be given effectively if EL-Cell grants them explicitly and in writing. In particular, EL-Cell is not liable that the purpose/result (e.g. savings) occurs which is desired by the Customer unless EL-Cell has confirmed this in writing

X. Industrial Property Rights and Copyrights; Rights of Use

1. EL-Cell shall reserve the unlimited exploitation rights, ownership rights and copyrights in cost estimates, drawings and other documents (hereinafter: Documents). The Documents may only be made accessible to third parties after prior consent by EL-Cell and if EL-Cell is not awarded the contract they shall be returned to EL-Cell immediately upon request. This shall apply analogously for Documents of the Customer; however, they may be made accessible to those third parties to which EL-Cell admissibly transferred Supplies.
2. EL-Cell is owner or authorized by the owner of all rights of the software/programs covered by this contract. The Customer has the non-exclusive right to use the software/program with the agreed performance in unaltered form using the agreed devices (license). The Customer is entitled to carry out data backup and to make the required backup-copies according to the acknowledged state-of-the-art. The Customer is not entitled to modify or remove existing copyright notes. The license does not include any right for the Customer to edit or modify the software/program.
3. Unless otherwise agreed upon, EL-Cell shall be obligated to render delivery free from industrial property rights and copyrights of third parties (hereinafter: industrial property rights) only in the country of the place of delivery. In case a third party raises justified claims versus the Customer due to the infringement of industrial property rights due to contractually used Supplies rendered by EL-Cell, EL-Cell shall be liable to the Customer within the period determined in Article IX No. 5, as follows:
 - a) At his option and at his costs, EL-Cell shall obtain either a use right for the Supplies concerned, or change them so that the industrial property right will not be infringed, or replace them. If he is unable to do so at reasonable conditions,

Customer shall be entitled to the statutory right of rescission or reduction.

- b) The above-mentioned obligations shall only exist as far as Customer immediately notifies EL-Cell in writing about the claims lodged by the third party, does not admit an infringement, and if all defense measures and settlement negotiations shall be reserved for EL-Cell. If the Customer stops using the Supply for reasons of mitigation of damage or other important reasons, he shall be obligated to indicate to the third party that stopping the use is not connected with an admission of an infringement of an industrial property right.
4. Claims by the Customer shall be excluded as far as he alone is responsible for the infringement of the industrial property right.
5. Claims by the Customer shall be further excluded as far as the infringement of the industrial property right is caused by specific requirements of the Customer, by an application not foreseeable by EL-Cell, or due to the fact that the supply was changed by the Customer or used together with products not supplied by EL-Cell.

XI. Liability

1. EL-Cell shall be liable for deliberate and grossly negligent violation of obligations as well as for violation of substantial contractual obligations (cardinal obligations) in case of slight negligence. In the latter case EL-Cell's liability shall be limited to the damage typically foreseeable at the conclusion of the contract.
2. EL-Cell is not liable in case of slightly negligent violations of minor contractual obligations.
3. There shall be no restriction with regard to legal liability in case of injury of life or according to the Produkthaftungsgesetz (Product Liability Law). The exclusion and limitation of EL-Cell's liability shall also apply for EL-Cell's legal representatives and vicarious agents.
4. EL-Cell is liable for the loss of data only, even if it had not been avoidable by reasonable measures of data backup and it is not caused by disturbances and influences of third parties.

XII. Place of Performance, Place of Jurisdiction, Applicable Law and Distribution of the Burden of Proof, Privacy of Data and AGG

1. Place of performance shall be the place of shipment (place of works or storage).
2. For any disputes resulting directly or indirectly from the contractual relationship, the place of jurisdiction shall be EL-Cell's place of business as far as the Customer is also a business person, a legal entity under public law or special assets under public law. However, EL-Cell shall also be entitled to bring action at other allowed places of jurisdiction as well.
3. For the legal relationships in connection with this contract, German law shall apply with the exclusion of the United Nations Convention on Contracts for the International Sale of Goods (CISG) as well as the conflict of laws of the EGBGB (Introductory Law to the German Civil Code).
4. EL-Cell shall handle all of the Customer's data exclusively for the purposes of business transactions and according to the requirements of the respectively valid provisions on the privacy of data. All terms and definitions shall be neutral in gender.

XIII. Severability Clause

Should individual provisions of these conditions be or become entirely or partly invalid or void, the effectiveness of the remaining provisions shall remain unaffected thereby.

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