

GENERAL TERMS AND CONDITIONS FOR PURCHASING 2022

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1. DEFINITIONS

In these Conditions the following words shall have the following meanings:

"**Buyer**": Elmeg S.r.l./Iberica/Serbia as stated on the relevant Order.

"**Seller**": the company with whom the Buyer places an Order for the purchase of Products and which expression shall include (jointly and severally) any principal on whose behalf the Seller accepts an Order.

"**Contract**": any Order sent by the Buyer and accepted in writing by the Seller.

"**Products**": the products designated or referred to in the Order.

"**Delivery**": the delivery of the Products by the Seller in accordance with the terms agreed in each Order.

"**Order**": the written purchase order placed with the Seller by the Buyer.

"**Specifications**": the technical or other description (whether as to quantity, quality, price, weight or otherwise) of the Products shown or referred to in the Order and any performance schedules and/or other characteristics and details contained, mentioned or referred to therein or prepared in accordance therewith.

2. BASIS OF PURCHASE

2.1 All contracts shall be executed upon the basis of these General Terms and Conditions for Purchasing together with any special conditions agreed upon between the Buyer and the Seller at any time prior to or with the Order and Order confirmation.

0.1 No terms or conditions submitted by the Seller to the Buyer, irrespective of their date shall prevail over these Conditions.

0.2 All Orders shall be deemed to be an offer by the Buyer to purchase Goods pursuant to these Conditions and despatch or Delivery of the Goods by the Seller to the Buyer shall be deemed conclusive evidence of the Seller's acceptance of these Conditions.

3. ORDERS

3.1 The Buyer shall be bound by an Order only if it is placed on its Order form (Annex A to the present Contract, integral part of it) or in its Open Orders form (Annex B to the present Contract, integral part of it) and shall have no liability whatsoever in respect of any Products supplied otherwise than in response to such Order form.

0.2 The Buyer shall be entitled to cancel any Order and so terminate the Contract to which it relates which is not unconditionally accepted by the Seller in writing within 3 (three) days of its date, giving evidence of it.

- 3.3 The open orders are binding for both parties. The firm period of the open orders is one month delivery, this firm period is binding for both parties. The forecast period is the timing over the first month and can be modified according to the Buyer's need.
- 3.4 The Buyer may ask for modifications of the design and construction of the Products within a reasonable time from the date of the Order. In case of substantial increased cost and time for the Seller, Seller shall proportionally revise its quote to Buyer reflecting such increased costs/time giving evidence of it.

4. WARRANTY, QUALITY, DESCRIPTION

- 0.1 In addition, and without prejudice to all other conditions or warranties, express or implied, the Seller hereby expressly warrants as follows:
- (a) upon Delivery of the Products and for the period of time indicated in the Order thereafter or the expiry date stated by the Seller (taking into account the type of Products concerned and the warranty required by the final customer of the Buyer) the Products shall be free from defects, and/or damage caused by improper storage or otherwise of the nature, substance and quality described in the Order and Order confirmation and shall correspond with any Specification, design, drawing or sample which have been given to the Seller and to which the Order shall made reference; and
 - (b) the Seller and/or the Products (as appropriate) shall comply with the requirements of all European Union Laws, Rules and Regulations as well as all acts of the National Parliament of the Buyer and/or Government and all other requirements (whether regional, national or international) which apply to the manufacture, storage and Delivery of the Products;
 - (c) the Seller shall be liable for and shall indemnify the Buyer from and against all liabilities, losses, costs, damages, claims and expenses (including legal expenses and any and all consequential loss or damage) which would not have been caused or made had the Seller fulfilled its express or implied obligations under the Contract.
- 0.2 If the Products and/or their supply and/or use are the subject of statutory or other safety regulations the Seller shall provide to the Buyer all qualification, homologation and/or certification or other information required by the Buyer according to the said regulations or deemed necessary and required by the Buyer to verify compliance with the same.
- 0.3 The Seller, upon a 5 (five) days written notice, shall permit access to the facilities for authorized representatives of the Buyer for a reasonable time to inspect any premises where Products to be purchased by the Buyer are manufactured, produced or stored and to reasonably examine materials to be used in such manufacture and/or production. Seller's business operations shall not be unreasonably disturbed during such visits. Following such inspection and examination the Buyer shall be entitled to make written recommendations to the Seller in respect of the

manufacture, production or storage of the Products which the Seller shall put in force forthwith upon its receipt of such notification, in case of non compliance after the agreed reasonable timeframe given for the solution implementation, the Buyer shall only be entitled not to place any further Order with the Seller. For the avoidance of doubt, any such compliance, assistance, inspection or examination shall not derogate from the Seller's other obligations under these conditions.

0.4 Without prejudice to any other remedy the Buyer shall be entitled to reject or refuse to accept any Products which fail to comply with the provisions of the Order, upon notice of the non-compliance of the Products, given in writing to Seller within 15 (fifteen) days from the discovery thereof.

0.5 Where the Buyer is entitled to reject or refuse to accept any Products by giving technical reasons in writing:

(a) the Buyer shall not be obliged to return the Products to the Seller but, if the Buyer elects to do so, they shall be so returned at the expense and risk of the Seller;

(b) at the option of the Buyer:

(i) the Seller shall replace the Products; or repair it by sending, at its own costs, technical personnel at the Buyer's premises within an agreed reasonable timeframe starting from the Buyer's written request;

(ii) in case the Seller do not comply with the obligation indicated in the paragraph here above, the Buyer shall be entitled to terminate the Contract as discharged by the Seller's breach and request immediate repayment of any part of the price of the defective Products which has been paid by the Buyer; and

(c) in case of the price of the defective Products shall be higher than 10.000 Euros the Buyer shall be entitled to terminate the Contract, without prejudice to any other remedy, whereupon property and risk in any Products already delivered and affected by such written determination shall revert to the Seller and the Seller shall be liable to repay any amount already paid by the Buyer in respect of the Contract.

(d) if requested by the Buyer, the Seller shall destroy any such Products bearing the Buyer's name, trademarks or those of any customer of the Buyer.

5. INDEMNITY

0.1 The Seller shall be liable for and shall indemnify the Buyer from and against all liabilities, losses, costs, damages, claims and expenses (including legal expenses and any and all consequential loss or damage) incurred by or made against the Buyer by any third party which would not have been caused or made if had the Seller fulfilled its express or implied obligations under the Contract including, but not exclusively:

(a) in respect of any breach of warranty given by the Seller in relation to the Products;

- (b) in respect of death or personal injury, loss of or damage to property and all sums expended by the Buyer in securing alternative supplies of all or any of the Products (including any sum expended by reason of any increase in costs thereof and compensation for any loss to the Buyer caused by any consequent delay);
- (c) arising out of the acts and omissions of the Seller, its sub-contractors or their respective employees or agents; and
- (d) the Seller shall effect and maintain a policy or policies of insurance to cover such of the aforementioned liabilities as are relevant to the Contract in such sums as may be required by the Buyer and shall produce such policy or policies and evidence of payment of the premiums therefore if so requested by the Buyer. In the event that the Seller shall fail to maintain such insurance policy(ies) the Buyer shall be entitled to effect the same on behalf of and at the expense of the Seller.

0.2 The Seller shall further be liable for and shall indemnify the Buyer from and against any claims for infringement of any letters patent, copyright, registered design or trade mark or other intellectual property rights by reason of the use or sale of the Products supplied, (save and to the extent that the same shall have been manufactured or produced in accordance with any Specification or design supplied by the Buyer), and against all losses, costs, damages, expenses and/or claims for which the Buyer may become liable as a result of such claims for infringement.

6. TIME

- 0.1 Time shall be of the essence of the Contract where a Delivery date is specified in the Order, except in the case where such date is stated as approximate or is not specified or where the parties have agreed on a delivery date.
- 0.2 If the Seller is, or is likely to be, unable to effect Delivery on or by the date so specified in the Order, the Seller shall promptly give the Buyer written notice of the relevant circumstances together with a date upon which the Seller reasonably expects to be able to fulfil the Order.
- 0.3 Notwithstanding the service of any such notice as aforesaid, (save where the Buyer has given to the Seller a written extension of time and the period thereof has not expired and save any force majeure), failure by the Seller to adhere to any provision as to time contained, mentioned or referred to in the Order shall entitle the Buyer to terminate the Contract, without prejudice to any other remedy, whereupon property and risk in any Products already delivered and affected by such written determination shall revert to the Seller; Buyer shall remit payment on Orders already fulfilled by Seller.

7. DELIVERY

- 0.1 The Products, properly packed and secured in such a manner intended as to reach their destination in good condition, shall be delivered DAP Incoterms ICC 2020 to the

Buyer's premises, except if different delivery manners are agreed in the Order and in the Order confirmation. Each container and/or package of Products must be marked to show Order number, contents, quantity, batch code, date of manufacture of production.

- 0.2 Delivery shall be effected upon the signature of the carrier's consignment note for the Products by an employee or representative of the Buyer.
- 0.3 In the event that Products are delivered before the Delivery date specified in the Order or in the Order Confirmation without the express written consent of the Buyer, the Buyer shall be entitled to refuse to take Delivery and/or to charge for reasonable insurance and storage thereof until the contractual date for Delivery.
- 0.4 If for any reason the Buyer is unable to accept Delivery of the Products at the time when the Products are due and ready for Delivery and notifies the Seller accordingly, the Seller shall store the Products for a reasonable time and at reasonable storage rates having regard to the circumstances and shall safeguard them and take all reasonable steps to prevent their deterioration until their actual Delivery, which shall take place upon the Buyer's written request and within the shortest possible time. In the case of goods with an expiry date that could be exceeded during the storage time, the Seller should deliver new products when asked for.

8. PACKAGING

- 0.1 The Buyer shall not be liable to pay for any returnable containers unless expressly agreed in writing.
- 0.2 The packaging must be made following the Buyer's guidelines. Any other items different from the agreed containers are to be supplied by the Seller free of charge and agreed with the Buyer.

9. PRICE AND PAYMENT

- 0.1 The price of the Products shall be as specified in the Order and, unless otherwise stated, shall be deemed without VAT and with packaging, carriage and insurance of the Products until Delivery thereof is made.
- 0.2 The settlement of invoices shall be subject to all details on the Seller's invoice being consistent with those shown on the Order or in the Order confirmation. In particular, in order for invoices to be settled by the Buyer, the Seller must state the Buyer's Order number on each invoice submitted.
- 0.3 No increase in the price specified in the Order may be made for any reason without the written consent of the Buyer or as provided herein.
- 0.4 No payment of or on account of the price shall constitute any admission by the Buyer as to proper performance by the Seller of its obligations under the Contract.

0.5 Unless otherwise provided by the Order, the price shall be payable by the Buyer to the Seller before the expiry of 60 days from the date of Delivery.

0.6 In case of defective and/or late Delivery, the Buyer is entitled to withhold payment of the price until proper performance is made.

10. RISK AND TITLE

0.1 Risk of damage to or loss of the Products shall pass to the Buyer upon Delivery following the Incoterms indicated in the paragraph 7.

0.2 Title to all Products supplied pursuant to the Contract shall pass to the Buyer on their Delivery following the Incoterms indicated in the paragraph 7.

11. SPECIFICATIONS AND DESIGNS

0.1 All Specifications, drawing, designs, prints, samples, plans, patterns, dies, moulds or tools, label, packaging or other materials supplied in writing or in kind by the issuing Party or made or obtained by the other Party at the written request and expense of the issuing Party and all intellectual property rights therein shall as between the parties shall remain the sole property of the issuing Party and shall not be disclosed to any third party or used for purposes other than of the performance of the obligations under the Contract.

0.2 Any price quoted in the Order shall be deemed to include the price of any such items which may be required for the performance of the Contract.

0.3 Where any such items are held by the Seller it shall keep such items in safe custody, reasonable wear and tear excepted.

12. PRODUCT RECALL AND CONSUMER COMPLAINTS

0.1 The Seller shall notify the Buyer immediately of any adverse results arising out of the manufacturing process of the Products or other quality or specification checks carried out in respect of the Products and discovered before or after their Delivery.

0.2 In the event that at the requirement, instruction, instigation, recommendation or suggestion of any governmental body (whether local or national or international) examination of any of the Products is required to be undertaken to investigate the safeness for the purpose of such Products, the Products should be withdrawn from sale and/or recalled after sale, and in the event Seller initiates such a recall program, the Seller shall be liable for and shall indemnify the Buyer from and against all damages, charges and expenses incurred by the Buyer arising out of such examination, withdrawal and/or recall.

0.3 The Buyer shall handle consumer complaints in the first instance but the Seller shall nevertheless maintain in force a crisis management procedure to provide to the

Buyer such assistance as the Buyer may request in order to deal with any such complaints. The parties shall agree on an appropriate customer communication.

12.4 The Seller shall be liable for and shall indemnify the Buyer from and against all costs, charges and expenses incurred by the Buyer arising out of any such complaints including, but not exclusively, a reasonable administration charge per complaint, the cost of reimbursement and/or compensation paid and settlement of all such payments due to the Buyer. Should the Buyer give evidences that the Products are defective or anyhow not in compliance with the contractual conditions agreed between the Seller and the Buyer.

0.5 The Buyer must maintain in force a product recall liability insurance and provide evidence of it.

13. CANCELLATION AND TERMINATION

0.1 In addition to the right of termination set out in clause 3.2 the Buyer shall be entitled to cancel the Order in respect of all or any part of the Products by giving notice to the Seller at least 20 (twenty) days prior to the Seller's Order agreed delivery date. In such a case the Buyer shall not be liable for any loss or damage whatever arising from such cancellation.

0.2 Without prejudice to any other rights or remedies to which it may be entitled, each party may terminate the Contract forthwith without liability in the event that:

(a) the other party shall become bankrupt or unable to pay its debts as they fall due or compound with its creditors or in the event of a resolution being passed or proceedings commenced for the administration or liquidation of the other party (other than for a voluntary winding up for the purpose of reconstruction or amalgamation) or if a Receiver or Manager is appointed of all or any part of its assets or undertaking;

(b) the other party commits any fundamental breach of its obligations. The parties agree that are considered fundamental breach of the Contract the non-fulfilment of the obligations indicated in the following articles here above: 4, 5, 6 and 7;

(c) the terminating party shall receive information which leads it reasonably to believe that the Seller will be unable to complete the Contract satisfactorily and on time;

In any such circumstances, each party shall be entitled to terminate the Contract in whole or in part by notice in writing. In such event, Buyer shall remit payment on Orders accepted and shipped prior to termination.

14. CHANGES

14.1 The Buyer may at any time by notice in writing propose changes in the method of shipment or packing, place of Delivery, general extent, scope or time scale of the

Contract and/or at any time by at least 7 days' notice in writing propose changes in the Specification.

14.2 Such Buyer's proposals shall be accepted by Seller to become binding: if any such change affects the time for or cost of Delivery a mutually agreed equitable adjustment shall be sought in the time fixed for Delivery and/or to the purchase price (as the case may be). The Seller shall not be entitled to delay in proceeding with the Contract as changed pending agreement as herein proposed nor to treat the Contract as repudiated and claim damages or any other relief from or against the Buyer by reason of any such request.

15. ASSIGNMENT AND SUB-CONTRACTING

0.1 The Seller shall not assign or sub-contract the Contract or any part thereof without the express written authority of the Buyer.

0.2 Any authority given by the Buyer for the Seller to sub-contract the Contract or any part thereof shall not relieve the Seller of any of its obligations thereunder nor impose any duty on the Buyer to enquire as to the competence of any authorized sub-contractor, but the Seller shall ensure that any authorized sub-contractor is competent and complies with the relevant provisions of the Contract.

0.3 Upon the Seller's written consent, the Buyer may assign the Contract which shall ensure to the benefit of its successors and assigns.

16. FORCE MAJEURE

16.1 Neither the Buyer nor the Seller shall be liable for any delay or failure to perform obligations hereunder where such delay or failure is due to Act of God, war, riot, civil commotion, global pandemic as declared by European Union or national public authorities of either party, or any governmental restriction, order or regulation or statutory prohibition. The party affected by any such event shall promptly notify the other of the event and performance of the Contract shall be suspended for the duration of the event of force majeure.

17. WAIVER

17.1 No failure of, or delay or forbearance by the Buyer (whether express or implied) in asserting or exercising any rights or remedies under the Contract shall affect its right to do so in the future.

18. SEVERANCE

18.1 If at any time any one or more of these Conditions (or any part or parts thereof) is held to be or becomes void or otherwise unenforceable for any reason under any applicable law, the same shall be deemed omitted herefrom and the validity and/or enforceability of the remaining provisions of these Conditions shall not in any way be affected or impaired thereby.

19. WHOLE AGREEMENT

19.1 Each party acknowledges that the Contract together with any variations and/or qualifications made pursuant to these Conditions contains the whole agreement between the parties and that it has not relied upon any oral or written representation made to it by the other or its employees or agents except for what agreed in writing between the Seller and the Buyer after the entry into force of the present conditions of purchase.

20. NOTICES

20.1 Any notices to be served hereunder shall be delivered by email or sent by registered mail with the correct answerback or facsimile to the relevant party at its last known address. Notice shall be deemed served on delivery if delivered by hand, on the day of receipt if posted by registered mail with return receipt or 24\hours after despatch.

21. LAW AND JURISDICTION

21.1 This Agreement shall be governed by the United Nations Convention for International Sale of Goods, Vienna 1980 and for what not contemplated in this Convention by the Italian laws.

21.2 Any dispute arising out of connected with the present Contract shall be decided following the Rules of Swiss Chambers' of Commerce Association for Arbitration and Mediation by one arbitrator appointed following said Rules. The place of arbitration shall be Geneva, Switzerland. The language of the arbitration shall be English;

Provided that the Buyer and the Seller may, refer any dispute to arbitration by a single arbitrator appointed by common consent.

ANNEX A Order

ANNEX B Open Order