

## GENERAL TERMS AND CONDITIONS

General terms and conditions of **Elfa Elementenfabriek B.V.**, having its registered seat at Amsterdam, the Netherlands and its office address at Madridstraat 5-7, 1175 RK Lijnden (Amsterdam), the Netherlands registered with the Chamber of Commerce for Amsterdam, the Netherlands, under number 33068133.

These general conditions are registered with Chamber of Commerce for Amsterdam, the Netherlands.

### Article 1: Definitions

In these terms and conditions, capitalized words shall have the meaning set out in this article 1, unless explicitly stated otherwise.

User: **Elfa Elementenfabriek B.V.** and all its affiliate and subsidiary companies;

Client: User's counterparty;

Parties: User and Client;

Agreement: the agreement between User and Client; *and*

Products: products as described in an Agreement, offer or tender, including but not limited to: the delivery of goods and the rendering of services and advice.

### Article 2: General

1. The stipulations of these terms and conditions apply to each and every offer of- and Agreement with User, and to all its Products, also if such Agreement is performed or such Products are delivered by any third parties.
2. The Agreement and these terms and conditions can only be diverged from by written agreement between the Parties.

3. The application of any terms and conditions employed by Client is hereby explicitly rejected.

4. If one or more paragraphs in these terms and conditions should be null and void or declared null and void or not binding, then the other paragraphs of these terms and conditions shall remain fully applicable and any such null and void paragraph shall automatically be replaced with such paragraph which matches the content of the original paragraph as much as possible without being null and void.

### Article 3: Offers and Tenders

1. The offers made by User shall be free of obligation and be based on the information provided by Client at the time of the requested offer. The offers shall be valid for a period of thirty (30) days, unless indicated otherwise or deviated from in writing. User shall only be bound by the offers if the acceptance thereof is confirmed in writing by Client within thirty (30) days.
2. The prices given in offers shall be exclusive of VAT, customs and excise duties, taxes, (disposal) fees and other government levies, as well as of shipment costs and possible packaging and administration costs, unless explicitly stated otherwise. If no VAT number of a foreign Client is provided, User shall include VAT in its invoice.
3. Offers or amounts based on third party offers (such as of raw materials, freight quotations, stowage charges, foreign currencies, fees, levies, duties, taxes, etc.) or that are subject to price fluctuations or (lead) surcharges shall always be without engagement, even when this does not explicitly appear from the offer.
4. Offers shall not apply automatically to repeat orders.
5. User is permitted to charge price increases if changes in costs have occurred between the moment the offer was made and the moment of execution of the Agreement with respect to (for example) raw materials, salaries and wages, freight

quotations, stowage charges, foreign currencies' exchange rates, fees, levies, duties, taxes, semi-finished products or packaging material.

6. If a sample or model was provided to Client, it is assumed that such was given by way of indication only, unless the Parties agree explicitly that the Product to be delivered shall correspond with it.

#### **Article 4: Execution of the Agreement**

1. User shall execute the Agreement to the best of its knowledge and ability.
2. User has the right to have the Products delivered by third parties.
3. Client shall ensure that User shall be provided in due time with all data which User requires or which Client must in all reasonableness understand to be required for the execution of the Agreement. If User was not provided the data required to execute the Agreement, User shall have the right to suspend the execution of the Agreement and/or to charge Client for the additional costs resulting from the delay. The term of delivery shall never commence before such data were made available to User.
4. If the Parties have agreed that the Agreement will be executed in stages, User may suspend the execution of any particular stage until Client has approved in writing the results of the stage prior to it.

#### **Article 5: Delivery and Transfer of Risks**

1. Delivery shall be made to the Client (Incoterms 2010: Ex Works - EXW), unless the Parties have agreed otherwise in writing.
2. If Client refuses to take delivery, or fails to provide the information or instructions required for the delivery, User shall be entitled to store the Products at Client's risk and expense.
3. If User has offered or accepted a term of delivery, it shall only be indicative. A given term of delivery shall therefore never constitute a term to be observed on penalty of forfeiture of rights, nor shall exceeding of the term

be considered a breach of the Agreement. If a term is exceeded, Client must give User notice of default in writing.

4. User shall be entitled to deliver the Products in parts, unless such is deviated from in writing in the Agreement or if the partial delivery does not represent an independent value. User shall be entitled to invoice the thus delivered Products separately.
5. Orders to be delivered in the Netherlands and with a net order value of more than EUR 300.00 (ex. VAT) will be delivered to the address of the Client within 48 hours at cost of the User, provided these orders are in stock. Delivery costs of EUR 25.00 (ex. VAT) will be charged to orders to be delivered in the Netherlands and with a net order value of EUR 300.00 (ex. VAT) or less. To dangerous Products an additional risk charge of EUR 25.00 (ex. VAT) will be levied. Orders that are collected at the site of the User should be reported to the User at least one day prior to collection and are increased with an additional charge of EUR 5.00 (ex. VAT). Handling- and/or research costs related to repair or guarantee are EUR 12.50 (ex. VAT) per Product.
6. Any estimated time of delivery is a mere indication. If the indicated time of delivery is exceeded, then the Client shall have the right to reasonably require the User to complete delivery. Such request shall be delivered by registered mail.
7. If there is any doubt with the User regarding the payment capacity of the Client, the User is entitled to postpone the delivery of the Products until the Client has provided a guarantee of payment. Therefore the Client is liable for the damages suffered by the User of the delayed delivery.

#### **Article 6: Changes to the Agreement**

1. If during the execution of the Agreement it becomes evident that the Products need to be changed and/or supplemented in order to ensure a proper execution of the Agreement, the Parties shall adapt the

Agreement accordingly in due time and in mutual consultations.

2. If the Parties agree that the Agreement needs to be changed and/or supplemented, this decision may influence the time of completion of the execution. User shall inform Client thereof as soon as possible.
3. Should the change and/or supplement to the Agreement have any financial and/or qualitative consequences, User shall inform Client thereof in advance.
4. If a fixed rate has been agreed upon then User shall indicate the degree to which the change or supplement to the Agreement will result in an increase of said fixed rate.

### **Article 7: Inspection, Complaints and RMA-procedure**

1. Client can only return a Product within the warranty period according to this RMA-procedure. The Client will inspect the Products upon receipt.
2. Before returning any Products to User, the Client shall first visit [www.elfa.nl/RMA](http://www.elfa.nl/RMA) to completely fill out the RMA-form set out thereon. This form shall then be sent to User via [RMA@elfa.nl](mailto:RMA@elfa.nl). If agreed, the User shall respond to the Client and confirm a unique RMA-number for that particular return.
3. After confirmation of the RMA-number, the Products will be transported to the User within fifteen (15) days and at the expense of the Client. Products that are returned to the User without an RMA number or a completely filled out RMA-form will not be accepted.
4. User will only accept returned Products if they are sent to the address specified by User:

Elfa Elementenfabriek B.V.  
Attn: Sales Department  
RMA #  
Madridstraat 5-7  
1175 RK Amsterdam (Lijnden)  
the Netherlands

5. User requires that Products are complete, in an unused condition and in the original and undamaged packaging. User reserves the right to

recover the costs associated with failure to comply with the above criteria on Client.

6. In the event that a Product is returned which does not comply with the order and/ or if it shown that the defective Product is not accepted for valid reasons such as dead on arrival (DOA), User will replace the item or reverse the payment. User reserves the right to choose for either replacement by a new Product or refund. If the Product proves defective more than fifteen (15) days after receipt, it cannot be exchanged or refunded.
7. In case of a refund to the Client, User shall pay within sixty (60) days after receipt of the payment of the returned Product.
8. Client will respect the reasonable time User will take for a RMA-procedure. User strives to handle an RMA-procedure within two months.
9. When the tracing of a defect in a Product or a part of a Product, which is excluded from the warranty, involves research and reparation costs, these costs are always borne by the Client. User strives to give prior notification. The absence of this notification does not relieve the Client from the obligation to pay these costs. If no warranty applies, the User will charge the applicable repair rate. User reserves the right to retain the Product until having been paid for the repair costs.

### **Article 8: Retention of Title (Eigendomsvoorbehoud)**

1. All Products delivered shall remain User's property until Client has fully settled the purchase price for all of these Products.
2. In respect of other claims against Client than set out under paragraph 1. above, Client shall, upon User's demand, instantly cooperate in the establishing of a non-possessory pledge (*bezitloos pandrecht*) on all Products delivered to Client.
3. Client shall not be authorized to pledge or encumber the Products in any way whilst these are still subject to the retention of title.

4. If third parties (i) seize Products that are still subjected to the retention of title or (ii) wish to establish or assert any right thereto, Client shall inform User thereof as soon as reasonably possible.
5. Client shall undertake to mark the Products delivered by User as retained and or pledged for the benefit of User.
6. Client shall undertake to properly insure the Products delivered subject to retention of title and non-possessory pledge.
7. After the final term for payment has passed without payment having been made in full, User shall (i) have the right to rescind the Agreement out of court and without further formalities and (ii) have the right to require the Client to return the Products to the User in their original state and condition within eight (8) days or have these Products collected at the site of the Client. The Client shall cooperate in full.

#### **Article 9: Payment**

1. Billing and payment of all costs under this Agreement will take place in Euros.
2. The purchase price applies to all Products and services ordered under the purchase agreement.
3. Unless otherwise expressly agreed in writing by User, payment must be made within thirty (30) days from the date of invoice, without any postponement, set-off or reduction. Contestation of the amount of the invoices shall not suspend the fulfillment of the payment obligation.
4. User is at all times authorized to require Client to pay an advance payment for the Products to be delivered. If such payment is refused, User has a right to suspend and rescind the Agreement, without Client acquiring any right to compensation.
5. If Client fails to fulfill its payment obligation within the term of thirty (30) days, then Client shall be in default by operation of law. In that event, Client shall owe an interest of one percent (1%) per month, unless the statutory interest rate of article 6:119a Dutch Civil Code is higher, in

which case the statutory interest rate of article 6:119a Dutch Civil Code shall apply. The interest on the amount due and payable shall be calculated as from the day Client is in default until the moment he has paid the amount in full.

6. In case of overdue payment, all Client's payment obligations shall fall immediately due and payable, irrespective of whether User has already invoiced in the matter.
7. User's claims against Client shall become due on demand in the event that Client is wound up, attached, declared bankrupt, or a request thereto was filed, or if a suspension of payment is requested.
8. If in the case of overdue payment judicial or other action is taken for collection, the amount of the debt shall be increased, regardless of the interests already due and to fait due, by fifteen percent (15%) of the principal amount with a minimum of EUR 350.00 to cover accounting costs as well as all judicial and extra-judicial costs (including the cost of legal assistance).

#### **Article 10: Guarantee**

1. Unless otherwise agreed to in writing, any guarantee on any Product shall never exceed the guarantee granted by the supplier of the Product to the User.
2. The guarantee set out under 1. above can only be invoked if the Client can prove that the defect was solely or primarily due to reasons that were not nor could not have become evident upon delivery.
3. Paragraphs 6 and 7 of article 7 shall apply. For repairs that do not fall under the protection of any guarantee, User shall be permitted to charge its hourly rate and disbursements.
4. The fulfillment of the obligations set out above is the only recourse available to the Client on the User.
5. All guarantees shall lapse immediately in case the Products were altered, repaired, wrongfully maintained or used, without the prior written approval of User.

6. The guarantee mentioned in paragraph 1. shall in any event not apply if:
  - a. Client has not timely provided User with all information required by User and requested by User in order to deliver or replace the Products;
  - b. any defect originated as a result of government regulations regarding the nature, quality and/or composition of the Products;
  - c. Client has determined the composition of the Products;
  - d. any defect originated as the result of injudicious or improper use of the Products;
  - e. the guarantee given by User concerns Products produced by a third party, in which case the guarantee shall be limited to the guarantee given by the producer of the Products; or
  - f. the liability of User for damages suffered by Client due to User's breach of the guarantee set out above, is governed by the liability regime laid down in article 14.

**Article 11: Judicial and extra-judicial costs**

1. If Client fails to fulfill its obligations hereunder, all costs incurred by User shall be borne by Client. If Client remains in default of payment within the set time period, he forfeits an immediately payable penalty of fifteen percent (15%) of the amount due at that moment with a minimum penalty of EUR 350.00.
2. If User can demonstrate that he has incurred expenses, which were reasonably required under the circumstances, then said expenses shall also qualify for reimbursement.
3. All judicial and execution costs incurred by User shall also be borne by Client.

**Article 12: Suspension, Rescission and Cancellation.**

1. User shall be authorized to suspend the fulfillment of the obligations under the Agreement or to rescind the

Agreement without the intervention of a court, without notice of default and without any obligation of User under the guarantee or obligation to pay compensation, in the event that:

- a. Client does not fulfill or does not fully fulfill its obligations resulting from the Agreement;
  - b. after the Agreement has been concluded, User learns of circumstances giving good ground to fear that Client will not fulfill its obligations. If good ground exists to fear that Client will only partially or improperly fulfill its obligations, suspension shall only be allowed in so far the shortcoming justifies such action;
  - c. User finds itself in a situation in which fulfillment of the order cannot be reasonably expected;
  - d. Client requests a suspension of payments or if such is granted, if a petition for bankruptcy of the other party is submitted or if the other party is declared bankrupt;
  - e. Client alienates its enterprise or loses the direct control over it;
  - f. Client was asked to furnish security to guarantee the fulfillment of its obligations resulting from the Agreement when the Agreement was concluded and that this security is not provided or insufficient. As soon as security is furnished, the authorization to suspend shall lapse, unless said fulfillment has been unreasonably delayed because of it; or
  - g. User was placed under guardianship or otherwise in any other way has no power of its assets or loses parts of it.
2. User shall furthermore be authorized to rescind the Agreement prematurely, without intervention of a court of justice, if:
    - a. Client is late with regard to payment or is, in some other way, imputably in default with regard to the fulfillment of its obligations, including obligations of previous Agreements; or
    - b. circumstances arise of such a nature that fulfillment of the obligations becomes impossible or

can no longer be demanded in accordance with the requirements of reasonableness and fairness.

3. User will be authorized to rescind the Agreement with immediate effect and to reclaim Products which are the property of User which may be in the possession of the Client.
4. If the Agreement is rescinded, User's claims against Client shall be forthwith due and payable. Client shall indemnify User against the costs associated with the termination of the Agreement. If User suspends fulfillment of its obligations, User shall retain its rights under the law and the Agreement.
5. User is not liable for any loss suffered by Client which may result from the action of, or an order to, User, as a result of the shortcomings of User.
6. Upon rescission any mutual claims will be due immediately. The Client shall be liable for the existing damages of User, including loss of profits and costs of transport.
7. Client will only have the power to rescind the Agreement if the User, following a proper and detailed written notice, will have a reasonable time period for remedying the failure, or any other attributable failure to perform material obligations under this Agreement.
8. In case of cancellation of the Agreement by the Client through no fault of the User (and thus before delivery of the Products) due to any reason, User will reserve the right to demand fulfillment.
9. If User rescinds the Agreement or accepts the cancellation, User shall be entitled to reimbursement by the Client for the costs of User that so far incurred, and to a payment to User for a percentage of twenty percent (20%) of the amount that the Agreement was involved in.

#### **Article 13: Return of Products Put at Client's Disposal**

1. If User has put any Products at Client's disposal (by delivery, transfer, display or otherwise) during and in connection with the execution of the Agreement, Client shall be held to

return these Products in their original state within fifteen (15) days after termination, rescission or cancellation of the Agreement. If Client fails to fulfill this obligation, all resulting costs shall be at Client's expense.

2. If, for any reason whatsoever, Client remains in default to fulfill the respective obligation, User shall be entitled to recover the resulting damages and costs, including replacement costs, from Client.

#### **Article 14: Liability and Indemnity**

1. Except for valid claims under a guarantee, User shall not be liable for any damages in relation to the execution of the Agreement.
2. User's liability for direct damages shall in any event be limited to the invoiced value of the Products and/or services and/or or advice in question.
3. User shall not be liable for indirect damages, including but not limited to consequential damage, loss of profit, lost savings, losses due to delays (e.g. in transport), and damages due to business stagnation.
4. The limitation of liability and exclusion of liability set out under 1. and 2. above shall not apply in the event that Client proves that the damages was caused by intentional act (*opzet*) or wilful recklessness (*bewuste roekeloosheid*) of User, or its management (*bedrijfsleiding*).
5. Client shall fully indemnify User against all claims of third parties in connection with delivered Products and/or services rendered (such as but not limited to treatment of products with Products) and/or advices rendered.

#### **Article 15: Force Majeure**

1. The Parties shall not be held to fulfill any of their obligations if they are hindered to do so due to a circumstance through no fault of their own and which cannot be attributed to them by virtue of law, a legal action or generally accepted practice.
2. User shall also be entitled to invoke force majeure if the circumstances that render a (further) fulfillment of

the obligation(s) impossible, commence after the moment User should have fulfilled its obligation.

3. If the force majeure period has continued for more than two consecutive months, User shall be entitled to extend or rescind the Agreement without any obligation to pay the opposite party any damages, except as provided in Article 78 of Book 6 of the Dutch Civil Code.
4. Insofar User has already partially fulfilled its obligations resulting from the Agreement at the moment the circumstance of force majeure commenced, User shall be entitled to invoice the part already fulfilled. Client shall be held to pay this invoice as if it were a separate Agreement.

#### **Article 16: Indemnity**

1. Client shall fully indemnify and hold harmless User against claims filed by third parties concerning intellectual property rights on material or data provided by Client, which shall be used for and during the execution of the Agreement.
2. If Client provides User with information carriers, electronic files or software, etc., Client shall guarantee that said information carriers, electronic files or software are free of viruses and defects.

#### **Article 17: Intellectual Property**

1. Without prejudice to the other stipulations of these terms and conditions, User reserves its rights and authorities to which User is entitled.
2. The designs, sketches, drawings, films, software and other material or (electronic) files, possibly produced by User within the framework of the Agreement, shall remain User's property, irrespective of the fact whether they have been handed over to Client or to third parties, unless otherwise agreed upon in writing.
3. All documents, such as designs, sketches, drawings, films, software, (electronic) files, etc., provided by User, shall be destined to be used by Client exclusively and must not be

reproduced, made public or brought to the notice of third parties by Client without prior consent from User, unless the nature of the documents provided dictates otherwise.

4. User shall reserve the right to use the knowledge gained due to the execution of the work for other purposes, in so far no confidential information shall be brought to the notice of third parties when doing so.

#### **Article 18: Confidentiality**

1. Each party to the Agreement will keep any and all non-public information and documentation in connection with this Agreement strictly confidential, unless disclosure is thereof required by law.
2. Upon the termination of the Agreement each party shall return the documentation received from the other. Each party shall impose an obligation to keep such information and documentation confidential upon its employees and other individuals engaged in the performance of the obligations under this Agreement. This provision shall survive the termination of the Agreement.

#### **Article 19: Non-employment of User's personnel**

Throughout the duration of the Agreement and for one year following the termination thereof, Client shall not in any way, (attempt to) hire or employ in any other way, be it directly or indirectly, staff of User or of enterprises whom User has engaged to execute the present Agreement and who are (or were) involved in the execution of the Agreement, without prior proper businesslike consultations on this matter, all this in accordance with the requirements of reasonableness and fairness.

#### **Article 20: Third Party Clause**

The provisions contained herein regarding exclusion and limitation of liability, as well as regarding User's indemnity and termination / prescription of the right of action, shall also apply to

User's employees and third parties it has engaged in any manner as well as of their employees.

#### **Article 21: Disputes**

1. Any and all disputes between User and Client in connection with this Agreement will be subjected to the competent court in Haarlem, the Netherlands.
2. Parties shall only refer the matter to the court if they have done their utmost to solve the dispute in mutual consultations.
3. Any dispute must be brought to the attention of the competent court within one year after the claim arose and became known to the plaintiff.

#### **Article 22: Applicable Law**

Any Agreement and legal relation between User and Client will be governed by the laws of the Netherlands. The Convention on Contracts for the International Sale of Goods ('Vienna Convention') is explicitly excluded.