

General Terms and Conditions of Sale 05.2025

1. General, Scope

- 1.1. These General Terms and Conditions of Sale ("General Terms and Conditions of Sale") shall apply to all agreements entered into by ELAFLEX HIBY GmbH & Co. KG ("Seller") governing the sale and/or the delivery of movable goods regardless of whether the Seller itself manufactures the goods or purchases such from suppliers. These General Terms and Conditions of Sale shall only apply if the buyer is an entrepreneur pursuant to § 14 of the German Civil Code (BGB), a legal entity under public law or a special fund under public law.

- 1.2. These General Terms and Conditions of Sale shall apply exclusively. Any deviating, opposing, or supplemental conditions of the buyer shall not apply. This provision shall also apply whenever the Seller does not object to any terms and conditions of the buyer.

2. Agreement Formation

- 2.1. Any offers of the Seller shall be non-binding.
- 2.2. The buyer shall be bound to its order for fourteen (14) days.
- 2.3. An agreement shall come into existence only via a written order confirmation by the Seller.

3. Prices and Terms and Conditions of Payment

- 3.1. The Seller shall grant the calculated list price starting from a minimum invoice value of € 100.00 net. Any stipulation of a discount shall be possible only starting from a net invoice value of at least € 300.00.
- 3.2. In the event of a net invoice value of less than € 100.00, the Seller shall, in order to cover the Seller's costs, invoice the buyer a net lump-sum price of at least € 100.00.
- 3.3. Provided that no agreements to the contrary are made, the invoice amount shall be payable strictly net 30 (thirty) days of the invoice date. The invoice date shall be deemed the date the invoice is sent; in case the invoice is collected, the day on which the invoice is transferred to the buyer.
- 3.4. Upon the elapsing of the payment period in accordance with clause 3.3, the buyer shall enter into default. During the period of default, interest shall be charged on the purchase price at the applicable statutory default interest rate. The Seller reserves the right to claim further damages caused by default. The claim to commercial maturity interest (§ 353 German Commercial Code) against merchants remains unaffected.
- 3.5. In the event of default, the Seller shall have the right to withdraw from the agreement.
- 3.6. The buyer may only offset claims that are undisputed or have been recognised as legally binding. This does not apply to counterclaims arising from the same contractual relationship.
- 3.7. The buyer may only assert a right of retention based on counterclaims arising from the same contractual relationship.

4. Delivery and Default

- 4.1. Deadlines and dates for deliveries held out prospectively by the Seller shall always be deemed as approximate, unless the Seller expressly and in writing promises a fixed deadline or a fixed date.
- 4.2. Deliveries shall be effected freight collect ex works (Incoterms® 2020).
- 4.3. The Seller shall have the right to make partial deliveries if :
- the partial delivery is usable for the buyer within the scope of the purpose of the intended contractual purpose,
 - the delivery of the remaining goods ordered is assured, and
 - no considerable additional expenditures or costs arising to the buyer arise therefrom.
- 4.4. Seller shall not be liable for impossibility of delivery or for delays in delivery, to the extent that these have been caused by force majeure or by other events not foreseeable at the time of entering into the agreement (e.g. strikes, lockouts, unavoidable shortages of raw materials, pandemics, unforeseeable operational disruptions of all types, or the absent, incorrect, or untimely delivery of supplies by suppliers), for which the Seller is not responsible. To the extent that (i) such events make the delivery materially more difficult or impossible for the Seller and (ii) the hindrance is not only of temporary duration, the Seller shall have the right to withdraw from the agreement. In the case of hindrances of temporary duration, the delivery periods shall be extended or postponed by the time period of the obstruction plus a reasonable start-up period. To the extent that the acceptance of the delivery is not reasonable for the buyer as a result of the delay, it shall be able to withdraw from the agreement by means of a declaration made in writing without undue delay vis-à-vis the Seller. The Seller shall inform the buyer without undue delay in accordance with this section 4.4 of (a) the impossibility of delivery or (b) of delays in delivery.
- 4.5. If the Seller is in default, the buyer must first set the Seller a reasonable grace period of 14 working days, unless this is unreasonable in an individual case. If this period expires without result, the buyer may assert any claims for damages for breach of duty only within the scope of clause 7 of these General Terms and Conditions of Sale.

5. Retention of Title

- 5.1. Until complete payment of all present and future receivables arising from the agreement and of the ongoing business relationship to the buyer, the Seller shall retain title in the goods sold.
- 5.2. The goods delivered under the retention of title shall not be permitted either to be pledged to third parties or to be transferred as collateral prior to full payment of the secured receivables. The buyer shall inform the Seller in writing without undue delay if a petition to initiate bankruptcy proceedings is lodged or to the extent that access by third parties (e.g. pledges) is effected on the goods delivered under the Seller's retention of title.

- 5.3. The handling and processing of the goods delivered under the retention of title shall be effected on behalf of the Seller such that the Seller is to be regarded as a (co-) manufacturer of the handled or processed goods according to its invoice value, as contemplated under § 950 of the German Civil Code (BGB) and shall receive joint title in the newly created item in proportion to its invoice value.

- 5.4. In the event of the Seller's withdrawal from the agreement due to non-payment of the payable purchase price, the Seller shall have the right to demand the goods based upon the retention of title and the withdrawal.

- 5.5. The Seller shall have the right to enter the warehouse of the buyer in order to ascertain and to make a written record of whichever goods subject to the retention of title are at hand. Such shall also apply after a petition to initiate bankruptcy proceedings over the assets of the buyer. The written record is to be countersigned by the buyer.

- 5.6. The buyer shall have the right to resell, in the ordinary course of business, the goods subject to the retention of title. The Seller shall be able to revoke its consent (i) if the buyer does not comply with its payment duties vis-à-vis the Seller or (ii) if the Seller's claim for payment is jeopardized by the buyer's inadequate ability to perform.

- 5.7. The buyer hereby assigns to the Seller as collateral any receivables against third parties arising from resale of the goods or products, in their entirety or in the amount of the joint title of the Seller in accordance with the above clause 5.6.. The Seller hereby accepts the assignment.

- 5.8. The buyer, along with the Seller, shall be empowered to make collections. The Seller shall be obligated not to collect the receivable as long as the buyer complies with its payment obligations vis-à-vis the Seller and the payment claim of the Seller is not jeopardized by deficient performance ability of the buyer. If such is the case, then the Seller shall be permitted to demand that the buyer (i) make the assigned receivables and their debtors known to the Seller, (ii) provide the Seller with all information necessary for the collection, (iii) hand out to the Seller the documents belonging thereto and (iv) report the assignment to the creditors.

- 5.9. Upon demand by the buyer, the Seller shall release the collateral to be selected by the Seller if the value of the collateral that can be realized amounts to more than 110 % of the value of the secured receivables, but by no later than whenever the estimated value of the collateral exceeds 150 % of the value of the secured receivables.

6. Condition of the Goods/ Buyer's Defect Claims

- 6.1. A guarantee shall only be deemed to have been assumed by the Seller if the Seller has designated a feature as "legally guaranteed" in writing.
- 6.2. It is the buyer's responsibility to examine whether the Seller's goods are suitable for the buyer's intended use.
- 6.3. As far as the Seller has entered into express and binding agreements with the buyer regarding the quality, features, specifications and/or quantity of the ordered goods, these shall take precedence over the objective requirements of § 434 (3) German Civil Code (BGB).
- 6.4. The buyer's claims for defects require that the buyer has fulfilled its statutory obligations to inspect and give notice of defects pursuant to § 377 German Commercial Code. With regard to goods intended for installation, attachment or other further processing, the buyer must in any case inspect the goods directly prior to installation, attachment or other further processing. If the buyer fails to carry out the proper inspection and/or to give notice of defects, the Seller's liability for the defect not notified, not notified in time and/or not notified properly, are excluded pursuant to the statutory provisions. With regard to goods intended for installation, attachment or other further processing this shall also apply if – as a result of the breach of these obligations – the defect only became apparent after installation, attachment or other further processing; in this case, the buyer shall in particular have no claims for compensation for corresponding removal and installation costs.
- 6.5. In cases of complaint of shortfalls or deficiency in weight, the buyer shall be able to assert rights to complain of defects only if upon receipt of the goods the buyer has carried out a quantity- or weight check.
- 6.6. The goods complained of are to be sent back to the Seller for inspection in the original packaging or in packaging of equal value.
- 6.7. If the buyer demands a defect remediation, then the Seller, at its choice, shall be able to subsequently improve or to deliver a replacement.
- 6.8. The subsequent performance shall include neither the removal of the defective item nor the renewed installation, if the Seller originally was not obligated to make the installation.
- 6.9. If a defect exists, the Seller shall bear the expenses necessary for inspection and subsequent performance, in particular the costs of transport, travel, labour and materials as well as – if applicable – the costs for dismantling and installation pursuant to the applicable statutory provisions and these General Terms and Conditions of Sale. Otherwise, the Seller may demand compensation from the buyer for the costs arising from the unjustified request to remedy the defect if the buyer knew or could have recognised that there was in fact no defect.
- 6.10. If the buyer, following an initial request for defect remediation, has granted the Seller an additional reasonable grace period for the remediation of defects without result, or if two (2) attempts at subsequent improvement or substitute delivery fail, then the buyer, at its choice, shall be able to withdraw from the agreement or to demand a reduction in payment. In the event of a trivial defect, however, there shall be no right of withdrawal.
- 6.11. The Seller – irrespective of the legal reasons for refusal – shall have the right to refuse subsequent performance to the extent that the buyer upon the request of the Seller has not shipped the goods complained of or a sample thereof to the Seller. The buyer shall not be entitled to any right of withdrawal or reduction on account of such a refusal.

- 6.12. The Seller shall not be obligated to subsequent performance if the buyer has performed, or has had third parties perform, any operations on or changes to the goods without the Seller's consent – unless the buyer proves that the defect has not been caused by such operations or changes.
- 6.13. In the event of withdrawal, the buyer shall be liable for any incidence of negligence and intent in case of any deterioration, loss, and uses not availed of.
- 6.14. Claims of the buyer for reimbursement of expenses pursuant to § 445a (1) German Civil Code (BGB) are excluded unless the last contract in the supply chain is a consumer goods purchase (§§ 478, 479 German Civil Code (BGB)) or a consumer contract for the provision of digital products (§§ 445c Clause 2, 327 (5), 327u German Civil Code (BGB)).
- 6.15. Any claims of the buyer for damages or reimbursement of futile expenses (§ 284 German Civil Code (BGB)) due to deficient performance of the Seller shall only exist within the scope Clause 7 of these General Terms and Conditions of Sale.
- 6.16. With the exception of
- damage claims, to which clause 7 of these General Terms and Conditions of Sale applies, and
 - defect claims due to the delivery of an item that has been used in accordance with its customary manner of use for construction and that such has caused its defectiveness, and for which the statutory limitation period applies as contemplated under § 438 para. 1 no. 2 German Civil Code (BGB),
- any defect claims by the buyer shall lapse after the expiration of twelve (12) months from the commencement of the statute of limitations period.

7. Liability

- 7.1. In accordance with statutory regulations, the Seller shall be liable
- a) in cases of malice, intent or gross negligence,
 - b) in cases of culpable injury to life, limb or health,
 - c) within the scope of any guarantee expressly assumed, and
 - d) in cases in which the prerequisites of liability under the 'Products Liability Act' (the 'ProdHaftG') are satisfied.
- 7.2. Furthermore, the Seller shall also be liable in cases of simple negligence due to the breach of a contractual duty, the fulfilment of which makes the proper performance of the agreement possible in the first place and upon the compliance of which the buyer may regularly rely (so-called cardinal duty). To this extent, the liability shall be limited to the foreseeable, typically occurring damages. The limitation of liability as contemplated under sent. 2 of this clause 7.2 shall not apply in cases of injury to life, limb or health, within the scope of any expressly assumed guarantee, or in cases in which the prerequisites of the Seller's liability under the ProdHaftG are satisfied.
- 7.3. Any further liability of the Seller shall be precluded.
- 7.4. Any damage claims of the buyer against the Seller arising from or in connection with the agreement shall lapse by no later than twelve (12) months after the commencement of the statute of limitations. Such shall not apply in cases of malice, intent and gross negligence, in cases of injury to life, limb or health, within the scope of any possibly expressly assumed guarantee, or in cases in which the prerequisites of the Seller's liability under the ProdHaftG are satisfied.
- 7.5. The limitations of liability of this clause 7 shall apply to the same extent to the benefit of the employees, executive bodies, representatives and other vicarious agents of the Seller.
- 7.6. The limitations of liability of this clause 7 shall also apply if liability vis-à-vis persons other than the buyer is sought to be established.

8. Place of Performance and Subsequent Performance

The place of performance and subsequent performance shall be the Seller's warehouse in Hamburg, Germany.

9. Protection of Intellectual Property

- 9.1. All documents made available by the Seller to the buyer, particularly, but not exclusively limited to, drawings, pictures, lists, tables and samples, shall be subject to protection under the law and shall not – without the Seller's approval – be permitted to be either reproduced or made accessible to third persons for their own use. All specifications made therein shall not be binding. They shall serve for illustrative purposes. The right to make any deviations and structural changes shall be reserved.
- 9.2. Moulds, tools or models which are made for the c of an order shall remain property of the Seller even if pro rata costs are calculated and paid.

10. Export Control

- 10.1. Buyer and Seller acknowledge that the sale, supply, technical assistance or brokering of the goods specified in this contract may be subject to export control and sanctions regulations of the USA, European Union, Federal Republic of Germany and other countries and in such cases may not be sold, exported, processed, brokered or otherwise provided without official authorisation. The deliveries and supplies may not, either directly or indirectly,
- a) be used in connection with the development, production, handling, operation, maintenance, storage, detection, identification or dissemination of chemical, biological or nuclear weapons or delivery systems; or
 - b) be used for a military end-use in a country of destination subject to an arms embargo imposed by a decision or a common position adopted by the Council or a decision of the Organisation for Security and Cooperation in Europe (OSCE) or an arms embargo imposed by a binding resolution of the Security Council of the United Nations.

The buyer has acknowledged this requirement and confirms its compliance.

- 10.2. The buyer and recipient of the contractual goods undertakes not to sell, export, deliver, broker or otherwise pass on these goods (Items, Software and technologies) and their derivatives to a country of destination, if this would violate the provisions of an embargo of the European Union. This applies in particular to
- the Russia Embargo Regulation (EU) 833/2014 in its current version, which prohibits the direct or indirect sale, transfer or export of goods listed in the embargo control lists (e.g. Annexes VII, XI, XVIII, XX, XXIII, XXXV, XL) to a Russian entity or for use in Russia, or the provision of technical services in connection with these goods or intermediate products. The circumvention clause (Article 12 and Article 12g Russia Embargo Regulation (EU) 833/2014, in its current version) is recognized and complied with by the recipient and end user.
 - the Belarus Embargo Regulation (EU) 765/2006 in its current version, which prohibits the direct or indirect sale, transfer or export of goods listed in the embargo control lists (e.g. Annexes III, IV, Va, VI, X, XVI, XVII, XVIII, XX, XXIV, XXV, XXVI) to a Belarusian entity or for use in Belarus, or the provision of technical services in connection with these goods or intermediate products. The circumvention clause and re-export prohibition clause (Art. 1m and Art. 8g Belarus Embargo Regulation (EU) 765/2006 as amended) is recognized and complied with by the recipient and end user.
- 10.3. The buyer shall oblige its customers, distributors and other business partners accordingly to the above provision and shall take reasonable and appropriate measures to ensure that circumvention transactions are excluded.
- 10.4. The conclusion of the contract and the fulfilment of the obligations under the contract are subject to the condition precedent of compliance with the aforementioned applicable export control and sanctions regulations and/or embargo regulations (in particular of the Federal Republic of Germany, the European Union, the USA or Japan) and, to the extent required under the foreign trade laws of the USA, European Union, Federal Republic of Germany and/or Japan, the application for and receipt of an official administrative act authorising the transaction or establishing that it is exempt from authorisation. To the extent required and at the request of the Seller, the buyer shall issue an end-use certificate to the Seller based on an official template.
- 10.5. In the event of a breach of a foregoing obligation by the buyer, the Seller shall be released from its delivery obligations upon issuing a written notice to the buyer. Any deliveries shall be returned and any claim of the buyer against the Seller for damages for covering purchase or consequential damages such as loss of profit or compensation for expenses shall be excluded.
- 10.6. As an appropriate remedial measure in the event of a suspected violation and insofar as this is necessary for the performance of export control checks by the authorities, the buyer shall, upon request, immediately provide all information about the final recipient, the final destination and the intended use of the goods delivered by the Seller as well as any export control restrictions applicable in this respect.
- 10.7. The buyer shall indemnify the Seller in full against all claims asserted by authorities or other third parties against the Seller due to non-compliance with foreign trade and/or export control obligations by the buyer and undertakes to compensate the Seller for all damages and expenses incurred by the Seller in this connection, unless the buyer is not responsible for the breach of duty. This does not imply a reversal of the burden of proof.

11. Applicable Law and Venue

- 11.1. German substantive law shall apply exclusively, precluding the 'United Nations Convention on Contracts for the International Sale of Goods' dated 11 April 1980 (CISG).
- 11.2. The exclusive venue shall be at Hamburg, Germany, to the extent that the buyer is a businessperson, a legal person under public law, or a special asset under public law. The Seller, however, shall have the right to initiate legal proceedings against the buyer at the buyer's general venue as well.

12. Final Provisions

- 12.1. Individual agreements made with the buyer in individual cases (including collateral agreements, supplements and amendments) shall in any case take precedence over these General Terms and Conditions of Sale. Subject to proof to the contrary, the content of such agreements shall be governed by a written contract or written confirmation by the Seller.
- 12.2. Legally relevant declarations and notifications of the buyer with regard to the contract (e.g. setting of a deadline, notification of defects, withdrawal or reduction) must be made in writing, i.e. in written or text form (e.g. letter, e-mail, fax). Statutory formal requirements and further evidence, in particular in the event of doubts about the legitimacy of the person making the declaration, remain unaffected.
- 12.3. References to the applicability of statutory provisions are for clarification purposes only. Even without such clarification, the statutory provisions shall therefore apply unless they are directly amended or expressly excluded by these General Terms and Conditions of Sale.
- 12.4. Should any provision of these General Terms and Conditions of Sale be or become ineffective or unenforceable, then such shall be without prejudice to the validity of the remaining provisions of these General Terms and Conditions of Sale. The contracting partners shall be obligated to replace the ineffective or unenforceable provision with a provision that approximates the business spirit and purpose of the omitted provision as closely as possible in accordance with legal requirements.