

# GENERAL TERMS AND CONDITIONS

## 1. General

The general terms and conditions listed below shall apply to all our delivered goods and services, insofar as no other conditions have been agreed in writing. Deviations from the terms set forth herein shall only have legal validity if set out in writing. Similarly, any departure from this agreement must be in writing. Only managers and company officers registered in the company's register are authorized to sign on behalf of the company.

## 2. Scope and Conditions of Delivery

All our offers are subject to change. The form and content of the delivery shall be determined by the purchaser's order. In the event that our order confirmation differs from the purchaser's order, our order confirmation will be considered as agreed if the purchaser does not contest our order confirmation in writing within 24 hours of receipt of our order confirmation. Changes to the order made by the purchaser shall only come into effect if they are confirmed by us in writing. All our offers are non-binding and subject to change. Data provided in the descriptions of performance, weight, quality, etc. are approximate.

## 3. Prices

All agreed prices are net prices ex works. All prices shall apply without packaging, shipping and insurance. If we are instructed to provide packaging, shipping, and insurance, these costs will be added to the purchaser's invoice.

In the event of shipment of goods to third countries, all duties, taxes and other public charges will be at the expense of the purchaser. Should individual cost drivers, such as: raw material prices, intermediate products, global / national or political developments etc., that are of crucial importance for pricing develop unfavorably, ELASTICA is entitled to increase the listed prices with immediate effect. In this case, ELASTICA is not bound to a price list, price sheet, product sheet, agreement or similar.

## 4. Delivery Time

A stated time of delivery is non-binding, unless a fixed delivery time has been agreed. Claims for damages due to exceeding the delivery date are excluded. We reserve the right to withdraw from the contract, if after the order confirmation we become aware of circumstances in the purchaser's business affairs which are such that the purchaser cannot ensure our payment. A contractual penalty for late delivery can only be applied with an existing agreement and cannot be requested if ELASTICA or one of the upstream suppliers declares "Force Majeure".

## 5. Delivery

The transfer of risk and responsibility for fulfilment of the contract shall always obtain from the moment the delivery leaves our works.

In the event of default of acceptance by the purchaser, the risk passes to the purchaser upon our declaring our readiness to deliver. Insofar as partial deliveries are not expressly excluded in writing, they are permissible at any time. The manner of shipment shall be determined by us, unless otherwise agreed in writing.

Malfunctions and/or cases of force majeure, regardless of whether they occur with us or with our suppliers, shall release us from the obligation to deliver or from adherence to the agreed delivery deadlines. We are entitled to deliver after the fault has been rectified.

ELASTICA is entitled to accordingly extend the delivery date in the event of unforeseeable circumstances and obstacles, regardless of whether this occurs directly at ELASTICA or at ELASTICA's suppliers, for example: work stoppages of any kind, strikes, state measures, lack of official permits, sabotage, „force majeure“ of the raw materials industry, lock-down, delay in customs clearance, loss of an essential and/or difficult to replace supplier, etc. For the duration of the impairment, ELASTICA is released from its obligation without the contractual partner being entitled to any claims from this. Operational and traffic disruptions are also considered cases of force majeure and release ELASTICA for the duration of the handicap from the obligation to deliver, without the contractual partner incurring any claims. We are entitled to make subsequent deliveries after the fault has been rectified.

All deliveries will be made freight-collect from our location, on the account of and at the risk and expense of the purchaser. Insurance shall obtain only on the basis of an explicit written order and at the expense of the purchaser.

## 6. Storage

If the shipping is delayed or impossible for reasons, which cannot be attributed to the manufacturer, the costs and risks for storage are at the expense of the customer.

## 7. Warranty/Guarantee/Indemnity

The purchaser is responsible for inspection and immediate notification of any complaint. Complaints must be in writing to be legally valid. A shall be within an acceptable time frame if it is lodged with us in writing within 3 days after delivery or upon appearance of the defect. The purchaser is not entitled to find fault in the overall delivery if only parts of the delivery have defects. We are entitled to deliver the faulty items later or to replace them. Our warranty is limited to supplementing what is lacking and to improvement. Warranty claims that go beyond the above shall be excluded. In the event of the assertion of a legitimate warranty claim, the purchaser must send the faulty goods to us at the purchaser's own expense and risk. After correcting the defect the goods will be returned to the purchaser at the purchaser's expense and risk. We will only perform beyond the legal warranty in individual cases of written warranty. Verbally agreed warranties are excluded. In the event that the manufacturer provides a guarantee, we shall assign to the purchaser our outstanding claims against the manufacturer.

Fluctuations in volume and/or weight of up to 10% are customary in the industry and do not constitute a defect. The formation of a slight hollow (mattress core) of up to 20 mm can occur but does not constitute a quality defect and grounds for a complaint. There is no adverse effect on reclining comfort. In the first few weeks of use a compacting

of the cushioning layer/uppermost material can occur, particularly in the area of the pelvis. The resulting loss of height can be up to 10% of the mattress height and does not constitute a reason for complaint. Mildew/mould and excessive humidity are due to the incorrect handling or care of the mattress, and are caused by heat and moisture build-up or an inadequate indoor climate. Consequently, faults of this kind do not constitute grounds for complaint and are not recognized as such; in this regard we refer you to the Elastica Matratzenpass' product information/instructions for use and to the warranty/guarantee conditions. In the first few weeks of use the mattress can exhibit a "new smell". The "new smell" is harmless (ÖKO-TEX standard 100 tested, test number 54794) and will dissipate soon after use.

Discoloration and/or yellowing may occur increasingly over time and use due to the action of UV radiation and ozone. The performance characteristics are not affected by this. Stains are not defects and are consequently excluded as grounds for complaint. **This can be seen directly on the product or at <http://www.elastica.at/de/agh>.** Damage to a mattress through an incorrect or inappropriate bed, or through the lack of using a bed, does not constitute grounds for complaint. The mattress and bed frame constitute a system. It is essential that both components match each other.

Even so, measurement deviations with regards to boards and pre-cuts from 1 m<sup>2</sup> to 2 % do not constitute a defect, as the high flexibility of our products means that fluctuations can never be completely avoided.

Due to the differences in the raw materials used (expansion), allowance has to be made for dimensional differences of + / - 2 cm (length + width). As such they do not constitute grounds for complaint.

The warranty is void if the purchased item has been changed by third parties, or if there has been installation of parts of third party origin. All warranty is excluded for repairs and second-hand items.

The purchaser is not entitled to assert claims from the title of the warranty.

Claims for damages on whatever grounds, including claims for consequential damages, are expressly excluded.

## 8. Payment

Unless otherwise agreed, our invoices are payable on delivery. Insofar as payment in instalments has been agreed, such an agreement shall be dissolved with the non-payment of only one payment, and the total outstanding amount shall then fall due for payment immediately. If the purchaser defaults on payment we are no longer obligated to proceed with outstanding deliveries. Payments shall only be effected if made directly to us. Representatives are not entitled to collect payments. In case of late payment, default interest of 10 % is agreed. Where a reminder has to be issued, a reminder fee € 10.00 will be charged. In the event of late payment, payments will first be offset against costs, then against interest and only lastly against the outstanding amount. If the purchaser has several outstanding debt obligations, payments will first be offset against non-secured claims, and then against the oldest debt obligations. A special written agreement is required for accepting bills of exchange. Bills of exchange and cheques shall only be accepted as promise of payment, not instead of payment.

The assertion of complaints does not entitle the purchaser to refrain from payments. Offsetting is excluded.

In the event of defaulted payment, after a granted grace period of 14 days we are entitled to withdraw from the contract and to claim damage and loss of profit, or to levy a contractual penalty to the amount of 30 % of the agreed price.

## 9. Retention of Ownership

The goods remain our property until full payment of the purchase price or the compensation of all other claims within the business relationship. In the event that the delivered goods are intended for resale by the purchaser, as soon as the resale takes place the purchaser's purchase price claim on his customer transfers to us. We are entitled but not obligated to assert the purchase price claims directly with the purchaser's customers. The purchaser is prohibited from pledging delivered goods under retention. The purchaser must immediately notify us of any seizure of the goods. The purchaser has to bear the costs of any possible seizure process.

## 10. Intellectual Property Rights

Elastica grants the purchaser the revocable, non-exclusive right to use our marks, brands and copyrighted works (such as images and text), hereinafter „property rights“, in the each case expressly granted scope of use. The purchaser agrees to use the property rights only as specified by us. The use of the property rights such as in domains requires our explicit consent. After termination of the contract all property rights have to be removed from the websites or advertising and marketing materials and the domains have to be transferred to us or deleted at our request.

## 11. Choice of Law, Place of Performance and Court of Jurisdiction

Austrian law shall apply. The place of performance is our works, and the court of jurisdiction is the city of Salzburg.

## 12. Consent to the processing of data in accordance with article 6a DSGVO

Detailed information under: <https://www.elastica.at/de/impressum-dateschutz/>

Kuchl, April 2021