

TERMS AND CONDITIONS OF PURCHASE

ELASTICA

Matratzen – Schaumstoffe – Zubehör Gesellschaft m.b.H.

1. General information:

- 1.1 The following General Terms and Conditions of Purchase shall apply to all business relations between Elastica and the Supplier. These Terms and Conditions shall apply analogously if the contractual object is a service/work.
- 1.2 Differing, contradictory or supplementary commercial Terms and Conditions of the Supplier shall not constitute an integral part of the contract, even if Elastica is aware of them, unless their validity is explicitly acknowledged in writing.
- 1.3 These Terms and Conditions of Purchase shall also apply to any future business transactions, even if no express reference is made to them.
- 1.4 The entire commercial and contract-related correspondence has to be conducted with Elastica's Purchasing Department. An order number and a reference number (article number) have to be specified.

2. Contract conclusion:

- 2.1 Orders by Elastica have to be confirmed by the Supplier in writing within 2 working days of receipt. E-mails and faxes shall be considered as compliant with this requirement for the written form.
- 2.2 Our enquiries must be responded to within 2 working days.
- 2.3 The Supplier must strictly comply with Elastica's requirements with regard to the offer and order confirmation. If there are objections, they have to be communicated in writing. In addition to the goods and services explicitly mentioned in the order, the scope of delivery also includes any goods and services, which are necessary for the regular performance and functioning of the ordered products. All deliveries / services have to correspond to the respective state of technology and be compatible with the legally applicable norms. Each contract must be based on a written order, stating the order number.

- 2.4 Without Elastica's permission, no models, drawings and tools provided by or commissioned and paid for by Elastica may be passed on to third parties or used for other purposes than the ones specified in this contract or the contents thereof intimated to third parties. Elastica shall retain the property and copyright for all documents pertaining to the offer. Such documents have to be immediately returned if so requested by Elastica.
- 2.5 For call orders, a purchase commitment shall only arise upon an explicit call by Elastica. This shall also apply if the delivery item has already been completed. Elastica has the right to change delivery deadlines provided that this is not contrary to important interests of the Supplier.
- 2.6 Any changes or additions to this contract must be done in writing. The same shall apply to any waiver of the requirement for written form.
- 2.7 In cases of doubt, the specified prices are fixed net prices before discounts and bonuses, free Elastica.
- 2.8 If prices are not agreed upon in advance, they obligatorily have to be specified in the order confirmation. In this case, Elastica reserves the right of objection or withdrawal within four weeks, without the Supplier retaining any rights to claim damages of any kind.

3. Delivery:

- 3.1 It is imperative that all agreed delivery deadlines are observed. The key date for determining the observance of delivery deadlines shall be the moment that the delivery item arrives at the delivery location specified by Elastica. Nonetheless, if the Supplier becomes aware that the delivery deadline may be exceeded, he must immediately notify Elastica of the reasons and anticipated duration of the delay in writing. This shall not affect any consequences of such delays in delivery, in particular Elastica's right of withdrawal or any claims for the compensation of damages. In the cases of a delay in delivery and following the expiry of a reasonable period of time as set by Elastica, Elastica explicitly reserves the right to withdraw from the contract, to claim damages and to procure replacement goods from third parties.
- 3.2 Notification of shipment has to be immediately provided after dispatch of the goods in duplicate through the provision of order number and reference number as well as an EAN Code, which also have to be specified both on the product and the delivery note. Partial deliveries have to be accordingly marked as such.

- 3.3 The shipment must proceed as quickly as possible to the delivery location specified by Elastica. Elastica is not obliged to accept goods without proper shipping documents. The Supplier is liable for the consequences of incorrect data in the shipping documents. The Supplier is responsible for the proper customs clearance for cross-border shipping and shall bear all costs related to it.
- 3.4 If Elastica bears the costs for transportation, the Supplier has to choose the most cost-effective way of transportation; notwithstanding, all shipping instructions of Elastica have to be complied with in all cases and notification must be provided before transportation is carried out.
- 3.5 The risk shall be transferred to Elastica as soon as Elastica effectively accepts the delivery item or, for machines and equipment, upon their final inspection.
- 3.6 The Supplier is obliged to provide all test certificates free of charge and without being requested to do so (incl. e.g. CE marking, ÖKO-TEX, etc).

4. Payment:

- 4.1 Invoices must include the order number and the precise company name. They may not be attached to the shipment.
- 4.2 Invoices shall become due for payment at a discount of 5 % within 30 days of their receipt, strictly net within 45 days, whereas a processing time of 10 days shall also be calculated in each case. Nonetheless, this term shall not begin before the delivery has been completed and no defects and omissions have been detected.
- 4.3 Partial deliveries shall be marked as such.

5. Auxiliary supplies:

- 5.1 Elastica shall retain the property of any supplied auxiliary goods.
- 5.2 Auxiliary goods must be properly stored by the Supplier free of charge. Elastica must be immediately notified about any losses or damages to the goods.

5.3 The Supplier is obliged to duly dispose of any packaging materials in compliance with the applicable legal regulations. In order to fulfill his disposal-related obligation, the Supplier must be connected to ARA, EVA or another similar disposal system. If this is not the case, 0,5 % of the product value plus the applicable VAT will be collected by Elastica from domestic and foreign suppliers in the course of regulation until proof for a corresponding contract with a disposal system is submitted.

6. Defaults in performance:

- 6.1 The Supplier provides a guarantee that, at the time of delivery, the supplied products are free of material or production defects, which could reduce the value or suitability of the products, as well as that the products possess the explicitly assured properties.
- 6.2 The Supplier provides a guarantee of 5 years for his products, starting from the delivery to Elastica or the delivery location specified by Elastica.
- 6.3 Elastica is not obliged to inspect the goods upon receipt.
- 6.4 If defects are detected, Elastica has the right, at its own discretion, to require the correction or exchange of the goods or to demand a reduction of their price. Elastica explicitly reserves the right to claim further damages. The correction or exchange of the goods shall take place, at Elastica's discretion, either at the place of delivery or, alternatively, at the location of the respective customer of Elastica.
- 6.5 If the Supplier does not comply with the justified guarantee claims of Elastica within the set time limit, then Elastica has the right to withdraw from the contract and cancel the contract. Elastica reserves the right to claim further damages. Elastica shall also have this right in cases of substantial and repairable damages.
- 6.6 In case of withdrawal from the contract, Elastica is entitled to procure the delivery item from another party. For this purpose, the Supplier must provide all necessary documents (plans, drawings, etc.) and data to Elastica. In this case, Elastica has the right to give all information and hand all over all documents to the third parties commissioned with the fulfillment of the order as are necessary for them to manufacture a non-defective delivery item as soon as possible. Any concluded non-disclosure agreements shall not prevent this from happening.

- 6.7 If goods have to be corrected or replaced, the warranty/guarantee term shall begin anew upon delivery of the corrected/replaced goods.
- 6.8 In case of defaults of performance of any kind, such as e.g. defectiveness or delays in delivery, the Supplier shall be liable for all damages incurred by Elastica, in particular for consequential harms caused by a defect or contractual penalties to be paid by Elastica to customers. In this case, Elastica has the right to demand 20 % of the total order's (net) value as liquidated damages (contractual penalty), without prejudice to the right to assert any further damages.

7. Assignment:

The Supplier may not assign claims that he has under a contract with us.

8. Final provisions:

- 8.1 Austrian law is applicable for all disputes arising from concluded contracts.
- 8.2 The court of jurisdiction shall be the court responsible for the registered office of Elastica. Austrian law shall apply. The place of performance shall be our factory. The place of jurisdiction is the city of Salzburg.
- 8.3 Should a provision of this contract be or become invalid, this shall not affect the validity of the remaining provisions. In this case, the contract parties undertake to replace the invalid provision with another provision, which corresponds most closely to the business purpose of the original provision. If gaps are identified in this regulation, the parties undertake to properly fill these gaps under consideration of the basic intentions of this contract.
- 8.4 The use of the name Elastica for advertising purposes is not permitted.
- 8.5 The unloading time is Monday through Thursday from 07:00 a.m. until 03:00 p.m. and on Friday from 07:00 a.m. until 01.00 p.m.
- 8.6 Visits to buyers are only possible by appointment in advance.

9. Validity of the contract:

9.1 The individual provisions of this contract shall become effective upon the date of signing. The contract shall initially become valid for 1 year and then be automatically extended for a further 1 year, unless it is cancelled at least 3 months before expiration.

Any agreements at variance with this contract shall become effective only after they are concluded in writing.

**Elastica Matratzen – Schaumstoffe –
Zubehör Gesellschaft m. b. H.**

Company:

Technical Management/CTO
Operations management

Date, Signature