

## Terms and conditions of Sale and Delivery

version of January 1, 2019.

- does not apply to consumer sales -

### § 1.

#### Preliminary provisions

1. The following Terms and Conditions of Sale and Delivery, hereinafter referred to as the TC, created by Elgo limited liability company and limited partnership in its registered office in Mazańcowice (hereinafter: the Company), applies to all sales transactions with the Buyers (natural persons conducting business activity, legal persons and other entities to which legal regulations grant legal capacity, the present TC do not apply to consumers), in which the Company acts as a seller or supplier within the meaning of the Civil Code. The TC constitute an integral part of all offers submitted by the Company and its sales or delivery agreements, unless it is individually agreed with a specific Buyer in writing or in the form of messages sent by e-mail.
2. Placing an order by the Buyer means acceptance of these TC without reservations.

### § 2.

#### Orders and contracting

1. Orders for the sale or delivery of goods are accepted in writing, via fax, electronic mail or by mail to the addresses of the Company.
2. The order should include full information about the ordered goods (detailed specification of ordered goods – catalogue code of goods, detailed description of the goods, the conditions, in case of special applications, in which it is to be used, their quantity, delivery date, payment terms, delivery conditions, place of delivery). The Buyer should also specify precisely whether he expects approvals or certificates in relation to the ordered products and which product features the certificates or approvals are to apply to. The company reserves the right to impose on the Buyer an additional fee for issuing a certificate or a seal of approval.
3. If the order concerns a previously presented offer, it is necessary to place the number of this offer on the order. Meeting the above-mentioned requirements will allow for faultless and quick order fulfilment. In the event of not referring to the offer number, the Seller shall not be liable for any price inconsistencies on the VAT invoice, lack of availability of the goods, as well as non-compliance in the specific parameters of the goods specified in the original order.
4. If the Buyer expects the goods to be made from the specifically determined, by the species or origin, materials, or through the specified production process, all requirements in this respect should be clearly stated in the order, otherwise the Company will not be liable for failure to do so.
5. In a situation where the Buyer expects the production to take place in a manner specified by the Buyer or according to the technical documentation provided by him, he provides the appropriate instructions or technical documentation in the order, otherwise the Company accepts its own production method.
6. In a situation where the Buyer expects the product to be manufactured from the materials and raw materials he has supplied, he should clearly indicate so in the order, under pain of producing goods from raw materials organized by the Company.
7. The contract is concluded when the Buyer receives a written confirmation of the order. The Company has the right to refuse to accept the order or to submit a counteroffer, modifying the original terms of the order. In this situation, the contract is concluded after the Buyer accepts the counteroffer.
8. In a situation where the Buyer who placed the order is a debtor of the Company and is in arrears with the Company due to previous contracts with due payments of at least PLN 100,000 net, the conclusion of the contract depends on the Buyer signing a written statement of acknowledgement of the debt with the content indicated by the Company and delivery of the original of such a document to the registered office of the Company. Prior to delivery of the indicated debt recognition to the Company, the Buyer is not entitled to any claims against the Company due to the order placed. The Company reserves the right not to use the content of this provision and to conclude the contract despite not obtaining written approval of the debt from the Buyer.
9. If the Buyer has any reservations as to the content of the order confirmation, he must immediately, no later than within 3 business days, notify in the form of an e-mail to the e-mail address of the Company's sales representative, from whom he received the order confirmation or, if no reaction of such a person within 1 business day, to the e-mail address of the Company (elgo@elgosruby.pl). Failure to meet the above-mentioned deadline means that the Agreement was concluded in accordance with the order confirmed by the Company.
10. The Company does not bear any responsibility for errors and omissions committed by the Buyer in the content of the order.

11. Any technical advice from the Company is for information purposes only and does not result in the Company's liability arising from it. In particular, this applies to the activities of the Company's representatives related to the assessment of the suitability of the given goods to the Buyer's needs, proposals for the use of the product, arrangements for compatibility of the Company's product with products of other companies and similar information.

### § 3.

#### Terms and conditions of order fulfilment

1. The Company is obliged to deliver the goods in compliance with the conditions specified in the order confirmation, i.e. the date and place of delivery, quantity, type of goods, price.
2. The Company provides for the following methods and regulations concerning the delivery:
  - a. Delivery by Company's own transport – then the DAP Incoterms 2010 *franco* rule applies, the place indicated by the Recipient, with the reservation that for orders up to PLN 3,000 net, the costs of transport incurred by the Company will be added to the VAT invoice and will be paid to the Company by the Recipient along with the price of the Goods
  - b. Delivery via a courier company – then the CPT Incoterms 2010 *franco* rule applies to the place indicated by the Recipient with the reservation that for orders up to PLN 3,000 net, the transport costs incurred by the Company will be added to the VAT invoice and will be paid to the Company by the Recipient along with the price of the Goods
  - c. Personal collection – then the EXW Incoterms 2010 *loco* rule applies. It takes place in Mazańcowice, the Company's warehouse.
3. Goods can be delivered in packs or on pallets at the Buyer's discretion, unless the property of the order prevents the use of the chosen method of carriage.
4. The goods are delivered to the address indicated on the order at the expense of the Buyer, unless the Parties agree otherwise.
5. The goods remain the property of the Company until the Buyer has paid the entire price for the ordered and released goods.
6. Deadlines for deliveries of ordered goods are specified in the order confirmation. The Company reserves the right to change the delivery date due to circumstances beyond its control, in particular: omission or delay in performance of duties on the part of the Buyer, including delivery to the Company: specification of goods, structural drawings, quality certificates, etc., necessary to perform or fulfil the order, change/extend the delivery date of materials necessary to perform the Buyer's order, the need to conduct qualitative tests of materials and raw materials provided by the Buyer for the performance of the goods, the need to evaluate the instructions or technical documentation provided by the Buyer regarding the manner of manufacturing goods, transport instructions, supplementary orders, the need to reconcile the details of the order (including the specific way of production of goods) by the Company with the Buyer. In the cases described in the preceding sentence, the Company does not bear any responsibility either towards the Buyer or his contractors. The Company is obliged to immediately inform the Buyer about the occurrence of the above circumstances, with the appointment of a new delivery date.
7. Partial deliveries are allowed, provided that the Buyer agrees in writing or by e-mail, or if it results from the content of the order.
8. If, in the order, the Buyer specified in detail the type of receipt of goods as a "personal collection", he must collect it within 7 days from the date of receiving the information from the Company about the readiness for the goods to be picked up. In the event of failing to collect the goods personally within the indicated time, the goods will be sent to the address of the Buyer along with the added costs of transport.
9. In the case of determining the form of "prepayment" in the payment terms, the delivery deadline may be extended by the period of delay in making the payment. The day of crediting the Company's bank account shall be considered as the day of payment.
10. If the product is to be made of resources and raw materials supplied by the Buyer, the Company, immediately after their receipt, and before proceeding with production, makes their quality assessment in terms of suitability for the contract. In the event of detection of defects of resources and raw materials or the necessity of in-depth tests, the Company informs the Buyer, which suspends the deadline for the completion of the contract for the time necessary to provide the Buyer with new materials and the implementation of in-depth tests. The Buyer is obliged to bear all possible costs of conducting quality tests of resources and raw materials.
11. If the product is to be manufactured in a manner specified by the Buyer or on the basis of the technical documentation provided by him, after receiving the instructions or technical documentation, the Company immediately makes its assessment, including the possibility of its use in the company's enterprise and the suitability and safety of the method for the production of the ordered goods. After the detection of an irregularities, the Company immediately informs the Buyer about their occurrence. In this situation, the Parties will establish a new, correct way of producing the goods. In the event of disagreement, the Company may not accept or withdraw from an already accepted order, which will not result in any liability for damages on its part.

12. In case of concluding a delivery contract between the Company and the Buyer within the meaning of the Civil Code, the Buyer, before exercising the control powers provided for in art. 608 of the Civil Code, is obliged to agree on the date and manner of control with the Company.

#### § 4.

#### Terms of payment

1. The date and form of payment are agreed for each Buyer individually by the Company's sales representative who is responsible for the order. The payment date commences from the date of delivery of the VAT invoice to the Buyer, unless the Parties agree otherwise.
2. For new Buyers, the Company requires a prepayment in the amount of 100% before proceeding with the contract. This payment method is valid for the first three orders for such a Buyer.
3. The decision on allowing the Buyer to make payments by bank transfer is considered for the Buyers for whom the Company has previously carried out the orders (at least 3 orders paid in the mode indicated in paragraph 2 above) and provided the following documents:
  - a. a copy of the current transcript from the National Court Register or Central Register and Information on Economic Activity,
  - b. an application for the transfer and granting a trade credit.
4. If the payment is made by a bank transfer, the date of crediting the Company's bank account shall be considered as the day of payment.
5. No checks or bills of exchange shall be accepted without the written consent of the Company.
6. The basis for determining the sale prices is the current sales price list or the offer submitted by the Company based on the Buyer's inquiry.
7. All data contained in prospectuses, catalogues, leaflets, announcements, price lists and other materials are only informational and tentative, and do not constitute an offer within the meaning of the Act of 23 April 1964 Civil Code (Journal of Laws of 1964 No. 16, item 93 with later amendments).
8. In the offers, the prices of products are net prices. The net value added tax is added to the net price in accordance with the applicable VAT rate for a given type of goods.
9. In the case of valuation of an offer in a currency other than PLN, the basis for settlement of the transaction is the sales rate announced for a given currency by the Alior Bank from the day preceding the invoice issue date.
10. In the case of settlements in the form of a prepayment, the basis for settlement of the transaction is the sales rate announced for a given currency by the Alior Bank from the day preceding the day of issuing the proforma invoice.
11. In the event of overdue payments or exceeding the trade credit limit by the Company, the execution of accepted orders may be suspended until the relevant payments have been made.
12. In the event of payment arrears, the Company, regardless of the entitlement specified in para. 9 above, has the right to:
  - a. Refuse to accept new orders,
  - b. Refuse to issue the ready orders,
  - c. Suspend of the Buyer's entitlements to payment by bank transfer and collection of rebates granted in the scope of future orders,
  - d. Withholding the Buyer's rights due to the trade credit granted to him.

#### § 5.

#### Guarantee and warranty

1. The Company does not provide a guarantee for its goods.
2. The Buyer is entitled to warranty rights for defects under the terms set out in the Civil Code, with the following reservations:
  - a. The Buyer is obliged to examine the received goods and notify (in the form of an e-mail to the Company's e-mail address: reklamacje@elgosruby.pl) the Company of quantitative defects up to 2 working days or qualitative defects within 3 working days from the date of its receipt under pain of loss of warranty rights for defects pursuant to art. 563 § 1 of the Civil Code.
  - b. If qualitative defects are of the type that cannot be detected as part of the examination of the goods based on point A. above (hidden quality defects), the Buyer is obliged to notify (in the form of an e-mail to the Company's e-mail address: reklamacje@elgosruby.pl) the Company of their occurrence within 3 days since their disclosure. In each case, warranty rights

for hidden qualitative defects expire 1 year after the delivery of the Goods to the Buyer. In order to comply with the annual deadline, it is necessary for the Buyer to make the notification referred to in the first sentence of this point.

- c. In the case of goods constructed or modified in accordance with the Buyer's guidelines, the Company's liability under the warranty is limited to producing such goods or making such modifications that meet these guidelines and are consistent with measurements, assembly parameters, excluding liability for materials provided by the Buyer and their properties. The Company does not give any guarantee or warranty of compliance for the above-mentioned products, constructed or modified upon request and in accordance with the Buyer's concept. The limitations of the warranty referred to in points A. and B. above shall apply to the products.

#### **§ 6.**

#### **Complaint procedure**

1. The provisions of this paragraph apply to claims under warranty for defects.
2. The Buyer is obliged to make the notification referred to in § 5 para. 2, points A and C before making further use (processing). If the Buyer fails to fulfil the above-mentioned obligation, the delivery will be deemed accepted without any reservations.
3. In the case of deliveries carried out via shipping companies, the delivery complaint (damage to the shipment, quantitative deficiencies) must be documented with the loss report prepared by the Buyer immediately upon receipt in the presence of the courier delivering the parcel, under pain of loss of defects in the scope of quantitative and qualitative defects.
4. The Company is not responsible for delays in the delivery of goods caused by the shipping company or a courier company and resulting from reasons beyond the Company's control. The Company is also not liable for Buyer losses related to running a business, loss of profit, loss of time, lost earnings and other indirect losses.
5. The faulty goods should be sent back to the Company within 3 working days since filing the complaint, but only after agreeing with the Company on the form of delivery. Unless agreed otherwise, within 30 days the faulty goods being will be exchanged for goods without defects or their defects will be removed.
6. All costs associated with an unjustified complaint shall be borne by the Buyer.
7. The response to the reported complaint as to how it should be dealt with should be provided by the Company within 7 days from the date of receipt of the faulty goods. In the event that a detailed examination, inspection or repair of the goods is required, the complaint may be considered in a longer period agreed by both parties, subject to the content of paragraph 8 of this section.
8. The Buyer shall be notified of the result of the complaint under review in writing, verbally or in another manner agreed by the parties, by an authorized employee of the Company.
9. The Buyer is not authorized to repair the Goods with his own resources at the cost and risk of the Company without the express consent of the Company or the final decision of the Court.
10. Submitting a complaint does not entitle the Buyer to withhold payment for the goods or for a part thereof. The Company has the right to withhold from carrying out the Buyer's claims regarding the complaint until the Buyer settles all outstanding liabilities.

#### **§ 7.**

#### **Force Majeure**

If circumstances are beyond the control of the Company, in particular, such as disruptions in the production or transport of goods caused by strikes, factory and equipment failures, accidents, local or national threats, trade disputes, floods, fires, earthquakes, etc. (force majeure), delivery may be delayed or held, by written notification to the Buyer within 14 days from the day the cause arose, until normal conditions are restored. The Company is not responsible for insufficient performance or non-performance of obligations related to the occurrence of force majeure. The occurrence of force majeure extends the time for the fulfilment of the Company's obligations for the period of its duration and time necessary to remove its effects.

#### **§ 8.**

#### **Final Provisions**

1. These TC and their subsequent versions, approved in writing, constitute an integral part of the Agreements concluded between the Company and the Buyer.

2. The Company is entitled to unilaterally modify any provisions of these TC. They enter into force in relation to existing Buyers after delivery of a new version of TC to them, and in relation to new Buyers – after the publication of a new version of TC on the Company's website.
3. If any of the provisions of the TC is declared invalid, it does not affect the validity of the remaining provisions or other fragments of the TC.
4. The TC apply to all orders completed by the Company since 01/01/2019.
5. The Buyer shall not be entitled to a cession of rights under the TC and the Agreement connecting the parties without the written consent of the Company.
6. All contracts concluded between the Company and the Buyer are subject to Polish law. For contracts concluded between the Company and the Buyer, the application of the United Nations Convention on Contracts for the International Sale of Goods of 1980 is excluded.
7. In the case of concluding a contract in writing or a framework agreement in writing and a possible conflict between the provisions of the aforementioned agreements and the regulations of these TC, the provisions of the agreements shall be binding.
8. Deviations from the content of these TC require, under pain of nullity, the written form or form of messages sent by e-mail.
9. The Parties will aim to amicably settle any disputes arising from the execution of orders and complaints covered by these TC. The provision contained in the preceding sentence is not an arbitration clause. If it is not possible to settle the dispute amicably, the court of the registered office of the Company will be competent to settle the dispute.
10. All provisions deviating from the TC must be agreed in writing under pain of nullity.

**ELGO Sp. z o.o. Sp. k.**  
Stanisława Gawłowska  
Prezes Zarządu

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Stanisława Gawłowska

President of the Board of the General Partner – Elgo sp. z o.o.

