# ela[container]

All offers and agreements relating to the supply (customer) and purchasing (supplier) of goods and services, in both current and future business transactions, are subject to the following conditions. Any alternative conditions, in particular any contradictory business terms applied by the customer / supplier or incidental agreements are only binding if they have our express agreement in writing. Furthermore, the conditions of the non-disclosure agreement (NDA) are mandatory for suppliers and need to be signed. All conditions listed in the NDA therefore become part of these General Terms of Business.

**1. Offers**
All offers and estimates are subject to confirmation. A contract of sale does not come into existence until we have accepted the order we receive, have confirmed any declaration of acceptance in writing, or have performed the required services. The same applies to contractual changes, additions or supplementary agreements. We are only obliged to supply (customer) or purchase (supplier) those goods and services which have been expressly defined in quotations and / or estimates. We retain the ownership and copyright to any drawings and other documentation which have been made available to the customer / supplier. Without our permission such documentation must not be used for other purposes. In particular they must not be copied or made accessible to third parties. At our request they must be returned to us without delay.

**2. Times of delivery and performance**
We always make every effort to meet delivery dates. However, any periods and dates are only binding if they have been expressly declared as such by us in writing. Any such periods begin with the date of our written declaration of acceptance or confirmation, or, where a contribution is required from the customer, receipt of the customer's declaration of acceptance. All commercial and technical details must first be clarified. The planned performance periods are correspondingly extended in such cases where the contract with our customer is changed or if the customer does not meet his obligations to make the agreed contribution punctually. Force majeure and other extraordinary measures beyond our control and interruptions to traffic, irrespective of whether they have arisen with us or with the customer, release us from our obligations, even where the periods and delivery dates are subject to binding agreement, for as long as their effects continue and, if they make performance impossible, they will release us completely from the obligation to provide the goods and services without giving the customer any claim to compensation as a result. Under such circumstances any agreed contractual penalty will be regarded as inapplicable. Suppliers should deliver after the agreed delivery conditions in the order confirmation.

**3. Prices and payment**
All prices quoted by us are in euros and are to be understood ex our stores. They do not include the applicable rate of VAT, transport, packing and any other incidental costs. Any costs for packing, transport, insurance and commissioning will be invoiced separately by us, together with the applicable rate of VAT. All payments by our customers are due without deduction within 7 days from date of invoice, but at the latest within 30 days from date of invoice and without deduction. This also applies to any interim invoices which are issued. In the event of delayed payment the purchaser will be liable to pay interest at the rate charged by our bank for overdrafts on current accounts, with a minimum rate of 5% above the relevant bank interest rate. We only accept bills of exchange after prior written agreement and on the condition that they can be discounted. All discounting charges and other incidental costs will be charged from the day the invoice amount becomes valid. These will be at the expense of the customer and are to be paid to us without delay. Amounts paid by bills of exchange or cheque are only credited when the full amount including incidental costs is available to us without reservation. No liability is accepted for the correct presentation or protesting of bills. If, after a contract has been concluded, we become aware of circumstances which could lead to reasonable doubt about the purchaser's ability to meet our payment claims, we are entitled to refuse performance and to give the customer a reasonable period in which to pay for deliveries in advance or to provide security. If the customer rejects this or the period of time has elapsed, we can withdraw from the contract and claim damages for non-performance. Prices and payment conditions with suppliers are subject of the signed order confirmation.

**4. Official permits**
It is the responsibility of the customer at his cost and risk to obtain any official permits, in particular building permission, needed for the delivery or assembly of the goods to be supplied. At his request we will support him in obtaining building permission or other official permits and will provide, at his expense, any documentation required.

**5. Retention of title**
The goods which have been supplied (goods subject to retention of title) remain our property until the purchase price has been received in full and all existing and future claims arising out of our business relationship with the customer have been met, including claims which already arisen at the time when the contract was concluded or will arise from the business relationship. The customer has the obligation to preserve in a good condition the goods to which title is retained. Such goods must be adequately insured. At our first request he is obliged to assign to us any claims he has on the insurers. The customer must inform us immediately if a third party initiates enforcement procedures against the goods or against the claims which have been assigned to us, and to provide any documentation which may be required for an intervention. This also applies to negative factors of any kind. The purchaser has the right to sell, process, combine or mix and then sell any goods which are subject to the retention of title in the normal course of business, provided he meets his contractual obligations to us punctually. The customer does not have the right to pledge the goods or use them as security. If he fails to meet his payment obligations punctually we have the right, after giving a reasonable extension of time, to demand, even without withdrawal from the contract, the return, at the expense of the customer, of any goods which are subject to retention of title. Any processing or changes to the goods by the customer is carried out on our behalf. If the goods are combined or mixed by the customer with other goods which do not belong to us, we will acquire part-ownership of the new goods in that proportion to which the overall value of the new goods stands to the invoice value of the goods to which title is retained. Within the framework of this agreement the new goods arising from the processing are classed as goods to which title is retained. As security the customer will assign to us in advance any claims he has on the purchasers to whom the goods are sold, together with any claims against his insurers. If the goods are exported the customer will also assign to us any existing or future claims which he has on domestic or foreign banks in connection with the export, in particular from collection orders, from confirmation of letters of credit or from guarantees and financial guarantees. If the goods are sold by the customer together with other goods which do not belong to us, with or without prior processing, he hereby assigns his financial claims from the transaction to us in the level of the invoice value of the goods to which we retain title. Until this provision is revoked by us he is entitled to collect his claims from the sale of the goods. The proceeds of such a sale must be immediately passed on to us to the level of our claims on him. We are obliged to release the goods to which we retain title and any assigned claims, as soon as all our claims on the customer have been met. If the realisable value of the goods and the assigned claims exceeds the overall value of our secured claims against our customer by more than 20% (for the cost of delayed payment, exploitation and other incidental costs), we will, at the request of the customer and at our discretion, be obliged to release the corresponding amount of the goods or assigned claims. We have the right to utilise any goods provided as security if the customer fails to meet his obligations when they fall due, in spite of the fact that he has received a reminder and a reasonable period of time to do so, and has been informed that the goods will be utilised by us.

**6. Warranty**
We operate a policy of fault-free manufacture of the goods we supply. We accept no liability for any material defects arising from incorrect or improper use of the goods, faulty assembly or commissioning by the customer or third parties, normal wear and tear, or incorrect or negligent handling, nor do we accept liability for the consequences of improper changes or repairs made without our consent by the customer or third parties. The same applies to any defects which only reduce the value or the usefulness of the goods supplied to an insignificant extent. We accept liability for other defects and the absence of guaranteed quality in the goods we supply, only if we are informed about these in writing immediately after the customer discovers them, and only if they are demonstrably due to faulty material or design or other performance for which we are responsible. We will at our discretion carry out improvements, supply replacement goods without defects or deliver spare parts. If we do not meet these obligations or fail to meet them within a reasonable time, the customer is entitled to prescribe, in writing, a period by which we must meet our obligations. If this has not been done by the expiry of this period, the customer can demand a reduction in price, withdraw from the contract, or carry out the necessary improvements himself or by a third party at our expense and risk. The customer has this right only if the replacement delivery or rectification of the defect is not possible in a specific case, or if we fail to carry it out in spite of a written demand by the customer with a reasonable period of notice, or if the rectification of the defect is unsuccessful in spite of a number of attempts. If the rectification has been successfully carried out by the customer or a third party, all the customer's claims will be satisfied once the costs which he has sustained have been reimbursed. The reimbursement of any costs is excluded to the extent to which the goods after delivery have been moved to a different location, unless this location corresponds to the predetermined utilisation of the goods. With regard to other claims by the customer in relation to defects or the absence of guaranteed quality, in particular with regard to consequential damage, § 7 applies. Any claims for material defects expire after twelve months. This does not apply to cases where a longer binding period is prescribed by the federal German statute book. The customer must report visible defects immediately after the goods have been supplied to the place of delivery. We only have the obligation to rectify a defect or provide a replacement delivery after payment by the customer of a reasonable share, in relation to the defect, of the payments due to us. Our guarantee obligations no longer apply if the goods or services which have been supplied are modified, improperly handled or incorrectly processed. The observance by the customer of our installation, operating and maintenance instructions, which the customer must prove have been complied with, is also part of the obligation handle the goods and services correctly. Complaints about part deliveries do not give the customer the right to reject the fulfilment of the contract as a whole. Warranty of suppliers are subject of the signed order confirmation.

**7. Liability**
Unless indicated otherwise below, other or further claims on us by the customer are excluded. This applies in particular to claims for damages which arise if fulfilment of the contract is delayed or proves impossible, from the culpable breach of incidental contractual obligations, from fault during the conclusion of the contract and from delict. In consequence we accept no liability for loss of profit or other financial damage which the customer has incurred. The above limitations on our liability do not apply if we have caused the damage by gross negligence or if we have been guilty of gross breach of contract. If we have been guilty of gross breach of contract we only accept liability for any damage which could have been reasonably foreseen within the terms of such a contract. Any liability going beyond this is excluded. Any claims by the customer for damages under the laws on product liability or on grounds of the absence of guaranteed quality remain unaffected. In addition the limitation of liability under § 7.1 does not apply to damage to life, limb and health if and to the extent that the guaranteed feature had the purpose of protecting the customer from damage which has not arisen in the case of the goods themselves. If we have, in individual cases, guaranteed a feature, we only accept liability for consequential damage arising from a defect if this has been expressly agreed in writing.

**8. Data protection**
The customer / supplier agrees to our computer-based storing of any customer data which are required in relation to the business relationship and to individual contracts, and to our using the data accordingly.

**9. Place of fulfilment/transfer of risk**
The place of fulfilment for the supply of goods and services is our company headquarters. It is agreed that part deliveries and performance will be permitted. These are subject to § 6 (guarantee) to a corresponding extent. The risk for any goods or services provided by us is transferred to the customer – irrespective of any agreements on transport and insurance costs (e.g. CIF, FOB, free house) – at the latest at the point when the delivery leaves our stores. If we deliver to EU countries, the customer has the duty to provide us in good time with his VAT ID number, together with any other data which are necessary for processing the order (including confirmation about transport arrangements and final destination).

**10. Assignment/right of retention/setoff**
As a result of the contract concluded between us it is the customer himself who enters into contractual obligations. Third parties represented by the customer enter into such obligations only if the customer submits a written power of attorney from the third party at the time the contract is concluded. The customer does not have the right to assign to third parties any claims which he has on us. The customer may set off any claims he has against us only insofar as such claims are due, uncontested or confirmed by law. The customer is only entitled to exercise a right of retention if his counter-claim arises from the same contractual relationship; in this respect § 10.2 applies correspondingly. The customer agrees to inform us without delay if there is any change in the company title or legal constitution, or if the company is taken over by a third party.

**11. Venue/jurisdiction – partial invalidity and assignability**
The exclusive venue for both parties for all disputes arising directly or indirectly from the contractual relationship – including those arising from documents, bills of exchange and cheques – is Meppen/Ems, provided the customer is a merchant, legal person under public law or under separate estate in public law. However, we retain the right to bring legal action against the customer at the legal venue which is responsible for his place of residence or business. This contract is subject to the law of the federal republic of Germany. The United Nations Treaty of 11.04.1980 concerning contracts in the international sale of goods (CISG/"Vienna Convention") does not apply. If any provision of these terms of business or a provision relating to other agreements should be invalid, this does not affect the validity of the contract as a whole. In such a case the contracting parties have the duty to replace the invalid provision by a valid provision which will come closest to achieving the intended commercial success. These terms of business and the provisions of any contracts and agreements are subject to this or / and the German version of our terms of business, of which this is a translation.