

**I. Contract conclusion**

1. Our supplies and services are exclusively subject to the terms and conditions set forth herein. Unless explicitly agreed in writing in an individual case, the buyer's general terms and conditions of purchase are expressly excluded and will not form part of the contract. The same applies to any formulated rules.
2. Our quotations are submitted without commitment, unless otherwise stated in writing in the quotation. Any statements relating to legal transactions or to transactions similar to legal transactions must be agreed in writing.
3. Documents forming part of our quotation such as illustrations, drawings, indications of weight and dimensions are approximate unless they are expressly defined as being binding upon us in the order confirmation. We reserve proprietary rights and intellectual property rights with respect to illustrations, drawings, calculations and other documents, and they must not be disclosed to third parties. This applies in particular to any documents which are declared to be "confidential". Before making them available to third parties the buyer must obtain our express consent in writing.

**II Prices, terms of payment**

1. Unless otherwise provided for, our prices are understood to be on a net basis, ex our works, free carrier (FCA) as per the Incoterms ruling at the time of delivery. If by the time of delivery a significant change in costs for labour, material and energy occurs, we are entitled to request adequate adjustment of the prices to take account of these factors. Unless otherwise agreed, this only applies to deliveries made more than four months after the date on which the contract was signed.
2. Our prices are exclusive of VAT, insofar as there is a liability for VAT.
3. Unless otherwise agreed, our invoices are payable net cash within 30 days of the date of invoice. If the date of payment is exceeded, we are entitled to charge interest at the legal interest rate on arrears (§ 288 BGB) without any further reminder. The right to provide evidence that the damage caused by delay is greater than this is reserved.
4. If the buyer is in default of payment, or if we learn of circumstances which cause us

to have doubts as to his credit worthiness, all our claims will immediately become due for payment, without considering the terms of any bills that may have been accepted. In such cases, we are entitled to make further deliveries against cash in advance or against provision of a form of security. It is understood that the buyer authorizes us to access his premises, to inspect the goods supplied and to identify them.

5. The buyer is not entitled to offset payments against counterclaims unless such counterclaims are confirmed as being legally valid or uncontested.

**III. Retention of title**

1. All goods remain our property until payment of all claims under the supply contract has been made in full. If the buyer behaves in a manner which is contrary to the terms of the contract, especially in the event of a default in payment, we are entitled to collect the goods supplied. Such a collection is not to be deemed as a withdrawal from the contract, unless this has been explicitly stated in writing by us. After collection of the goods supplied we are entitled to make commercial use of them. The sales revenue less reasonable costs will be offset against the buyer's liabilities.
2. The buyer is entitled to sell the goods in the course of his normal business transactions. It is, however, understood that any claims the buyer may have against his customers or third parties resulting from reselling the goods (final invoice amount including VAT) shall hereby be transferred to us, regardless of whether the goods supplied have been processed or not before resale. The buyer shall be authorized to collect payment for such claims even after their transfer. This does not affect our right to collect payment ourselves for such claims. We undertake, however, not to collect payment if the buyer meets his obligations to make payment from moneys received, if he is not in default of payment and in particular if no application for insolvency proceedings or cessation of payment has been filed. In any such event, we are entitled to request the buyer to give details of claims transferred, to provide us with any related documents and to inform his customers (third parties) of the transfer to us.
3. Any processing or modification of our materials by the buyer is carried out on our behalf. If the buyer processes our materials

together with foreign materials, we are entitled to co-ownership in the new product in proportion to the value of our materials compared with the value of the other materials processed at the time of processing. The new product resulting from processing is subject to the same proprietary rights as the delivered item.

4. If the delivered item is inseparably mixed or combined with other materials which are not our property, we are entitled to co-ownership in the new product in proportion to the value of our materials compared with the value of the other materials mixed or combined at the time of mixing or combining. If, in an individual case, the buyer's item is considered as the major element, it is hereby agreed that the buyer transfers to us co-ownership equivalent to our portion. The purchaser shall keep the material subject to full ownership or co-ownership in custody for us.
5. In order to secure our claims against the buyer, the buyer transfers to us his claims he has against a third party and which result from installation of the delivered item within a plot of land.
6. We undertake to release securities at the buyer's request if the amount of securities exceeds the secured claims by more than 10%, the selection of the securities to be released being at our discretion.

#### **IV Lead times, delivery dates**

1. Lead times begin on the date of our order confirmation, but not before full clarification of all the details of the order; this also applies to delivery dates. The date of despatch ex works will be decisive in demonstrating compliance with lead times and delivery dates. If goods cannot be collected which is not due to a failure on our part, the lead times and delivery dates shall be deemed to have been fulfilled at the time of notification of readiness for despatch. Lead times will be extended by the period of time for which the buyer fails to comply with his obligations towards us arising from this or from any other contract. This also applies with respect to delivery dates.
2. In the event that we are in default of delivery, legal provisions shall apply. To be in default, however, presupposes an express reminder. Claims for damages can only be addressed in the event of wilful intent or gross negligence. The extent of claims for damages is limited to reasonably

foreseeable damage, excluding any loss of profit.

3. If the buyer fails to collect the goods in due time, or if he breaches any other obligations to co-operate, we are entitled to request compensation for the damage incurred, including any additional expenditure. In this event, the risk of accidental loss or accidental deterioration of the delivered item shall pass to the buyer at the time he is put in default of acceptance.
4. We shall not be responsible for any delays or non-performance caused in whole or in part, directly or indirectly, by strikes, accidents, embargoes, fire, floods, inability to obtain materials, labour or services, conditions arising from government orders or regulations, war or national emergency, Acts of God and any other cause, similar events to the foregoing which are deemed beyond our reasonable control. Buyer may not refuse delivery on grounds of an event of Force Majeure.

#### **V. Dimensions, weights, qualities**

Deviations in terms of dimensions, weight and quality are permissible to the extent defined in DIN standards or common practice. Weights stated in quotations, order confirmations and shipping notes are based on theoretical calculations. On special request or if required to meet standards, individual weighing is carried out, and a weighing protocol is presented. In the case of individual weighing the total weight of the goods delivered shall apply. Differences from the calculated individual weights are distributed proportionally.

#### **VI. Transfer of risk and despatch**

1. Unless otherwise provided for in our order confirmation, delivery is deemed to be agreed as being on an "ex works" basis.
2. Upon delivery of the goods to the forwarder or carrier, but at the latest when the goods leave the factory, the risk is transferred to the buyer.
3. Transport is carried out by order and on behalf of the buyer.
4. If loading or transport of the goods is delayed for reasons not imputable to us, we or our agents are entitled but not obliged to store the goods at the buyer's cost and risk at our discretion, without assuming liability, in case of need even outdoor, to take all measures deemed

necessary to maintain the goods in good condition and to invoice for the goods as if they had been delivered.

5. In the absence of specific instructions from the buyer, shipment will be made at our discretion without taking responsibility for the most cost-effective shipping mode. We will provide packaging, means of protection and transport aids on the basis of our experience at the buyer's expense and without assuming liability. Packaging, means of protection and transport aids will not be returnable.

**VII. Warranty and liability**

Our products are deemed to be free from material defects if their quality at the time when the risk is passed to the buyer corresponds to the quality which has been agreed upon. This also applies if there are insignificant defects or slight deviations in quantity. The buyer must thoroughly inspect our products following receipt and advise us immediately of any defects which have been detected.

2. Incorrect information on the processing of goods of our supply / installation instructions / other information on use, does not give any right to claims for material defects with respect to the delivered items. No liability is assumed for the correctness of product descriptions of sub-suppliers or suppliers of raw material.
3. Justified claims for material defects will be satisfied by subsequent rectification, which will be performed at our discretion by elimination of the defects or by the supply of new goods without any defects. Subsequent rectification is limited to performance at the initial place of despatch.
4. Claims for damages shall be limited to those arising from acts of intent or gross negligence by our legal representatives or execution agents. Apart from these, claims for damages shall be excluded. Claims resulting from death, bodily injury or injury to health or from the breach of an essential contractual obligation shall not be affected. With the exception of acts of wilful intent or gross negligence, claims for damages shall be limited to reasonably foreseeable damage, excluding any loss of profit. In the case of insurable damage, our liability will be limited to 2.5 million Euro for each damage event.
5. Claims for damages will become time-barred one year after delivery. This does

not apply to products, which are intended to be integrated into structures and which cause defectiveness of the structure.

6. The compulsory legal provisions with respect to product liability shall not be affected.
7. Items subjected to inaccurate installation (if not installed and/or terminated to the eltherm installation and termination manuals or if not used the original accessories provided by eltherm) or operation, maintenance, misapplication, neglect, alteration, repair or testing (or such other act or omission for which eltherm is not responsible) are not covered by this agreement.

**VIII. General limitation of liability**

Circumstances which are not linked to defects in the delivered item are subject to the limitations of liability as per VII paragraph 4.

**IX. Place of performance, place of jurisdiction**

1. Unless otherwise provided for in our order confirmation, our registered seat shall be the place of performance.
2. Place of jurisdiction is Siegen. We are, however, also entitled to sue the buyer at his registered seat.

**X. Miscellaneous**

1. Proof of export:  
When collecting goods not intended for use in the Federal Republic of Germany, the buyer or his agents must furnish the proof of export required for fiscal reasons. If this proof is not provided, the purchaser will be under the obligation to pay the VAT applicable to deliveries within the Federal Republic of Germany.
2. The contractual relationship between the buyer and our company shall be interpreted according to the Laws of the Federal Republic of Germany. Application of the Vienna Convention of the United Nations on Contracts for the International Sale of Goods shall be excluded.