

ELBE & SOHN, INC.  
GENERAL SALES TERMS AND DELIVERY CONDITIONS

Section 1. Scope of Application

Sales and deliveries of Elbe & Sohn, Inc., are exclusively based on these general sales terms and delivery conditions. The general terms and conditions of Customer, including additional or different terms or conditions proposed by Customer (including terms or conditions stated in a purchase order) are hereby expressly rejected and shall be void and of no effect unless specifically accepted in writing by an authorized employee of Elbe & Sohn, Inc.

The sales terms and delivery conditions set forth by Elbe & Sohn, Inc., also apply if Elbe & Sohn, Inc., affects deliveries without reservation with knowledge of conditions which are conflicting with or different from the sales terms and delivery conditions contained herein.

Agents and sales representatives of Elbe & Sohn, Inc., have no authority to make any representations conflicting with or different from the sales terms and delivery conditions contained herein. Any such representations should not be relied upon by Customer and shall not bind Elbe & Sohn, Inc., unless agreed to in writing by an authorized employee of Elbe & Sohn, Inc.

Section 2. Offer and Signing of a Contract

Offers of Elbe & Sohn, Inc., are non-binding and are without obligation.

All orders to, and acceptances of orders by, Elbe & Sohn, Inc., shall be subject to the terms and conditions as stated herein. Any additional or different terms or conditions proposed by Customer are objected to by Elbe & Sohn, Inc., without need of further notice of objection, and will not be binding upon Elbe & Sohn, Inc., unless specifically agreed to in writing signed by Elbe & Sohn, Inc.

No assignment, modification, amendment, rescission, waiver or other alteration or change of the sales terms and delivery conditions contained herein will bind Elbe & Sohn, Inc., unless agreed to in writing by an authorized employee of Elbe & Sohn, Inc.

Drawings, images, weights, measures or miscellaneous performance data are only binding upon Elbe & Sohn, Inc., if they are expressly agreed to in writing by an authorized employee of Elbe & Sohn, Inc.

Section 3. Price

The prices included herein are valid. The prices do not include sales, excise, use or other taxes now in effect or hereafter levied by reason of this transaction. Customer will pay, and indemnify and hold Elbe & Sohn, Inc., harmless from, all such taxes.

Freight and packaging costs will be billed separately to Customer by Elbe & Sohn, Inc.

If not indicated otherwise, the purchase price is binding until thirty (30) days after the date of the offer of Elbe & Sohn, Inc. Elbe & Sohn, Inc., reserves the right after the expiration of the thirty (30) days to increase the prices as compensation for cost increases incurred after the signing of the Agreement, including, but not limited to, increases precipitated by a collective bargaining agreement or increases of the material prices which are not caused by Elbe & Sohn, Inc.

All products ordered to customer specifications which require deviations in standard production or delivery processes and all products requiring certification by Elbe & Sohn, Inc., or any governmental agency inspection are subject to an additional charge.

Section 4. Dates of Delivery, Cancellation of the Contract and Damages

Terms and conditions setting forth dates and times of performance are not binding unless stated in writing signed by both parties.

Compliance with times of delivery and performance depends on the timely and acceptable fulfillment of Customer's obligations.

Elbe & Sohn, Inc., will not be liable for delays in performance, including delivery, or for failures to perform, including failure to deliver, due to:

(a) any causes beyond Elbe & Sohn, Inc.'s reasonable control, including Elbe & Sohn, Inc.'s inability to obtain necessary materials, components, services or facilities; or,

(b) Acts of God, acts of Customer, acts of civil or military authorities, governmental regulations or priorities, strikes or other labor disturbances, fires, riots, wars, or natural disasters, including epidemics, droughts, floods, or transportation interruptions.

Elbe & Sohn, Inc., will promptly notify Customer of any material delay and will specify a revised performance date as soon as practicable. In the event of such delay, the Agreement will not be terminated and the date of performance will be extended for a period of time equal to the period of the delay.

If the inability to deliver due to circumstances described above exceeds three (3) months, Customer, after a reasonable extension period, has the right to rescind the part of the contract that has not been fulfilled.

Elbe & Sohn, Inc., has the right to make partial deliveries and to perform partial services at any time.

Claims for compensation due to delay in delivery are excluded and respectively restricted as provided herein. This does not apply to transactions for delivery by a fixed date.

If Customer defaults on acceptance or violates other cooperational duties, Elbe & Sohn, Inc., is entitled to claim incidental damage, including possible additional expenditures. In this case, the risk of incidental loss or incidental deterioration of the delivered goods is transferred to Customer at the point of default or violation by Customer.

Elbe & Sohn, Inc. has the right to make deliveries ahead of schedule.

Section 5. Shipment and Transfer of Risks

Elbe & Sohn, Inc., will use commercially reasonable efforts to comply with shipping instructions provided by Customer and agreed upon in writing by Elbe & Sohn, Inc. In the absence of any specific, mutually agreed upon shipping instruction, Elbe & Sohn, Inc., will ship by the method it deems most advantageous.

Transportation charges will be prepaid by Customer or subsequently invoiced to Customer by Elbe & Sohn, Inc.

When special or export packaging is required, the cost of the same, if not set forth on the invoice, will be separately invoiced.

Elbe & Sohn, Inc., may make delivery in installments and may render a separate invoice for each installment. Each installment shall be deemed a separate sale. Delay in delivery of any installment shall not relieve Customer of its obligation to accept

delivery of remaining installments. Any delivery not in dispute shall be paid for on the due date, as provided in the Agreement, without any offset, regardless of controversies relating to other deliveries or undelivered products.

All products shall be suitably packed for air and/or ground shipment, unless another form of shipment is otherwise requested by Customer and agreed to in writing by Elbe & Sohn, Inc.

Customer bears the risks for bringing the product(s) to their final destination; the risks pass to Customer upon Elbe & Sohn, Inc.'s transfer of possession of the product(s) to the person (entity) in charge of the transportation of the product(s). This transfer of risk is valid regardless of who is responsible for shipping and handling costs.

If the goods are ready for delivery and the delivery is delayed due to no fault of Elbe & Sohn, Inc., then the risks pass to Customer once Customer has received notice that the goods are ready for transport.

If Elbe & Sohn, Inc., follows a shipping instruction given by Customer, Elbe & Sohn, Inc., does so without accepting personal liability or risk of loss, solely by order, for the invoice and risk taken by Customer.

Section 6. Warranty

Customer must examine the delivered goods immediately upon arrival and make complaints for detectable defects in writing to Elbe & Sohn, Inc., within eight (8) days after receipt of the delivered goods. Complaints regarding non-detectable, latent defects must be made in writing to Elbe & Sohn, Inc., within eight (8) days after discovery of the defect.

An irrelevant deviation from the agreed-upon specifications or an irrelevant degradation of the fitness of the goods does not constitute a "defect" for purposes of the Warranty provisions contained herein.

If the customer or a third party makes inappropriate modifications, changes or repairs to the product delivered by Elbe & Sohn, Inc., the liability of Elbe & Sohn, Inc., if any, for the consequences of said modifications, changes or repairs shall be released and the warranty void.

Customer has the burden of proof that the defect complained of by the Customer preexisted the point of transfer of risk from Elbe & Sohn, Inc. to Customer.

If Customer demands specific performance, by either a form of remedy of the defects or an additional delivery due to defectiveness of the delivered goods from Elbe & Sohn, Inc., Elbe & Sohn, Inc., has the option of performing by either remedy of the defect or an additional delivery. Such performance shall not be an admission of liability, nor an admission of the existence of a defect, for which Elbe & Sohn, Inc., would be responsible as otherwise provided here.

Customer shall bear any expenses which become necessary for purposes of specific performance demanded by Customer.

Customer is not entitled to withdraw from the Agreement because of defects. However, Customer retains the right to seek a reduction in the purchase price.

The limitation period for warranty claims for defects of delivered goods is twelve (12) months. The limitation period begins with the transfer of risk from Elbe & Sohn, Inc., to Customer.

Section 7. Reservation of Title

The title to the property described above will remain in Elbe & Sohn, Inc. until all debts of Customer owing to Elbe & Sohn, Inc., have been fully satisfied. This provision also applies to balances owing to Elbe & Sohn, Inc., by Customer on preexisting accounts.

On the default of Customer in the payment of its obligation(s) to Elbe & Sohn, Inc., as provided herein, Elbe & Sohn, Inc., may, at its option, enter the premises of Customer or any premises where the property may be found, and Elbe & Sohn, Inc., may remove the property from the premises where it is found without hindrance or without making demands of any kind. In this case, Customer agrees that an employee of Elbe & Sohn, Inc., or another person authorized by Elbe & Sohn, Inc., may enter the customer's storage or business premises for this purpose. Elbe & Sohn, Inc., may retain the money paid, despite the property having been reclaimed by Elbe & Sohn, Inc., to the extent necessary to pay for the depreciation that occurred to the property prior to the time of retaking.

If Elbe & Sohn, Inc., has agreed with Customer for payment in installments, the reservation of title also refers to the payment of an installment by Customer which is accepted by Elbe & Sohn, Inc., and does not expire by the credit of said installment to Customer's account until such time as Customer's debts owed Elbe & Sohn, Inc., have been paid in full.

Customer is entitled to resell the delivered goods under reservation of title in its ordinary course of business. Any claim of Customer that occurs from the sale of goods delivered under reservation of title is hereby assigned from Customer to Elbe & Sohn, Inc. This assignment is accepted by Elbe & Sohn, Inc. Customer is entitled to collect the claims against its buyers, as long as Elbe & Sohn, Inc., has not cancelled the authorization. Customer is not entitled to perform other assignments - especially overall or global assignments - or chattel mortgages referring to the goods under reservation of title.

Customer must give its buyers notice of the assignment on demand by Elbe & Sohn, Inc., and must provide all the necessary information and documents for the enforcement of a claim.

In the case of the customer's breach of contract, Elbe & Sohn, Inc., is entitled to prohibit Customer to sell or use the delivered goods under reservation of title and may take the goods into possession. In this case, Customer agrees that an employee of Elbe & Sohn, Inc. or another person authorized by Elbe & Sohn, Inc., may enter the customer's storage or business premises. Demand for retraction of the delivered goods does not require rescission by Elbe & Sohn, Inc., from the contract. The retraction claim of the reserved good, as well as the placement of a lien on the reserved good, constitutes only a declaration for withdrawal from the Agreement when Elbe & Sohn, Inc., has given Customer a period of notice to perform, if required by law.

Customer must keep the goods under reservation of title separate from the other goods. Customer is obliged to immediately give Elbe & Sohn, Inc., notice in written form by registered mail of any possible possession by a third party, for example attachment of the reserved goods and the claims assigned to Elbe & Sohn, Inc. In the case that damage occurs to the reserved goods through the possession of a third party, Customer must compensate Elbe & Sohn, Inc., for the damages. Elbe & Sohn, Inc., shall bear all the costs of an intervention by Elbe & Sohn, Inc., to enforce Elbe & Sohn, Inc.'s rights of possession.

Customer is obliged to provide sufficient insurance for the goods under reservation of title against insurable accidents at its cost. Insurance claims in the case of damage are hereby assigned to Elbe & Sohn, Inc., in the amount of the invoice value of the possibly damaged goods under reservation of title.

If under the statutory or other regulations of the country of destination the reservation

of title does not take effect without registration or any other formality, Customer hereby already now gives his agreement to such registration. Customer will provide all necessary assistance in order to fulfil the formalities required under the respective national law.

Section 8. Time of Payment and Payment Conditions

Payment terms are net thirty (30) days from date of invoice. Elbe & Sohn, Inc., reserves the right to require alternative payment terms, including, without limitation, a letter of credit or payment in advance.

If payment is not received by the due date, a late charge will be added at the rate of one and one-half percent (1.5%) per month (eighteen percent (18%) per annum) or the maximum legal rate, whichever is less, to unpaid invoices from the due date thereof.

All payments (checks) should be sent to: Elbe & Sohn, Inc., 1875 Dewey Lane, South Haven, MI 49090.

If Customer is delinquent in paying any amount owed to Elbe & Sohn, Inc., for more than ten (10) days, then, without limiting any other rights and remedies available to Elbe & Sohn, Inc., under the law, in equity, or under the Agreement:

(a) suspend production, shipment and/or deliveries of any or all products purchased by Customer; or,

(b) by notice to Customer, treat such delinquency as a repudiation by Customer of the portion of the Agreement not then fully performed, whereupon Elbe & Sohn, Inc., may cancel all further deliveries and any amounts unpaid hereunder shall immediately become due and payable.

If Elbe & Sohn, Inc., retains a collection agency and/or attorney to collect overdue amounts, all collection costs, including attorney's fees, shall be payable by Customer. Customer hereby represents to Elbe & Sohn, Inc., that Customer is now solvent and agrees that each acceptance of delivery of the products sold hereunder shall constitute reaffirmation of this representation at such time.

If payment is not to be in cash, Customer will execute a financing statement, security agreement, lease, and any other documents reasonably requested by Elbe & Sohn, Inc.

Elbe & Sohn, Inc. is entitled to use payments to credit old debts first despite declarations of Customer to the contrary. If costs and interest have accrued, then Elbe & Sohn, Inc., is entitled to use payments to credit costs first, then interest and lastly to credit the principal obligation.

Section 9. Set-off by Customer, Retention

Customer is only entitled to the right of set-off if the counterclaims have become res judica, are uncontested or accepted by Elbe & Sohn, Inc.. Customer is only entitled to the right of retention of mature claims if the counterclaims result from the same contractual relationship; a more extensive right of retention is excluded. If the agreement is a commercial transaction for both parties, Customer is entitled to refusal of performance only in case of defective goods or gross breach of the contract. Customer agrees to a set-off of his claims against liabilities vis-à-vis Elbe & Sohn, Inc.

Section 10. Compensation for Damages and for Disbursements

In no event shall Elbe & Sohn, Inc., be liable to third parties for damages of any type arising out of Customer's use of the Elbe & Sohn, Inc., products. Customer furthermore represents and warrants to Elbe & Sohn, Inc., that any services performed by Elbe & Sohn, Inc., at Customer's request on material supplied by Customer, are not in violation or infringement of any person's statutory or common law copyright or other proprietary rights; and, Customer agrees to indemnify Elbe & Sohn, Inc., from and against all liability, loss or damage, including reasonable attorney fees, resulting from a claimed violation or infringement of any person's proprietary rights or any litigation based thereon, or from Customer's use of the Elbe & Sohn, Inc., products.

The liability of Elbe & Sohn, Inc., is limited to foreseeable and contract-typical damages. This limitation is not valid if a legal representative or an authoritative employee of Elbe & Sohn, Inc., caused the damages deliberately or gross negligently or has breached substantial contractual duties. Furthermore, this limitation is not valid if Elbe & Sohn, Inc., is liable for harm to life, body or health.

ELBE & SOHN, INC., WILL NOT UNDER ANY CIRCUMSTANCES, WHETHER AS A RESULT OF BREACH OF CONTRACT, BREACH OF WARRANTY, TORT OR OTHERWISE, BE LIABLE FOR CONSEQUENTIAL, INCIDENTAL, SPECIAL, INDIRECT OR EXEMPLARY DAMAGES, HOWEVER CAUSED, INCLUDING, BUT NOT LIMITED TO, LOSS OF PROFITS OR REVENUES, LOSS OF USE OF OR DAMAGE TO ANY ASSOCIATED EQUIPMENT, COST OF CAPITAL, COST OF SUBSTITUTE PRODUCTS, FACILITIES OR SERVICES, DOWNTIME COSTS, OR CLAIMS OF BUYERS CUSTOMERS, ARISING OUT OF THE USE OF OR INABILITY TO USE ELBE & SOHN, INC., PRODUCTS OR SERVICES, EVEN IF ELBE & SOHN, INC., HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES.

LIABILITY OF ELBE & SOHN, INC. ON ANY CLAIM OF ANY KIND WHETHER IN CONTRACT, TORT (INCLUDING NEGLIGENCE) OR OTHERWISE FOR ANY LOSS OR DAMAGE ARISING OUT OF, RESULTING FROM, OR CONCERNING ANY ASPECTS OF THIS AGREEMENT OR FROM THE PRODUCTS OR SERVICES FURNISHED HEREUNDER SHALL NOT EXCEED THE PRICE OF THE SPECIFIC PRODUCT OR SHIPMENT WHICH GIVES RISE TO THE CLAIM, AND NO CLAIM MAY BE BROUGHT AGAINST ELBE & SOHN, INC. WITHIN THE STATUTORY PERIOD AFTER ANY CAUSE OF ACTION ACCRUES.

Section 11. Notices, Severability and Jurisdiction

All payments and notices required herein shall be provided to Elbe & Sohn, Inc., at its registered office at 1875 Dewey Lane, South Haven, MI 49090.

In case one or more of the terms and conditions contained herein should be declared invalid by a Court of competent jurisdiction, the validity of the remaining terms and conditions will remain. Should additions or interpretations of these terms and conditions be necessary due to the invalidity of any of the provisions contained herein, such additions or interpretation shall be made such as to achieve as closely as possible the economic purpose of the invalidated provision(s).

Customer expressly agrees that the terms and conditions contained herein shall be interpreted and governed by the laws of the State of Michigan.

The terms and conditions of this contract shall be adjudicated in the United States in a court in Van Buren County, State of Michigan, unless Elbe & Sohn, Inc., in its sole and absolute discretion chooses to adjudicate this contract in the United States District Court for the Western District of Michigan or any other court located in the State of Michigan.



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