

GENERAL TERMS AND CONDITIONS OF SALE AND DELIVERY (GTCSD) OF C&T ELMECH SP. Z O.O. IN PRUSZCZ GDAŃSKI



1. General provisions

1.1. These General Terms and Conditions of Sale and Delivery regulate the rules of cooperation between C&T Elmech Sp. z o.o. (hereinafter referred to as the Supplier) and the Customer (hereinafter referred to as the Ordering Party) concerning the supply of products (hereinafter referred to as the Products) offered by the Supplier to the Customer. The Ordering Party is any entrepreneur, within the meaning of the Act of 2 July 2004 on freedom of business activity (Journal of Laws of 2013, item 672), who concludes commercial transactions with the Supplier.

1.2. These General Terms and Conditions of Sale and Delivery are an integral part of every offer of the Supplier and every commercial agreement, and the commencement of cooperation in the area of deliveries is tantamount to accepting the above.

1.3. Commercial agreements may modify and specify in more detail these General Terms and Conditions of Sale and Delivery. In any matters not regulated by this document, the respective written arrangements between the parties and the provisions of the Civil Code shall apply.

1.4. These General Terms and Conditions of Sale and Delivery are available on the Supplier's website <http://www.elmech.pl>

2. Order

2.1. The Supplier undertakes to perform a delivery based on an order placed in person, sent by post to the Supplier's office or one of its branches, or sent by e-mail. Only the quantities of the ordered assortment confirmed by the Supplier shall be considered as binding and shall represent an offer within the meaning of the Civil Code. The acceptance of an offer that is subject to a change or supplementation shall be considered as a new offer. The response to an offer that is subject to a change or supplementation without a significant modification of the content of the offer shall be deemed as its acceptance. The Supplier may also make the conclusion of a supply agreement contingent on the Ordering Party's payment for previously ordered products or on an advance payment to be made by the Ordering Party.

2.2. The order shall include the following: the Ordering Party's name and address, type and quantity of the product being ordered, place of delivery, number of the offer based on which the order is placed (where applicable), full name of the person authorised to receive the products being ordered, name and address of the payer (if different than the name and address of the Ordering Party), address for the delivery of an invoice (if different than the Ordering Party's address) as well as full name and signature of the person authorised to place orders.

3. Order cancellation (withdrawal from the agreement) and buyback of products by the Supplier

3.1. The Ordering Party may cancel an order (withdraw from the agreement) only for products in the Supplier's warehouse within 24 hours from the sending of the order and is subject to written approval by the Supplier.

3.2. If the Ordering Party cancels an order (withdraws from the agreement) only for products in the Supplier's warehouse later than 24 hours from the sending of the order to the Supplier, the order shall be considered to be in progress, and the Ordering Party shall be obliged to reimburse any costs incurred by the Supplier, depending on the order fulfillment progress. Said costs shall include all expenditures incurred by the Supplier in order to fulfil the order.

3.3. If the Ordering Party cancels an order (withdraws from the agreement) for products manufactured and delivered on special order of the Ordering Party and for goods from production in progress, the Ordering Party shall pay the following amounts to the Supplier:

- before the approval of the detailed design documentation by the Ordering Party, the Ordering Party shall pay 10% of the net value of the object of the order (relating to the preparation of the documentation);
- up to 1 week from the approval of the detailed design documentation, the Ordering Party shall pay 30% of the net value of the object of the order;
- up to 4 weeks from the approval of the detailed design documentation, the Ordering Party shall pay 80% of the net value of the object of the order;
- after 4 weeks from the approval of the detailed design documentation, the Ordering Party shall pay 95% of the net value of the object of the order. The payment of the above amounts represents a compensation fee within the meaning of Article 396 of the Civil Code and shall be made together with the declaration of withdrawal from the agreement.

3.4. Once the delivery has been performed, the Ordering Party may request the Supplier to buy back the products purchased by the Ordering Party on the condition that these are standard products which the Supplier has permanently in stock. The products must be unused and complete, and must have original packaging. Once the products' condition is approved by the Supplier's quality control department, the Supplier can buy them back for 30% of their sale value.

4. Delivery time and delay

4.1. Observance of the term of delivery depends on the fulfilment of contractual obligations by the Ordering Party. The term of delivery starts once an order is placed, but not until all details concerning the order's fulfillment have been clarified, the Ordering Party has submitted full documentation, licenses and permits, the Supplier has received any agreed advance payments and any other conditions agreed by the parties have been met in order to enable unproblematic order fulfillment. Failing this, the term of delivery shall be extended accordingly, unless the Supplier is responsible for the delay.

4.2. The agreed term of delivery shall be deemed to have been observed if the products leave the Supplier's premises before the expiry of the term of delivery, or, in the case of an ex-works delivery (EXW Incoterms 2010), i.e. the risk of loss of or damage to the products transfers from the Supplier to the Ordering Party once they are made available by the Supplier to the Ordering Party at a designated place and time), if the Ordering Party has been notified that the products are ready for shipping and have been appropriately separated.

4.3. If the delivery is delayed due to unforeseeable and/or unusual circumstances of the Supplier which could not have been prevented despite observing due diligence, the term of delivery shall be extended accordingly. The above provision shall apply irrespective of whether the delay takes place at the Supplier's or any of its suppliers' premises.

4.4. The Supplier shall be exempted from liability for punctual fulfilment of deliveries and any other contractual obligations if, as a result of circumstances beyond the control of the Supplier or the suppliers, it is not possible or exceptionally difficult to fulfil the terms and conditions of the agreement. The circumstances referred to in this clause shall include in particular:

- mobilisation, war, riots, social unrest, blockades, labour disputes, demonstrations, strikes and sabotage;
- harmful weather, such as ice, flood water, low water levels, hurricanes, earthquakes and flood waves;
- obstacles, delays, restrictions or stoppage of loading and transport;
- explosion, fire, complete or partial destruction of a production plan, warehouse facilities, machines and their parts;
- effects of an energy crisis, fuel or power shortage;
- lack of workforce due to sickness and epidemic;
- the supplier has not received all raw materials, accessories or packagings, or has received them but they do not conform to the order;
- decisions by domestic or foreign authorities.

4.5. If the Supplier is responsible for a delayed delivery and the Ordering Party suffers damage on this account, the Ordering Party shall have the right to demand damages for every full week of the delay in the amount of 0.5%, but not more than 5% of the value of the part of the delivery which could not be delivered on time or could not be used according to the provisions of the agreement due to the delay.

5. Shipment, transfer of risk and acceptance of delivery

5.1. The delivery shall be made according to the ex-works formula (EXW Incoterms 2010), unless agreed otherwise. If the Supplier is obliged to ship the products, it shall also have the right to select the mode and route of transport. At the Ordering Party's request, there is an option to purchase transport insurance, whose costs shall be paid by the Ordering Party.

5.2. The risk, also in the case of a partial delivery, shall transfer to the Ordering Party when the Supplier makes the products available to the Ordering Party. The above provision shall apply irrespective of whether the Supplier has undertaken to provide any additional services, such as paying for the costs of transport, delivery or assembly.

5.3. If the shipment is delayed due to circumstances for which the Supplier is not responsible, the risk shall transfer to the ordering party after 7 calendar days from the notification of the readiness for shipment. However, the Supplier shall be obliged to purchase the insurance requested by the Ordering Party at the Ordering Party's expense.

5.3.1. After the 7-day period referred to before, in the event that the Ordering Party fails to collect the goods, the Supplier shall have the right to charge a warehousing fee in the amount of 0.1% of the value of the goods for every day of storage.

5.4. The products must be collected in terms of quantity and quality, and inspected for any identifiable mechanical damage, which must be confirmed on the issue document or the proof of delivery. The products collected by the Ordering Party or the carrier without reservations shall be deemed to be free from apparent and physical defects. The Ordering Party is obliged to accept the delivered goods even if minor defects are discovered which do not affect warranty claims.

5.5. The Supplier has the right to perform partial deliveries.

6. Warranty and statutory warranty

6.1. The parties exclude the application of the statutory warranty in the relationship between them as per Article 558 § 1 of the Civil Code.

6.2. Unless agreed otherwise, the Supplier shall grant a 12-month warranty to the Ordering Party as of the day when the risk transfers to the Ordering Party.

6.3. The Supplier shall be liable under the warranty only for defects that are inherent to the product sold, in particular as a result of faults in design, building materials or workmanship.

6.4. In particular, the warranty does not cover:

- use that is inconsistent with the operating manual and intended purpose;
- damage caused as a result of unsuitable or negligent handling, storage or use of the product;
- unprofessional assembly and/or installation, and unprofessional commissioning of the product by the Ordering Party or third parties;
- normal wear and tear;
- use of unsuitable equipment, tools and materials;
- unsuitable construction works;
- unsuitable foundation soil;
- chemical, electrochemical or electrical effects.

6.5. The warranty does not cover defects as a result of unauthorised modifications or repairs of the product by the Ordering Party or a third party without prior written consent of the Supplier.

6.6. The Supplier, having consulted the Ordering Party, shall perform repairs or supply spare parts (products) which it considers to be necessary within the agreed period. All replaced parts become property of the Supplier.

6.7. If the Supplier delivers to the Ordering Party defect-free products in place of defective products, or makes significant repairs of products under the warranty, the term of the warranty shall begin anew as of the delivery of such defect-free products or the return of repaired products. If the Supplier replaces a spare part, the above rule shall apply to the replaced spare part accordingly. In other cases, the term of the warranty shall be extended by the duration of the period in which, as a result of the defect of the product covered by the warranty, the Ordering Party was unable to use the product.

6.8. The Ordering Party shall notify the Supplier in writing of the defect immediately after discovering it to the following address: C&T Elmech Sp. z o.o., ul. Podmiejska 5c; 83-000 Gdańsk; by fax: 58 682 38 70 or e-mail serwis@elmech.pl.

6.9. The Supplier shall notify the Ordering Party in writing about the outcome of the complaint within 14 days from its receipt.

6.10. If the complaint is accepted, the delivery of products to and from the Ordering Party shall be made at the expense of the Supplier on a date agreed by both parties.

6.11. If the complaint is rejected, the Supplier shall charge the Ordering Party for the costs of an unjustified complaint.

6.12. Any goods shipped by the Ordering Party as part of the complaint must be appropriately packaged, secured and cleaned. A completed copy of the Complaint and Service Form (CSF) must be included with the goods.

7. Prices and payment

7.1. All prices are provided according to the ex-works formula (EXW Incoterms 2010) and do not include the applicable goods and services tax, unless agreed otherwise. Any additional costs of packaging, shipping, insurance, customs duty and installation shall be charged separately.

7.2. After the end of the term of payment for an invoice, the Supplier shall charge the Ordering Party with statutory interest.

7.3. The Supplier and the Ordering Party may mutually waive any claims if such claims consist in cash, are both payable and can be disputed in court or another state authority.

7.4. The Supplier has the right to suspend the performance of a part of the agreement if, after the signing of the agreement, it is discovered that the Ordering Party is unlikely to fulfil its obligation due to its economic situation. The Supplier shall promptly inform the Ordering Party about it, making its performance of the agreement contingent upon the Ordering Party providing an appropriate security for the fulfilment of its obligations.

7.5. In the case of foreign currency transactions, the Supplier has the right to withdraw from the agreement if the exchange rate fluctuations are unfavourable to the Supplier by more than 10% of the order value. The exchange rate fluctuations underlying the withdrawal from the agreement by the Supplier must take place after the order is placed and before the first delivery is made under the agreement.

8. Industrial property rights

8.1. The Supplier reserves the copyrights to any documentation accompanying each offer as well as any documents and information received by the Ordering Party during the sale and delivery process. The Ordering Party is obliged not to make such documents and information available to third parties without express consent of the Supplier, and the Ordering Party shall use such documents and information only in accordance with the agreement. The above does not apply to information which is already available to the public independently from the sale and delivery process, and which was already in the Ordering Party's possession before its disclosure by the Supplier, or which is obtained by the Ordering Party from an authorised third party independently from the sale and delivery process.

9. Place of performance, language of the agreement, applicable law, place of jurisdiction, protection, written form and partial invalidity

9.1. The place of performance for both payments and deliveries is the Supplier's registered office.

9.2. Unless agreed otherwise, the language of the agreement is Polish. The above shall apply even if the communication between the Buyer's and the Supplier's personnel concerning technical aspects, logistics and other practicalities takes place in the native language of the Ordering Party or in another language.

9.3. These General Terms and Conditions of Sale and Delivery and the entire legal relationship between the Supplier and the Ordering Party shall be governed only by the Polish law, excluding the Convention on Contracts for the International Sale of Goods (CISG).

9.4. In the event of a dispute between the parties to the agreement, the place of jurisdiction shall be the court competent for the Supplier's registered office. However, the Supplier can decide to initiate proceedings against the Ordering Party in the place of jurisdiction of the Ordering Party.

9.5. The contractual relationship is governed by the following hierarchy of provisions:

- individual agreements concluded by the parties,
- these General Terms and Conditions of Sale and Delivery,
- the law, in particular the provisions of the Civil Code.

9.6. If any provision of these General Terms and Conditions of Sale and Delivery or any other provisions associated herewith prove to be void, this shall not affect the validity of the remaining provisions, terms and conditions.