

## General Terms & Conditions

### I GENERAL.

1. The general Terms & Conditions, as described in this document, apply to all requests, proposals, and agreements, for which elho B.V. (hereafter referred to as elho) acts as the dealer. If our General Terms & Conditions are changed during this agreement, then only the most recent version of the Terms & Conditions is legally valid. These general Terms & Conditions also apply to the following agreements and/or orders.
2. Deviations from these general Terms & Conditions can only be made in writing.
3. The "customer" is defined in these Terms & Conditions as any entity or its representative which has, either directly or indirectly, made an agreement or wishes to make an agreement concerning products for the benefit of selling these products to end users/consumers.
4. The customer's general Terms & Conditions, regardless of their denomination, will never apply to the relation between elho and the customer.

### II PROPOSALS.

1. All proposals are made without liability and may be altered or withdrawn by elho at all times and without providing reasons, before the agreement is completed.
2. A proposal/offer that has been accepted by the customer is only binding when confirmed by elho in writing and under the explicit condition that the claim by elho is insurable. elho has the right to refuse the order at all times and without providing reasons.
3. All price-lists, brochures and other information made available with a proposal have been drawn up as accurately as possible, though the valid price will be established between parties in the final written confirmation of the order.

### III AGREEMENT.

1. The agreement between elho and the customer is established when the written order confirmation is sent by elho. Deviations and/or additions concerning the agreement only apply when put down in writing by parties and signed by an authorised person.
2. elho has the right to request additional securities or full upfront payment from the customer, by which elho, without becoming liable to damage, maintains the right to temporarily suspend the execution of the agreement until the customer has provided security for the fulfilment of their obligations.

### IV PRICES.

1. All prices are based on delivery ex works [Incoterms 2010] and are exclusive of packaging, VAT, import duties and other surcharges, taxes and rights. The charged prices are the prices that are valid at the moment of delivery.
2. If, following the signing of the agreement, there are salary increases, price increases for materials, increases in government taxes, social premiums, taxes and duties or if there is a change in currency rates or if other factors occur which cause an increase of prices, elho has the right to effect a price increase for the customer or to annul the contract.

### V DELIVERY AND DELIVERY TIME.

1. The delivery time given by elho is indicative and cannot be considered as an absolute term; elho will make every effort to realise the terms. In case of late delivery, therefore, the customer will give elho a notice of default in writing, including a reasonable timeframe for elho to fulfil its obligations. If elho is unable to deliver within this timeframe, the customer has the right to annul the agreement in writing with a term of notice of 14 days. elho will not be liable in case of any damage for the customer.
2. The agreed delivery period starts on the date on which the order confirmation is sent by elho and on which all formalities of the agreement have been met, but not limited to an advance payment and providing of necessary documents, information, permits etc.
3. For orders where further instruction, approval or availability of products is necessary, the delivery period is suspended until the customer has given this further instruction or approval or made the products or materials available. The payment terms agreed will always be adhered to.
4. Deliveries always take place ex works and the risk passes to the customer from the moment of delivery.
5. The delivery date is considered to be the time at which the merchandise is ready for delivery or is transferred into the control of the customer.
6. If the merchandise has not been picked up by the other party before the expiration of the delivery date as indicated in clause 5, elho shall declare, in writing, the other party to be in breach and allow them a reasonable period to pick up the merchandise. A reasonable period will, in general, not be longer than 5 working days. If the other party, following the expiration of this period, is still in breach with regard to collection of the merchandise, we have the right to effect sale of this merchandise, as determined in article 6:90 of the Civil Code. The merchandise that has not been picked up can be considered as merchandise as defined in the Legal Code article, given that they are seasonal.
7. Any necessary packaging will be charged at cost price and not taken back. The judgement as to the necessity of packaging is completely at the discretion of elho.

### VI TRANSPORT/RISK.

1. Transport of the merchandise takes place in accordance with the conditions of Incoterm 2010 as mentioned in the order confirmation by the parties. The customer should ensure adequate insurance for the risks during transport at all times.
2. If transport is taken care of by elho, the customer, as addressee, is obliged to provide a certificate of receipt. In case the customer omits this a handling fee of 25% of the value of the invoice will be charged.

### VII FORCE MAJEURE.

1. In case of force majeure none of the parties are liable concerning the other party's suffered damage, loss or foregone income.
2. Force Majeure is defined as: all circumstances, occurring independently of the will of parties or unforeseen circumstances under which the fulfilment of the contract can no longer be reasonably required by the other party.
3. Included in the definition "force majeure" in all cases are the following: strikes, refusals to work, exclusionary practices, frost, lack of transport resources, transport hold-ups, government legislation, refusal of import permits by the government, blockades, company disruption, excessive personnel illness, delayed or incorrect delivery of raw materials or consumables, independent of whether these circumstances occur at elho's location or those of elho's suppliers.
4. If elho is confronted with force majeure, the other party will be informed as soon as is reasonably possible and the execution of the agreement will be suspended until further notice, or annulled in case a short term fulfilment cannot be expected. Parties will confer about the situation at hand.
5. If the agreement is annulled as a consequence of force majeure, elho shall be paid for the activities carried out in regard to the relevant agreement, prior to the occurrence that caused force majeure becoming evident.

### VIII LIABILITY.

1. Elho is liable for direct damages suffered by the customer only if this is a result of a shortcoming in meeting its obligations, attributable in carrying out the agreement between parties. Whether it is a result of attributable shortcomings, breach of contract, negligence or guarantees, elho is not liable for indirect damage, but not limited to consequential damage, immaterial damage, a loss of profits, loss of use or the impossibility of the use of the merchandise.
2. The total liability for elho, as a consequence of the occurrences mentioned under clause 1, is limited to the nominal invoice amount of the delivered merchandise.
3. All (legal) claims based on contracts entered into by us lapse according to the statute of limitations after a period of one year.

4. The customer releases elho from any claims from third parties as a result of a default in a product in which the customer has processed the elho product. The customer also releases elho from claims by third parties.

#### **IX COMPLAINTS.**

1. The customer must check the goods delivered and/or the packaging immediately upon delivery for any omissions or visible damage.
2. Minor defects and differences in quality, colour or finishing do not constitute grounds for a complaint or refunds nor do they constitute grounds for annulment of the agreement.
3. Complaints will only be dealt with by us if the customer informs us, in writing, within 5 working days following the moment the fault is discovered or within 5 working days after the customer could reasonably be expected to have discovered the fault and where an accurate description is provided of the nature of the fault and the grounds for the complaint as well as when and in which manner the fault was identified. The customer is reasonably expected to have discovered any fault within 2 working days following delivery.
4. Complaints regarding invoices must be made in writing and within 5 working days following the postage date of the invoice.
5. Following expiry of the above-mentioned periods, the customer is considered to have accepted the merchandise and/or invoice. Refunds, therefore, will no longer be dealt with by us and the conditions in article 6:89 of the Netherlands Legal Code will apply given that the customer or other party has not dealt with the matter with sufficient urgency.
6. The submission of a complaint does not release the customer from the liability towards elho for payment. Suspension or settlement against other invoices by the customer or other party is, therefore, not permitted.
7. Merchandise returns can only take place with our prior written permission and according to reasonable conditions that will be determined by elho.
8. If the complaint is accepted by elho as justified, then we are only liable for replacement of the defective goods without the customer having the any rights to any type of compensation whatsoever.

#### **X PAYMENT, INTEREST AND COSTS.:**

1. Payment of the nominal invoice amount must take place within 14 days following invoice date, without any form of discount or settlement. If the customer does not pay in time, he is considered to be negligent immediately and without a formal notice being necessary.
2. Once the other party is negligent, a minimum of 9% (trading) delay-interest as defined in article 6:119a jo 6:120 clause 2 of the Civil Code is due on the outstanding amount from the date on which the breach of contract starts up to date of general payment.
3. If the customer remains negligent, all judicial and non-judicial collection costs incurred by elho will be charged to the other party.
4. The non-judicial collection costs and accompanying costs will be calculated at the charge-rates that are normally adhered to in the branch.
5. All payments made by the customer – despite any payment codes, invoice number etc. – will be applied primarily to all collection costs incurred by us, confiscation fine(s) and/or administration costs, then subsequently towards any interest owed by the other party and the rest towards outstanding debts that will be determined by us.

#### **XI RESERVATION OF TITLE.**

1. All merchandise delivered by elho remains exclusively the property of elho until such time as the customer has fulfilled all the financial obligations that are due following the agreement. Prior to complete payment being made of all debts outstanding to elho, in whatever regard, the opposite party is not legally permitted or authorised, as described in the Civil Code article 83 clause 2 Volume 3, to incur financial obligations with regard to the merchandise delivered by elho, to establish limited security rights or to transfer the property rights. As an exception to this, the customer is permitted, with regard to his normal company activities or the normal destination for the merchandise, to transfer property of the merchandise delivered by elho.
2. When the customer has completed the acquisition of property, this agreement establishes a silent lien on the merchandise delivered by elho, for our purpose, for any claim that we have, or will have, on the customer.
3. Elho maintains the right at any time and on the basis of the provisions in this article, to remove the delivered merchandise (or have it removed) from the customer or those in possession of the merchandise. If the customer, despite written requests to do so, refuses to cooperate in the return of the goods delivered, he is liable to a fine of € 500,- per day that he is/remains in breach.

#### **XII ANNULMENT AND SUSPENSION.**

1. If the customer is in breach under the provisions of the Civil Code, these General Terms & Conditions or on the grounds of any obligations from the Agreement incumbent upon him, elho has the right to annul the agreement by confirming this in a written declaration to the other party, without affecting any right elho has to compensation for damages. Elho also has the right, by declaring such in writing to the other party, to reclaim all merchandise that has been delivered. The Agreement is annulled by this written declaration, without, once again, affecting our right to compensation for damages.
2. elho has the right to suspend the agreement if it appears that the other party will fall short in fulfilling its obligations.
3. elho has the right to immediately annul and end the agreement in the event of the following situations:
  - a. the customer is declared bankrupt, decides to surrender property, files a request for suspension of payment to creditors, files a request such as described in the Law Remission of Debt Private Individuals (*Wet Schuldsanering Natuurlijke Personen*), or if part or all of his property is seized;
  - b. the customer dies or is placed under jurisdiction;
  - c. the customer ceases business operations or divests all or part of his company, including the merger of his company in a partnership to be set up or which already exists, or where the customer decides to change the objectives of his company;
  - d. it is evident that the fulfilment of obligations by the other party will be impossible.

#### **XIII INTELLECTUAL PROPERTY RIGHTS**

All intellectual property rights on products, designs, drawings, other documents concerning 'know how' developed by elho will remain the property of elho. The customer is not at liberty to copy these products or to apply its own name and/or logo to the elho product. If this provision is violated the customer is liable to a directly claimable fine, which is not open to judicial mitigation, of respectively € 25.000,- and € 2.500,- for each day that he remains in violation.

#### **XIV APPLICABLE LAW.**

The Dutch Law is exclusively applicable to all our proposals, agreements and the execution of these. The Vienna sales Convention does not apply to the relation between elho and the customer.

#### **XV DISPUTES.**

Disputes, including those which are considered as such by only one party, arising from or related to the Agreement for which these Terms & Conditions are applicable or the relevant Terms & Conditions themselves and the explanation or execution, both factual or legal, will be adjudged by the Court in 's-Hertogenbosch, unless the competence rules decree that the Sector Cantonal is authorized to adjudge the dispute. In such cases, this forum should be advised, and the normal rules for relative competence should be followed. These Terms & Conditions have been registered with the Chamber of Commerce in 's-Hertogenbosch.