

General Terms and Conditions of Supply of UNI ELEKTRO (Status October 2008)

1. Validity

1.1. Unless specifically agreed otherwise, the following "General Terms and Conditions of Supply" shall apply for all contracts, consignments and other services in commercial transactions with non-consumers within the meaning of § 310 Section 1 of the German Civil Code [BGB]. Differing terms and conditions, in particular the Buyer's terms and conditions of purchase are hereby rejected.

1.2. In the course of a regular business relationship between registered traders the terms and conditions shall also become an integral part of the contract in those cases in which the Seller has not specifically drawn attention to their inclusion.

1.3. Specific obligations as part of manufacturer partnership contracts (**exclusive distribution rights directives**) for "Brown goods" covering wholesalers and retailers of the same manufacturer shall prevail over these terms and conditions.

2. Offers and signing a contract

2.1. The offers contained in the catalogues and sales documentation, as well as those in the internet are always subject to change without notice unless they have been expressly designated as being binding. I.e. they are only to be regarded as a request to submit an offer.

2.2. Orders shall be regarded as having been accepted if they have either been confirmed in writing or are carried out straight away after the order is received. In such cases the delivery note or the goods invoice shall be regarded as the order confirmation.

2.3. In so far as employees of the Seller make verbal side agreements or furnish assurances over and above the written purchase agreement, these shall always require the Seller's written confirmation to be valid. Verbal statements by the Seller or by persons who are authorised to represent the Seller shall not be affected by the above regulation.

2.4. If, after signing the contract, the Seller becomes aware of facts, in particular default in payment with regard to consignments already delivered, which according to his best commercial judgement suggest that the right to the purchase price is jeopardised by faulty performance on the part of the Buyer, the Seller shall, having been set a reasonable period of time by the Buyer, be entitled at the Buyer's choice, to demand payment concurrently or that appropriate securities are furnished and in the event of refusal, to withdraw from the contract, whereby the invoices for part consignments already delivered shall be rendered payable straight away.

2.5. Services rendered by the wholesaler over and above his obligations as Seller, such as, for example, taking over the support and planning services incumbent upon the Buyer towards third parties shall be subject to a separate agreement and shall only be taken on for a remuneration.

2.6. The minimum order value is 50 Euro for small orders. A charge of 4.50 Euro of this amount shall be charged for the additional expense incurred by handling charges.

2.7. UNI ELEKTRO shall charge an energy lump sum amounting to 1.50 Euro for each delivery order. This amount shall be shown separately on order confirmations and invoices.

2.8. The Buyer's wishes to have a legally valid order reduced or cancelled subsequently may only be taken into consideration subsequently on the basis of special agreements and – provided that they are not stock articles – to the extent that the sub-supplier is prepared to take back the goods. In each instance the Seller shall be entitled to deduct a reasonable percentage of the net invoiced amount from the credit note for goods returned properly with his consent for handling costs, inspection and repacking. Damaged goods will not be credited. On cases in which a claim asserted by a Buyer is based upon a mistake, the Seller shall be entitled to be compensated for the losses he has incurred in accordance with § 122 of the German Civil Code [BGB].

3. Data protection

The Seller shall save and use the Buyer's personal data for handling purposes and also as far as is necessary and normal to review the creditworthiness of the contractual relationships entered into. In addition to this, the data shall be used to provide on-going support for the contractual relationships.

4. Supply, Passing of risk and Default

4.1. All technical queries must have been dealt with before a delivery period stated by the Seller can start to run.

4.2. The risk shall pass over to the Buyer when the goods are handed over.

4.3. The risk shall pass over to the Buyer when the goods are handed over to a haulier or freight forwarder, and no later than when the goods leave the Seller's business premises, and to be more precise, even in those cases in which the goods are to be delivered by the Seller's vehicles. This shall also apply if the goods are to be delivered to a third party's business premises (So-called direct-to-purchaser sale).

4.4. The goods will be insured by the Seller at the Buyer's express request and expense.

4.5. If dispatch is delayed at the Seller's request or fault, the goods shall consequently be stored at the cost and risk of the Buyer. In this case the notification that the goods are ready for dispatch shall be equal to dispatch. The risk shall pass over to the Buyer at the point time at which the Buyer finds himself in default in taking delivery of the goods or rendering payment.

4.6. Part-consignments are allowed within reasonable limits.

4.7. The delivery period shall be extended – even if the Supplier is already in default – by a reasonable period if force majeure occurs and all other unforeseen events occurring after the contract is signed for which the Seller is not responsible (in particular, also including operational breakdowns, strike, lock-out or transport disruptions), provided that such hindrances can be proven to have a considerable impact upon the supply of items sold. This shall also apply if these circumstances occur at the Seller's suppliers' and their suppliers'. The Seller is to notify the Buyer of the beginning and end of such hindrances as soon as possible. The Buyer may demand a statement from the Seller whether he intends to withdraw from the contract or supply within a reasonable period of time. If the Seller does not make a statement straight away, the Buyer may withdraw from the contract. No compensation claims for damages may be asserted under such circumstances. The above regulations shall apply accordingly for the Buyer if the above-named hindrances affect the Buyer.

4.8. With regard to supplying on time, the Seller shall only be liable if he or his assistants are to blame. He shall not have to answer for his suppliers being to blame, since they are not his assistants. The Seller is however obliged, upon request, to assign any claims to which he may be entitled against his suppliers to the Buyer.

4.9. In the event of a delay in delivery, the Buyer shall, at the Supplier's request, be obliged to state within a reasonable period of time whether he intends to continue to insist upon delivery or withdraw from the contract in account of default and / or demand compensation for damages instead of performance.

5. Packing

5.1. Packing will be charged separately.

5.2. The Supplier will not take back packing material, if he has called in a suitable waste disposal company in accordance with the German Packing Regulations in force at that point in time. The Buyer is in this case obliged to keep the packing material ready for collection and to hand it over to the waste disposal company. In so far as the Seller agrees with the Buyer that he give the Buyer a lump sum disposal fee for waiving his right to return the packing, the Buyer shall be obliged to hand over the used packing material to a recognised disposal business which will ensure that the packing material is disposed properly in accordance with the regulations of the German Packing Regulations.

5.3. The Buyer shall only be provided with return packaging on a loan basis. The Buyer is to notify the Seller in writing of the return of the packing unit within 14 days and have the packing ready for collection.

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If the Buyer fails to do so, the Seller shall be entitled, once he has sent a written payment reminder, to demand 20% of the purchase price each week from the 3rd week onwards (up to a maximum of the full purchase price). Moreover, the following shall apply when entering into contracts with registered businesses, legal entities created under public law and public law special funds: cable drums owned by Kabeltrommel GmbH & Co. KG, Cologne, (KTG), or other third parties shall be supplied in the name and on behalf of these owners and in accordance with their terms and conditions – in particular in accordance with the respective KTG terms and conditions for handing over cable and rope drums. These are on display in the Seller's premises for inspection, or can be forwarded upon request. Attention is drawn to the fact that the suppliers of cable drums will charge rent for them if they are not returned on time which the Buyer shall have to pay if they are attributable to him.

6. Prices and Payment

6.1. The prices are always exclusive of value added tax.

6.2. Unless agreed otherwise, the purchase price shall be payable in full and immediately upon receipt of the goods. The same shall apply for repairs.

6.3. The Seller shall only accept drafts which can be accepted on account of payment if an agreement has been made to that effect. Credit entries from drafts and cheques shall be booked minus expenses and at the value on the date on which the Seller is able to dispose of the countervalue.

6.4. In the event of a delay in payment the statutory regulations shall apply. Any prompt payment discounts which may have been agreed shall not be granted in so far as the Buyer is in default with the payment for earlier deliveries.

6.5. The Seller's claims shall be payable immediately irrespective of the term of any drafts which have been received and credited, in the event of failure to comply with the terms and conditions of business or the Seller becomes aware of facts suggesting that the Seller's purchase price claims are jeopardised as a result of the Buyer's lack of performance. In the latter case the Seller is entitled to make future deliveries dependent upon payment concurrent with delivery or the furnishing of appropriate securities.

6.6. If the Buyer finds himself in default with payment, or if he does not honour a draft when payment is due, the Seller shall be entitled, after giving a written warning, to take back the goods and if necessary to enter the Buyer's premises and take away the goods. Taking back the goods shall not constitute withdrawal from the contract. If, on the other hand, the goods have been supplied as a once-off contract when there is no established business relationship between the Buyer and Seller, the Seller shall undertake to withdraw from the contract in advance. The Seller may in all circumstances forbid the supplied goods from being removed from the Buyer's premises.

6.7. In the circumstances outlined in Points 6.5. and 6.6. the Seller may revoke the direct debit mandate (Section 7.6) and insist upon payment concurrent with deliveries still outstanding. However, the Buyer may avert these as well as the legal consequences in Section 6.6 by furnishing a security for the sum equal to the entitlement to payment jeopardised.

6.8. A refusal to pay or – withholding of payment is ruled out if the Buyer knew of the defect or other reason for complaint when he entered into the contract. This shall also apply if he remained unaware of the defect or other reason for complaint as a result of gross negligence, unless the Seller maliciously concealed the defect or other reason for complaint or has assumed a guarantee for the condition of the thing. Moreover, only a reasonable proportion of the payment may be withheld on account of defects or other complaints. In the event of a dispute the amount which may be withheld shall be decided by an expert appointed by the Chamber of Commerce and Industry where the Buyer is based. This person is also to decide at his equitable discretion on how the costs of calling him in are to be shared between the Buyer and Seller.

6.9. Offsetting is only allowed with accounts recognised by the Seller or accounts declared final and absolute in a court of law.

6.10 The Seller shall reserve the right to amend his prices as appropriate if having signed the contract costs increase or decrease, in particular as a result of his suppliers changing their prices. Proof of such changes will be presented by the Seller to his customers upon request.

7. Reservation of title

7.1. The Seller shall reserve the title to the goods until they have been paid for in full. The Seller shall reserve the title to goods which the Buyer sources from the Seller as part of an on-going business relationship until all his claims against the Buyer under the business relationship, including those created in the future, and also including those accounts created by contracts entered into at the same time or later, have been settled. This shall also apply even in those cases in which individual or all the Seller's accounts have been entered into a current account and the balance of account has been drawn and accepted. If a liability on the part of the Seller is created by a draft in connection with the payment of the purchase price, the reservation of title shall consequently not expire prior to the draft being honoured by the Buyer as drawee. In the event of a default in payment on the part of the Buyer, the Seller shall be entitled to take back the goods having issued a written warning and the Buyer is obliged to return the goods. Section 6.6 Sentences 2 to 4 shall apply accordingly.

7.2. If the goods subject to reservation of title are processed by the Buyer into a new mobile thing, the processing shall consequently be carried out for the Seller without the Seller being placed under any obligation as a result. The new thing shall become the Seller's property. If the Seller's goods are processed together with good not belonging to him, the Seller shall acquire co-ownership to the new thing in proportion to the value of the goods subject to reservation of title to the value of the other goods at the point in time at which the processing takes place. If the goods subject to reservation of title are connected to, combined or blended with, goods not belonging to the Seller in accordance with § 947, § 948 of the German Civil Code [BGB], the Seller shall consequently become co-owner in accordance with the statutory provisions. If the Buyer acquires sole title as a result of joining, combination or joining, he shall consequently assign co-ownership to the Seller here and now in proportion to the value of the goods subject to reservation of title to the other goods at the time at which they are joined, combined or mixed. In such cases the Buyer has to keep the thing owned or co-owned by the Seller, which is likewise regarded as goods subject to reservation of title within the meaning of the above provisions, in safekeeping free of charge.

7.3. If the goods subject to reservation of title are sold on their own or together with goods not belonging to the Seller, the Buyer shall consequently assign here and now, that means at the point in time at which the contract is signed, the accounts created by the resale amounting to the value of the goods subject to the reservation of title with all secondary rights and senior to all other accounts. The Seller accepts the assignment. The value of the goods subject to reservation of title shall be the amount invoiced by the Seller, which shall not apply if third parties have rights against the Seller. If the Seller has co-ownership of goods subject to reservation of title which are resold, the assignment of the accounts shall consequently cover the sum equal to the value of the Seller's proportion of the co-ownership.

7.4. If the goods subject to reservation of title are installed by the Buyer as an integral element in the property, ship, ship under construction, structure or aircraft of a third party, the Buyer shall consequently assign here and now the assignable accounts created against the third party or the party concerned for remuneration amounting to the value of the goods subject to reservation of title with all secondary rights including those for a to be granted a mortgage securing a claim, ranking above all other accounts. The Seller accepts the assignment. Section 7.3, Sentences 2 and 3 shall apply accordingly.

7.5. The Buyer shall only be entitled and authorised to resell, use or install the goods subject to reservation of title in a normal proper business transaction subject to the proviso that the accounts within the meaning of Section 3 and 4 actually pass over to the Seller. The Buyer is not authorised to dispose of the goods subject to the reservation otherwise, in particular he is not entitled to pledge or assign the goods subject to reservation of title by bill of sale as a security. The Buyer is only allowed to assign the goods subject to reservation of title by recourse factoring subject to the precondition that the Seller is notified of this and of the name of the factoring bank and the Buyer's accounts maintained at this bank and the factoring proceeds are greater than the value of the Seller's secured account.

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The Seller's account shall become payable immediately when the factoring proceeds are credited.

7.6. The Seller authorises the Buyer, subject to the reservation of revocation, to collect the accounts assigned in accordance with Sections 3 – 5. The Seller shall not make use of his own authority to collect his accounts as long as the Buyer fulfils his payment obligations, including those to third parties as well. At the Seller's request the Buyer shall have to name the debtors of the assigned accounts and to notify them that the accounts have been assigned to the Seller. The Seller is also authorised to notify the debtors himself that the accounts have been assigned to him.

7.7. The Buyer shall have to notify the Seller straight away of third party enforcement measures on the goods subject to reservation of title or on the assigned accounts by handing over to the Seller the documents the Seller needs to ward off the enforcement measures.

7.8. The Buyer's right to resell the goods subject to reservation of title, his right to use or install them, and his authorisation to collect the assigned accounts shall lapse if he stops making his payments and / or an application is made to instigate insolvency proceedings. The Buyer's authorisation to collect assigned accounts shall likewise lapse if a cheque or draft is protested. This shall not apply for the liquidator's rights.

7.9. In so far as the value of the securities when successfully collected to which the Seller is entitled exceeds the securities to which the Seller is entitled by more than 10%, the Seller shall undertake at the Buyer's request to release the excess security rights. The Seller is entitled to select the securities to be released.

7.10. In so far as the value of the goods subject to reservation of title is relied upon as a figure, it shall be determined by the sum invoiced by the Seller.

8. Notification of defects, Warranty and liability

8.1. The Seller shall only be liable for defects within the meaning of § 434 of the German Civil Code [BGB] as follows: The Buyer has to inspect the goods he has received straight away to ascertain the quantity supplied as well as the condition of the goods. The Seller is to be notified of manifest defects in writing within 14 days. § 377 of the German Commercial Code [HGB] shall not be affected if the transaction is entered into between two commercial firms.

8.2. If the Buyer identifies defects in the goods, he must not dispose of them. I.e. they must not be divided up, resold or finished until the evidence has been preserved by an expert appointed by the chamber of commerce and industry based where the Buyer has his principal place of business.

8.3. The Buyer is obliged to provide the Seller with the purchased thing about which he has made a complaint or a sample of it for the purposes of allowing the complaint to be examined. If the Buyer is guilty of refusing to do so, the warranty shall be invalidated. If complaints are substantiated, the Seller shall be entitled, taking the type of the defect and the justified interest of the Buyer into consideration, to stipulate the way in which subsequent fulfilment is to be rendered (Supply of a replacement part, repair). If the subsequent fulfilment is unsuccessful, the Buyer shall consequently be entitled as he chooses to withdraw from the contract or to reduce the purchase price – irrespective of any compensation claims he may have for damages in accordance with 9.

8.5. The Buyer's claims on account of the expenditure required for the purposes of rendering subsequent fulfilment, in particular the costs of transport, travelling expenses, labour and material costs are ruled out in so far as these expenses are increased because the supplied item has been relocated to a place other than the Buyer's branch office or to a location agreed in the contract, unless the thing has been relocated in accordance with its intended use.

8.6. The Buyer shall have to inform the Seller as soon as possible if he is to make a claim under warranty.

8.7. Provided that the Seller has carried out the planning / programming when installing complex control and network systems in the construction sector (E.g. EIB), the Buyer, as installer, is obliged to abide by this planning and only carry out modifications, even minor ones, with the Seller's consent – not only during installation but also when carrying out minor repairs subsequently.

The Seller shall not pay compensation for damage – regardless of whatever type – attributable to the Buyer carrying out a modification on his own authority.

8.8. Warranty claims based on quality defects shall become time-barred after 12 months. This shall not apply provided that the law prescribes longer periods in accordance with § 438 Section 1 No 2 (Structures and things for structures), § 479 Section 1 (Right of recourse) and § 634a Section 1 No 2 (Construction defects) of the German Civil Code [BGB].

8.9 Rights of recourse in accordance with § 478, § 479 of the German Civil Code [BGB] shall only exist provided that the consumer was entitled to recourse and only on the scale provided for by law and not, on the other hand, for accommodating arrangements not agreed with the Seller. Moreover, they assume that the party entitled to a right of recourse has complied with his own obligations, in particular that he has complied with his obligation to notify defects.

8.10 The Seller shall be liable for compensation for damages or for compensation for expenditure incurred to no purpose for quality defects in accordance with Section 9 (General limitation of liability).

9. General limitation of liability

9.1. The Supplier shall be liable in accordance with the statutory regulations provided that the Buyer asserts compensation claims for damages based upon intent or gross negligence including intent or gross negligence on the part of his representatives or assistants. In addition to this, the Seller shall be liable for culpable breaches of important contractual duties in accordance with the statutory provisions. For these purposes important contractual duties are those the fulfilment of which alone makes it possible to carry out the contract and upon compliance with which the other party to the contract generally can rely upon. Provided that the Seller is not accused of intent or any gross negligence, his liability for compensation for damages shall be limited to the foreseeable damage typically incurred for contracts of this type. A change in the burden of proof to the detriment of the Buyer is not associated with this.

9.2. The liability on account of being culpable for death, personal injury or physical harm, loss of life shall remain unaffected. Liability in accordance with the German Product Liability Act shall likewise remain unaffected.

9.3 No other compensation claims for damages over and above these, regardless of whatever reason upon which they are based, shall be admitted. This shall also apply provided that the Buyer demands expenditure incurred in vain instead of claiming compensation for damages instead of performance.

9.4 The statutory limitation regulations shall apply for liability based on gross negligence as well as for compensation claims based upon death, personal injury and physical harm.

9.5 Moreover the periods of time limitation in 8.8 shall apply for compensation claims for damages.

10. Repairs

The terms and conditions of repair of the individual wholesaler shall apply. These are available upon request.

11. Place of jurisdiction and applicable law

11.1. The place of fulfilment and the place of jurisdiction for goods and payments (including legal action based upon cheques and drafts) as well as all disputes arising between the parties shall be the courts having jurisdiction where the Seller has his principal place of business, provided that the Buyer is a registered business, a legal entity created in accordance with public law or a special fund created in accordance with public law. The Seller is however also entitled to take legal action against the Buyer at the courts having jurisdiction where the Buyer has his principal place of business.

11.2. The relationships between the parties to the contract shall be governed in accordance with the law of the Federal Republic of Germany alone. The UN law on sales shall not apply.