

General Terms and Conditions of Sale and Delivery of the private limited Dutch company **Element4 B.V, with its registered offices in** (8531 XE) Lemmer at Klaaskamp 4 1. Registered at the Dutch Chamber of Commerce in Leeuwarden under number: 111 4157

## **1. General:**

These General Terms and Conditions shall form part of all offers and contracts with the Buyer for the supply of products by E4, unless explicitly stated otherwise in writing.

Any reference made to the Buyer's own purchasing or other conditions shall not be accepted by E4.

In these conditions of delivery the following shall be understood to mean:

- E4 : Element4 B.V. of Lemmer, or its branches or outlets  
Buyer : Any third party with whom E4 shall enter into a contract for the supply of a Product of a service, which is understood to include its representatives, authorised parties, assignees and beneficiaries.  
Product: : The goods or service supplied/to be supplied by E4.

## **2. Offers:**

- 2.1. All our offers shall be considered as invitations to the potential Buyer to make an offer. These offers shall not bind us in any form whatsoever, unless the offer explicitly and unequivocally stipulates the opposite (in writing). The order placed with us shall be valid as an offer, which after written confirmation from us (the order confirmation), shall be deemed to have been accepted by us.
- 2.2. Details stated in catalogues, images, drawings, size and weight specifications etc., shall only be binding if and in as far as these have been explicitly included in a contract signed by parties or an order confirmation signed by E4.
- 2.3. The offer made by E4, as well as any drawings, calculations, software, descriptions, models, tools etc. that E4 supplies, shall remain the (intellectual) property of E4, regardless of whether charges have been made for these, and should be returned immediately upon request. Any enclosed proprietary and/or underlying information relating to manufacture and construction methods shall remain the exclusive (intellectual) property of E4, even if charges have been made for these, and should be returned immediately upon request. The Buyer accepts that all information referred to, with the exception of information for the execution of the agreement, shall not be copied, shown to third parties, made public or used for any other means without the express prior permission of E4.
- 2.4. The despatch of offers and/or other documentation shall not oblige E4 to accept the order or supply goods. E4 shall retain the right to refuse orders without giving any reason, or to send goods cash on delivery.

### **3. Agreement:**

- 3.1. If the agreement is entered into in writing, it shall not come into effect until the day that E4 signs the contract, or the day that E4 sends the written order confirmation.
- 3.2. The Buyer is deemed to agree with the contents of our order confirmation, unless we are notified in writing that he is not in agreement within 8 days after the date of our order.
- 3.3. The confirmation order sent by E4 to the Buyer shall be deemed to stipulate the contents of the proprietary agreement fully and correctly. E4 shall not be bound by any oral agreements and undertakings made by its employees, unless these have been confirmed in writing by authorised managers.
- 3.4. When the Buyer places an order by telephone or fax, any charges arising from incorrectly transmitted and/or details registered incorrectly by E4 shall be borne exclusively by the Buyer. Our order confirmation, or in its absence our delivery note, shall be deemed as decisive proof of the contents of the agreement.
- 3.5. Where no quotation or order confirmation is sent due to the nature of the related work, the invoice shall also be considered as an order confirmation. Any such confirmation order shall also be deemed to reflect the agreement fully and correctly.
- 3.6. E4 shall enter into all agreements under the condition subsequent that the Buyer - at the sole discretion of E4 - is sufficiently creditworthy to meet the (financial) obligations of the agreement. Within this scope E4 is entitled to request security from the Buyer.
- 3.7. Any cancellations shall be made in writing. In the case of (partial or complete) cancellations the Buyer shall bear the cost of all cancellations. Said costs shall amount to 10% of the (cancelled) order amount if cancellation is made within 3 of the agreed delivery date, 25% of the (cancelled) order amount if cancellation is made within 1-3 months of the agreed delivery date, and 50% of the (cancelled) order amount if cancellation is made within the month prior to the agreed delivery date.

### **4. Prices:**

- 4.1. The net prices stated are made subject to change in price and are, unless otherwise explicitly agreed in writing, exclusive of Dutch sales tax, customs duties, other taxes, levies and duties and are based on ex-factory delivery in accordance with the Incoterms in effect on the date of the offer. Factory is understood to mean the premises of E4, the warehouse of E4 in the Netherlands or another depot, depending on the location from where the goods must be despatched. All prices are stated in Euros and changes in currency will be charged.
- 4.2. Unless agreed otherwise, all prices are established by means of the price list in

effect on the date of delivery. A request for prompt payment discount can only be made if this has been agreed in writing.

- 4.3. In the case of an increase in one or more cost price factors, in any case including prices, currencies, wages, taxes, duties, expenses and transport costs, E4 shall retain the right to increase the price as stated in the agreement.
- 4.4. Packaging intended for once-only use is included in the price and shall not be reclaimed. Packaging intended for reuse is not included in the price. The Buyer shall return this in the manner agreed. Charges shall be incurred for packaging that is not returned or damaged.

## **5. Supply and delivery date**

- 5.1. The delivery dates given by E4 shall be effective from the date on which the agreement came into force, on the condition that we have all information necessary to carry out the order we hold. The delivery dates given by E4 shall never constitute a term to be observed on penalty or forfeiture of rights. If the terms of delivery are exceeded, the Buyer shall be obliged to give E4 notice of default in writing.
- 5.2. If a penalty for exceeding the delivery date has been explicitly agreed in the individual contract, this is not due if the delivery date was exceeded as a result of the cases referring to force majeure in article 7.1 or situations in articles 8.2, 8.3 and/or 8.4, or is otherwise not attributable to E4. A contractual penalty incurred for exceeding the delivery date shall be deemed to take the place of any entitlement of the Buyer to damages.
- 5.3. Unless stated otherwise in the order confirmation, the delivery of Products within the Benelux shall be free of charge when the net order amounts to more than €1,000 (in words: one thousand Euros).
- 5.4. We deliver ex-warehouse to foreign Buyers, unless otherwise agreed in writing. In such cases the Products shall therefore travel at the risk of the Buyer with all costs to be borne by the Buyer from the moment they leave our company warehouse or premises/depot. We are able to arrange customs clearance, but these costs shall be borne by the Buyer.
- 5.5. Unless the Buyer arranges his own forwarding agent, the costs of Products sent by us in a manner we consider favourable using forwarding agents selected by us shall be borne by the Buyer.
- 5.6. Should a Buyer request that Products be delivered in a manner other than is customary, E4 shall be entitled to charge the Buyer for the associated (additional) costs.
- 5.7. E4 shall be entitled to make partial deliveries, and in the case of such deliveries, E4 shall be entitled to treat each delivery as a separate transaction. If the Buyer does not fulfil his obligation to pay, E4 shall be entitled to declare the agreement as dissolved without judicial intervention.
- 5.8. The Buyer shall be obliged to accept the Products purchased by him within the

agreed period. When the Buyer does not fulfil this obligation, the Products shall be stored at his risk and at his disposal. After a period of one month the storage costs shall be charged to the Buyer. After a period of 2 months E4 shall be entitled to (privately) sell the Products to a third party. Any loss of proceeds and costs shall be borne by the Buyer, without prejudice to the other rights of E4. This condition shall also apply if a delivery is refused by the Buyer, whereby refusal is also understood to mean the situation in which the ordered Products are offered for delivery at the agreed location and in which delivery proves impossible.

- 5.9. The Buyer shall be obliged to immediately check that the delivered goods correspond with the Product type ordered and/or to check for visible damages, or to carry out these checks centrally after notification from E4 that the Products are available to the Buyer.
- 5.10. Any Product discrepancies, shortages or damage to delivered goods that are present on delivery, shall be noted by the Buyer on the delivery note, the invoice and/or the transport documents and reported to E4 within 48 hours, in their absence the Buyer shall be deemed to have authorised the delivered goods. In that case complaints shall no longer be dealt with. The administration department of E4 has the final word in such cases.
- 5.11. Other complaints shall be made in writing to E4 no later than 5 working days after receipt of the Products by the Buyer, describing the nature of the complaint clearly and fully and giving reference to the related delivery note or transport documents that accompanied the Products.
- 5.12. In the case of insignificant shortcomings, in particular those that do not or hardly effect the anticipated use of the Product, the Product shall be deemed to be accepted regardless of these shortcomings. E4 shall remedy such shortcomings as soon as possible. The Buyer shall take normal margins and minor changes in constructions or parts into account, in as far as these are necessary for satisfactory execution.
- 5.13. Products shall only be returned, free domicile, after written permission has been granted. E4 is entitled to refuse return shipments for which the Buyer bears the cost if these conditions are not met. All return shipments shall be executed at the Buyer's own risk and all costs shall be borne by the Buyer.

## **6. Risk and retention of title**

- 6.1. Immediately after the Products have been delivered by E4 as stipulated in article 5, the Buyer shall bear the risk for all indirect and direct damage to Products that may arise, barring the extent to which said damages are attributable to the intent or negligence of E4.
- 6.2. E4 shall reserve the right of ownership on all Products supplied, as long as the Buyer has not paid any outstanding amounts, either partially or fully, for Products or services supplied by E4. This retention of title shall also apply to outstanding amounts as a result of shortcomings by the Buyer in meeting the obligations of any contract with E4 for which the Buyer can be held responsible.

- 6.3. The Products may be resold or used by the Buyer within the framework of his normal business activities. The Buyer shall not be authorised to grant or encumber in any way the goods falling under the retention of title. In particular, the Buyer shall not be authorised to create an (undisclosed) pledge (or have a pledge created) on the Products as security for claims from third parties.
- 6.4. E4 shall in such an instance be entitled to access to the Products without hindrance. The Buyer shall – in the case of an immediately due penalty of EUR 1,000.00 per day or part day that he remains in default – provide all necessary assistance to enable E4 to exercise its retention of title as stipulated in this article by taking back the Products, inclusive of any dismantling necessary for that purpose.
- 6.5. In the case of non-payment of outstanding amounts, delay of payment, application for a moratorium, (petition for) bankruptcy, under curatorship, (application for) admission to the Debt Restructuring procedure, death or liquidation of the Buyer, E4 is entitled to fully or partially dissolve the agreement with the Buyer without further proof of default or judicial intervention and to remove the Products already supplied (have them removed) from the Buyer or his holders. In such cases, every E4 claim to be borne by the Buyer is immediately due and payable. The costs associated with taking the Products back shall be borne by the Buyer.
- 6.6. In the case of either fully or partially unpaid Products that have been sold on by the Buyer, the Buyer shall in that case create an undisclosed pledge on behalf of E4 on any claims arising from this sale to his buyer (the second buyer), as security for all claims, of whatever nature, that E4 may have against the opposite party, which is also understood to mean future claims against the Buyer.

## **7. Force majeure**

- 7.1. In these General terms and conditions force majeure shall be understood to mean all circumstances independent from the will of E4 - even if provision for such could have been made at the time the agreement was concluded - which permanently or temporarily hinder fulfilment of the agreement, and that are not attributable to E4. The following points are additional but not exclusive:
- 7.2. war, risk of war, civil war, revolt, strike, union lockout, excessive absence through the illness of personnel, transport difficulties, governmental measures including import and export embargoes, fire and other serious interruptions to the activities of E4 or its suppliers.
- 7.2. In the case of hindrances to execution of the agreement as a result of force majeure E4 shall have the right to either suspend the execution of the agreement for a maximum of 6 months without judicial intervention, or to dissolve the agreement fully or partially, without being held liable for any damages.
- 7.3. If, at the moment the circumstance of force majeure commenced, E4 has already partially fulfilled its obligations, or shall be able to fulfil them partially,

it shall be entitled to separately invoice the part already delivered and/or the deliverable part and the Buyer shall be held to pay this invoice as if it were a separate agreement.

## **8. Payment, suspension, dissolution and security**

8.1. The following payment terms shall be applicable:

- All payments shall be made within 14 days after the date of the invoice, unless otherwise stipulated, on an invoice allocated by E4.
- If exceptional stipulations such as payment in instalments are authorised and the Buyer fails to respect any of the due dates, the Buyer shall then forfeit the benefit of these terms and the full amount shall be immediately due for payment.
- Every payment made by the Buyer shall serve primarily as settlement of the interest own by him as well as any collection and/or administration charges incurred by E4 which shall subsequently be deducted from the oldest outstanding invoice.
- E4 shall be entitled to invoice after each part delivery.

8.2. If the Buyer: shall fail to settle an invoice amount or part thereof within the specified period; apply for a moratorium or bankruptcy, be placed under curatorship or die; request permission for access to the Debt Restructuring procedure, transfer assets; suspend business activities or a significant part thereof, change his commercial objectives, or have his assets partly or wholly seized; the Buyer shall be legally in default without further proof of default being required. In that case, E4 shall be entitled to the following at its sole discretion:

- The right to suspend all its obligations arising from commitments to the Buyer for a maximum of 6 months.
- The right to charge a percentage of 3% above the legal rate of interest in the Netherlands from the due date, and also all legal and extrajudicial costs associated with the collection of any outstanding amount.
- The right to dissolve the agreement with immediate effect without judicial intervention, whereby all outstanding monies owed by the Buyer to E4 shall be immediately due for payment, without prejudice to the right of E4 to compensation of costs, damages and/or interest.
- The right to take back the Products that may be found with the Buyer or third parties that are the ownership of E4.

8.3. During the period of suspension and at its conclusion, E4 shall be authorised to opt for execution or full or partial dissolution of the suspended agreements. In the case of suspension the agreed purchase price shall be due immediately, upon deduction of any payments already made and savings in costs made by E4 as a result of the suspension, and in the execution of the agreement E4 shall be authorised to put any work-in-process and manufactured ingredients, materials, parts and other items it has reserved into storage; all risks and costs shall be borne by the Buyer. In the case of suspension the agreed purchase price shall be due immediately, upon deduction of any payments already made and savings in costs made by E4 as a result of said suspension, and in the execution of the

agreement E4 shall be authorised to put any work-in-process and manufactured ingredients, materials, parts and other items it has reserved into storage; all risks and costs shall be borne by the Buyer.

8.4. If there are reasonable grounds for fearing that the Buyer shall not be punctual in fulfilling his obligations, the Buyer shall be obliged at the first request of E4 to provide satisfactory assurance in a form specified by E4 and to supplement this as necessary in order to fulfil all his obligations to E4. As long as the Buyer has not satisfied this provision, E4 shall be entitled to suspend fulfilment of its obligations.

8.5. Buyer shall not be entitled to claim dissolution of the agreement in arrears.

## **9. Liability**

9.1. The liability of E4 shall be limited to the fulfilment of the guarantee obligations as described in article 11 of these General terms and conditions.

9.2. Except for any intent or negligence on the part of E4, the application of legal stipulations relating to product liability, and subject to that stipulated in section 1 of this article, shall limit all liability pertaining to E4 to the amount paid out by the insurer of E4 under the company liability insurance policy, or the net invoice amount of the agreement concerned.

9.3. The Buyer shall be held to indemnify E4, or pay compensation respectively, in the case of all claims from third parties for compensation for damages for which the liability of E4 in relation to Seller is excluded in these General terms and conditions.

9.4. In addition, E4 shall not be liable for:

- the violation of patents, or other third-party intellectual rights of ownership, including licences, arising from the use of information or information supplied by the Buyer.
- damages or loss due to any reason whatsoever, to raw materials, work-in-progress, models, tools and other items made available by the Buyer.

9.5. Any claim for damages and/or restoration or replacement shall lapse after a period of 6 months after the damages and/or shortcoming is recognised or shall have been deemed to have reasonably been recognised and shall lapse in any case one year after the delivery concerned has been made by E4.

## **10. Intellectual ownership**

10.1. The Buyer shall not be entitled to partially or wholly change Products supplied by E4 or give them another brand name, or use any other brand or trading name belonging to E4 (including names of a similar nature) in any other manner, or register these in his own name.

## **11. Guarantee and complaints**

- 11.1. Products and parts belonging to E4 third parties shall be subject to the guarantee stipulations for these third parties.
- 11.2. Without prejudice to the following applicable stipulations, E4 agrees to the requirements under normal trading standards for soundness and quality of parts and materials processed and supplied by E4.
- 11.3. The guarantee and period of guarantee individually stipulated by E4 for each product shall be deemed valid. If this is not the case a guarantee period of 12 months, commencing at the moment of delivery (article 5) shall be deemed valid.
- 11.4. Shortcomings that fall under this guarantee shall entitle the Buyer to restoration/replacement of the defective part. Replaced parts are the ownership of E4. Free guarantee work is only carried out in our company.
- 11.5. The guarantee shall include, at the sole discretion of E4:
  - the free repeat delivery of parts, subject to the condition that defective parts shall be returned;
  - repair in our own workshop;
  - on-site repair by a skilled employee to be appointed by E4;
  - reimbursement of the received purchase amount or crediting the invoice sent by E4 to the Buyer with dissolution of the proprietary agreement without judicial intervention, in as far as the purchase amount, the invoice and the agreement relate to the defective products supplied;
  - an arrangement other than that stipulated here, to be determined in consultation with the Buyer.
- 11.6. The guarantee shall lapse in the following cases: after the period of guarantee has expired (maximum 12 months); on resale, if the Buyer carries out repairs/changes or has these carried out without the prior permission of E4, if the Buyer does not adhere to our maintenance/user instructions; in the case of incorrect transport or handling by the Buyer; in the case of normal wear and tear or inadequate maintenance; or if that supplied is used for another purpose than for which it was/is originally intended or is used/applied in any (other) incompetent manner.
- 11.7. The cost of service work not included under free guarantee work shall be borne by the Buyer at prices in force at the time of executing the work. Article 9 (liability) of these General terms and conditions shall correspondingly apply to guarantee claims.
- 11.8. Repairs carried out by E4 under guarantee or parts sent under guarantee shall only be afforded a guarantee for the soundness of new parts and on the performance of any work executed, for a period ending on the date at which the period of guarantee for the original product would have ended.
- 11.9. Complaints to E4 regarding hidden (not visible on delivery) defects shall be



passed to E4 as quickly as possible after their discovery in writing, no later than 14 days after the expiry of the guarantee period, and within 8 days of their discovery, and in exceeding these periods any liability on the part of E4 concerning these defects shall lapse. In such cases complaints shall no longer be dealt with. Any related legal claims shall be re-opened 1 year on penalty of renunciation of rights after complaints that were received in due time.

- 11.10. The submission of a complaint or the alleged failure of E4 to fulfill its guarantee obligations shall not relieve the Buyer in any way whatsoever from any (payment) obligations arising from any agreement entered into with E4.
- 11.11. Return of goods supplied shall only take place after prior written permission from E4.
- 11.12. If the Buyer has resold the Products purchased from E4 to consumers within the framework of his business activities, the Buyer shall be obliged to provide free first-line service to these consumers accordingly, without being able to make any claim against E4 or the consumer for compensation of labour costs.
- 11.13. If the Buyer has resold the Products purchased from E4 to non-consumers within the course of his normal business activities, the Buyer shall impose the obligations stipulated in this article 11.12 on these buyers.

## **12. Advertising material**

- 12.1. Any advertising material supplied by E4 to the Buyer, even if not free of charge, shall remain the (intellectual) property of E4. The Buyer shall be obliged to make the requested material immediately available to E4 at first request. The final obligation shall also apply without prejudice to advertising material that is no longer the property of E4 as a result of any specification/accession.
- 12.2. At the termination of the relationship between E4 and the Buyer for a specific product, supplied on the basis of the present General terms and conditions, the Buyer shall be forbidden to use these advertising materials any longer, even if the said materials were not supplied by E4, if this involves the name and/or logo or any whatsoever reference to E4 or one of its exclusive brand names. The Buyer shall be held to remove (or have removed) any such references as intended in the above as quickly as possible after the termination of the relationship with E4, if applied to his premises, nearby or elsewhere, such as a sport's field.
- 12.3. When offering and selling products not supplied by E4, the Buyer shall not make any reference or other public statements that could give rise to the impression that the products concerned originate from E4.

## **13. Jurisdiction and applicable law**

- 13.1. Dutch law shall apply to all offers, agreements and the execution thereof, to which these General terms and conditions apply and to these conditions themselves.

- 13.2. The Dutch text in these General terms and conditions is binding. In the case of conflict with the law relating to one or more stipulations, the other stipulations shall remain in full force and effect.
- 13.3. All disputes arising from agreements to which these General terms and conditions apply shall be submitted to the competent judge in Amsterdam, notwithstanding the right of E4 to submit any such dispute to the competent judge at the Court where the Buyer has his registered offices.