

1. General

The general terms and conditions of business apply to all offers and orders. Deviations from said terms must be agreed in writing to be valid. Verbal arrangements, including telephone arrangements, are only valid if confirmed in writing by us.

2. Offers, documents and drawings

2.1. Our offers are subject to alteration.
2.2. Documents and drawings remain our property and may not be made available to a third party, in particular any competitor, without our written consent. Copyright and intellectual property must be observed. Such violations shall result in litigation.

3. Nature and scope of the delivery and/or service

3.1. Our order confirmation or, where such confirmation does not exist, our offer is exclusively decisive with regard to the nature and scope of the delivery and/or service.
3.2. Our obligation to provide a delivery and/or service shall assume that the customer has been subject to a credit check. Should the financial position of the customer deteriorate, he shall undertake to remove the risk to the purpose of the contract through contemporaneous performance or the furnishing of collateral within a reasonable time-limit. Where this is not fulfilled, we reserve the right to withdraw from the contract. In such a case, the customer may not claim for damages.

4. Pricing

4.1. Our prices do not include value-added tax or packing, and are delivered ex works from Konstanz. The extra cost of express or similar urgent delivery shall fall to the customer. Engineering services, installation, commissioning and adjustment are not included.
4.2. Rises in wages, the cost of materials and other factors shall precipitate appropriate price rises, for non-traders, 4 months from conclusion of the contract. Should the customer not approve of the price rises, both parties shall be entitled to withdraw from the contract within one week.
4.3. The minimum invoice value per order and/or provision of goods, repair work or customer services is EUR 50.00 net excluding value-added tax, transport and packing costs.

5. Place of performance and jurisdiction

is, in both instances, Konstanz.
This also applies to exchange and cheque processing.
The business relationship between the parties, including when the head office of the customer is located abroad, is subject to German law.

6. Terms of payment

6.1. Our invoices for deliveries are payable within 30 days net from issue of invoice.
Our invoices for services, especially repair work, are payable immediately net terms only.
Deliveries for occasional orders, especially repair work, are payable cash on delivery.
6.2. The customer may only set off claims with the written consent of Elesta building automation GmbH, unless this is legally recognised or a legal entitlement.
6.3. The assignment of claims or payments from Elesta building automation GmbH, for another reason, shall require the prior written consent of Elesta in order to be valid.
6.4. In the event of late payment, interest shall be applied at 5% above the basic rate of the European Central Bank.

7. Terms of delivery

7.1. Our delivery times are non-binding unless mutually arranged.
7.2. We reserve the right to defer a delivery time
a) should an event of any kind occur for which we are not responsible, and which negatively impacts our or our supplier's normal progression of work in conformance with the contract, e.g. shortage of materials, industrial action, strike or force majeure.
b) should the details necessary for the completion of the order not be received by us on time or be subsequently altered.
7.3. The call-off of ordered goods must be completed within no later than 12 months, unless separate written agreement has been reached.
7.4. Should a delivery time and a reasonable extension not be met, for which we are responsible, the customer may make a claim for documented damages to a maximum however of 5% of the value of the relevant part of the service, which cannot be out to its intended use due to the late production of associated individual items.

8. Passing of risk

Goods are dispatched to the account of and at the risk of the customer, including free of charge deliveries. Claims for damages may only be asserted in cases where we are responsible.

9. Liability for defects

9.1. We are liable for products supplied by us within the framework of statutory legislation and where not limited by the following rules.
9.2. There must in general be a reasonable time-limit for performance or rectification of at least three weeks, so that the rights provided for by law can be avoided before expiry of the time-limit unless special circumstances can be proved to exist on the part of the creditor and timely notification is given of such.
9.3. A claim for damages based on the violation of contractual duties which are not principal duties may only exist in the case of intent and gross negligence.
9.4. It is also agreed that liability to pay damages is limited to material defects which are the direct result of the breach of duty.
9.5. Liability is also limited to damages which typically arise in delivery transactions of the kind normally carried out.
9.6. A stated quality therefore only represents the transfer of a "guarantee" where this has been additionally expressly agreed and is marked as a transfer of guarantee.
The same applies to the transfer of the purchase risk on the delivery item.
9.7. The liability for damages is excluded in the case of natural wear, and for damage which occurs after delivery due to incorrect or negligent handling, excessive demand on use, failure to observe our fitting, operating or maintenance instructions, unauthorised tampering, unsuitable equipment, defective construction work or unforeseen electrical or chemical influences.
9.8. Elesta's liability is lifted in the case of damage resulting from improper modifications or maintenance work performed by the customer or third party.
9.9. Software is produced and advised with the necessary care. Elesta is not liable for defective function for which it is not responsible and is therefore not liable for any resulting damage. Responsibility for the proper use of software and hardware falls exclusively to the purchaser.
9.10. We guarantee our products to be free of defect for a period of two years from the date of delivery within the framework of the existing liability having regard for the above exclusions from liability and limitations of liability.

10. Liability for other reasons

Other claims made on us or our vicarious agents by the customer, for whatever legal reason, in particular at the time of contract negotiation, for delay, positive violation of a claim or tort are excluded unless they concern intent or -in the case of non-traders- gross negligence.

11. Returns

The purchaser is basically not entitled to return goods supplied by us. The return of equipment in its original packaging is only permitted with our express, written consent. In all cases, we are entitled to deduct at least 15% as a penalty from the invoiced amount in the case of returned goods. The return of replacement parts is basically not permitted.

12. Reservation of ownership

We reserve ownership of all goods supplied by us until complete payment has been made of all accrued and accruing claims arising from the business relation or other legal basis between us and the purchaser. The reservation of ownership also exists where individual claims are included in a rolling invoice and the balance has been acknowledged. The purchaser is bound to store such reserved property carefully. He must provide special storage for such property on request. He may dispose of reserved property only within the framework of the usual, proper course of business. Pledging or transferring by way of security of any kind is not permitted. He must notify us immediately of any access by a third party. He must insure the property against fire and theft at his own cost and be able to prove such insurance to us at any time on request. Claims by the seller made against the insurance on substituted performance are hereby now assigned to us.
The purchaser may not acquire ownership to goods by processing them with another product. Processing is likewise performed for us. Processed goods also serve as security for us as the conditional purchaser.
Where external goods which do not belong to us are used by the purchaser, we, become the owner of the new products to the percentage of the value of our goods in relation to the external goods. The new products arising from the processing are considered our reserved property.
All claims by the purchaser arising from the resale of reserved property are assigned to us. Where the reserved property is sold to the purchaser together with external goods not belonging to us, whether or not it has undergone processing, the claim on the purchase price is considered assigned only up to the value of the reserved property.
The purchaser is entitled to call in the claim from the resale. At our request, he must notify the debtor of the assigned claim. We may then show the debtor the assignment.
Our reservation of ownership is conditional to the extent that on full payment of our claims arising from the business relation it passes to the purchaser without any further ownership of the reserved property and he becomes entitled to the assigned claims.