



GENERAL TERMS  
AND CONDITIONS OF SALE



# General Terms and Conditions of Sale

## 1. Definitions, subject matter and scope

- 1.1. These General Terms and Conditions of Sale ("GTC") govern all contracts of sale concerning ELATECH products entered into between ELATECH s.r.l. ("ELATECH") and the Customer.ELATECH.
- 1.2. Definitions: "Goods": all goods, products or components listed in ELATECH's Order Confirmation; "Services": any ancillary services described in ELATECH's Order Confirmation; "Contract": the written agreement between the Customer and ELATECH for the sale of the Goods; "Price": the price payable by the Customer to ELATECH for the sale of the Goods, under each individual Order Confirmation.
- 1.3. ELATECH reserves the right to:
  - a) unilaterally modify these GCS, giving timely notice to the Customer. In the absence of written dissent by the latter, to be sent by CERTIFIED E MAIL to ELATECH, within and not later than 5 (five) days from receipt of the aforesaid notice, the clauses thus amended shall be deemed accepted without reservation by the Customer and fully effective;
  - b) suspend and/or terminate at any time and without notice the marketing of the Goods, at its sole discretion, without prejudice to the execution of orders already confirmed in writing by ELATECH;
  - c) modify without notice its price list.
- 1.4. The Customer expressly waives the application of its own general conditions of purchase, which are in any case ineffective and not opposable to ELATECH.
- 1.5. In the event of any conflict, even partial, between these GTC, the Customer's Purchase Orders and ELATECH's Order Confirmations, these GTC shall prevail. Any invalidity and/or ineffectiveness of a clause of these GCS shall not entail the invalidity of the other clauses.

## 2. Offers, Orders and Order Confirmations. Conclusion of the Contract.

- 2.1. Any commercial offers relating to the Goods ("Offers") sent by ELATECH to the Customer shall be binding on ELATECH for 30 (thirty) days from the date of their issue. After such term, in the absence of a Contract, the Offers shall be deemed void and therefore ineffective.
- 2.2. Customer shall send its Purchase Orders ("Orders") to ELATECH in writing. Any terms and/or conditions placed by the Customer in the Orders shall not bind ELATECH. In the event of any discrepancy between the Order and the Order Confirmation, the latter shall prevail.
- 2.3. Contracts between ELATECH and the Customer relating to the Goods shall be deemed concluded only after ELATECH has sent a written Order Confirmation. Orders sent by the Customer to ELATECH and/or collected by ELATECH through its agents and appointees shall not be binding on ELATECH until ELATECH has sent the relevant written Order Confirmation to the Customer.

- 2.4. Any payment by the Customer as advance payment and/or down payment at the time of the Orders shall not constitute nor be construed as acceptance of the Orders by ELATECH. In the event of non-acceptance of the Orders by means of Order Confirmation, ELATECH shall return to the Customer any amounts paid by way of advance payment and/or down payment, without interest.
- 2.5. Any requests by the Customer to modify and/or supplement and/or add to the Goods listed in the Order Confirmation shall be subject to a feasibility assessment by ELATECH from time to time. In the event of a positive outcome of such assessment, ELATECH shall issue a new Order Confirmation, replacing the previous one.
- 2.6. No amendment or variation to the Contract shall be effective unless agreed in writing by both parties.

### **3. Terms and methods of payment of the Price**

- 3.1. Unless otherwise indicated in the Order Confirmation, the prices of the Goods indicated on the invoice by ELATECH:
  - a) are intended "Ex Seller's warehouse", with packaging costs borne by the Customer;
  - b) do not include VAT and/or any other similar tax;
  - c) do not include duties and/or any other taxes due outside Italy in connection with the performance of the Contract.
- 3.2. The Customer undertakes to make the payment within the terms established in the Order Confirmation.
- 3.3. In the event of non-payment and/or delayed payment, ELATECH, without any waiver or prejudice to the exercise of its rights, reserves the right to
  - a) charge the Customer default interest pursuant to Legislative Decree No. 231 of October 9, 2002 and Legislative Decree No. 192 of November 9, 2012;
  - b) and/or suspend the performance of the Contract (including the suspension of the delivery of the Goods) in the event that the Customer is unable or ELATECH has reasonable grounds to believe that the Customer is unable to make the payment due under the Contract or under other contracts;
  - c) and/or terminate the Contract.

### **4. Delivery of the Goods**

- 4.1. The time of delivery of the Goods by ELATECH shall be agreed with the Customer from time to time, depending on the individual Contract, as set forth in the Order Confirmation.
- 4.2. In the event of delay and/or impossibility for ELATECH to deliver the Goods to the Customer for reasons attributable to the latter, ELATECH shall be entitled to unilaterally modify the delivery times and the Price.
- 4.3. If the Customer refuses to deliver the Goods, ELATECH shall be entitled to deposit the Goods in a warehouse at the Customer's expense. In such event, the delivery of the Goods shall be deemed to have been made at the time of the deposit of the Goods at the aforementioned warehouse, with the consequent transfer of risk to the Customer.

## **5. Force Majeure.**

- 5.1. Neither party shall be in breach of the Contract if the breach is due to fire, flood, natural disaster, strikes, industrial action, industrial accident, unavoidable impediment, war, embargo, legal impediment (factum principis), insurrection, epidemic, pandemic or any other cause beyond the control of the parties, provided that these events could not have been foreseen or the effects of these events prevented at the time of entering into the Contract.
- 5.2. Such events shall constitute grounds for exoneration of liability if they result in temporary or permanent impossibility of performance of the obligations between the parties, with the exclusion of those events that merely make performance more difficult or more onerous.

## **6. Inspection and testing. Goods made at the Customer's request**

- 6.1. Any samples and/or models of the Goods manufactured by ELATECH at the Customer's request must be approved by the Customer before ELATECH commences series production, with a written statement attesting to the compatibility of the Goods in question with the Customer's needs and with the use for which the Goods are intended. If Customer fails to approve the Goods within the terms described, ELATECH shall be exempt from proceeding with the Order.
- 6.2. The Customer hereby declares that the delivery of any projects, drawings, technical specifications and instructions to ELATECH for the realization of the Goods "on demand" shall in no case entail the infringement of any intellectual property right to the detriment of third parties and in this respect hereby indemnifies ELATECH from any possible claim and/or action that ELATECH may be subjected to by any third party.
- 6.3. ELATECH:
  - a) is the owner of the intellectual property of all inventions, designs, technical specifications and know-how relating to the production of the Contract Goods;
  - b) shall not be liable for any errors of any nature relating to projects, drawings and technical specifications provided by the Customer, as well as instructions given to ELATECH for the production of the Goods "on demand".
- 6.4. The material supplied shall in any case be used by the Customer bearing in mind any patent rights of third parties.

## **7. Delivery and passing of risk**

- 7.1. Unless otherwise indicated in the Order Confirmation, the risks of loss of or damage to the Goods are transferred to the Customer at the time of taking delivery of the Goods at the ELATECH plant located in Val Brembilla (BG), according to the terms agreed from time to time. The Customer is responsible for insuring the Goods after delivery by ELATECH within the agreed terms.
- 7.2. ELATECH reserves the right to execute Orders by means of split deliveries. In this case, each individual delivery shall constitute a separate contract. Therefore, ELATECH's failure to deliver one or more deliveries within the relevant terms shall not entitle the Customer to terminate the Contract.
- 7.3. The Customer is obliged to notify ELATECH of any wrong deliveries in terms of quantity within 8 (eight) days from the relevant delivery, to be considered as a forfeiture period,

without prejudice in any case to the statute of limitations of the action, one year after delivery of the Goods.

## **8. Deferred Payments. Reservation of title**

- 8.1. In case of deferred payments and/or down payments, the Customer assumes the risks from the moment of delivery of the Goods, but shall acquire ownership only upon payment of the last agreed instalment of the price or upon payment of the balance.
- 8.2. During the period between delivery and acquisition of ownership of the Goods, the Customer is expressly prohibited from disposing of the Goods in any way or transferring them to third parties in any form, even if only temporarily. The Customer shall also:
  - a) keep the Goods with professional diligence, so as to adequately prevent their loss, theft and damage;
  - b) prevent the Goods from being subjected to privileges or material or legal constraints of any kind and to immediately inform ELATECH by CERTIFIED E MAIL of any act or fact that may prejudice the Goods and may modify, limit or in any case prejudice the rights of ELATECH over them.
- 8.3. Failure to pay and/or delay in paying even a single instalment and/or the balance shall result in the legal termination of the Contract, pursuant to and for the purposes of article 1456 of the Italian Civil Code. In such event, ELATECH shall be entitled to immediately regain possession of the Goods, retaining the amounts already received as a penalty, without prejudice to compensation for greater damages suffered.

## **9. Guarantees, liability and claims**

- 9.1. The Goods are designed and manufactured by ELATECH in compliance with the highest standards and according to the technical specifications described in ELATECH's Product Catalogues, which the Customer declares to know.
- 9.2. Customer has been made aware by ELATECH of the circumstances set forth below and declares to accept them:
  - a) the Goods meet the agreed specifications based on established tests performed under "controlled" laboratory conditions and specific test requirements;
  - b) such tests are not intended to reflect the performance of the Goods under actual conditions;
  - c) the performance of the Goods, as components of a finished product, may not necessarily meet the requirements of the tests.
- 9.3. The Goods shall be installed by the Customer by competent and highly qualified personnel who have received specific training for the use for which the Goods are intended. The Goods shall be subject to regular maintenance, as indicated in the technical specifications described in ELATECH's Product Catalogues.
- 9.4. Customer shall not use the Goods for any purpose other than that for which the Goods have been designed and manufactured. Because of the variety of applications for which the Power Transmission Goods may be purchased and because ELATECH has no control over the conditions under which the product may be used by others, ELATECH assumes no responsibility for the results of use in specific applications. In

any event, the Customer is expressly prohibited from using the Goods for applications relating to aircraft systems. In this regard, ELATECH hereby disclaims all liability.

- 9.5. Any claims for defects and/or apparent and/or hidden defects of the Goods must be submitted in writing by the Customer within 8 (eight) days, under penalty of forfeiture of the delivery of the Goods or of the discovery of the defects themselves, without prejudice to the statute of limitations of the action, in any event, one year after delivery of the Goods. Parts found to be defective shall be returned at the Customer's expense to ELATECH in accordance with the Operating Instructions provided by ELATECH. If ELATECH determines that the parts in question are defective, replacement may be considered.
- 9.6. ELATECH reserves the right to reject complaints relating to defects and/or faults due to non-compliance with the dimensions indicated by ELATECH;
  - a) incorrect installation and/or incorrect assembly of the Goods;
  - b) incorrect storage of the Goods;
  - c) improper use, maintenance, unauthorized repairs or modifications of the Goods.
- 9.7. ELATECH shall not be liable for damages arising from
  - a) the use of the Goods not in compliance with ELATECH's instructions and/or prescriptions and/or the use of the Goods for applications that may impair the functionality and resistance of the Goods;
  - b) normal wear and tear of the Goods;
  - c) from "storage" of the Goods that does not comply with ELATECH's instructions;
  - d) modifications and/or tampering of the Goods; (v) lack of or incorrect maintenance.
- 9.8. ELATECH's liability towards the Customer is in any case limited to the Price of the Goods, excluding compensation for any other damage of any nature whatsoever. ELATECH makes no warranties, express or implied, which extend its liability beyond what is expressly indicated in this article. No agent and/or distributor of ELATECH has the power to provide warranties beyond what is set forth herein. The Customer hereby waives any and all claims against ELATECH for indirect damages, loss of earnings and loss of profit.
- 9.9. The warranty referred to in this article is excluded if:
  - a) the Goods are not installed, used and/or maintained correctly and in any case in accordance with the Instructions and/or technical specifications described in ELATECH's Product Catalogues;
  - b) the Goods have been used by the Customer for applications related to aircraft systems, in violation of the prohibition set forth in art. 9.4 above.
- 9.10. Without prejudice to the foregoing, ELATECH, excluding cases of fraud and gross negligence, is in any case exonerated from any and all contractual and/or extra-contractual liability for direct and/or indirect damages - both with reference to emergent damage and loss of profit - suffered by the Customer and/or third parties as a consequence of
  - a) non-compliance with the instructions given by ELATECH in relation to the Goods and the so-called "sizing" indicated by ELATECH;

- b) the improper and/or incorrect installation of the Goods;
- c) the lack of and/or incorrect maintenance of the Goods.

9.11. It is understood that ELATECH's liability is limited to the value of the single Order Confirmation.

## **10. Confidentiality**

- 10.1. The Customer undertakes not to disclose to third parties and not to use in any way whatsoever information of a confidential nature relating to ELATECH, such as, for example, designs, drawings, technical specifications, advertising or financial data, commercial information, know-how, prices, costs, administrative, operational information, present or future projects or commercial strategies, or any other information that at the time of disclosure is not yet in the public domain.
- 10.2. The Client undertakes to take all necessary measures to guarantee and protect the confidential nature of the aforementioned information.
- 10.3. The undertaking governed by this article is to be understood as binding on the Customer even after the termination of these GTC.

## **11. Applicable law**

- 11.1. These GCS and the Contracts between ELATECH and the Customer shall be governed by Italian law, as well as orders, order confirmations, sales and any other related agreements. The applicability of the 1980 Vienna Convention on the International Sale of Goods is expressly excluded.

## **12. Place of jurisdiction**

- 12.1. The Court of Milan shall have exclusive jurisdiction over any dispute arising from the interpretation or execution of these GCS and/or the Contracts between ELATECH and the Customer.

## **13. Personal Data**

- 13.1. The Parties declare to be in compliance with EU Reg. no. 679/2016 and Legislative Decree no. 196/2003, to observe the provisions contained therein as well as the measures and indications of the Guarantor Authority regarding the processing of personal data of the Interested Parties.
- 13.2. The parties authorize the reciprocal processing of personal data, solely and exclusively for the purposes related to the execution of this contract.