



# ELSCHUKOM

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ELSCHUKOM gmbh. gewerbestraße 87. 98669 veilsdorf. germany

## ELSCHUKOM GmbH General Terms and Conditions of Purchase

as of: 25.10.2017

### I. General

1. For all deliveries, the [following] General Terms and Conditions of Purchase of ELSCHUKOM GmbH shall prevail. They shall equally apply for all future business transactions, without expressly being referred to once more.
2. Any conflicting terms and conditions or terms and conditions differing from the Terms and Conditions of Purchase of ELSCHUKOM GmbH are only accepted by ELSCHUKOM where ELSCHUKOM GmbH has expressly agreed to them. The acceptance of goods or services provided by the supplier or the payment of such does not constitute consent even if the acceptance or payment is made in the knowledge of conflicting or supplementary contractual terms and conditions of the supplier.
3. Oral additions, modifications or ancillary agreements must also be confirmed in writing by ELSCHUKOM GmbH in order to become effective.
4. Any other terms and conditions of contract agreed upon at an earlier date to the contrary or supplementary to these terms and conditions of purchase are no longer accepted.

### II. Offers, conclusion of contract and changes of contract

1. Purchase orders and agreements shall be binding for ELSCHUKOM GmbH only if such have been issued or confirmed by ELSCHUKOM GmbH in writing.
2. The requirement of the written form shall also be considered to be met via telefax, remote data transmission or e-mail.
3. All costs arising for the preparation and submission of an offer shall be chargeable to the supplier.
4. If the supplier does not accept the purchase order within two weeks from the date of reception, ELSCHUKOM GmbH is entitled to withdraw from the order.
5. Call-offs within the scope of a purchase order or call-off delivery planning shall become binding unless the supplier objects within two workdays after receipt.

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### III. Delivery

1. Stipulated dates and deadlines shall be binding. The relevant factor for any delivery date or delivery deadline to be considered as being kept shall be the written confirmation of the incoming goods reception at ELSCHUKOM GmbH. ELSCHUKOM GmbH is obliged to confirm the reception of the incoming goods immediately.

2. Unless expressly otherwise agreed in writing, the goods are

"delivered duty paid" („DDP“ in accordance with the most recent Incoterms). If delivery „ex works“ has been agreed, the supplier must make the goods available in due time taking into account the time required for loading and shipment in coordination with the forwarder.

3. Where stipulated dates are not kept, the statutory provisions shall apply. If the supplier foresees difficulties with regard to manufacturing, input material supplies, compliance with the delivery deadline or similar circumstances which could impede delivery according to the stipulated date or delivery of the agreed quality, the supplier must report this to ELSCHUKOM GmbH immediately.

4. The unconditional acceptance of a delayed delivery or service does not constitute a waiver of any secondary claims to which ELSCHUKOM GmbH is entitled due to the delayed delivery or service. This shall apply until the amount owed for the relevant delivery or service has been paid in full.

5. The supplier bears the risk of accidental loss, destruction or deterioration until acceptance of the goods by ELSCHUKOM GmbH or an authorised representative at the destination specified in the order.

6. Together with the delivery of the goods, the supplier will provide ELSCHUKOM GmbH with copies of the required licenses. For any software included in the scope of delivery, ELSCHUKOM is granted non-exclusive rights of use unrestricted with regard to time and place. The

permitted use in particular includes the reproduction, loading and execution of the software, as well as the sub-licensing or leasing of the software or any other surrender of the software within ELSCHUKOM GmbH or companies affiliated with ELSCHUKOM GmbH.

7. The supplier is not entitled to make partial deliveries or deliveries prior to the agreed delivery deadline without the express written consent of ELSCHUKOM GmbH. The values determined by ELSCHUKOM GmbH at the incoming goods inspection shall be binding for the item quantities, weights and dimensions, unless evidence to the contrary is presented.

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8. ELSCHUKOM GmbH shall not be liable for unforeseen costs which incur for the supplier within the scope of manufacturing, installation, assembly or other work associated with the goods.
9. In the event that the supplier has accepted to carry out the installation or assembly, the supplier shall bear all required expenses such as e.g. travel expenses, costs for the provision of the tools as well as accommodation allowances.
10. Design, manufacture, installation and other work to be provided by or on behalf of the supplier on the basis of the contract must be carried out in a professional manner and using suitable materials.
11. As minimum requirement, the goods must comply with all relevant quality and certification standards, in particular with the general material standards, and especially with the respectively agreed delivery terms and conditions for the relevant material or raw material or for the applicable finished products as well as with the provisions referred to in XI.4.
12. The supplied goods must comply with the agreed purchase order text and any associated technical documents (e.g. drawings, data sheets, specifications) and the agreed samples. The supplier will in all cases immediately verify if an order submitted by ELSCHUKOM GmbH is incorrect, unclear, incomplete or obviously deviating from the known technical documentation or samples. If the supplier realises that this is the case, the supplier will inform ELSCHUKOM GmbH immediately.
13. Where wire is supplied, the wire surface on the coil must be clean, free of oxidations or other contaminations as well as free of finger prints and must be evenly wound up, and placed without gaps up to the coil flanges. In addition, the following must be complied with - unless otherwise specified in the purchase order:
  - a. The wire surfaces of the coil must be protected through banderols
  - b. Coil packaging must be positioned on the flanges
  - c. The items must be protected against mechanical and environmental influences (e.g. cardboard boxes, closed boxes) through suitable secondary packaging.
  - d. The coils must be secured to suitable palettes in secondary packaging or delivered on a mesh box pallet.

Each bundle must be provided with a label with the following information:

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- a. ELSCHUKOM GmbH's item number [in German: Artikelnummer]
  - b. Designation / material name
  - c. Dimensions
  
  - d. Net weight
  - e. Series or batch number
  - f. Date of manufacture
  - g. RoHS conformity
  - h. Ohm/m specification (actual value)
14. The relevant inspection certificates and required conformity declarations must be enclosed with each delivery.

15. The supplier must package, mark and ship the goods in such a way that damages during transport are prevented and efficient unloading, processing, handling and storing of the goods is possible. All goods must be clearly marked as determined for ELSCHUKOM GmbH.

#### IV. Force Majeure

1. In the event that the supplier is temporarily prevented from meeting its obligations resulting from this contract due to an event of force majeure, the fulfilment of such obligation shall be suspended for the duration of the event of force majeure.
2. If the circumstances giving rise to the event of force majeure should last for more than 30 days, ELSCHUKOM GmbH has the right to rescind the contract by written notice to the supplier with immediate effect and without liability for damages.
3. An event of force majeure on the part of the supplier can neither be based on a lack of personnel, production materials or resources, strike, breach of contract by a third party commissioned by the supplier for the fulfilment of contract, financial problems of the supplier nor on the inability to procure the required licenses for the software to be supplied or the necessary statutory or official permits or authorisations for the goods or services to be provided.
4. Force majeure, breakdowns of the operations without fault, industrial disputes, riots, measures by the authorities, and other unavoidable events release ELSCHUKOM GmbH from its obligation to accept [the goods/services] in due time for the duration of their occurrence. During such events as well as within two weeks after their end ELSCHUKOM GmbH is entitled to withdraw from the contract – without prejudice to

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any other rights - in full or in part, as far as these events are of not inconsiderable duration and demand is materially reduced due to procurement from other sources which has become necessary as a result.

## **V. Services**

1. The supplier must provide the services with the necessary expertise and diligence while using suitable materials and providing sufficient qualified personnel.
2. The supplier is liable without limitation for all third parties it commissions to provide the service.
3. The service provided is only deemed accepted upon the written confirmation by ELSCHUKOM GmbH. The acceptance is to be carried out by way of a declaration of acceptance and the pertaining acceptance certificates.

## **VI. Receiving inspection of deliveries**

1. Upon receipt of the goods, ELSCHUKOM GmbH will inspect the goods only with regard to obvious damage, in particular transport damage, deviations of identity and quality of the delivery, unless otherwise agreed with the supplier in a quality assurance agreement.
2. Any defect will be promptly reprimanded by ELSCHUKOM GmbH upon detection.
3. In this respect, the supplier waives its right of objection of late notification of defects.

## **VII. Quality assurance and notice of defects**

1. An inspection of the delivered goods or provided services by ELSCHUKOM GmbH does not constitute their acceptance. The acceptance of the goods always takes place subject to quality, condition and quantity. The inspection or acceptance by ELSCHUKOM GmbH does not release the supplier from its obligations, undertakings or warranties.
2. The supplier maintains a quality assurance system in accordance with DIN EN ISO 9001 or equivalent and will manufacture its products in accordance with these regulations. Any exceeding requirements are product-specific and kept on file in separate specification documents. Immediately after receipt of the order, the supplier will check whether it can meet the requirements with its quality assurance system.
3. The supplier undertakes to inspect the quality of its products prior to delivery to ELSCHUKOM GmbH in such a manner that the incoming shipments must only be inspected for external transport damage.

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4. Where the supplier obtains production or test equipment, software, services, material or other pre-deliveries from

sub-suppliers for the manufacture or quality assurance of its products, it will contractually include these in its quality management system or assure the quality of the pre-deliveries itself.

5. The supplier will keep records on the implementation of the above specified quality assurance measures, in particular regarding the measurement values and test results and keep these records as well as any product samples in a clear and ordered manner. To the extent required, it will grant ELSCHUKOM GmbH inspection and hand over copies of the records and relevant samples. Type, scope and retention periods for these records and samples are product-specific and must at minimum comply with the statutory requirements.

6. ELSCHUKOM GmbH will inspect the delivered goods for any deviations in quality within a reasonable period of time. Hereby, the values determined by ELSCHUKOM GmbH at the incoming goods inspection shall be binding for the item quantities, weights and dimensions, unless evidence to the contrary is presented.

7. A notice of defect shall be deemed timely if it is received by the supplier within a deadline of ten workdays, starting from the date of goods receipt or, for hidden defects, from discovery. The period of limitation - except in cases of fraudulent intent - is 36 months, reckoned from the transfer of risk.

8. If the goods are unusable for ELSCHUKOM GmbH, the supplier has to collect the relevant goods from ELSCHUKOM GmbH within two weeks from notice of defects at its own expense or provide the services in accordance with ELSCHUKOM GmbH's specifications. If the supplier fails to collect the goods within the two-week deadline, ELSCHUKOM GmbH may return the goods to the supplier at the supplier's expense and risk – without prejudice to any other contractual or statutory rights. Additional rights of ELSCHUKOM GmbH shall remain unaffected by this.

9. Should ELSCHUKOM GmbH have reasonable grounds to assume that the supplier can or will not deliver or provide the goods or services as agreed, ELSCHUKOM GmbH has the right to terminate or rescind the contract with immediate effect. Any further contractual or statutory rights of ELSCHUKOM GmbH shall remain unaffected by this.

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## VIII. Burden of proof and information obligation

1. The supplier will enable ELSCHUKOM GmbH in adequate intervals to ascertain the implementation of the quality assurance measures. For this purpose, the supplier will grant ELSCHUKOM GmbH access to its operating facilities to a reasonable extent and after the prior coordination of an inspection date, allocating ELSCHUKOM GmbH a qualified staff member during such access.
2. Prior to changes of manufacturing procedures, materials, subcontracted parts for the products, relocations of production sites as well as changes to the procedures or equipment for the inspection of goods or other quality assurance measures, the supplier will notify ELSCHUKOM GmbH in such a timely manner that ELSCHUKOM GmbH can verify whether the changes will have a negative effect. The obligation to inform shall not apply where the supplier may reasonably exclude such negative effects after careful consideration.
3. If the supplier determines an increase of the deviations between the actual and specified features of the goods (quality losses), it will advise ELSCHUKOM GmbH immediately about this as well as about any planned corrective measures.
4. By labelling the goods, or if this is not possible or impractical, by implementing other suitable measures, the supplier will ensure that it can immediately determine whether there are more goods which may be affected if a defect of the goods emerges.
5. The supplier will inform ELSCHUKOM GmbH about its labelling system or its other measures in such a manner that ELSCHUKOM GmbH is able reach its own conclusions to the extent necessary.

## IX. Payment and prices

1. All purchase prices referred to in the contract are considered as fixed prices.
2. Any and all prices are understood as net prices plus value-added or sales taxes (VAT), excise taxes or similar taxes.
3. If the transactions described in this contract are subject to value-added or sales taxes (VAT), excise taxes or similar taxes, the supplier is entitled to pass on such taxes to ELSCHUKOM GmbH. ELSCHUKOM GmbH will then pay such taxes in addition to the agreed price.

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4. The supplier is responsible to pay the value-added or sales taxes (VAT), excise taxes or similar taxes to the competent authorities or tax offices. The supplier will issue its invoices in such a manner that ELSCHUKOM GmbH can make use of the option to deduct input tax. The supplier will also notify ELSCHUKOM GmbH if ELSCHUKOM GmbH may be able to make use of tax exemptions, if applicable, and to which extent.
5. Any licensing fees which may arise as well as packaging are included in the purchase price.
6. If no special agreement has been entered into, the settlement of the invoice is made either within 14 days subject to a discount of 2% or within 30 days without deduction from the due date of the payment claim and receipt both of the invoice and the goods or provision of the service.
7. Payment is made under reserve of invoice verification.
8. If a payment due from ELSCHUKOM GmbH is not made within the above specified period of time, the liability of ELSCHUKOM GmbH towards the supplier shall be limited to a default damage to the amount of annually 6% of the outstanding amount.
9. ELSCHUKOM GmbH may refuse payment as long as the supplier has not supplied all its goods/services. In this case, no default will occur.
10. ELSCHUKOM GmbH is entitled to offset claims from the supplier against ELSCHUKOM GmbH with claims which ELSCHUKOM GmbH has against the supplier.

## X. Environmental protection

1. The partners undertake to take into account any relevant environmental aspects for all products within the scope of this agreement. In particular, when selecting the materials to be used, and for products, packaging, transport and disposal at the end of the product life, alternatives in the most environmentally friendly way possible should be given preference. Any considerations necessary for that and for the fulfilment of the relevant statutory regulations will also be made by the supplier, and the relevant findings and information will be forwarded to ELSCHUKOM GmbH at the earliest possible stage.
2. The fulfilment of the above provisions can be achieved most reliably when an environmental management system is applied, e. g. in accordance with DIN EN ISO 14001.

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## XI. Warranties

The supplier guarantees ELSCHUKOM GmbH,

1. that the goods are suited for the intended purpose of use and that they are new, of good quality, design, material, construction, manufacture and free of defects and
2. that the goods and services comply with the specifications, approved samples and all other technical requirements (electrical, geometrical, generally physical) specified by ELSCHUKOM GmbH in its purchase orders;
3. that the goods are free of third-party rights, in particular encumbrances;
4. that the goods and services are manufactured, delivered or provided in accordance with the applicable statutory provisions (including labour standards), the EU guideline 2001/95 with regard to general product safety, the statutory provisions REACH & RoHS and other environmental EU guidelines, in particular 2002/95/EC-ROHS, 2005/69/EC-PAHS, 2006/122/EC-PFOS, 2006/197/EC-REACH;
5. that the goods and services are provided together with all information and instructions required for their proper and safe use;
6. that all required licenses with regard to the goods are available and valid and that the scope of the licenses fully covers the intended use of the goods and that all these licenses include the right of assignment as well as the right to grant sub-licenses.
7. that ELSCHUKOM GmbH is provided with written and detailed specifications referring to the composition and properties of goods or substances containing chemical or hazardous substances. In addition, the supplier will advise ELSCHUKOM GmbH concerning all relevant laws, regulations and other requirements with regard to such goods or substances, in order to enable ELSCHUKOM GmbH to transport, store, process, use and dispose of the relevant goods properly and safely.

## XII. Open source software guarantee

The supplier guarantees that the goods include no competence with regard to open source software.

"Open source software" means in this context



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1. Any software which requires the following conditions for its use, modification and/or sale:

- a. Disclosure or sale in source code form and / or
- b. Is licensed for the purpose of completing derivative works and / or
- c. May only be further distributed when free of enforceable intellectual property rights

and / or

2. Any software which contains a software specified in 1 above or has been derived from such a software or is statically or dynamically associated therewith.

### **XIII. Information and documents for foreign trade; customs requirements**

1. The supplier is obliged to notify ELSCHUKOM GmbH about any obligations to obtain permits or about any limitations for (re-)exports of its goods in accordance with the German, European, Chinese, Taiwanese and US export and customs regulations as well as the export and customs regulations of the country of origin of its goods in its business documents.

2. The supplier is in particular obliged to provide the following foreign trade data when delivering the goods:

- a. Classification of goods in the trade statistics (statistical goods number)
- b. Country of origin
- c. Marking and classification of goods which are subject to exports control
- d. At request, provision of a certificate of origin or proof of preference
- e. At request, preparation of a long-term supplier's declaration

3. The supplier is obliged to notify ELSCHUKOM GmbH immediately about any changes to the obligations to obtain permits regarding its goods supplied to ELSCHUKOM GmbH due to technical or statutory amendments or regulatory determinations.

### **XIV. Material defects and defects of title**

1. The statutory provisions on material defects and defects of title shall apply, unless otherwise specified below.

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2. If the goods are defective, lack an assured feature or if the supplier violates a guarantee, ELSCHUKOM GmbH may,
  - a. at its own discretion, demand remedy of defects or replacement delivery within a reasonable deadline or
  - b. if the remedy of defects or the replacement delivery remain unsuccessful, withdraw from the contract or reduce the purchase price.
3. The right to choose the method of supplementary performance belongs to ELSCHUKOM GmbH. The supplier may only refuse the chosen method of supplementary performance if it could only be carried out at a disproportionate expense.
4. Where goods have been rejected, the risk of accidental loss or accidental deterioration as well as the ownership of the rejected goods shall be returned to the supplier at the time of notification of defects. The transfer is substituted by ELSCHUKOM GmbH's storage of the goods for the supplier.
5. The supplier bears all costs for repairs, replacement and transport and reimburses all costs and expenses to ELSCHUKOM GmbH (in particular inspection or verification, processing, handling and storage costs) which have demonstrably incurred to ELSCHUKOM GmbH in this context.
6. If the supplier does not start with the elimination of the defect immediately after receiving the request for remedy of defect, ELSCHUKOM GmbH is, in urgent cases, entitled to remedy the defects itself or commission a third party to eliminate the defects, in particular in order to avert acute danger or to prevent larger damage, at the supplier's expense.
7. In case of defects of title, the supplier releases ELSCHUKOM GmbH from any third party claims which might exist, unless such defect of title is not attributable to the supplier.
8. Claims due to defects become time-barred - except for cases of fraudulent intent - after three years, unless the object was used for a building according to its customary use and has caused the defectiveness thereof. The period of limitation commences upon delivery of the contractual object (transfer of risk).

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9. If the supplier fulfils its obligations of supplementary performance by replacement delivery, the limitation period will start anew for the replacement goods upon the new delivery, unless the supplier has expressly and correctly reserved the right - for such cases of supplementary performance - to carry out the replacement delivery only on a goodwill basis, in order to prevent disputes or in the interest of a continuation of its business relationship as a supplier.

10. If costs incur for ELSCHUKOM GmbH resulting from the defective delivery of the contractual object, in particular transport, road, labour, installation, disassembly, material costs or costs for an incoming goods inspection exceeding the usual extent, these costs have to be borne by the supplier.

11. The supplier bears the responsibility for the fault of the sub-contractor as if it were its own.

## **XV. Ownership and property rights**

1. All data, specifications, drawings, information, shapes, templates, drafts,

tools and other materials (hereinafter: „materials“) provided by ELSCHUKOM GmbH or manufactured by the supplier at the expense of ELSCHUKOM GmbH, will become the property of ELSCHUKOM GmbH. The transfer is substituted by the free-of-charge storage of the materials by the supplier for ELSCHUKOM GmbH. The supplier will hand over the materials to ELSCHUKOM GmbH at first request. The supplier must specifically mark the materials as the property of ELSCHUKOM GmbH and store them securely for ELSCHUKOM GmbH, at the supplier's risk. The supplier may use the materials only for the purpose of contract fulfilment.

2. The supplier warrants and guarantees that the goods and services are free of third-party property rights and violate no third party property rights.

## **XVI. Release from liability**

1. The supplier undertakes to release ELSCHUKOM GmbH from any claims resulting from the violation of property rights and to compensate ELSCHUKOM GmbH for the incurred damage, costs and expenses, in particular missed profits and costs for any legal proceedings or - at ELSCHUKOM GmbH's discretion - to ward off such claims at its own expense.

2. ELSCHUKOM GmbH will notify the supplier in writing about such a claim. In connection with such a claim, the supplier will provide any reasonable support requested by ELSCHUKOM GmbH.

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3. If any third parties assert justified claims resulting from property rights and the use of the delivered goods or provided services is prohibited, the supplier must, at its own expense and at ELSCHUKOM GmbH's discretion, either

a. obtain a license for ELSCHUKOM GmbH or

b. replace the goods and services through a non-proprietary, functional equivalent or modify them accordingly.

4. If the supplier does not succeed in procuring the right for use of the goods or services for ELSCHUKOM GmbH or in replacing or modifying the goods or services accordingly, ELSCHUKOM GmbH may terminate the contract with immediate effect or withdraw from the contract. In this case, the supplier will reimburse ELSCHUKOM GmbH the purchase price. The supplier's obligation in accordance with 1 will remain unaffected by this.

5. Irrespective of all other contractual and statutory rights, the supplier releases ELSCHUKOM GmbH from all claims of third parties and assumes liability for all damages, losses and expenditure which can be directly or indirectly attributed to a defect or any other violation of contract.

## XVII. Product liability and recall

1. In the event that a claim is asserted against ELSCHUKOM GmbH in the matter of product liability, the supplier is obliged to release ELSCHUKOM GmbH from such claims if and to the extent that the damage was caused by a defect in the goods supplied by the supplier. In cases of liability based on fault, this shall however only apply should a fault be attributable to the supplier. Where the cause of damage is within the supplier's sphere of responsibility, the supplier must prove that no fault is attributable to it.

2. In the cases set out in XVII.1, the supplier bears all costs and expenses, including the costs for any possible legal proceedings.

3. Apart from that, the statutory provisions shall apply.

4. Prior to a recall campaign which is wholly or partly the consequence of a defect of an article delivered by the supplier, ELSCHUKOM GmbH will notify the supplier, give the supplier an opportunity to cooperate and discuss efficient handling with the supplier, unless the investigation or involvement of the supplier is not possible due to special urgency. Where a recall campaign is the consequence of a defect of an article delivered by the supplier, the supplier shall bear the costs for the recall campaign.

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## XVIII. Material provided

1. Substances, parts, containers and special packaging ("materials provided") provided by ELSCHUKOM GmbH against payment or free-of-charge shall remain the property of ELSCHUKOM GmbH.
2. These may only be used in accordance with their intended use. The processing and the assembly of the material provided is carried out for ELSCHUKOM GmbH. It is agreed that ELSCHUKOM GmbH - in the ratio of the value of the provided materials to the finished products - is the co-owner of the products manufactured while our substances and parts were used, and which are, in this respect, stored by the supplier for ELSCHUKOM GmbH.
3. ELSCHUKOM GmbH reserves the co-ownership in the products manufactured while our provided material has been used, up to the complete fulfilment of any claims resulting from the provision of the material.
4. The supplier is entitled to resell the products manufactured while our provided material has been used, in the orderly course of business under reservation of title. The supplier hereby assigns ELSCHUKOM GmbH already now all receivables including ancillary rights resulting from the products in full. The assigned receivables serve to secure the claims resulting from the provision of the material. The supplier is entitled to collect the assigned receivables.
5. The rights of ELSCHUKOM GmbH under this clause can be revoked by ELSCHUKOM GmbH if the supplier does not duly meet its obligations towards ELSCHUKOM GmbH, if the supplier gets into payment arrears, stops its payments or if the supplier applies for the opening of insolvency proceedings or comparable debt settlement proceedings concerning the supplier's assets. ELSCHUKOM GmbH can revoke the rights of the supplier under this clause also if the supplier's financial situation deteriorates substantially or threatens to deteriorate substantially or if the supplier's insolvency occurs

or if the supplier is over-indebted. If the value of the securities existing for ELSCHUKOM GmbH exceeds the value of our claims by more than 10% in total, ELSCHUKOM GmbH will at request release securities at its own discretion in this respect.

## XIX. Right of retention and termination

1. In addition to the statutory rights of withdrawal, ELSCHUKOM GmbH is entitled to withdraw from the contract if a substantial deterioration to the financial situation of the supplier has occurred or threatens to occur and this jeopardises the fulfilment of a delivery obligation to us.

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2. ELSCHUKOM GmbH is moreover entitled to withdraw from the contract if
  - a. the supplier's insolvency occurs,
  - b. the supplier ceases to pay,
  - c. the supplier's imminent insolvency according to Section § 18 German Insolvency Code (InsO) becomes the case or if an over-indebtedness of the supplier emerges,
  - d. if the opening of insolvency proceedings or comparable proceedings for debt settlement are applied for by the supplier, concerning the assets or the business operation of the supplier or
  - e. If the opening of insolvency proceedings concerning the assets of the supplier are rejected for lack of assets.
3. In the event of continuing debt obligations, 1 and 2 will apply analogously under the provision that the right of withdrawal will be replaced by an extraordinary right to terminate without notice.
4. If the supplier has effected a partial performance, ELSCHUKOM GmbH is only entitled to withdraw from the entire contract if ELSCHUKOM GmbH is not interested in the partial performance.
5. Where ELSCHUKOM GmbH withdraws from the contract based on the above contractual rights of withdrawal or termination, the supplier must replace any damage resulting from this to ELSCHUKOM GmbH, unless the emergence of the rights of withdrawal or termination is not attributable to the supplier.
6. Statutory rights and claims are not limited by the regulations set out in XIX.

## XX. Confidentiality and secrecy

1. All business or technical information made available by ELSCHUKOM GmbH (including features which, for example, are disclosed in objects, documents or software handed over, and any other knowledge, expertise or experience) must be treated, as long and as far they are demonstrably not known to the public, be kept strictly secret and confidential from third parties and may only be made available to such persons within the supplier's own company, who must necessarily be provided with the information to use it for the purpose of the delivery to ELSCHUKOM GmbH and who are also obliged to maintain secrecy; any such information described above shall remain the exclusive property of ELSCHUKOM GmbH. Without prior written consent, such information - except for deliveries to us - must not be duplicated or used for



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commercial purposes. At request, all information originating from ELSCHUKOM GmbH (if applicable, including any copies or records made) and other objects lent out must immediately and completely be returned to ELSCHUKOM GmbH or be destroyed. ELSCHUKOM GmbH reserves the right to such information (including copyrights and the right to register industrial property rights such as patents, registered designs, semi-conductor protection, etc.) Where these have been made available to ELSCHUKOM GmbH by a third party, this reservation of rights shall also apply in favour of such third party.

2. Products which have been made in accordance with documents created by ELSCHUKOM GmbH, such as drawings, models etc., or in accordance with confidential specifications or with tools of ELSCHUKOM GmbH or with tools manufactured in accordance with the specifications of ELSCHUKOM GmbH, must not be used by the supplier itself, nor offered or delivered to third parties. This applies correspondingly for print orders by ELSCHUKOM GmbH.

3. The contents of the contract will be treated confidentially by the supplier.

## XXI. Data protection

Within the scope of the business relations with ELSCHUKOM GmbH's supplier, the data resulting thereof will be stored, processed, changed, and, if applicable, deleted in compliance with the statutory provisions.

## XXII. Miscellaneous

1. Without the prior written consent from ELSCHUKOM GmbH, the supplier may neither grant any sub-contracts nor transfer, pledge or assign rights under this contract. A sub-contract approved in advance or an approved transfer, pledge or assignment does not release the supplier from its obligations under this contract.

2. Neither omissions nor delays in the assertion or enforcement on the part of ELSCHUKOM GmbH constitute a waiver of rights or claims of ELSCHUKOM GmbH according to this contract.

3. Each party designates a quality assurance officer and advises the other party about it in writing; this quality assurance officer has to coordinate the execution of this agreement and pass and bring about any decisions in connection therewith. Any change concerning such designated officer must be advised immediately in writing.

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4. This contract is exclusively subject to German law under exclusion of UN-sales law and International Private Law.
5. Place of performance and place of jurisdiction, also for bill of exchange matters and measures which serve the provision of security, is for both parties: 98669 Veilsdorf, Federal Republic of Germany. The right of ELSCHUKOM GmbH to sue the supplier at the location of its registered offices shall - except for in the cases referred to in XXII.6 – remain unaffected.
6. If the supplier maintains its registered offices outside the European Union and if no judicial assistance agreements on the recognition and enforcement of decisions of a foreign court of law exist between this country and the Federal Republic of Germany, and if the country, in which the supplier maintains its registered offices, has entered into the New York Convention on the recognition and enforcement of foreign arbitral awards, the Coburg Chamber of Industry and Commerce will be appointed as arbitration tribunal. The applicable substantive law is German law under exclusion of UN-sales law and International Private Law. The language of the arbitration proceedings shall be German. The arbitral award will be accepted as binding by both parties without recourse to ordinary courts of law.
7. If the supplier initiates a legal dispute before a non-German court, the supplier is obliged to bear the costs of the legal dispute and refund all costs to ELSCHUKOM GmbH incurring in this context, in particular lawyers' fees, court fees, travel expenses and accommodation costs.
8. The generally binding contractual language is German. The German version of this text of the contract prevails over all other versions.
9. If any of the above conditions should be invalid, the validity of the remaining conditions shall remain unaffected by this.

## XXIII. External company management

1. The supplier is obliged to comply with any provisions and instructions of ELSCHUKOM GmbH with regard to occupational safety, environmental protection, access to the plant premises by foot or vehicle, the obligation to show an identification document and similar which ELSCHUKOM GmbH provides for the supplier and gives to the supplier for its work at our site. The supplier will actively inform itself of existing regulations for external companies. A relevant instruction sheet will be presented to the supplier by the relevant contact person for acknowledgement and signature.

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2. People who carry out work on the plant premises in fulfilment of a contract must observe the provisions of the relevant operation regulations. Liability for accidents suffered by such people on the plant premises is excluded, unless they were caused by

wilful or grossly negligent violation of duty by ELSCHUKOM GmbH's legal representatives or vicarious agents.

#### XXIV. Compliance and minimum wage

1. The supplier undertakes not to offer, ask for or accept advantages which are infringing the applicable anti-corruption regulations within the scope of the business relationship with ELSCHUKOM GmbH, neither in the course of business nor when dealing with officials.

2. The supplier undertakes not to enter into any agreements or concerted practices with other companies within the scope of the business relationship with ELSCHUKOM GmbH, the purpose or effect of which is the prevention, restriction or distortion of competition according to the applicable provisions of antitrust law.

3. The supplier assures that the relevantly applicable laws on the regulation of the general minimum wage will be complied with and that the supplier will oblige any sub-suppliers contracted by it to comply with such regulations to the same extent. At request, the supplier will provide evidence for the compliance with the aforementioned assurance. In the event of a breach against the aforementioned assurance, the supplier will indemnify ELSCHUKOM GmbH from third-party claims and is obliged to reimburse any fines which might be imposed on ELSCHUKOM GmbH in this context.

4. The supplier will comply with the relevant statutory regulations on the handling of employees, environmental protection and work safety and strive to reduce any adverse impacts of its activities on man and environment. To do so, the supplier will, within the scope of its abilities, introduce and further develop a management system according to DIN EN ISO 14001. Moreover, the supplier will observe the principles of the Global Compact Initiative of the UN which essentially relate to the protection of international human rights, the abolition of forced and child labour, the elimination of discrimination in employment and occupation as well as the responsibility for the environment ( [www.unglobalcompact.org](http://www.unglobalcompact.org)).

5. Upon the suspicion of a breach against the obligations set out in 1. to 4., the supplier must clarify possible breaches immediately and inform ELSCHUKOM GmbH about the clarification measures carried out. If the suspicion is substantiated, the supplier must inform ELSCHUKOM GmbH within a reasonable deadline, which internal measures it has taken to prevent future breaches. Should the supplier not attend to its duties

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within a reasonable deadline, ELSCHUKOM GmbH reserves the right to withdraw from any contract with the supplier or to terminate any such contract with immediate effect.

6. In the event of severe law infringements on part of the supplier and violations of the regulations set out under 1 to 4., ELSCHUKOM GmbH reserves the right to withdraw from existing contracts or to terminate such contracts without notice.

## XXV. Severability clause

The invalidity of any clause or provision of the foregoing General Terms and Conditions of Purchase of ELSCHUKOM GmbH shall not affect the validity of the remaining provisions or clauses. If any one of the clauses or provisions should prove to be ineffective or impracticable, that clause or provision will be substituted by a new provision or clause which comes as close as possible to the invalid clause or provision in terms of its legal and economic success.

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