



**ELVACENTER**

## **Elvacenter Purchase Terms & Conditions**

Version	Date	Author
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### Table of content

ARTICLE 1 - DEFINITIONS .....	3
ARTICLE 2 - AGREEMENT .....	4
ARTICLE 3 - CONFIDENTIALITY .....	5
ARTICLE 4 - PROHIBITION TO MAKE OFFERS AND SUCH TO THE COMPANY'S CUSTOMER .....	6
ARTICLE 5 - INTELLECTUAL PROPERTY RIGHTS AND OTHER LEGAL REQUIREMENTS .....	7
ARTICLE 6 - PRICES .....	9
ARTICLE 7 - DELIVERY - TERMS AND CONDITIONS OF DELIVERY .....	10
ARTICLE 8 - TRANSPORTATION - UNLOADING .....	11
ARTICLE 9 - PACKAGING .....	12
ARTICLE 10 - QUALITY .....	13
ARTICLE 11 - INSPECTION .....	14
ARTICLE 12 - PROPERTY AND RISK .....	15
ARTICLE 13 - PAYMENT AND SETTLEMENT .....	16
ARTICLE 14 - INVOICING .....	18
ARTICLE 15 - RETURN SHIPMENTS .....	19
ARTICLE 16 - GUARANTEE .....	20
ARTICLE 17 - LIABILITY .....	21
ARTICLE 18 - COMPLETE OR PARTIAL DISSOLUTION .....	22
ARTICLE 19 - SUBCONTRACTING - TRANSFER .....	23
ARTICLE 20 - GENERAL .....	24
ARTICLE 21 - DISPUTES AND APPLICABLE LAW .....	25



**ELVACENTER**

## **ARTICLE 1 – DEFINITIONS**

1.1 These General Terms and Conditions apply to all offers by and agreements with the user of these General Terms and Conditions and its legal successors, as well as any associated companies (together as well as individually hereinafter also called: the Company) relating to the delivery of goods by the supplying party or the other party concerned (hereinafter also called: the Supplier).

1.2 The applicability of any general terms and conditions used or in use by Supplier is hereby explicitly rejected.

1.3 Any stipulations deviating from these General Terms and Conditions shall only apply in the event that and insofar as they have been accepted by the Company in writing.



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## **ARTICLE 2 – AGREEMENT**

2.1 An agreement, in this article also including any changes and/or additions thereto, shall not be binding unless agreed upon in writing.

2.2 An agreement is concluded in writing (upon the Company's discretion) on the date of dispatch (by post and/or by telefax and/or by e-mail) by the Company of the written order confirmation. Promises by and arrangements with subordinates of the Company shall not bind the Company, unless these have been confirmed in writing by the board of directors of the Company.

2.3 The written order confirmation of the Company (hereinafter also called: "Purchase Order or "PO") shall be considered to represent the contents of the agreement correctly, unless the Supplier rejects the PO forthwith ultimately within 24 hours after dispatch of the PO to Supplier in writing (including email) and well-motivated. In that event, the Company shall no longer be bound by the PO either.

2.4 The Supplier must procure any permissions, permits and/or licenses needed for the execution of the agreement, in time and at his expense, and he must see to it that the conditions made therein or thereby are observed. The Supplier shall be solely liable for any failure to acquire the permissions, permits or licenses, or to acquire them in time, or for the non-observance of the conditions made therein or thereby, whereas the Supplier shall indemnify the Company for any and all damage and costs arising from such failure including but not limited to all and any reasonable incurred legal expenses by Company.

2.5 Unilateral cancellation or termination from the side of the Supplier shall be null and void, unless the Company agrees to said cancellation in writing.



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## **ARTICLE 3 – CONFIDENTIALITY**

3.1 Supplier shall keep all information in the broadest sense of the word, in connection with the Company or any of the products procured or sold by the Company, which has been brought or come to his knowledge by the Company and/or within the context of the offer and/or the agreement, in strict confidentiality and shall not disclose the same to any third party in any way, unless prior written consent has been granted by Company to disclose any such information.

3.2 In the event Supplier breaches its obligations under this article, it forfeits an immediately payable fine of €10,000 per violation, to be increased by €1,000 for each day or part thereof that the violation continues. This does not affect the Supplier's obligation to compensate Company for any damages in addition to the stipulated fine.



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## **ARTICLE 4 – PROHIBITION TO MAKE OFFERS AND SUCH TO THE COMPANY’S CUSTOMER**

Supplier shall cease and desist from making any offers, either directly or by third-party intervention, to customers and prospects of Company.



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## **ARTICLE 5 – INTELLECTUAL PROPERTY RIGHTS AND OTHER LEGAL REQUIREMENTS**

5.1 Supplier guarantees that any delivered goods does not infringe any and all word – and figurative trademarks, copyrights, design rights or any other industrial or intellectual property rights of third parties (hereinafter also called: IP right holders) or any other rights of third parties.

5.2 The Supplier guarantees that the delivered goods are not counterfeit goods, pirated goods nor can otherwise be considered fake goods, implying that the goods are produced by, under license of or otherwise produced with sufficient permission of the proprietor(s) of all intellectual property rights used in or on the goods, including the packaging thereof.

5.3 Supplier warrants and represents that:

(i) the goods sold to the Company are authentic goods and that the goods have not been decoded or otherwise tampered with;

(ii) in the event of procurement by Company of goods to be sold in the European Economic Area (EEA) that any delivered goods have been (previously) brought onto the market in the European Economic Area (EEA) by the IP right holder itself, or with its permission. This warranty also applies in the event that the Supplier did not buy the goods from the IP right holder itself. The Supplier guarantees that the delivered goods meet all requirements including but not limited to labeling requirements and are fit and suitable for sale and subsequent trade in the EEA. Upon first request Supplier shall provide the Company with any and all information relating to suppliers and any previous holders of the goods sold to the Company accompanied by (unredacted) underlying documents including – but not limited to – invoices and correspondence;

(iii) in the event of procurement by Company of goods to be sold in transit on customs status T1 or otherwise outside the European Economic Area (EEA), that any delivered goods have been (previously) brought onto the market (where the products originate from or where Supplier has



## ELVACENTER

purchased the delivered goods) by the IP right holder itself, or with its permission. This warranty also applies in the event that the Supplier did not buy the goods direct from the IP right holder itself. The Supplier guarantees that the delivered goods meet all requirements including but not limited to labeling requirements and are fit and suitable for sale and subsequent trade in the country or region where Company intends to sell and subsequently trade the delivered goods insofar Company has indicated in the PO the country or region.

5.4 The Supplier shall indemnify and hold harmless the Company and its client(s) unconditionally and wholly against: (i) any and all claims related to circumstances of which the Supplier guaranteed the presence or absence in this or any other article of these general terms and conditions of purchase, (ii) any and all claims related to an (alleged) infringement of any intellectual property rights of third parties related to the supply of goods to Company by Supplier and will compensate and hold harmless the Company and/or its client(s) for any loss as well as the costs, including – but not limited to – all legal costs, arising out or in connection with any such claims. Any costs associated with the defense of Company against any such claims will be invoiced monthly as an estimate of anticipated actual costs and such estimates will be prepaid by Supplier to Company. Company will provide the actual costs to Supplier and a balance of costs and estimates prepaid on a monthly basis.

5.5 If requested by Company in the event of a possible claim by an IP right holder in connection with this article 5 , Supplier will furnish to Company the full contact details of its suppliers and other relevant details regarding the goods and the previous supply chain and origin of the goods including copies of all relevant underlying documents of Supplier and its own suppliers including any logistics service providers instructed by Supplier or its suppliers.





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## **ARTICLE 6 – PRICES**

All prices shall be fixed and inclusive of Value Added Tax ("B.T.W." or "VAT"), import and export duties, and all other levies and taxes in connection with or in relation to the goods or the delivery. The prices shall furthermore be based on the Terms and Conditions (of delivery) mentioned in the following articles. There shall be no settlement and or price increase in the event of increase of wages, prices of materials and the like.



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## **ARTICLE 7 – DELIVERY - TERMS AND CONDITIONS OF DELIVERY**

7.1 Unless explicitly agreed upon otherwise, the delivery shall be made "Delivered Duty Paid" (DDP) at the place indicated by the Company. The interpretation of the terms and conditions of delivery shall be determined by ICC Incoterms (the most recently issued edition at the time of conclusion of the agreement).

7.2 The Supplier shall deliver the goods on the date mentioned in the agreement, or not later than the last day of the term mentioned therein, and failing an agreed date or term, within 30 days. Said date or term shall apply as a strict and final delivery date or term. A term of delivery mentioned in the agreement shall apply as of the date of conclusion of the agreement.

7.3 The Supplier shall be obliged to timely inform the Company about the exact time of delivery and about any threatening exceeding of the time of delivery.

7.4 At the request of the Company, the Supplier shall be obliged to deliver the goods at a later date than the agreed one and the Supplier shall do his utmost to deliver the goods at an earlier date than the agreed date, in the event that the Company considers this desirable, without being entitled to any compensation of damage and costs because of this.

7.5 The Supplier shall only be entitled to make partial deliveries after prior written consent by the Company.



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## **ARTICLE 8 – TRANSPORTATION - UNLOADING**

8.1 Transportation and unloading of goods shall be at the expense and risk of the Supplier in accordance with the Terms and Conditions of delivery mentioned in the previous article (Delivery - Terms and conditions of delivery).

8.2 The Supplier can on no account claim any compensation of damage and costs as a result of any possible delay arising at the unloading of delivered goods.

8.3 The Supplier must present a delivery note immediately at the unloading of the goods, so as to have said note signed for approval by a person authorized on behalf of the Company to do so. The signing of the delivery note shall solely be a confirmation of the receipt of the delivered goods and does not imply any approval of (the quality or the quantity) of the delivered goods and does not discharge the Supplier of any guarantee and/or liability. Nor can the signing of the delivery note result in a change of the agreement in any other way.

8.4 In any and all cases and notwithstanding the agreed Terms and Conditions of delivery, the Supplier shall be obliged to provide the documentation which is needed to transport the goods to the place of destination.



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## **ARTICLE 9 – PACKAGING**

9.1 The Supplier shall pack the goods with proper care. He shall be liable for damage and costs caused by insufficient packaging of and/or damage to and/or destruction of this packaging.

9.2 The Company shall not be obliged to pay the costs of packaging, unless explicitly agreed otherwise.

9.3 The Supplier shall take back any possible packaging of the goods at demand by the Company and shall collect said packaging at his expense at the Company's premises, at the same time refunding any costs charged for said packaging by the Supplier to the Company.



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## **ARTICLE 10 – QUALITY**

The Supplier warrants en represents that the delivered goods:

- a. are genuine and originating from the manufacturer stated on the packaging and labels (therefore not produced under license either), as well as in accordance with the quality intended by said manufacturer and without any faults;
- b. regarding shelf life as well as quality - and taking into consideration usual terms - are suitable for sale to resellers and (finally) for sale to and use by consumers;
- c. are provided with the original and with regard to design and colouring most recent packaging and labelling of the manufacturer;
- d. are in accordance with the demands made in the agreement, the documents belonging to the agreement and/or made available, as well as with the norms and specifications set by the Company and samples approved by it;
- e. are in accordance with Dutch, European and other international rules and regulations; and
- f. have the original batch or code numbers (identical on the packaging and on the (labels on) the goods) to comply with tracking and traceability regulations.
- g. will provide to Company all and any certificates, test-reports and any other product information of the manufacturer that provides maximum assurance on the authenticity, origin and proper performance of the product to be delivered.



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## **ARTICLE 11 – INSPECTION**

11.1 The Company or any third party designated by it shall at all times have the right to inspect or to test the goods, wherever these may be. The results of inspection or test or the omission thereof shall not discharge the Supplier of any guarantee and/or liability.

11.2 The Supplier shall provide all information and facilities needed for an inspection or test, including the necessary help regarding employees and materials.

11.3 The personnel costs of the Company or the designated third party concerned, made in connection with an inspection or a test, shall be payable by the Company. Any other costs shall be at the Supplier's expense.

11.4 The Company shall inform the Supplier forthwith of any rejection of goods. In that case, the Supplier shall be bound to repair or to replace the rejected goods at his expense within a time-limit to be stipulated by the Company, and in such a way that said goods do fulfil the approval requirements, without prejudice to any other rights of the Company. In case of rejection, goods already delivered must be taken back at the Company's request and at the expense of the Supplier. Rejection shall also entitle the Company to suspend payment of the agreed price or instalment.

11.5 The Supplier shall give the Company the right to use or to put into use the delivered goods even before inspection or test has taken place.



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## **ARTICLE 12 – PROPERTY AND RISK**

12.1 The Supplier shall bear the risk for the goods until the moment in time at which said goods have been delivered and approved of by the Company in accordance with the previous articles.

12.2 In the event that the Company shall make any payment to the Supplier before the delivery of the goods, the goods said payment refers to or is attributable to, shall be the Company's property as of the time of payment.

12.3 In the event that the Company will be or will become the owner of (a part of) the goods already before the delivery and approval, then the Supplier shall be obliged to identify these goods on behalf of the Company and to take proper care of said identified goods, as well as to insure them and keep them insured for the benefit of those concerned.



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## **ARTICLE 13 – PAYMENT AND SETTLEMENT**

13.1 Unless another term has been explicitly agreed upon and subject to any (suspension) rights the Company is entitled to, payment shall take place within sixty (60) days after the last of the following moments in time:

- a. the time of delivery of the goods;
- b. the time of approval of the goods by the Company;
- c. the time of receipt of an invoice by the Company, fulfilling the requirements stated in the following article.

13.2 Payment of the delivered goods shall not discharge the Supplier of any guarantee and/or liability.

13.3 In the event that it has been agreed that the Company shall make any payments in advance, the Company shall have the right at all times, before making said payments, to require from the Supplier the provision of a security which is sufficient at the Company's discretion.

13.4 In the event that the Company has a well-founded fear that the Supplier will not fulfil his obligations, the Company shall be entitled to suspend the fulfilment of the Company's own obligations.

13.5 The Company shall be authorized to settle any amounts payable to the Supplier or to companies associated with the Supplier with any claims the Company (or any party associated with the Company) has on the Supplier or on any companies associated with the Supplier, irrespective of the fact whether the amounts concerned are due or not.

13.6 The Supplier shall not transfer or encumber any of its rights deriving from the agreement. In the event that the Supplier alleges to have a claim on the Company he shall have no right of





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setting-off, suspension or postponement. In such an event, the Supplier shall not attach any of the Company's assets.



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## **ARTICLE 14 – INVOICING**

14.1 The invoices to be sent to the Company by the Supplier shall fulfil the requirements set by (by virtue of) the Wet op de Omzetbelasting or any VAT regulation applicable in the country where Company has its registered seat. 14.2 The invoices of the Supplier must be accompanied by notes signed for approval by a person authorized by the Company.

14.3 Invoices not fulfilling the requirements set out in the previous paragraphs of this article shall not be dealt with nor paid.



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## **ARTICLE 15 – RETURN SHIPMENTS**

15.1 The Company shall be entitled to return the goods bought from the Supplier, thereby crediting and requiring refund of the price originally charged by the Supplier to the Company for said goods, if as a result of actions or failure to act by the Supplier, the situation in the market and/or the marketability of these acquired goods is essentially different from what it was at the time of the formation of the agreement.

15.2 Furthermore the Company shall be entitled to return the goods bought from the Supplier within twelve (12) months after the delivery without stating the reasons, in the event the goods deviate regarding packaging or labelling from what is usual for the goods concerned (for instance so-called action lots), thereby crediting and requiring refund of the price originally charged by the Supplier to the Company for said goods.



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## **ARTICLE 16 – GUARANTEE**

16.1 The Supplier shall repair forthwith any and all defects, shown by the goods after the delivery in consultation with the Company, and in the event that in the Company's opinion repairs are not possible, replace said goods, without prejudice to the Supplier's liability and any further rights of the Company.

16.2 Any and all costs of repairing the defect or replacing the goods shall be payable by the Supplier.

16.3 In the event that the Supplier does not repair the defect forthwith and/or sufficiently, or if the reparation of the defect cannot be postponed, the Company shall have the right to carry out the necessary actions or have these carried out at the Supplier's expense. In the event that the Company exercises this right, the Company shall inform the Supplier in writing.

16.4 Any obligations under the guarantee shall apply unimpaired after the reparation or replacement of the goods.

16.5 The Supplier shall hold harmless and indemnify the Company (including its employees) against any and all claims by third parties with regard to defects to the goods, under whatever name.

16.6 A report of an independent expert concerning the relevant defects shall be conclusive evidence between parties in the event of a claim by the Company based on the guarantee referred to hereby. Said report need not include any information on the identity of the clients of the Company, nor on the place where the goods are. Moreover, the Company shall not be bound to inform the Supplier of such data.



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## **ARTICLE 17 – LIABILITY**

17.1 The Supplier shall be liable for all and any damage and costs, inclusive of business and other indirect damage (whereby loss of profit), arising from defects to the delivered goods or other shortcomings, whether attributable or not, of the Supplier and/or caused by natural persons or legal entities working for the Supplier or by any employed, directly or indirectly, by (one of) said natural persons or legal entities.

17.2 The Supplier shall hold harmless and indemnify the Company against any and all claims by third parties he is liable for, of whatever name.

17.3 The Supplier shall insure his liability as described in this article to a sufficient amount and shall allow the Company inspection of the documents referring to said insurance, among which the policy and premium receipts.

17.4 The provisions of article 16 paragraph 6 (independent expert report) also apply.



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## **ARTICLE 18 – COMPLETE OR PARTIAL DISSOLUTION**

18.1 In the cases provided for by the Law, as well as in the event that the Supplier does not, not in time or not sufficiently fulfil one or more obligations arising for him from the agreement, or in the event that there is serious doubt as to the Supplier being able to fulfil his contractual obligation towards the Company, as well as in the event of bankruptcy, suspension of payments, appointment of a pre-bankruptcy receiver (pre-pack), complete or partial stoppage of work, liquidation, transfer or encumbrance of the Supplier's business, including the transfer or pledging of an important part of his debts receivable and furthermore in the event that any goods of the Supplier are attached before judgement or in execution, the Company shall have the right, without notice of default or judicial intervention, to partially or wholly dissolve the agreement by means of a written (including by telefax or e-mail) notice sent to the Supplier, and all this without the Company being liable to any compensation and without prejudice to any of its other rights.

18.2 In the event that goods have already been delivered in connection with the execution of the agreement, the Company shall have the right to keep these goods in case of dissolution, subject to the payment of the part of the price referring to said goods, or to return these goods to the Supplier at his risk and expense and to reclaim the payments already made for these goods, all this at the Company's discretion and without prejudice to the Company's further rights.

18.3 The claims which the Company may have or get as a result of the dissolution of the agreement, its possible claim for compensation of damage and costs inclusive, shall be immediately and fully payable.



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## **ARTICLE 19 – SUBCONTRACTING - TRANSFER**

19.1 Without explicit prior consent of the Company, the Supplier shall not subcontract the agreement or any part thereof to third parties nor transfer his obligations arising from the agreement or a part thereof to third parties, nor use any other employees than his own staff (for instance employees made available (hired out) for the execution of the agreement. The Company shall have the right to attach conditions to any consent to be given by the Company. Consent given by the Company shall not release the Supplier from any obligation arising from the agreement concluded between the parties.

19.2 Supplier shall compensate any and all damage and costs caused by non-observance of the provisions of the previous paragraph of this article to the Company and shall hold harmless and indemnify the Company against any claims by third parties in this respect.

19.3 Supplier, as well as the Company shall ensure to comply with its obligations under the relevant data protection legislation in respect of all personal data processed by it in connection with an agreement entered into between them. The type of personal data processed by the Company, the categories of data subjects and the nature and purpose of the processing are described in the Privacy Statement of the Company, which is available on its website: Privacy & Cookiestatement . In the event that the Company and Supplier process personal data of (third) parties with/for each other, the Company and Supplier shall conclude a processing agreement with each other in accordance with the General Data Protection Regulation (2016/679/EU).



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## **ARTICLE 20 – GENERAL**

20.1 In the event that one or more stipulations of the agreement, including stipulations of these General Terms and Conditions, are null and void or become legally invalid, the remaining provisions of the agreement shall remain in force. Parties shall consult on the stipulations which are null and void or have become legally invalid, in order to make an alternative arrangement.

20.2 Should one or more stipulations of the agreement, including the stipulations of these General Terms and Conditions, be in conflict with mandatory provisions, stipulated by or to be stipulated by a thereto competent authority, these latter provisions shall be considered to have replaced the relevant stipulations of the agreement.

20.3 Stipulations, that due to their nature, are intended to remain applicable after the end of an agreement entered into by the Company and Supplier shall remain applicable upon termination of the agreement.





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## **ARTICLE 21 – DISPUTES AND APPLICABLE LAW**

21.1 With regard to any and all disputes in connection with the agreement, or with further agreements arising or resulting from or in connection with said agreement, the court in Ghent, Belgium shall have exclusive jurisdiction in the first instance, unless the Company explicitly opts for the competence of the court in the place of establishment of the Supplier.

21.2 The agreement, as well as any and all further agreements arising or resulting from or in connection with said agreement, shall be governed by the laws of Belgium. The applicability of the The United Nations Convention on Contracts for the International Sale of Goods (CISG) is explicitly excluded and rejected.