

General Terms and Conditions for the Scale of Products and Services – Ellab GmbH

1. Scope

These General Terms and Conditions of Business apply to all our deliveries, rental contracts and services. Any regulations in written contracts concluded between us and the customer have priority over the general terms and conditions, and, to this extent, these General Terms and Conditions of Business shall only apply as supplementary provisions. We only recognize any divergent terms and conditions of the customer if we agree to them in writing before the conclusion of the business transaction.

2. Offer and conclusion of contract

The prices stated in our offers are non-binding. An order is only considered accepted if the order has been confirmed in writing by an order confirmation issued by Ellab GmbH. Verbal and telephone agreements are only valid if they have been confirmed by us in writing. Illustrations, drawings, weight specifications etc. only serve as approximate guides. We are entitled, at our discretion, to withdraw from the contract either wholly or in part or to demand securities (e.g., also to defer the delivery of reports etc. until payment) if substantial changes occur as regards the person or, in the case of legal entities, the shareholder situation of the contracting party, or if the customer's creditworthiness appears doubtful due to any circumstances that may subsequently become known.

3. Cancellation

In the event of any agreed cancellation of an ordered performance (service and delivery of goods), Ellab GmbH is entitled to demand a fixed compensation amounting to 25 % of the agreed order value from the contracting party (reason: all measuring technology and consumables are provided with a calibration certificate and/or a material certificate. Any return therefore involves increased administrative cost and effort, e.g. for the new calibration required, the return order, the incoming goods inspection, the renewed outgoing inspection with the next delivery, etc.). This provision does not rule out any further compensation. The contracting party is entitled to provide evidence that the actual loss incurred is less than the fixed amount claimed. Custom-made products and services that have already been provided will be charged in full.

4. Delivery deadlines

Unless a fixed date is agreed, delivery periods are non-binding. Partial deliveries are permitted. Circumstances such as force majeure, a shortage of energy and raw material, official decrees, the repercussions of industrial disputes, traffic holdups, disturbances in our own company or the company of our suppliers, transport difficulties etc. suspend our obligation to deliver or entitle us to withdraw from the contract either wholly or in part. Customer claims for compensation are excluded, even after the expiry of any extension period. Delivery dates for call orders are to be specified in writing.

5. Shipment

The shipment is carried out as we deem best, but without any guarantee to use the cheapest mode of transport. All consignments – including deliveries we carry out ourselves as well as any return shipments –, whichever the mode of dispatch chosen, are conducted at the expense and the risk of the customer. Insurance coverage is provided at the explicit request and at the expense of the customer. If the shipment is delayed through no fault of our own, the goods will be stored at the expense and risk of the customer. In such a case, our notification of the readiness for shipment is deemed to be equivalent to the actual shipping. No liability for damages of any kind is assumed for such transports, even if the transports are carried out by our own personnel. This does not apply to damage in the case of willful intent and gross negligence and/or in the case of physical injury or loss of life.

6. Packaging

The packaging and its general costs are charged separately.

7. Terms of payment

If the customer exceeds the deadline for payment, he is to pay default interest of 9 percentage points above the respective base rate of the Deutsche Bundesbank (German Central Bank) on expiry of the deadline, without the need for him to receive any prior warning to that effect. If the contracting partner is a consumer within the meaning of Section 13 of the German Civil Code (BGB), the statutory provisions apply. We reserve the right to assert further claims for damages caused by the delay.

8. Retention of title

8.1 We reserve ownership of all goods delivered by us (reserved ownership goods) or reports until payment of all our claims resulting from the business relationship. The customer is not entitled to dispose of the goods or reports or to assign them to third parties. That also applies when the purchase price has been paid for specific deliveries of goods defined by the customer. When a running (current) account is operated, the reserved property rights to the delivered goods (i.e., the reserved ownership goods) serve as collateral until the balance owed to us has been paid in full.

8.2 The contracting partner recognizes a processing clause within the meaning of Section 950 of the German Civil Code (BGB) to the effect that Ellab GmbH is to be regarded as the manufacturer within the meaning of Section 950 of the German Civil Code (BGB); this entails the legal consequence that Ellab GmbH is also to be assumed to be the manufacturer within the meaning of Section 950 of the German Civil Code (BGB) in the event of any (further) processing according to Section 950 of the German Civil Code (BGB) by the customer.

8.3 Should the contracting party combine and mix goods with others that are not our property, the provisions of Sections 947 and 948 of the German Civil Code (BGB) shall apply, with the result that our joint ownership of this new product now becomes subject to reservation of ownership within the meaning of these conditions.

8.4 The contracting partner is prohibited from pledging and assigning as security the reserved ownership goods. The contracting partner is obligated to immediately notify us of any access by third parties to the goods delivered under reservation of ownership by sending us a report of the seizure and an affidavit stating that the seized items are identical to the goods delivered. Any expenses incurred in the course of any such intervention will be borne by the customer.

8.5 The contracting partner is obligated to insure the goods against fire and the risk of theft and, on request, to furnish proof that such insurance has been taken out. All claims against the insurer under this contract with regard to the goods delivered under reservation of ownership are deemed to be assigned to us.

8.6 We are entitled to demand access to the goods subject to reservation of ownership that are still in the possession of the customer and to demand the immediate surrender of any goods that have not yet been resold in the event of any delay in payment or any payment difficulties on the part of the contracting partner. Until possession is reclaimed, the contracting partner must store the goods that are in our ownership or co-ownership separately from other goods, mark them as our property (jointly held property), abstain from using them in any way, and provide us with a list of our property (jointly held property). Without setting a prior deadline, we are entitled to sell the goods or have them auctioned on the open market. Our repossession of the goods subject to reservation of ownership is effected on the basis of the revenue obtained, but shall not exceed the agreed delivery prices. The right to make further claims for damage, in particular for loss of profit, remains unaffected.

8.7 The resale of goods subject to reservation of ownership is only permitted within the usual scope of business.

9. Warranty

9.1 Defects are remedied within the warranty period announced with the order confirmation. In the case of recognizable defects, the written notification of such defects must reach us at the latest 14 days after delivery of the goods to the customer, and immediately on detection in the case of non-recognizable defects. In the case of goods intended for further processing or installation as spare and wear parts, these parts must be examined for defects prior to further processing or installation. All warranty claims lapse after processing or installation for defects that could have been recognized before installation or processing.

9.2 The customer is obligated to examine service reports sent to him immediately upon receipt and to make a complaint about any errors within 10 days of receiving the report at the latest. If the complaint is not made in time, any warranty claims on the part of the customer become void.

9.3 In the case of justified complaints regarding service performance, Ellab GmbH is entitled, at its own discretion, to repeat the performance or to carry out the corresponding rectification work.

9.4 An error or defect in the performance of a service does not constitute a valid ground for complaint if such a complaint was caused by any disregard of the application specified by the manufacturer.

9.5 If errors occur during the execution of a service order, the customer is not entitled to refuse payment for any other order. Any set-off against other payments is only admissible if the customer's set-off claim is uncontested or legally established.

9.6 Further claims, in particular to compensate for consequential damages owing to defects, are excluded in the case of both deliveries and services.

9.7 Our warranty obligation is excluded in the case of any poor maintenance of the goods on the part of the customer. This includes the omission of regular factory calibrations, excessive operating hours/stress conditions, changes in the goods delivered by us without our written consent or repairs not carried out by members of our sales organization. A factory calibration including adjustment must be carried out by the manufacturer because only this company has the necessary competence and references. In order to ensure the specified precision, precision measurement technology is subject to regular factory calibration, including adjustment, depending on the stress conditions the technology is exposed to. The period for re-calibration may differ from that specified on the certificate, which merely serves as a recommendation. Factory calibrations are to be understood as a snapshot at the time of the calibration and do not protect against the transfer of risk during the transport process. Example: If the transporter handles the precision measuring technology improperly, any warranty shall cease to apply. After receipt of such precision measuring technology, an incoming goods inspection, i.e., calibration inspection, must be carried out under GxP principles. The warranty obligation also lapses if the auxiliary and operating materials specified by us are not used for the continuous operation of the equipment we have delivered. This includes, in particular, thermal paper, calibration bath fluids or ORIGINAL ELLAB battery cells. As part of our quality assurance, ORIGINAL ELLAB batteries are subjected to a specific stress test before being delivered. A defined

- battery voltage and capacity is one of the essential elements of trouble-free operation.
- 9.8 The warranty obligations outlined above do not apply if the customer has previously rented the purchased item.
- 9.9 The warranty does not cover transport, shipping and labour costs.
- ## 10. Liability
- 10.1 Damage compensation claims against Ellab GmbH and its performing and vicarious agents and legal representatives are excluded, for whatever legal reason (whether these be from consulting, positive breach of contract or illicit acts), in particular also for indirect and consequential damage. This does not apply in cases of willful intent, gross negligence or in the absence of assured properties and promised attributes. Insofar as damage compensation claims against Ellab GmbH or their performing and vicarious agents and legal representatives exist, these claims lapse within one year after delivery of the product or the consulting activity/service provided, or after receipt of operational readiness in the case of systems.
- 10.2 Under no circumstances will Ellab GmbH be liable for production losses, profit losses or other such consequences. We maintain a reasonable degree of general and product warranty insurance. The customer is responsible for operator (worker) insurance and the provision of safe working conditions according to his own company regulations.
- 10.3 Our liability for injuries and material damage is based on the amount of the damage incurred but may not exceed a maximum of EUR 50,000.
- 10.4 Under no circumstances are we liable for losses that the customer, his customers or third parties may suffer as a result of misunderstandings relating to our agreement, such as the loss of own customers, if such misunderstandings have been caused by faulty services such as measurements, data records, consulting activity, validation reports, certificates and/or the non-functioning of all possible accessories of this contract.
- 10.5 Oral and written information, explanations, advice or recommendations are given to the best of our knowledge and belief and are non-binding. Validation reports are only binding by the acceptance/approval and signature of the QS/QA department of the contracting company.
- 10.6 A liability or warranty for the success of the measures recommended by Ellab GmbH is excluded. This also applies if Ellab GmbH accompanies the implementation of agreed or recommended planning activities or measures.
- 10.7 The liability of Ellab GmbH lapses if the damage incurred is also due to incorrect or incomplete information or documents provided by the customer. This also applies if the customer has not complained about liability-relevant circumstances to Ellab GmbH in writing within 14 calendar days after knowledge has been obtained. This exclusion of liability applies to both products and services provided by Ellab GmbH.
- 10.8 As regards its services, Ellab GmbH is not liable for any erroneous operations or settings on the part of the customer.
- 10.9 The above does not apply to damage caused by willful intent or gross negligence and/or in the case of injury to life and limb.
- ## 11. Configuration and installation of software
- A start-up and test period must be included for the installation of the data systems and the associated software. This test phase usually extends 3 months after the complete installation of the systems. It is the responsibility of the customer to check the delivered software and the complete system for possible defects in their respective areas of application. Defects must be reported immediately and will then be rectified by Ellab GmbH. The existence of any such software and system defects does not imply that the customer may withhold payment for the equipment. After the above-mentioned test period, we regard any subsequent corrections on our part as modifications and newly added functions (in comparison with the original delivery specifications). These newly added functions are to be charged, separately invoiced, and vehemently demanded over the course of time. If we do not have a written notification from the customer after the 3 months of complete installation has expired to the effect that the customer points up any damage or defects in his existing system and requests correction, the test and start-up phase is regarded by us as completed.
- ## 12. Repairs
- If a cost estimate is requested prior to the execution of repairs, this is to be stated explicitly. The costs of the estimate must be reimbursed. Repairs are carried out without warranty, insofar as there is no defects report. Whether a repair is carried out in our own or in an external workshop is subject to our discretion. Costs for transport, shipping and packaging are borne by the customer. Reference is made to Sections 4 and 5 of these Terms and Conditions. Notification of warranty claims is to be made within 3 days.
- ## 13. Services
- 13.1 The work of Ellab GmbH consists – unless otherwise agreed in any individual case – in the independent and autonomous counselling of the customer as a service.
- 13.2 A concrete success is neither owed nor guaranteed. It is the sole responsibility of the customer to decide on the date and on the type and scope of the measures recommended or coordinated by Ellab. This applies even if Ellab accompanies the customer's implementation of any agreed plans or measures.
- 13.3 The specific content and scope of the work to be performed by Ellab is determined by the written order. If the need arises for additional or complementary activities, Ellab will notify the customer. In this case, an extension of the contract with Ellab will also become binding simply by the fact that the customer requests this further work or accepts it.
- 13.4 Ellab considers the information or documents provided by the customer as well as any submitted figures to be complete and accurate. Ellab is not obligated to verify the accuracy, completeness, or correctness or to conduct own research. This also applies if, within the scope of the order placed, plausibility checks or evaluations are to be carried out by Ellab that build solely on the information, data or documents furnished by the customer and do not deal with their inspection.
- 13.5 The submission or presentation of any written elaboration or results of Ellab to third parties requires the prior consent of Ellab and takes place solely in the interest and on behalf of the customer. Through such action, the third party does not fall within the protective scope of the order contract between the customer and Ellab GmbH. This also applies if the third party wholly or partially bears the costs of or takes over payment of Ellab's work for the customer.
- 13.6 Outsourcing and subcontracting is possible.
- ## 14. Obligations of the customer to cooperate in service performance
- 14.1 The customer provides Ellab with all necessary information and documents to perform the service order completely and correctly in terms of content.
- 14.2 The customer undertakes to carry out any necessary preparations specified in advance by Ellab GmbH for the performance of the service.
- 14.3 If, after a request from Ellab GmbH, the customer fails to perform his respective obligations to cooperate wholly or partly, after notification in writing, Ellab is entitled, but not obligated, to terminate the contract concluded without prior notice. In such case, we are entitled to charge the customer either the actual services rendered up to the date of termination or, alternatively, the agreed or projected total remuneration minus any expenses saved by the early termination of the contract.
- 14.4 The customer issues to Ellab a declaration of completeness confirming that the information and documents provided by him are complete and correct and that there are no existing or known indications that are likely to call into question their completeness and correctness.
- 14.5 If validations cannot be executed or can only be executed defectively for reasons that lie within the scope of risk of the customer, the agreed service will nevertheless be invoiced to the customer. If Ellab GmbH is without fault in the defective execution or nonexecution, the customer has no claims against Ellab.
- 14.6 The customer is not entitled to assign or transfer rights or obligations from the contract to third parties without the express prior consent of Ellab GmbH.
- ## 15. Payment for services
- 15.1 The services of Ellab GmbH are calculated and paid according to the daily rates valid at Ellab GmbH plus outlays, incidental costs, per diem expense allowances, etc. – unless otherwise agreed in writing in any individual case.
- 15.2 Ellab is entitled to invoice reasonable advance payments for the services expected to be provided or to invoice appropriate part payments for services already provided.
- 15.3 If any advances, part payments or other invoices requested by Ellab are not paid or only incompletely settled, Ellab is entitled to stop further activities until such time as the outstanding claim has been fully paid. Moreover, Ellab GmbH may terminate the concluded contract without notice after the issue of a prior written warning with threat of termination. In such case, we are entitled to charge the customer either the actual services rendered up to the date of termination or, alternatively, the agreed or projected total remuneration minus any expenses saved by the early termination of the contract.
- 15.4 Any time and remuneration forecasts of Ellab GmbH regarding the execution of an order constitute a non-binding estimate since the time required may depend on factors that we cannot influence.
- 15.5 If the forecasted time or remuneration is exceeded due to circumstances that are the responsibility of the customer (e.g., inadequate cooperative activity on the part of the customer), the resulting additional costs are to be paid according to the respective valid/agreed daily rates of Ellab GmbH. The same applies to any excess or overrun of up to 30 % if it is based on any other causes.
- 15.6 If the actual processing time amounts to more than 30% of the forecasted working time, the customer has the option, after being informed by Ellab GmbH, to terminate the order and to remunerate the services provided so far according to the agreed terms or to continue the order and additionally pay the excess working time based on the daily rates.
- ## 16. Place of performance and court of jurisdiction
- 16.1 The place of performance and exclusive court of jurisdiction is – unless prohibited by law – Zeven.
- 16.2 The laws of the Federal Republic of Germany shall apply.
- ## 17. Final provisions
- 17.1 Changes or additions to the contract, including ancillary agreements, must be made in writing in order to be legally valid. An implicit amendment of the order/contract or the General Terms and Conditions shall be excluded.
- 17.2 Ellab GmbH is authorized to use and store data entrusted to it within the assigned purpose of its order in accordance with statutory provisions.

17.3 If any of these provisions becomes invalid for any reason whatsoever, the validity of all other Provisions shall remain unaffected.