

International Terms and Conditions of Supply and Payment for elbe

Valid from 01.09.2005 onwards

Deliveries by the **elbe** company to its Customers will be made on the basis of the terms and conditions below. These shall also apply for all future business transactions, even if they are not expressly agreed again. Discrepancies shall only become valid if **elbe** confirms them in writing. These terms and conditions shall be regarded as having been accepted by the receipt of the goods at the latest. The Customer's own terms and conditions of business are hereby rejected.

1. Quotes and prices

Quotes submitted by **elbe** shall be subject to change without notice and are understood as a request to submit quotes. In the event that there are discrepancies from our original quote, we shall draw the attention of the Customer to them straightaway. The prices valid on the date on which an order is placed shall apply. If there has been a change in the prices or other terms and conditions this will be announced in the written order confirmation. If no objections are raised within 8 working days from the date of the order confirmation, it will be assumed that the Customer has granted his legally binding consent to the price change and **elbe** shall supply at this price. In so far as **elbe** has not expressly granted a longer period for which its quoted price will be binding, **elbe** shall consequently be able to amend its prices after a period of 4 weeks has elapsed.

2. New information

New sales catalogues and price lists shall render the preceding ones invalid.

3. Dispatch costs and carriage

As a matter of principle the term of delivery „Ex works“ shall be regarded as having been agreed. **elbe** is prepared to deliver „Franco domicile“ or „CIF“ upon request, but will invoice the Customer at cost.

4. Assembly

All prices exclude assembly.

5. Payment

elbe supplies upon payment in advance or payment by L/C.

6. Liability for quality defects

Discrepancies from the sales catalogue which only impair the quality and function of the goods to a minor extent as well as changes in the wood – in particular shrinkage cracks for playground equipment – will not be covered by the law on liability for quality defects.

The written consent of the **elbe** company must be obtained in writing prior to returning goods about which a complaint has been made.

elbe shall not accept responsibility for the consequences of unprofessional modifications or repairs carried out by the Customer or third party without the consent of **elbe**, nor shall **elbe** accept responsibility for quality defects arising as a result of the unsuitable or improper use, defective assembly or start-up by the Customer or third party for which **elbe** is not to blame, nor shall **elbe** accept responsibility for normal wear and tear, faulty or negligent treatment.

No other claims asserted by the Customer, in particular those for compensation for damages or for the reimbursement of expenses, shall be admitted.

Defects must be notified in writing and received by **elbe** within seven days from the receipt of the goods.

elbe shall not accept any liability for defects which only reduce the value or the fitness for use of the goods by a minor extent. The liability for quality defects shall expire after 12 months.

7. Supplementary arrangements for products with a quality seal

elbe shall extend its liability for quality defects up to 5 years (excluding parts liable to wear and tear) for all products with an **elbe** quality seal. The products are marked as appropriate in the catalogue.

7.1 Supplementary regulations for **elbe** playground equipment: terms and conditions of warranty

Over and above the liability for quality defects described in Section 6 above, **elbe** shall furnish a manufacturer's warranty for **elbe** playground equipment subject to the following terms and conditions.

7.2 Warranty promise

elbe shall make the following promises to the Customer:

- 10-year warranty against wood rot and fungus attack on all tanalized woods
- 5-year warranty on all **elbe** playground equipment

The following are not covered by warranty:

- wear and tear due to use: the parts liable to wear and tear can be seen from the item registration book / certificate of warranty (assembly instructions)
- wickerwork items, sun shade awnings, ropes, hinges, contact surfaces, powder coating, and scumbling, coats of paint. Sculptures, products made of robinia wood and products which have not been impregnated.
- wanton destruction and vandalism
- unprofessional assembly and assembly not in accordance with assembly instructions.
- defective maintenance and care
- (Documentation in accordance with EN 1176 et seq.
- Termite attack

The period covered by warranty shall begin on the date of delivery.

7.3 Preconditions

For the warranty to be valid, the equipment must be maintained by trained staff and as specified by **elbe**, and if necessary, repairs must be carried out properly using original spare parts from **elbe**. The Customer or the operator of the playground equipment shall be responsible for providing proof of proper maintenance (submission of the complete inspection and maintenance reports in accordance with the specifications of DIN EN 1176, Part 7).

7.4 Honouring the warranty

In the event that claims under warranty are justified, **elbe** shall be entitled to render subsequent fulfilment as it sees fit. Honouring the warranty includes the provision of proper replacement parts. Transport as well as the installation and removal of defective parts is not included.

8. Approach to be adopted in the event of damage in transit

The haulier is to be notified immediately of damage identified upon the receipt of the goods. Damage not externally visible shall have to be notified to the haulier within 3 days by telephone and in writing.

The Customer alone shall be responsible for compliance with the set notification period and for dealing with the damage in transport.

9. Special productions and made-to-measure productions as well as special items

Made-to-measure productions and special items will not be taken back.

10. Changes in the circumstances underlying the contract

elbe is entitled to demand an extension of the delivery period, in particular in the event of force majeure, operational breakdowns, difficulties in obtaining materials, strikes or similar circumstances. In such cases **elbe** shall state new delivery dates. The remaining parts of the contract shall not be affected by this as a result.

11. Default in taking delivery

If the goods are not collected, **elbe** shall be entitled to put them into store and to have its costs reimbursed. The purchase price shall become payable upon the expiry of the collection period. The risk of accidental deterioration shall pass over to the Buyer.

12. Reservation of title

The goods shall remain the property of **elbe** until the current account has been settled in full. Provided that the Customer acquires goods for resale, he shall be entitled to process and sell the goods subject to the reservation of title in the course of normal commercial transactions. The Customer is not allowed to assign the title to these goods as a security or pledge them.

The account to which the Buyer is entitled against a third party from the sale of the goods subject to the reservation of title shall be assigned by the Buyer to **elbe** here and now up to the amount of the accounts **elbe** has against the Buyer.

elbe shall be entitled to collect the assigned accounts in its own name from the Buyer's debtor.

The assignment of the account shall only apply in so far as the accounts of **elbe** have not been settled.

The reservation, processing and mixing of the goods subject to reservation shall be carried out for **elbe**. The Buyer shall keep the new thing in safe custody for us with the care of a prudent businessman. The processed, transformed or combined thing shall be regarded as being goods subject to the reservation of title. If the goods subject to the reservation of title are processed, transformed or combined together with other goods not belonging to **elbe**, **elbe** shall be entitled to the co-ownership of the new thing for the amount of the proportion of the value of the processed, transformed or combined goods to the value of the other processed objects. In so far as the Buyer acquires sole ownership to the new thing, **elbe** agrees with the Buyer that the Buyer shall give us co-ownership to the new thing created as a result of processing, transformation or combining in proportion to the other processed, transformed or combined objects or things at the point in time of processing, transformation or combination.

elbe is to be notified immediately of third party seizures, in cases in which there is a levy of execution in particular, and if the goods are taken advantage of it must be pointed out that the goods are subject to reservation of title by **elbe**. The costs and damages incurred in connection with this shall be borne by the Buyer.

In the event of default in payment, **elbe** may at any time demand that the goods subject to the reservation of title are handed over to **elbe**. The demand for the return of the goods

may only be regarded as withdrawal from the contract in those cases in which this is expressly stated by **elbe**. The Buyer's obligation to pay compensation for damages shall not be affected by this as a result.

13. Industrial proprietary rights and legal defects

elbe shall only be responsible for breaches of proprietary rights and copyrights for goods delivered in Germany and only if it is at fault in accordance with § 261 of the (German) Civil Code (BGB). If the breach of proprietary right is based on the Buyer's specifications, the Buyer shall consequently have to exempt **elbe** from all claims. The parties to the contract shall provide each other with the best possible support in the event that a claim is asserted against either one of them. The regulations for quality defects shall apply for other legal defects.

14. Limitation of liability

In all cases in which **elbe** is, notwithstanding the above provisions, obliged on the basis of claims asserted on the basis of contractual or statutory requirements, to pay compensation for damages or for expenses, **elbe** shall only be liable, in so far as the management, senior employees or assistants are guilty of acting with intent, gross negligence or loss of life, personal injury or physical harm. Irrespective of who is to blame under the (German) product Liability Act, liability shall not be affected. However, in accordance with the regulations of the (German) Product Liability Act, there shall not be any liability on the part of **elbe** for any subsequent modifications made by the Buyer. The liability of **elbe** for the breach of important contractual obligations for which it is to blame shall not be affected either. Given this, liability shall however, with the exception of the cases in Sentence 1 above, be limited to the foreseeable damage typical for the contract. The above arrangements do not include a change in the burden of proof to the detriment of the Buyer.

15. Verbal agreements

Verbal agreements are not valid. Supplements have to be made in writing and they have to be confirmed by **elbe**. If an order is placed by fax message or by e-mail, **elbe** may confirm the order by fax message.

16. Sphere of application of our products

The products shall be supplied in accordance with the European standard as may from time to time be established. The Customer shall undertake to comply with any additional regulations which may possibly exist in a specific country with regard to start-up, ongoing operation, assembly and maintenance.

On the basis of this **elbe** shall not accept any liability for the operation of its products in countries outside the EU, in so far as the Customer fails to comply with additional regulations applicable in a specific country. This shall apply in particular to **elbe** products imported into the USA and Canada!

17. Information material

The Customer states his express agreement that **elbe** is entitled to send information material to the Customer's e-mail address if the Customer has notified **elbe** of his e-mail address, until the Customer expressly revokes his consent hereto.

18. Place of fulfilment and Place of jurisdiction

It shall be regarded as being agreed between **elbe** and the Customer that the law of the Federal Republic of Germany shall apply and that the UN law on sales (CISG) shall not apply. Provided that it is allowed by law, the local court of Würzburg shall be regarded as having been agreed as the place of jurisdiction for all disputes arising directly or indirectly from the contractual relationship between **elbe** and the Customer, regardless of the value in dispute, provided that the Customer is a registered trader. This shall also apply for legal action based on unpaid cheques and bills of exchange, as well as if the whereabouts of the Buyer are unknown at the point in time at which the legal dispute is instigated.

elbe shall, however, be entitled to also take legal action against the Buyer at his general place of jurisdiction and on the basis of international legal standards.

19. Statutory law

Provided that no separate agreements are made as a result of these terms and conditions of supply and payment, the regulations of the (German) Civil Code (BGB) and the (German) Commercial Code (HGB) shall apply. Should individual points of these terms and conditions of supply and payment contradict the statutory regulations, the validity of remaining agreements shall not be affected as a result.

The invalid provision is to be replaced by a valid provision coming closest to its economic or legal objective.

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