

## GENERAL TERMS AND CONDITIONS OF DELIVERY AND SERVICE OF ELCOWIRE RAIL GMBH

### 1 GENERAL SCOPE OF APPLICATION

- 1.1 **These General Terms and Conditions ("GTC")** shall apply to all deliveries and services of Elcowire Rail GmbH ("Elcowire") and legal transactions and declarations related thereto.
- 1.2 **Elcowire's deliveries, services and offers** are provided exclusively on the basis of these General Terms and Conditions. They are an integral part of all contracts concluded by Elcowire with its contractual partners (hereinafter referred to as "Purchaser") for deliveries or services offered by Elcowire. They shall also apply to all future deliveries, services or offers to the Purchaser, even if they are not separately and repeatedly agreed upon. They become part of the contract upon acceptance of the offer by the Purchaser. However, they shall be deemed accepted at the latest upon receipt of the goods or services.
- 1.3 **General terms and conditions** of business or purchase of the Purchaser or other third parties shall apply only if expressly accepted by Elcowire in writing. Any waiver of the written form requirement must also be in writing. Reference to a letter from the Purchaser containing or referring to the terms and conditions of the Purchaser or any other third party shall not constitute such written acceptance.
- 1.4 **The ICC Incoterms (2020)** or as amended from time to time shall be decisive for the interpretation of commercial clauses.
- 1.5 **Insofar as clauses are referenced below**, reference is made to clauses of these General Terms and Conditions.

### 2 ORDER DOCUMENTS; AGREEMENTS ON QUALITY; RESERVATION OF RIGHT OF MODIFICATION; BINDING PERIOD

- 2.1 It is the responsibility of the Purchaser to ensure that the order is complete and correct in content. Elcowire may rely on the accuracy of the order and the documents (drawings, samples, models) and technical and commercial information provided by the Purchaser. Elcowire is not obliged to check the order for errors or the suitability of the ordered specifications and items for the Purchaser or adequacy of the order quantities. However, Elcowire shall draw the Purchaser's attention to any detected errors.
- 2.2 If Elcowire has to perform according to drawings, specifications, samples, requirements, etc. of the Purchaser, the Purchaser shall bear the risk of suitability for the agreed purpose.
- 2.3 A quality agreement or suitability for a specific purpose shall only be deemed to exist if this is expressly agreed in the contract.
- 2.4 Information and statements made by Elcowire in brochures, graphical representations, catalogs, price lists and similar documents may contain errors or may have changed after their creation. They are binding on Elcowire only if and insofar as they are expressly confirmed in writing in the respective contract or order confirmation.
- 2.5 Orders are considered as a binding offer to Elcowire. Elcowire may accept such orders within two (2) weeks after receipt by Elcowire, unless the Purchaser specifies a different binding period.

### 3. CONCLUSION OF CONTRACT, CHANGES TO CONTRACT, REQUIREMENT OF WRITTEN FORM

- 3.1 All offers made by Elcowire are subject to change without notice and are not binding, unless they are expressly marked as binding or contain a specific acceptance period. A legally binding contract shall only be concluded upon written confirmation by Elcowire.
- 3.2 Any additions, amendments or side agreements to the contract must be confirmed in writing by Elcowire in order to be effective.
- 3.3 Subsequent amendments to the Agreement, including amendments to these General Terms and Conditions, must be agreed upon in writing. This also applies to changes to this written form requirement.
- 3.4 The written form requirement may also be met by sending signed original declarations by fax or electronically (e.g. sending scans by e-mail). If there is no signature on the originals, it must be indicated that the document is valid without a signature.

### 4. STOCKING UP OF METAL

- 4.1 The stocking up of metal is carried out on the instructions of the Purchaser. For this purpose, the Purchaser shall notify Elcowire in writing of the required material, the required quantity of metal and the required delivery dates no later than 11:30 a.m. on the day of the required fixing. The metal will be purchased on the agreed fixing date on the basis of the LME Settlement Price (LME daily official price), which may be unknown at the time of the Purchaser's order, plus purchase and procurement costs and premiums (together the "Metal Price"). Elcowire will send the relevant order confirmation, specifying the valid metal conditions and procurement costs, to the Purchaser after all relevant data of the metal exchange are available.
- 4.2 If metals (copper and aluminum) are purchased at the Purchaser's request, regardless of a specific order, or if no other arrangement has been made regarding payment dates, Elcowire may invoice the Purchaser for the metals. Unless otherwise agreed, the metal invoice is due immediately and payable without deduction. In any case, title to the Metals shall not pass to the Purchaser until payment has been made in full. The further provisions in Clause 13 (extended and prolonged retention of title) shall remain unaffected.
- 4.3 If order-specific delivery and payment schedules have been agreed for metal or supplies, the originally agreed due dates or payment schedules shall be observed by the Purchaser in the event that originally agreed delivery dates are postponed at the Purchaser's instigation. If payment is made later, the Purchaser shall pay a surcharge of 1% on the originally agreed Metal Price for each month or part thereof of delay instead of the default interest (Clause 5.7). Unless otherwise agreed in writing, the Purchaser shall not be entitled to demand that deliveries be brought forward in relation to the agreed delivery schedule.
- 4.4 If the Purchaser provides electrolytic LME registered Grade A copper cathodes through suppliers to be agreed with Elcowire for production at Elcowire, Elcowire is entitled to use and process these raw materials in the current production. Elcowire is obliged to provide raw materials in the same quantity and quality in time so that the goods ordered by the Purchaser are produced and the delivery is not delayed.
- 4.5 If it is agreed that the Purchaser will provide copper, the provision shall be made in time so that the copper is available at Elcowire's plant at least 6 weeks before the requested delivery date or - if this is the later date - at the latest on the day following the order of the goods to be produced by Elcowire. The Purchaser is responsible for timely and proper delivery to Elcowire's production facility. Unless otherwise agreed, deliveries can only be made on working days (Monday to Friday only) at Elcowire's factory site between 7:00 and 13:00. Deliveries must be announced at least one day before the scheduled delivery date.

- 4.6 If there is no or insufficient copper available on the day of the start of production, Elcowire is entitled to deliver at the terms of the full price transaction, limited to the shortage. Elcowire will inform the Purchaser before covering the shortage and is entitled to make the delivery related to the shortage subject to a separate written confirmation from the Purchaser. The basis is the metal quotation of the London Metal Exchange on the day of metal fixing plus the agreed purchase and procurement costs and premiums.

### 5. PRICES AND PAYMENT

- 5.1 Unless otherwise agreed, Elcowire's prices are ex-works Elcowire (EXW) excluding packaging. Packaging will be charged separately.
- 5.2 Unless otherwise expressly agreed, prices quoted are net prices plus VAT at the statutory rate applicable on the date of delivery or performance.
- 5.3 If the Metal Price is stated separately in Elcowire's offers or order confirmations, the price calculation in particular in the full price transaction (i.e. for production without the provision of the required metal), unless otherwise agreed, shall be based on the still unknown LME Settlement Price (LME daily official price), which is applicable on the day of the metal fixing, plus the agreed purchase and procurement costs and premiums. The day of the metal fixing will regularly be the first working day after receipt of the order (whereby only working days from Monday to Friday at Elcowire's registered office, which are also trading days on the LME, count as working days in this respect). If the LME Settlement Price on which the Metal Price is based changes, the Metal Price will change on a percentage basis corresponding to the percentage change in the LME Settlement Price.
- 5.4 If Elcowire makes partial deliveries at the Purchaser's request, Elcowire is entitled to charge additional packaging, transport and other delivery costs.
- 5.5 Unless otherwise agreed, packaging materials (drums, containers, pallets) shall be invoiced to the Purchaser at the applicable invoice value and shall become the property of the Purchaser upon payment. If Elcowire has made drums available to the Purchaser on loan for a period defined in the quotation or order confirmation ("Loan Period"), the drums shall remain the property of Elcowire and shall be returned to Elcowire's Hettstedt factory in perfect condition no later than on the last day of the Loan Period. In particular, the Purchaser shall not staple or glue any linings to the drums, change the color of the linings, or write on, obscure, damage or remove the bar code labels affixed to the drums. The Purchaser shall at all times identify the drums as the property of Elcowire and protect them against unauthorized access by third parties. For the duration of its possession, the Purchaser shall be liable for any wear and tear, deterioration, damage or loss of the loaned drums beyond their contractual use, regardless of fault. Unless otherwise stated, the loan period shall be 6 months from the date of delivery. After the end of the rental period, the Purchaser shall pay Elcowire a rental fee of 15% of the calculated value of the drum as stated by Elcowire per month for the first to fifth month after the end of the rental period and 25% for the sixth month after the end of the rental period, but not more than the full calculated value in total. Upon payment of the full calculation value, the drums become the property of the Purchaser.
- 5.6 Elcowire is entitled to issue invoices in writing or in text form (including e-mail). Unless expressly agreed otherwise, Elcowire's invoices are due and payable without deduction 30 days after the date of invoice and delivery or performance.
- 5.7 If the Purchaser is in default of payment as defined in § 286 German Civil Code (BGB), Elcowire is entitled to claim damages on the outstanding amount with an interest rate based on EURIBOR 1 month +9% per year in accordance with § 288 German Civil Code (BGB). Elcowire reserves the right to claim further damages.
- 5.8 The Purchaser shall not be entitled to set off or retain any claims against Elcowire unless such claims are acknowledged, undisputed or have been finally determined by a court of law. The Purchaser's right to invoke the defense of non-performance of the contract shall remain unaffected.

## 6. DELIVERY TIME AND DELIVERY PERIODS

- 6.1 A delivery period shall not commence until all details of the execution of the order have been clarified and both parties have agreed on the terms of the order. Any delivery dates agreed upon prior to complete clarification shall be extended by the period of clarification plus 5 working days.
- 6.2 Elcowire's compliance with its delivery obligation is conditional upon the timely and proper fulfillment of the Purchaser's obligations, including clarification of technical issues and provision of information and documents requiring the Purchaser's cooperation.
- 6.3 In addition to the extent that Elcowire has concluded a covering transaction for metal prior to the conclusion of the contract with the Purchaser, which would have enabled Elcowire to fulfil its contractual delivery obligations to the Purchaser if Elcowire had been properly supplied, and Elcowire is not supplied correctly or in time by its suppliers for reasons beyond Elcowire's control, Elcowire shall inform the Purchaser thereof without undue delay. If the Purchaser refuses a reasonable postponement of the delivery date agreed with Elcowire, which would allow Elcowire to deliver to the Purchaser in the ordinary course of business, Elcowire shall be entitled to withdraw from the contract for the order in question. The costs of the withdrawal or cancellation of the covering transaction for the Metal shall be borne by the Purchaser, unless the agreed delivery would have been a fixed date transaction or the postponement of the delivery date would have been objectively unreasonable for the Purchaser. The above provisions in this Clause 6.3 shall apply mutatis mutandis also in the event that Elcowire, in accordance with Clause 4.1, has performed a stocking up of metal on behalf of the Purchaser and the metal supplier fails to deliver on time.
- 6.4 In cases of Force Majeure, Elcowire shall be released from its obligation to deliver for the duration and to the extent of the effect. Force Majeure is any event beyond the control of Elcowire which prevents it from fulfilling its obligations in whole or in part, such as war, stoppage of gas supply, substantial changes in the price structure, fire damage, floods, strikes and lawful lock-outs, pandemics or epidemics, as well as supply difficulties not caused by Elcowire (such as restriction of supply of gas and other energy sources), operational disruptions or governmental orders (Force Majeure). Elcowire shall immediately notify the Purchaser of the occurrence and cessation of the Force Majeure and shall endeavor to remedy and limit the effects of the Force Majeure. Elcowire shall, upon the occurrence of the Force Majeure, consult with the Purchaser on the further course of action and determine whether, upon its cessation, the products not delivered during such period shall be subsequently delivered and how to proceed with the reserved copper purchased for the affected contracts and orders at the agreed price. The copper purchased in the contracts not performed due to Force Majeure shall, at the Purchaser's option, either be invoiced to the Purchaser at the fixed price as set out in the order confirmation and, upon payment, be made available to the customer as Grade A cathode or be held in custody for use in future orders once Force Majeure has ceased to exist. The Purchaser bears the cost for this.
- 6.5 If Elcowire is in delay with its performance, the Purchaser may, if it proves that it has suffered damage as a result thereof, claim compensation for each full week of delay of 0.5%, but not more than a total of 5%, of the price of the part of the Supplies in respect of which Elcowire is in delay with delivery. Any further claims are excluded unless Elcowire is guilty of intent or gross negligence or in case Elcowire is liable for ordinary negligence according to clause 14.2.

## 7. DELIVERY, PARTIAL DELIVERIES AND TRANSFER OF RISK, ACCEPTANCE OF WORK PERFORMED

- 7.1 Unless otherwise agreed, delivery shall be made ex-works Elcowire (EXW). The place of performance is Elcowire's manufacturing plant. This shall also apply if Elcowire has exceptionally assumed the transport costs or paid them on behalf of the Purchaser.

- 7.2 If, taking into account the agreed upon Incoterms, the shipment of the goods has been agreed upon (obligation to be performed at Elcowire's place of business by dispatch of Elcowire, Schickschuld"), the risk of accidental loss and accidental deterioration of the goods shall pass to the Purchaser upon delivery to the carrier, freight forwarder or other person or institution designated to carry out the shipment. This shall also apply if Elcowire has assumed the transport costs or paid them on behalf of the Purchaser. If the shipment or handover is delayed for reasons for which the Purchaser is responsible or which are otherwise within the Purchaser's sphere of risk, the risk of accidental loss shall pass to the Purchaser on the day following the day on which the goods are ready for shipment and the Purchaser has been notified thereof.
- 7.3 Unless otherwise agreed, Elcowire shall be entitled to make partial deliveries, if this is objectively reasonable for the Purchaser, taking into account the Purchaser's interests.
- 7.4 If the Purchaser is in default of acceptance or if ordered items cannot be delivered or can only be delivered with delay for reasons for which the Purchaser is responsible, Elcowire is entitled to claim compensation for the resulting damage including additional expenses. If collection or shipment is delayed at the Purchaser's request for more than one month from the date of notification of readiness for shipment, Elcowire will store the items at the Purchaser's risk and charge the Purchaser for storage. Elcowire shall be entitled to charge storage costs at a flat rate of 4€/100kg for each month or part thereof. The Parties are free to prove higher or lower storage costs. Further claims remain reserved.
- 7.5 If the subject of Elcowire's performance is the production of a work, the statutory provisions of the law on contracts for work and services regarding acceptance shall apply, with the proviso that in the case of Section 640, Paragraph 2 of the German Civil Code (BGB), the setting of a deadline of 5 working days shall be deemed reasonable. Tacit acceptance shall not be excluded.

## 8. EXCESS OR SHORT DELIVERIES

Elcowire is entitled to over- or under-deliver the ordered quantity within the permissible tolerances applicable to the respective product according to the applicable technical standard, both with respect to the total ordered quantity and with respect to the individual partial deliveries. Excess or shortfall quantities will then be charged or deducted as an excess or shortfall price in proportion to the agreed quantity. If no tolerances are provided for in the technical standard, the permissible tolerance shall be +/- 3% of the order quantity.

## 9. WARRANTY

- 9.1 The statutory provisions shall apply to the rights of the Purchaser in the event of material defects and defects of title (including wrong delivery and short delivery), unless otherwise provided below.
- 9.2 The Purchaser shall inspect the delivered goods immediately after delivery by Elcowire, as far as this is feasible in the ordinary course of business, and shall notify Elcowire immediately if a defect is found (Sec. 377 of the German Commercial Code, HGB). If the Purchaser fails to notify Elcowire, the goods shall be deemed to have been accepted, unless the defect was not apparent during the inspection. If such a defect is discovered later, the notification must be made immediately after discovery; otherwise, the goods shall be deemed accepted also in view of such defect, unless Elcowire has fraudulently concealed the defect. The notification must be made at least in text form. In order to preserve the rights of the Purchaser, it is sufficient to send the notification in time. The foregoing shall apply mutatis mutandis if the subject matter of the delivery is a work performance by Elcowire.

- 9.3 Elcowire shall be given the opportunity to inspect a claimed defect on site.
- 9.4 If the delivered product is defective and the Purchaser has duly complied with its obligation to inspect the product in accordance with clause 9.2, or if Elcowire has acted with intent or fraudulently, the Purchaser shall be entitled to the statutory rights in accordance with the following provisions:
- Elcowire shall first have the right, at its own option and discretion, either to remedy the defect or to deliver to the Purchaser non-defective contractual goods (subsequent performance). Elcowire has the right to refuse to remedy the defect if the remedy would incur unreasonable costs. This does not affect Elcowire's right to refuse performance if such performance would require an effort that is grossly disproportionate to the Purchaser's interest in performance, taking into account the content of the contractual relationship and the principles of good faith. Subsequent performance does not include removal of the defective item or re-installation if Elcowire was not originally obliged to install the item. Elcowire is entitled to make the supplementary performance conditional upon the Purchaser paying the agreed purchase price. However, the Purchaser is entitled to withhold a reasonable part of the purchase price. In case of replacement or remanufacture in case of a contract for work and services, the Purchaser shall return the defective product to Elcowire upon request.
  - If Elcowire fails or refuses to remedy the defect, the Purchaser may withdraw from the contract or reduce the purchase price after a reasonable period of time set by the Purchaser has elapsed. If the defect is not substantial or if the product has already been sold, processed or transformed, the Purchaser shall only have the right to reduce the purchase price.
- 9.5 If the Purchaser's request to remedy the defect turns out to be unjustified, Elcowire may demand reimbursement from the Purchaser for the costs incurred.
- 9.6 The Purchaser's claims for damages and reimbursement of expenses incurred in vain shall be governed by Clause 14. Clause 15 shall govern the limitation periods.

## 10. INDUSTRIAL PROPERTY RIGHTS

- 10.1 In the event of a claim against the Purchaser for infringement of industrial property rights (such as patents, designs or trademarks) by Elcowire's products, the Purchaser shall immediately inform Elcowire thereof.
- 10.2 If Elcowire manufactures a product according to drawings, specifications, samples or other requirements of the Purchaser, Elcowire shall not be liable for any infringement of industrial property rights by the relevant Elcowire product if and to the extent that the infringement of the industrial property right is due to a requirement of the Purchaser. The same shall apply if the Purchaser uses Elcowire's products outside the contractually agreed purpose or outside the contractually agreed geographical area and the infringement of the Intellectual Property Right is due to the use of the product outside the contractually agreed purpose or outside the contractually agreed geographical area.

- 10.3 In the cases of clause 10.2, the Purchaser shall fully indemnify Elcowire against any claims of third parties.
- 10.4 Unless a case under clause 10.2 applies, the Purchaser shall give Elcowire the opportunity, at its own discretion and expense, to either
- provide the Purchaser with the right to use the Product in question, or
  - replace the Product or modify it in such a way that the IPR in question is not infringed, provided that the Product nevertheless has the contractually agreed quality or is suitable for the intended use, or
  - to allow the Purchaser to use the Product in accordance with Elcowire's instructions, while indemnifying the Purchaser against any consequences to third parties.
- 10.5 The limitations of liability according to clause 14 and the provisions on limitation of claims in clause 15 remain unaffected.

## 11. EXPORT REGULATIONS

- 11.1 If the Purchaser exports the goods to non-EU countries, it is the Purchaser's responsibility to check any restrictions according to the applicable foreign trade regulations and to ensure compliance with them.

## 12. PROPERTY RIGHTS AND COPYRIGHTS; SECRECY

- 12.1 Elcowire reserves all rights to illustrations, drawings, calculations and other documents (collectively referred to as "Documents"). The delivery of such documents does not imply the granting of any rights of use.
- 12.2 Documents marked as "Confidential" may only be used by the Purchaser for the purposes of the respective contract and shall be returned or destroyed by the Purchaser upon Elcowire's request in case the contract is not concluded or fully completed. Disclosure to third parties is permitted only with Elcowire's express consent, which must be at least in text form. The data may be disclosed within the Purchaser's company only to those persons who need them for the purpose of executing the contract. They shall be adequately protected against unauthorized access, e.g. by applying a rights management system and obliging employees to maintain confidentiality.
- 12.3 In case of unauthorized disclosure, disclosure or use of such documents, the Purchaser is obligated to compensate Elcowire for all damages resulting therefrom.

## 13. RETENTION OF TITLE

- 13.1 Elcowire reserves all rights to illustrations, drawings, calculations and other documents (collectively referred to as "Documents"). The delivery of such documents does not imply the granting of any rights of use.
- 13.2 The Purchaser shall handle the Reserved Goods with care and insure them against accidental destruction and loss at replacement value and provide Elcowire with evidence thereof. Elcowire is entitled to refuse delivery as long as the Purchaser has not provided proof of insurance of the Reserved Goods. The Purchaser may not pledge or assign the Reserved Goods as security to any third party without the express written consent of Elcowire prior to full payment of the secured claims.

- 13.3 The Purchaser shall process the Reserved Goods on behalf of Elcowire without any obligation on the part of Elcowire. In the event that the processing is made into a new movable item that exceeds the value of the Reserved Goods, the Purchaser hereby grants Elcowire co-ownership of such item in the proportion that the value of the processed new item exceeds the value of the Reserved Goods. If the Reserved Goods are mixed or combined with other items, the Purchaser, at the time of conclusion of the delivery contract, assigns its rights of surrender, ownership or co-ownership of the mixed stock or the new item to Elcowire, which accepts such assignment, in the amount of the value of the Reserved Goods, and shall keep the mixed stock or the new item in safe custody for Elcowire with due commercial care.
- 13.4 The Purchaser may resell the Reserved Goods only in the ordinary course of business. The Purchaser assigns in advance to Elcowire as security all claims arising from the resale or for any other legal reason. The Purchaser is authorized to collect the assigned receivables. If Elcowire's claims are due, the Purchaser shall keep collected amounts separate and immediately pay them to Elcowire.
- 13.5 The Purchaser shall immediately notify Elcowire in the event that third parties seize the Reserved Goods or the assigned claims, e.g. by way of attachment. The Purchaser shall bear any costs of successful interventions, in particular of a third party action, which cannot be recovered from the third party.
- 13.6 If the value of the security provided exceeds Elcowire's claims by more than 10 percent in total, Elcowire is obligated to transfer the respective part of the security at the Purchaser's request.
- 13.7 In case of non-compliance with the terms of payment, as well as in case of protest of a bill of exchange or a cheque, in case of filing a petition for insolvency proceedings, in case of cessation of payments, dissolution of business, as well as in case of initiation of negotiations for conclusion of a moratorium, the Purchaser's rights to process and sell the Reserved Goods and to collect the receivables assigned to Elcowire shall expire. In this case, Elcowire is entitled to take the Reserved Goods into its possession. If Elcowire makes use of this right, it shall not be deemed to be a withdrawal from the contract unless Elcowire expressly declares so. Storage, transport and other costs incurred because of taking back the Reserved Goods shall be borne by the Purchaser. In such case, the Purchaser is also obliged to disclose the aforementioned assignment of property rights and claims to third party debtors upon Elcowire's request and to provide Elcowire with the information necessary to enforce its rights against the third party debtors. Elcowire is entitled to credit the Reserved Goods taken back on the basis of the retention of title, instead of the invoice value, with the current price at the time of the return or the price Elcowire is able to achieve in a reasonable realization or sale, in which case the costs of sale shall in any case be borne by the Purchaser.

#### 14. EXCLUSIONS AND LIMITATIONS OF LIABILITY

- 14.1 Subject to clause 14.2, Elcowire shall be liable for damages - contractual, non-contractual or otherwise - on any legal grounds whatsoever, including but not limited to defects, delay and impossibility, negligence in contract negotiations and tort, only in case of intent and gross negligence, including intent and gross negligence of Elcowire's representatives and vicarious agents. In addition, Elcowire shall be liable also in case of ordinary negligence, including ordinary negligence of its representatives and vicarious agents, for damages arising from breach of an essential contractual obligation, i.e. an obligation the performance of which is a prerequisite for the proper execution of the contract and the performance of which the Purchaser may therefore regularly rely upon. As far as Elcowire is not guilty of intentional breach of duty, the liability for damages is limited to the foreseeable, typically occurring damage.
- 14.2 The exclusions and limitations of liability set forth in Section 14.1 shall not affect any claims for damages resulting from injury to life, body or health, as well as claims under the Product Liability Act and the statutory recourse liability in case of delivery of the goods to a consumer pursuant to Sections 445a, 445b of the German Civil Code (BGB). The foregoing exclusions or limitations of liability shall also not apply if Elcowire has fraudulently concealed a defect or has given a guarantee as to the quality of the goods.

- 14.3 Clauses 14.1 and 14.2 shall also apply if the Purchaser claims compensation for useless expenses instead of claiming compensation for damages.
- 14.4 To the extent that Elcowire's liability for damages is excluded or limited, this shall also apply with respect to the personal liability for damages of Elcowire's employees, representatives and vicarious agents based on the same legal grounds.

#### 15. LIMITATION OF ACTIONS

- 15.1 The Purchaser's claims for material defects and defects of title shall be time-barred within one year from the date of delivery, but no later than one year after the end of the year in which the claim arose and the Purchaser became aware of the circumstances giving rise to the claim or should have become aware without gross negligence.
- 15.2 Mandatory statutes of limitation shall remain unaffected. The relief from the statute of limitations referred to in clause 15.1 shall therefore not apply:
- to claims due to defects which exist in a right in rem of a third party on the basis of which surrender of the object of sale can be demanded, or in any other right which is registered in the land register,
  - for claims based on defects in a building or defects in products which have been used for a building in accordance with their customary use and have caused the defectiveness of the building or a work the success of which consists in planning or supervision services for a building,
  - in case of fraudulent concealment of a defect by Elcowire,
  - for recourse claims based on the regulations of the sale of consumer goods (§§ 445a, 445b BGB),
  - for claims based on the assumption of a guarantee,
  - for claims based on intent and gross negligence,
  - for claims based on injury to life, limb or health, and
  - for claims under the Product Liability Act.
- 15.3 The limitation periods resulting from sections 15.1 and 15.2 for claims due to material defects and defects of title shall apply accordingly to competing contractual and non-contractual claims for damages of the Purchaser based on a defect of the delivered items. Insofar as in individual cases the application of the statutory limitation provisions should lead to an earlier limitation of the competing claims, the statutory limitation period shall apply to the competing claims.
- 15.4 To the extent that the limitation of claims against Elcowire is shortened pursuant to clauses 15.1 to 15.3, such shortening shall apply mutatis mutandis to any claims of the Purchaser against Elcowire's legal representatives, employees, agents and vicarious agents based on the same legal grounds.

#### 16. RIGHTS OF WITHDRAWAL / TERMINATION

- 16.1 The Purchaser is entitled to withdraw from the contract due to a breach of duty by Elcowire, other than a defect, only if Elcowire is responsible for the breach of duty.
- 16.2 If the contract is a contract for work and services or a contract for work and services for movable, nontransferable goods, the Purchaser's free right to terminate the contract (Sec. 648 German Civil Code, BGB) is excluded.

**17. APPLICABLE LAW AND PLACE OF JURISDICTION**

- 17.1 The contractual relationship shall be governed by the law of the Federal Republic of Germany, excluding the provisions of the United Nations Convention on Contracts for the International Sale of Goods (CISG) and excluding the conflict-of-law rules of private international law.
- 17.2 All disputes arising out of or in connection with the contractual relationship or its validity shall be finally adjudicated in accordance with the Arbitration Rules of the German Institution of Arbitration e. V. (DIS) to the exclusion of the ordinary course of law. The version of these rules in force at the time of commencement of the arbitration proceedings shall apply.
- The place of arbitration shall be Halle/Saale, Germany. The number of arbitrators shall be three.
- The arbitration proceedings shall be conducted in German. Annexes to pleadings may also be submitted in English without the need for a translation.
- 17.3 Should individual provisions of these GTC be invalid, this shall not affect the validity of the remaining provisions. Insofar as the contract or these General Terms and Conditions should contain gaps, those legally effective provisions shall be deemed agreed to fill these gaps which the contracting parties would have agreed upon according to the economic objectives of the contract and the purpose of these General Terms and Conditions if they had recognized the gap.