

## GENERAL CONTRACTUAL CONDITIONS

### 1 – Contractual regulations

**1.1** These General Contractual Conditions regulate all contractual relations that take place between Elettroresin s.r.l., head office at Via 302 - Zona Industriale Basso Marino, Ascoli Piceno, VAT n°. 00443120449, and its Customers.

Any exceptions from what is agreed in these General Conditions must be specifically agreed in writing by the Parties and, in all cases, the General Conditions shall continue to apply with respect to everything that is not expressly referred to in the exception.

Any general conditions drafted by the Customer shall not apply to relations between the Parties if not expressly accepted in writing by Elettroresin s.r.l. and, in all cases, shall not invalidate the effect of these General Conditions, which should be used to coordinate such relations.

**1.2** These General Conditions are accessible, as they are published on the Elettroresin s.r.l. [www.elettroresin.it](http://www.elettroresin.it).

**1.3** In the absence of written communications by the Customer within 3 working days from the moment when Elettroresin s.r.l. sends the order confirmation or, in cases of acceptance by the Customer of the offer presented by Elettroresin s.r.l., the General Conditions shall be considered as definitively accepted.

### 2 – Products

The non-substantial characteristics of the products supplied and shown in catalogues, pricelists, circulars or in other illustrative documents, just as for sample quality, are purely for explanatory purposes and are not binding, except when they are shown as substantial in the sales offer or in the order confirmation.

Elettroresin s.r.l. reserves the right at any time to modify the construction details of its products in order to improve their performance, and undertakes to notify the Customer when such modifications are substantial.

### 3 – Price and method of payment

**3.1** The prices shown in the order confirmation or in the offer presented by Elettroresin s.r.l. and accepted by the Customer are expressed in Euros. The prices are ex warehouse and are exclusive of VAT, customs duty, insurance or, in general, taxes or financial costs related to sale and export.

Elettroresin s.r.l. reserves the right at any time to modify the prices of its products, after having notified the Customer in writing, in cases where there are cost increases for raw materials, labour costs or any other factor that could cause a significant rise in production costs.

**3.2** Payment for goods must be made according to the methods and terms laid down in the order confirmation and the offer presented by Elettroresin s.r.l. and accepted by the Customer.

Monetary transfers in favour of Elettroresin s.r.l. are always made at the Customer's risk, whatever means of payment is established.

Any delay or irregularity in the payments by the Customer shall give Elettroresin s.r.l. the right:

- a) to suspend current supplies, even if not related to the payment in question;
- b) to change the method of payment and/or discount for subsequent supplies, including requests for advance payment or the issuing of further guarantees;
- c) to request, with effect from the established expiry date for the payment and without the need for formal notice of default, default interest on the sum still owed, in accordance with the rate defined by current legislation for commercial transactions (in particular, legislative decree 231/2002 including subsequent amendments and additions), without prejudice to the right of Elettroresin s.r.l. to request compensation for any greater damages incurred.

**3.3** Invoices shall be issued by Elettroresin s.r.l. according to the specifications contained in the order confirmation and sent, in a single document, to the Customer at the address shown in the order.

### 4 – Delivery

**4.1** Unless agreed otherwise, **supply** of goods shall be made ex warehouse, by means of delivery of goods to the Customer or to a third party specified in good time by the Customer.

**4.2** If necessary, the Customer may authorise Elettroresin s.r.l. to select and appoint a carrier or forwarder on the Customer's behalf, waiving any liability for such a selection; in such cases the risks relating to the contract shall pass to the Customer at the moment in which the products are transferred to the carrier.

**4.3** Terms of delivery shall take effect from the date of the last of the following:

- a) the time of the written agreement between the Parties regarding all conditions of Supply;
- b) receipt by Elettroresin s.r.l. of the advance payment or full settlement of the order, if provided for;
- c) receipt by Elettroresin s.r.l. of the technical data of the Customer or of third parties designated by the Customer or the moment of approval of working drawings and diagrams of Elettroresin s.r.l. by the Customer, if provided for;
- d) receipt by Elettroresin s.r.l. of part-finished goods supplied by the Customer and by a third party appointed by the Customer, if provided for.

The terms of delivery are merely an indication and refer to business days. No liability shall therefore be attributed to Elettroresin s.r.l. for all damages deriving from early or late delay, whether total or partial.

The Customer nevertheless accepts to receive ordered material even after that term.

The specified term shall be automatically extended in cases of unforeseeable circumstances or force majeure, as defined below in clause 7, for the duration of the circumstances that, therefore, shall be considered as a period during which the term is suspended.

**4.4** If the Customer is in arrears with payments relating to other supplies, the entry into force of terms of delivery shall be suspended and Elettroresin s.r.l. may delay deliveries until the Customer has paid the sums owed for the preceding supplies.

The delivery date shall be postponed if the Customer does not punctually perform its contractual obligations, in particular:

- a) if the Customer does not provide the necessary data prior to or during the manufacturing process;
- b) if the Customer requests variants while the Order is being carried out;
- c) if the Customer delays deliveries of raw materials or during the manufacturing process.

**4.5** If delivery is not made for any reason that is not attributable to Elettroresin s.r.l., delivery shall be considered to have effectively been made with a simple notification of completed supply.

By date of delivery the Parties refer to the date of issue, by Elettroresin s.r.l., of the notification of ready goods or shipping to the Customer or to the carrier or forwarder specified by the Customer in the order or of notification of goods available for testing.

### 5 – Shipping – Packing

**5.1** When goods are shipped by courier or forwarder they shall always travel at the Customer's expense and shall not be insured by Elettroresin s.r.l. against transport risks.

The Customer hereby undertakes to check the goods and report any shortages thereof prior to accepting delivery by a forwarder and, therefore, before signing the transport document as acknowledgement of receipt.

By express agreement of the parties, goods may be shipped, within Italy, according to the Franco Magazzino Compratore [ex buyer's warehouse] method.

Also by express agreement of the parties, goods may be shipped outside Italy according to the FOB or DAF terms of delivery, and consequently any risk and/or liability for damage to or loss of goods outside the border shall be borne exclusively by the Customer, along with any liability relating to customs clearance and loading/unloading of goods.

**5.2** Exclusion of packing, in cases of goods where packing is normally used, or the use of special packing must be expressly requested by the Customer when ordering, and the order must also expressly specify the packing method and/or supply instructions regarding special transport requirements. Elettroresin s.r.l. shall provide for packing according to normal procedures, on the understanding that it is explicitly exonerated from any liability relating to any flaws and/or damage deriving from packing which, due to accidental or unforeseeable circumstances or circumstances that are unknown to Elettroresin s.r.l., may befall the material or which the material may cause, during transportation.

### 6 – Penalty for late delivery

**6.1** The Parties must expressly and previously agree in writing any penalties in the event of late delivery of goods.

If Elettroresin s.r.l., due to its own directly attributable lack of performance, is obliged to pay a penalty for late delivery of goods, upon payment of the contractually agreed amount by way of penalty, it shall be exonerated from payment of compensation for any further damages in compliance with and in accordance with article 1382 of the Italian Civil Code.

**6.2** In cases where the Customer intends to apply the penalty for late delivery, he must provide written notification to Elettroresin s.r.l. within the mandatory term of ten days from receipt of the delayed goods. In the event of failure to provide written notification within the specified term, the Customer shall lose any right to request payment of such a penalty.

**6.3** The Customer expressly foregoes compensation of owed amounts by way of penalty with other contractually agreed amounts.

### 7 – Unforeseeable circumstances – Force majeure

**7.1** Elettroresin s.r.l. shall not be liable for any non-performance and/or delay in performance of the contractually agreed obligations that result from unforeseen circumstances or force majeure.

Events that constitute unforeseeable circumstances are unexpected or inevitable events including but not limited to: earthquakes, floods, fires, accidents, etc., whereas events that constitute force majeure are cases of strikes, industrial action, occupation of premises, lockouts, embargos, stoppages of goods transportation services and, in any case, any other circumstances that are beyond the control of Elettroresin s.r.l.

**7.2** In such circumstances the delivery date and/or any other term agreed for the performance of any service whatsoever by Elettroresin s.r.l. shall be suspended for the whole period during which the events described above continue to prevent to the performance of the agreed service.

### 8 – Technical regulations and liability

**8.1** Elettroresin s.r.l. products comply with Italian legislation and conform to the technical regulations specified in the order confirmation. The Customer has the obligation to verify any variance between Italian norms and those of the country of destination of the products, and hold harmless Elettroresin s.r.l.

**8.2** Elettroresin s.r.l. guarantees the performance of the products that it manufactures solely and exclusively in relation to uses, purposes, applications, tolerances, etc. that are expressly specified by Elettroresin s.r.l., without prejudice to the right of Elettroresin s.r.l. to withdraw from the contract as regulated by clause 16 below.

### 9 – Warranties

**9.1** Elettroresin s.r.l. guarantees that the products supplied correspond in terms of quality and type to the specifications of the contract and that they are free of flaws that could make them unsuitable for the use for which they are expressly intended.

**9.2** The warranty for construction defects is limited to those product defects that are attributable to flaws in materials used or to design and construction problems attributable to Elettroresin s.r.l.

Furthermore, the warranty does not cover normal product wear and tear, errors of assembly attributable to the Customer or to third parties, malfunctions caused by

incompetence or negligence on the part of the Customer or by transportation, failure to take immediate steps to avoid any malfunctions, overloads in excess of contractual limits, unauthorised repairs, tampering, any interventions not authorised by Elettroresin s.r.l. carried out or instructed to be carried out by the Customer, unforeseeable circumstances or force majeure.

**9.3** The applicability of the warranty on purchased products is dependent upon full payment for such products.

**9.4** Unless otherwise agreed in writing by the Parties, the warranty has a duration of 24 (twenty-four) months from the date of delivery of the goods, even in cases when the products are not used.

The abovementioned warranty is applicable on condition that the products have been correctly stored and used in accordance with the instructions and technical specifications provided by Elettroresin s.r.l., and that no repairs, modifications or alterations have been carried out without the previous written authorisation of Elettroresin s.r.l..

**9.5** The Customer has the obligation to verify the conformity of products and the absence of flaws within 8 (eight) days from the date of delivery of the products and, in any case, prior to any use of the products. Under penalty of invalidation, the Customer must report any obvious flaws or defects, whilst hidden flaws and/or functional defects (i.e. observable only following the use of the product) must be reported, also under penalty of invalidation, within 8 (eight) days from the discovery of the defect and, in any case, not beyond the expiry of the warranty. Claim must be presented in writing to Elettroresin s.r.l. on the basis of the instructions and using the method specified by Elettroresin s.r.l., with detailed specification of the flaw or non-conformity encountered. The Customer shall forego his right to the warranty if he does not enable every reasonable check by Elettroresin s.r.l. or if he does not take steps to return the defective products within 8 (eight) days from the corresponding request.

**9.6** Subsequent to the presentation of a correctly compiled claim by the Customer, Elettroresin s.r.l., at its own discretion, may decide to:

- a) repair the defective products;
- b) supply, free of charge at the Customers head office, products of the same type and in the same quantity as those that have proven to be defective;
- c) issue a credit note in favour of the Customer for a sum corresponding to the value specified in the invoice for the returned products. In cases referred to in b) and c), Elettroresin s.r.l. may request the return of the defective products.

In cases where the defects encountered in the products do not prove to be attributable to the responsibility of Elettroresin s.r.l., the costs of repairs and substitution of the products shall be calculated and invoiced to the Customer.

By express agreement as specified in this clause, the warranty acts in lieu of legal warranties for flaws and conformity and excludes any other possible liability of Elettroresin s.r.l., however that liability originated from the products supplied; in particular, the Customer may not make other requests for compensation for damages and in no case may Elettroresin s.r.l. be held liable for indirect or consequential damages, losses in turnover or reduced profits.

#### **10 – Liability**

The liability of Elettroresin s.r.l., whether deriving from non-performance of the contract, from the warranty, from unlawful action or whether deriving from strict liability, may not in any case exceed the value of the product to which such liability corresponds. In no cases may Elettroresin s.r.l. be liable for loss of earnings, loss of profits, lack of use of the product or any associated machinery, for Customer or third-party claims relating to the abovementioned damages or for any other possible damages including indirect or consequential damages.

#### **11 – Intellectual property**

**11.1** Elettroresin s.r.l. guarantees to the Customer that its products do not violate the intellectual property rights of third parties and that Elettroresin s.r.l. is the owner and/or licensee and/or entitled to use any rights relating to the products and/or components thereof.

In all cases, Elettroresin s.r.l. accepts to indemnify and hold harmless the Customer from all liability arising from legitimate claims by third parties regarding any counterfeiting or violation of industrial property rights for the supplied products.

In the case of a claim by a third party, the Customer must promptly notify Elettroresin s.r.l. and provide Elettroresin s.r.l. with all information and assistance that is useful in challenging the claim.

In all cases, Elettroresin s.r.l. may, at its own discretion:

- a) buy, on behalf of the Customer, the right to continue to use the product that is under dispute;
- b) modify the product and/or one or more of its components in order to eliminate the element that was at the origin of the counterfeiting claim;
- c) replace the product with a different but compatible product which causes the counterfeiting claim to be dropped.

**11.2** In the case of counterfeiting by third parties of the Products supplied by Elettroresin s.r.l., or of violation of any rights held by Elettroresin s.r.l. relating to its Products, the Customer shall notify Elettroresin s.r.l., upon becoming aware of such violation in the course of their contractual relations every unauthorised use of the Products and/or Trademarks and/or Patents, making all efforts to provide the necessary cooperation, in both judicial and extra-judicial proceedings, for the protection of the industrial property rights of Elettroresin s.r.l..

**11.3** In cases of products created according to plans, drawings, designs, instructions and/or technical specifications provided by the Customer, Elettroresin s.r.l. accepts no liability for any violation of third party industrial property rights for which the Customer alone shall be liable.

#### **12 – Applicable law and jurisdiction**

These General Contractual Conditions and relative contracts shall be disciplined by Italian law.

For all controversies relating to or in any case connected with the contracts to which these General Contractual Conditions are applied, the Court of Ascoli Piceno shall have exclusive jurisdiction. Notwithstanding the above stipulation, Elettroresin s.r.l. shall however have the right to act in the Customer's jurisdiction.

#### **13 – Contractual language**

By express agreement, the Parties concur that the contractual language shall be Italian and therefore the official text of these General Conditions shall be the text drafted in Italian, even in the case where such General Conditions are drafted in the Customer's, possibly different, language.

#### **14 - Confidentiality**

The Customer agrees and undertakes:

- a) to treat the information/data/drawings/designs/expertise/documentation received and/or learned from Elettroresin s.r.l. as confidential;
- b) to limit the use of such information/reserved documents and relative access thereto only to purposes relating to the performance of the contract. Such information/reserved documents may not be reproduced without the prior written authorisation of Elettroresin s.r.l. and all copies taken shall be immediately returned to Elettroresin s.r.l. upon express request;

The above provisions do not apply to information that: (i) is public or that becomes public not as a result of being divulged by the Customer, his employees or his collaborators, or (ii) was in the Customer's possession before receiving it from Elettroresin s.r.l. or (iii) was divulged by sources that are not subject to the restrictions that apply to the Customer relating to its use, or (iv) may be divulged by third parties on the basis of the written authorisation of Elettroresin s.r.l.

#### **15 - Privacy**

In compliance with Legislative Decree n°. 196/2003 and successive amendments and additions, the data and information relating to the Customer that Elettroresin s.r.l. comes to possess as a result of the contractual relationship regulated by these General Contractual Conditions shall be treated according to current privacy laws and shall be kept and used exclusively for the purposes inherent to the contractual relations regulated by these General Contractual Conditions.

#### **16 – Express Termination**

In compliance with and for the purposes of article 1456 of the Italian Civil Code, Elettroresin s.r.l. may terminate the contract with the Customer upon the occurrence of the following breaches of contract:

- non-payment, also partial, by the Customer, within the agreed terms, of the price, as regulated by clause 3 of these General Contractual Conditions;
- non-compliance by the Customer of the provisions specified in the following clause 17 of these General Contractual Conditions.

#### **17 – Withdrawal**

Apart from what is expressly laid down in law, Elettroresin s.r.l. reserves the right to withdraw from the contract with the Customer in the following cases:

- a) changes in shareholding structure and/or ownership relating to the Customer's business;
- b) changes in its own shareholding structure;
- c) access by the Customer to one of the insolvency proceedings referred to in Royal Decree of 16 March 1942, n°. 267 (so-called Bankruptcy Law) and successive amendments and additions;
- d) the passing of the 60 (sixty) day term from the occurrence of an event defined as unforeseeable or of force majeure as referred to in clause 7 above.

The right to withdrawal may be exercised by giving written notification of such withdrawal to the Customer by means of registered letter with acknowledgement of receipt, in compliance with a notice period of 15 (fifteen) calendar days. Withdrawal shall become effective from the date of receipt of such notification.

In cases of withdrawal, just as in any other case of termination of the contract due to other causes, the Customer is obliged to return to Elettroresin s.r.l. plans, relative designs, drawings and technical documentation along with all other documentation that is the property of Elettroresin s.r.l..

#### **18 – Traceability of financial flows**

**18.1** The Customer must inform Elettroresin s.r.l., at the moment of signing the contract at the latest, of the application to the contract itself of the dispositions relating to traceability referred to in Law 136/2010 and successive amendments and additions.

In this case, the Customer must provide Elettroresin s.r.l. with Tender Identification Code (CIG) and, where required, the Project Code (CUP). Also in such cases any financial transactions relating to the activities referred to in the contract:

- a) must be made exclusively by means of bank or postal transfer, or by cash order (Electronic Cash Order);
- b) must carry the relative Tender Identification Code (CIG) and, where required, the corresponding Project Code (CUP).

**18.2** The Customer is aware that, failure to supply such information within the maximum term as specified above, Elettroresin s.r.l. will not be in a position to fulfil its obligations as referred to in Law 136/2010 both with respect to the Customer and with respect to the subcontractors/suppliers that Elettroresin s.r.l. may use in order to carry out the activities referred to in the contract with the Customer.

The Customer shall be exclusively liable for every detrimental consequence that may derive from the absence of information within the term referred to above and shall indemnify and hold harmless Elettroresin s.r.l. from any damages or detrimental consequence.

Ascoli Piceno, Italy 29<sup>th</sup> January 2018

Signature

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