

## **GENERAL TERMS AND CONDITIONS – BUSINESS**

### **Article 1 – Applicability**

1. These General Terms and Conditions shall apply to all offers (quotations) and contracts between EldurApi B.V. and the Customer.
2. Deviations from these General Terms and Conditions shall only be permissible if EldurApi B.V. has explicitly agreed to them in writing. If the present contract has been deviated from tacitly or explicitly on one or more occasions, the Customer cannot derive any rights from such deviation with respect to contracts concluded subsequently.
3. If one or more provisions of these General Terms and Conditions are invalid, this shall not affect the validity of the rest of these General Terms and Conditions. If any provision of these General Terms and Conditions is null and void or is annulled, the remaining provisions will remain in force and the Parties will consult with a view to agreeing on a new provision (or provisions) to replace the null and void or annulled provision(s), taking into account, as far as possible, the objective and purport of the null and void or annulled provision(s).
4. In the event of a discrepancy or conflict between these General Terms and Conditions on the one hand and the offer or the contract on the other, the text of the offer or the contract shall prevail. If there is no such discrepancy or conflict, these General Terms and Conditions supplement the contract and form an integral part of it.

### **Article 2 – Offers and Conclusion of Contract**

1. All quotations, offers and prices provided by EldurApi B.V. shall be without obligation. An offer by EldurApi B.V. shall lapse when the goods offered have been sold, a new price is available, or after a period of one month.
2. When a Customer places an order with EldurApi B.V., this will be considered to be an offer. Such an offer shall be deemed to have been accepted by EldurApi B.V. once it has been confirmed by EldurApi B.V. in writing with a pro forma invoice, or EldurApi B.V. has commenced actual execution of the offer in some other way apparent to the Customer.
3. A contract shall be concluded once EldurApi B.V. has accepted the offer, which acceptance binds the Customer. Acceptance may be either explicit or tacit. Tacit acceptance shall be deemed to have taken place unless the Customer is notified in writing within five days of receipt of an order by EldurApi B.V. that the order has not been accepted.
3. Product details, such as characteristics, quality and colour, as well as those contained in printed matter, drawings, illustrations, etc., are provided by EldurApi B.V. with the greatest care when making its offer but shall never be regarded as binding.
4. Agreements and/or assurances made by employees of or on behalf of EldurApi B.V. shall only be binding on EldurApi B.V. if such agreements and/or assurances are explicitly confirmed in writing by directors of EldurApi B.V. who are authorised to represent EldurApi B.V.
5. EldurApi B.V. reserves the right to refuse orders without giving reasons. Such refusal shall never constitute a right to compensation.
6. If a collective contract is concluded with two or more Customers, they shall each be jointly and severally liable for the full performance of the contract concluded by them.
7. The Customer shall authorise EldurApi B.V. to have the order executed by a third party to be designated by EldurApi B.V., at a time to be determined by the latter. The Customer agrees to allow EldurApi B.V. to assign all rights and obligations ensuing from the contract(s) it concludes with the Customer to third parties.
8. If any drawings, models, designs, calculations, samples, prospects or the like are used by EldurApi B.V. at the quotation stage, such items must be returned by the Customer if a contract between the Parties is not concluded. EldurApi B.V. reserves all intellectual property rights to these items. Documents provided by EldurApi B.V. to the Customer may not be reproduced, disclosed or made available to third parties without its written consent.

### **Article 3 – Prices**

1. The prices shall be quoted in Euro, exclusive of turnover tax and exclusive of costs of packaging and/or wrapping. Transport costs are not included in the price and shall be borne by the Customer.

2. The prices and offers of EldurApi B.V. are without obligation. All agreed prices shall be binding unless one of the factors determining the product's cost price changes after the offer has been made and EldurApi B.V. has little or no influence on price increases resulting therefrom. In such cases, EldurApi B.V. shall be entitled to revise the agreed price accordingly, regardless of whether the cost price increase was foreseeable at the time when the offer was made.
3. In the event of a price increase, EldurApi B.V. shall contact the Customer. Should such a price increase amount to 40% or more, the Customer shall be entitled to cancel the relevant contract free of charge but without entitlement to compensation. If the products have already been delivered, they shall be returned to EldurApi B.V. as soon as possible after the cancellation, at the latter's expense. However, the Customer shall remain fully liable for any deterioration in quality, damage, theft and the like until such time as the products are retrieved.

#### **Article 4 – Payment**

1. EldurApi B.V. shall be entitled to demand advance payment. If (in an exceptional case) no advance payment has been agreed, a payment term of 14 days following the invoice date shall apply. For deliveries outside the Netherlands and Belgium, payment must always be made in advance. If an order is executed in parts, EldurApi B.V. shall be entitled to invoice for each partial delivery.
2. EldurApi B.V. shall be entitled to cancel or suspend any current contracts with immediate effect if the Customer fails to pay an outstanding invoice within the payment term and fails to offer EldurApi B.V. adequate security for what the Customer still owes and will owe EldurApi B.V. within eight (8) days.
3. Should payment not be made within the agreed payment term, the Customer shall immediately owe EldurApi B.V. interest. The interest rate shall be 12% per annum but shall be equal to the statutory commercial interest rate if this is higher. For the purposes of calculating interest, part of a month shall be considered a full month. EldurApi B.V. shall also be entitled to take extrajudicial or judicial collection measures. The ensuing costs shall be borne by the Customer. These costs shall be set at 15% on the first EUR 5,000, 10% on the amount in excess thereof up to EUR 25,000, and 5% on the amount in excess thereof up to EUR 60,000 and shall not be less than EUR 1,000.
4. The amount owed by the Customer shall be immediately due and payable without notice of default if one or more of the following events occurs:
  - the Customer's bankruptcy or a petition to that effect;
  - a request by the Customer for a suspension of payments;
  - the Customer being placed under guardianship;
  - death of (the director of) the Customer;
  - attachment levied against the Customer;
  - (a decision to) liquidate or dispose of the Customer's company(ies);
  - the Customer fails to fulfil, fails to fulfil properly or fails to fulfil on time any of the obligations arising for them from the contract.
5. Any counterclaims made by the Customer against EldurApi B.V. or any of its affiliated companies, on any grounds whatsoever, shall not be set off against any claims made by EldurApi B.V.
6. In the event that the Customer fails to comply with any of the provisions of these General Terms and Conditions, all claims of EldurApi B.V. against the Customer, on whatever grounds, shall become immediately due and payable without notice of default being required.
7. In the event of a dispute between the Customer and EldurApi B.V., the Customer shall not be entitled to suspend any payment of outstanding invoices.

#### **Article 5 – Delivery and Transfer of Risk**

1. Delivery takes place:
  - within the European Union EX Works (EXW) in accordance with Incoterms 2020;
  - outside the European Union Free Carrier (FCA) in accordance with Incoterms 2020.
2. In the event that delivery is not made Ex Works or Free Carrier, and no specific method of shipment has been agreed, EldurApi B.V. shall determine the method of shipment. Delivery shall in any case be deemed to have taken place:
  - in the event of shipment by a professional carrier: by the transfer of the goods to the carrier;
  - in the event of shipment by EldurApi B.V.: delivery or offer for delivery to the Customer's warehouse or to the receiving address specified by the Customer in writing in advance.

3. Transport costs shall be borne by the Customer. The Customer shall in all cases bear the risk of transport, even if transport is carried out by or at the expense of EldurApi B.V. Subject to the foregoing, EldurApi B.V. shall provide insurance for transport up to the amount of the sale price of the goods. The goods shall be insured against the normal risk of transport, i.e. not against war or other extraordinary risks. Any damage or loss must be reported by the Customer to the carrier and to EldurApi B.V. within 24 hours of delivery, and in writing without delay.
4. In the event that the goods sold are made available to EldurApi B.V. at its address, the Customer shall, if they fail to take delivery of the goods immediately, collect them within five days of the date on which EldurApi B.V. notifies the Customer that the goods are at their disposal. Should the Customer fail to collect the goods within the aforementioned period, EldurApi B.V. shall be entitled to charge the Customer 15% of the value of the goods as standing charges. Should the Customer fail to take delivery of the goods within one month of the offer, EldurApi B.V. shall be entitled to dissolve the contract.
5. In the event of delivery of the goods to the Customer's address, the delivery periods stated shall never be regarded as final deadlines. The delivery periods stated shall commence at the moment when the contract is concluded and all the details required for the execution of the order are in EldurApi B.V.'s possession. Late delivery shall not constitute a reason for the Customer to dissolve the contract. Exceeding deadlines does not give the Customer the right to suspend payment. Delivery periods may be extended and/or orders placed may be suspended for as long as the Customer fails to pay EldurApi B.V. any amount due or payable.

#### **Article 6 – Force Majeure or Unforeseen Circumstances**

1. EldurApi B.V. shall be entitled to postpone delivery of the goods in the event of force majeure or unforeseen circumstances that make it impossible to execute current orders in time without any additional effort. In the event of force majeure or unforeseen circumstances, EldurApi B.V. shall be entitled to dissolve all or part of the contract without judicial intervention and without being liable for compensation. In the event of a temporary suspension, EldurApi B.V. shall still be entitled to dissolve the contract in whole or in part after the time limit specified therein has expired.
2. The situations referred to in paragraph 1 shall include, but not be limited to, extreme weather conditions, war, acts of war, riots, strikes, staff disputes, pandemics, unforeseeable availability, unforeseen business disruptions, unforeseen price increases, fire, explosion, flood, sabotage, obstruction of import or export by government authorities or third parties, compliance with laws and regulations, or any other event beyond the reasonable control of EldurApi B.V.
3. In the event that a situation of force majeure renders it unreasonable for the Customer to expect delivery of the goods by EldurApi B.V., the Customer shall be entitled to dissolve the contract (in writing) without judicial intervention. In the event of termination on account of force majeure, EldurApi B.V. shall not compensate the Customer for any loss.

#### **Article 7 – Liability and Indemnity**

1. In the event of shortcomings, EldurApi B.V. shall not be liable for any direct or indirect damage, consequential damage, trading loss, damage to property, personal injury or any other damage whatsoever suffered by the Customer and/or third parties, except in the case of gross negligence or wilful misconduct. Minor deviations that are considered permissible in commerce or that cannot reasonably be avoided do not constitute a shortcoming.
2. Any liability on the part of EldurApi B.V. shall be limited to foreseeable damage as a possible consequence of the act requiring compensation, up to a maximum of the amount paid out in the relevant case under its liability insurance policy, plus the amount of the excess which the insurer is not required to pay under the policy terms.
3. Should EldurApi B.V. not be able to invoke the restriction set out in paragraph 2 of this article for any reason whatsoever, EldurApi B.V. shall only be obliged to redeliver the goods or, if delivery is no longer reasonably possible, to apply a reasonable price reduction of up to 10% (excluding VAT) of the order amount. If the contract consists of parts or partial deliveries, the obligation to pay compensation will be limited to a maximum of 10% (excluding VAT) of the order price for that part or delivery.
4. Without prejudice to the other provisions of these General Terms and Conditions, under no circumstances shall EldurApi B.V. be liable for goods and/or services which it has procured from third parties, unless to the extent that such third parties are liable to EldurApi B.V. and offer recourse.

5. EldurApi B.V. shall not be liable for any damage whatsoever in the event that EldurApi B.V. loads and/or unloads the goods itself using a forklift belonging to the Customer.
6. The Customer shall indemnify EldurApi B.V. in full against any form of liability that EldurApi B.V. may have towards third parties in respect of the goods delivered or services rendered. In particular, the Customer shall indemnify EldurApi B.V. against all third-party claims based on infringement of intellectual property rights resulting from information, such as models and images, provided by the Customer.

#### **Article 8 – Complaints, Obligation to Complain and Lapse of Rights**

1. Any complaints must be reported in writing or by e-mail immediately, and no later than three (3) days after the actual delivery, failing which the right to appeal to shortcomings which could reasonably have been discovered during a careful inspection shall lapse. If the Customer does not complain in time, they shall be deemed to have irrevocably and unconditionally accepted the goods delivered.
2. Possible (legal) claims must furthermore be brought before the court no later than one year after delivery of the agreed services and/or goods on penalty of expiry.
3. Upon receipt of the products, the Customer must check whether the delivery corresponds to the order made. Visible damage or defects that can already be observed at the time of delivery (including shortages) must be reported by the Customer immediately. If the Customer opens, breaks or damages packaging or products before they have been paid for, the Customer is obliged to take delivery and pay for the products concerned.
4. Upon delivery of the products to the Customer's address, the Customer shall notify EldurApi B.V. in writing of any visible damage, defects or shortages on the waybill or delivery document or in some other direct manner, failing which full proof shall be provided that the Customer has received the products in sound and undamaged condition at the time of delivery.
5. Any right of action the Customer may have against EldurApi B.V. in respect of errors in delivery or defects in or to products delivered by EldurApi B.V. shall lapse irrevocably as soon as the aforementioned deadlines have elapsed, as well as in those situations where the Customer fails to cooperate sufficiently with EldurApi B.V. in investigating the merits of the complaint. The goods to which complaints relate must remain available for inspection by EldurApi B.V. in the condition they were in at the time when the defects were discovered. The right to complain shall lapse once the Customer has taken the goods into use or processed them or has had them taken into use or processed, or has supplied them to a third party, unless EldurApi B.V. has expressly agreed to this in a dealer agreement.
6. In the event that a complaint proves to be well-founded and the aforementioned procedures concerning the notification of complaints have also been complied with, EldurApi B.V. shall, at its discretion, deliver a replacement product as soon as possible or, if the purchase price for the relevant product has already been invoiced, credit the amount corresponding to the complaint. In such situations, the Customer shall never be able to claim any compensation from EldurApi B.V.; EldurApi B.V.'s liability shall be limited to the value of the products delivered in respect of which a complaint was made.
7. Complaints and claims shall not entitle the Customer to suspend payment of the relevant invoice, and EldurApi B.V. expressly excludes compensation. The time limit for complaints on invoices sent by EldurApi B.V. shall not exceed 5 days following the day of receipt. If no objection is made to the invoice within this period, it shall be deemed to correctly reflect the underlying transaction(s) with EldurApi B.V. and to have been approved by the Customer.

#### **Article 9 – Retention of Title**

1. EldurApi B.V. retains title to all goods it has delivered to the Customer until such time as the purchase price has been paid, including future goods. Retention of title shall also apply to any claims which EldurApi B.V. may acquire against the Customer on account of the latter's failure to fulfil one or more of their other obligations towards EldurApi B.V.
2. As long as ownership of the goods delivered has not been transferred to the Customer, the Customer may not use, consume, sell, pledge or grant any other right to the goods to a third party. Delivered goods whose ownership has been transferred to the Customer as a result of payment and other goods which are in EldurApi B.V.'s possession shall serve as collateral for any claims which EldurApi B.V. may still have against the Customer on any grounds whatsoever (reserved non-possessory pledge).
3. The Customer shall carefully preserve the goods delivered subject to retention of title and shall consider them to be the recognisable property of EldurApi B.V. The Customer shall insure the goods against all the

usual risks for the duration of the retention of title. The Customer authorises EldurApi B.V., on their behalf, to (tacitly) pledge to itself all its liabilities to the insurer(s) under the aforementioned insurance policies as additional security within the meaning of Section 3:239 of the Dutch Civil Code.

4. In the event that the Customer fails to comply with their obligation to pay EldurApi B.V., or if EldurApi B.V. has good reason to fear that the Customer will fail to comply with their obligation to pay, EldurApi B.V. shall be entitled at any time to repossess the goods delivered subject to retention of title. After repossession, the Customer shall be credited for the market value (on the basis of the purchase price) of the goods, which shall under no circumstances exceed the original purchase price, less any costs incurred in repossessing the goods.
5. The Customer shall be obliged to insure the goods against fire, explosion and water damage, and against theft, as from the moment of delivery and for the duration of the retention of title, and to provide EldurApi B.V. with the relevant insurance policies on request. As soon as EldurApi B.V. so desires, all the Customer's claims under the insurance policies shall be subrogated to the goods that are subject to retention of title.

#### **Article 10 – Intellectual Property**

1. All intellectual property rights relating to the website, including those concerning the software, texts, images and sounds, are owned by EldurApi B.V. and/or those from whom EldurApi B.V. has obtained a licence. This means, inter alia, that it is not permitted to publish, reproduce and/or edit the information contained in the website without the consent of EldurApi B.V., other than for personal use.

#### **Article 11 – Warranty for Professional Use**

1. EldurApi B.V. provides a warranty for specific products. The warranty terms and conditions are described in the manual of the product. This manual can also be consulted via [www.EldurApi.com](http://www.EldurApi.com).
2. The warranty shall only apply if the user handles the EldurApi product with care by following all installation instructions, user instructions and directions for preventive maintenance as described in the accompanying user manual.
3. The warranty shall not apply if damage, wear and tear, discoloration and/or rust occur for which EldurApi B.V. is not responsible, and which is caused by:
  - Abuse, improper use, modification, misuse, vandalism, neglect, improper assembly or installation or failure to properly perform normal and routine maintenance;
  - Exposure to salty air and/or chlorine from, for example, swimming pools, whirlpool baths and thermal baths;
  - Severe weather conditions such as hail, hurricanes, earthquakes, tsunamis, flooding, tornadoes or severe storms.
4. EldurApi B.V. does not provide any warranty on:
  - parts subject to wear and tear such as (but not limited to) felt and gloves;
  - fine hairline cracks in the finish (glaze) of the EldurApi grill.

#### **Article 12 – Applicable law and Disputes**

1. The General Terms and Conditions and contracts are subject to Dutch law. Application of the United Nations Convention on Contracts for the International Sale of Goods (Vienna Sales Convention) is excluded.
2. Any disputes arising from or related to the General Terms and Conditions or contracts will be submitted exclusively (in the first instance) to the District Court of Zeeland–West Brabant in Middelburg.
3. All judicial and extrajudicial costs incurred by EldurApi B.V. in enforcing and complying with the General Terms and Conditions and contracts shall be borne by the Customer.