

# Terms and Conditions of Sales and Delivery



Applicable version of 2018

## 1. Application

- 1.1. These Terms and Conditions of Sales and Delivery (the “**Terms and Conditions**”) applies for all products offered, sold and delivered by Elvstrøm Sails A/S (the “**Seller**”) and ordered by, purchased and delivered to the relevant customer (the “**Buyer**”), unless the Seller and Buyer have agreed in written other terms or conditions that specially apply and revoke these Terms and Conditions.
- 1.2. The Seller shall deliver these Terms and Conditions to the Buyer, and the Terms and Conditions shall be available at the Seller’s website: <http://www.elvstromsails.com/>.
- 1.3. The Buyer agree that the Terms and Conditions applies, and the Buyer is responsible for reading and understanding the Terms and Conditions.

## 2. Quotations, orders and acceptance

- 2.1. Unless otherwise expressly stated in the quotation, all quotations are valid for 28 business days from the date of the quotation. If the Buyer do not accept the quotation by this deadline, it is no longer valid.

## 3. Prices and delivery

- 3.1. Unless otherwise specified expressly, the stated prices are excluding VAT and statutory charges or fees.
- 3.2. The expected time of delivery will be stated on the quotation or the order confirmation.
- 3.3. If the expected time of delivery cannot be observed, the Seller is obliged to inform the Buyer thereof. The Seller has no liability in relation to delivery which occurs later than the expected time of delivery.
- 3.4. An order may only be cancelled with the written consent of the Seller.
- 3.5. All prices are subject to changes in exchange rates, unforeseen price increases for raw materials and other unforeseen price increases. The Seller shall inform the Buyer of the amendment of prices and its causes. Changes of prices that are in favour of the Buyer shall be done without previous notice. The Buyer has the right to terminate the contract with 30 days prior notice in writing, if the amendments of prices are substantial.
- 3.6. When collecting the sails, the week of collection must be respected as the Seller must otherwise have to dispatch the products due to lack of storage space.
- 3.7. Delivery of products takes place Ex Works, and freight costs are applied separately at the Buyer’s account.

## 4. Payment

- 4.1. If the Buyer fails to pay on time, the Seller is, from the specified due date, entitled to charge default interest at a rate of 2 % per month and to add a reminding charge of DKK 100 per reminder.
- 4.2. If the Buyer fails to take delivery of products at the agreed time of delivery, the Buyer is nevertheless obliged to pay the purchase price as if delivery had taken place according to the agreed time.

## 5. Retention of title

- 5.1. The Seller retains the title to the products being sold until the purchase price, including any interest and expenses, has been paid in full. The Buyer is not entitled to enter into any transactions that would compromise or degrade the Seller’s title to the products.

## 6. Compensation

- 6.1. If the Buyer decides to terminate the contract according to Clause 3, the Buyer will not be entitled to a compensation from the Seller in respect of any kind of indirect or consequential losses, including but not limited to lost marketing advantages, loss of profit or loss of possibility to use the product.
- 6.2. If the Buyer decides not to terminate the contract according to Clause 3 and receives the products, the Buyer will not be entitled to any compensation from the Seller.

## 7. Liability for defects

- 7.1. It is the Buyer’s liability to inspect the products upon receipt and make immediate complaints in the event of potentially defective products. The Buyer must inform the Seller in writing of defects without undue delay when the Buyer become aware or should have become aware of such defects. If the Buyer fails to do so, the Buyer shall forfeit the right to make a claim against the Seller for such defects.

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- 7.2. The Seller is entitled to exchange the products or remedy any defects in the products at the Seller's own discretion within a period of 6 months from the delivery date.
- 7.3. After 24 months from the date of delivery, the Seller shall have no responsibility for the products delivered.
- 7.4. The Seller provides an extended guarantee for EPEX membrane sails. The Seller guarantees a three-year guarantee against delamination of the membrane caused by a production defect. If a delamination occurs within the first two years, the Seller replaces the sail in full. From the third year of use, the compensation is reduced by countering the period of use of the sail. In the third year, the compensation is reduced by 30% of the original price.
- 7.5. The Seller has no responsibility if the Buyer, either himself or through a third party, interferes with or makes changes to the products supplied. In that case, any right to complain in relation to the products supplied will lapse and the guarantee provided by the Seller will no longer apply.
- 7.6. The Seller has no responsibility for defects or reduced benefits due to delayed delivery apart from the responsibility stated above. Consequently, the Seller is not liable for damages for any operating loss, loss of profit, loss of possibility to use the products or any other indirect losses.
- 7.7. All guarantee repairs must be carried out at the Seller's service points or production facilities. The Buyer must pay the relevant freight costs. The Seller is not obliged to provide courtesy products in replacement of the products being repaired.

## 8. Passing of risk

- 8.1. The passing of risk for the ordered products shall in all cases, including in case of fire, theft or the like, pass to the Buyer at the actual time of delivery regardless of whether this is before or after the agreed time of delivery.
- 8.2. If the Buyer fails to collect or receive the products at the time of delivery, the risk related to the purchased products will pass to the Buyer at the time when the Seller offers delivery.
- 8.3. If the Seller undertakes the dispatch of the products, it will be for the Buyer's account and at the Buyer's risk. The delivery of the purchased products to an independent freight carrier is deemed to be a delivery.
- 8.4. This Clause 8 shall not affect the Seller's right of retention pursuant to Clause 5.

## 9. Exemption from liability and force majeure

- 9.1. The circumstances mentioned in Clause 9.2 shall result in exemption from liability if these occur after the confirmation of an order and prevent such order from being performed.
- 9.2. Industrial conflict and any other circumstances beyond the control of the Seller ("force majeure") including but not limited to fire, war, mobilisation or unforeseen conscription of similar extent, requisition, seizure, exchange controls, riots, civil commotion, lack of means of transport, general lack of products, restrictions on power as well as defective - or delayed - deliveries from suppliers.
- 9.3. The Seller is only liable for any personal injury, if it is proved that the damage was caused by negligence or wilful misconduct on the part of the Seller.
- 9.4. The Seller is not liable for damage to other real or tangible property related to the sale and/or delivery of the ordered products.
- 9.5. The Seller's product liability is in every single case limited to DKK 100,000 in case of operating damage and to DKK 1,000,000 in case of injuries per damage/injury, where each order number shall comprise one product. In any event, the Seller's liability is limited to the coverage that the Seller's product liability insurance company covers (excluding possible excess).

## 10. Governing law and legal venue

- 10.1. The contract as well as any claim or dispute, which may arise out of or in connection with the contract and the business relationship between the Buyer and the Seller, including any disputes regarding the existence or validity of the contract, shall be governed by Danish law and settled by the Maritime and Commercial Court of Copenhagen (in Danish: "*Sø- og Handelsretten*") as the court of first instance.