



ELDFAST

Raudhella 3, 221 Hafnarfjörður, Iceland

General conditions for Eldfast deliveries

ELDFAST ehf
Raudhella 3
221 Hafnarfjörður
Iceland

Tlf: +354 657 1199
Reg.no. 620109-0370

Mail: gunnar@eldfast.is
Web: www.eldfast.is





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1 SCOPE OF APPLICATION

1.1 These Eldfast General Conditions (“General Conditions”) shall apply to all deliveries made by Eldfast ehf (“Eldfast”), its subsidiaries or other companies of Eldfast Group, or representatives unless the parties have not otherwise agreed upon in writing. Modifications of or deviations from them must be agreed in writing.

1.2 No person, firm or company acting as agent or distributor on behalf of Eldfast is authorised to make any representation or give any warranty or guarantee on behalf of Eldfast other than contained in these General Conditions.

2 DEFINITIONS

2.1 “Contract” means a legally binding agreement based on either a written agreement between the parties or “offer and acceptance” -procedure in which case the offer submitted by Eldfast must be accepted without additional conditions. Eldfast’s offer shall be binding upon Eldfast only if, and to the extent Eldfast receives a purchase order from purchaser based on Eldfast’s offer and Eldfast unconditionally acknowledges such purchase order in writing.

2.2 “Products” means all products which are manufactured and marketed by Eldfast under the Contract (including Installation).

2.3 “Chemical Products” means all chemicals manufactured and/or marketed by Eldfast under the Contract (including refractory materials, metallic anchors, insulation).

2.4 “Services” means all on-site work, training, start-up, testing or other assistance as expressly agreed to be supplied by Eldfast.

2.5 “Spare Parts” mean all spare parts manufactured or marketed by Eldfast.

3 PRODUCT INFORMATION

3.1 All information and data contained in product brochures and price lists are binding only to the extent that they are by reference expressly included in the Contract.

4 DRAWINGS, DESCRIPTIONS AND TECHNICAL SPECIFICATION

4.1 All drawings and technical documents relating to the Products and the Chemical Products submitted by Eldfast, prior or subsequent to the formation of the Contract, shall remain the property of Eldfast or its suppliers. Drawings, technical documents or other technical information may not without the consent of Eldfast be used, except for the operation and maintenance of the Product, by the purchaser. Any copying, reproducing, transmitting or disclosing to a third party is strictly prohibited.

4.2 At the commencement of the warranty period Eldfast shall, if so requested by the purchaser, furnish to the purchaser information and drawings of the Products to carry out operation and maintenance of the Product. Such information and drawings shall be supplied in the number of copies agreed upon or at least one copy of each.

Eldfast shall however not be obliged to supply manufacturing drawings for the Product or Spare Parts.

4.3 Any changes to drawings and descriptions of Products required by purchaser after date of Contract constitute a change to order and Eldfast is entitled to charge incurred additional costs.

5 DELIVERY TESTS

5.1 Delivery tests if provided for in the Contract shall, unless otherwise agreed, be carried out at Eldfast’s supplier’s manufacturing sites during normal working hours. If the Contract does not specify the technical requirements, the tests shall be carried out in accordance with general practice in the industry concerned in the country of manufacture.

5.2 The purchaser shall bear all travelling and accommodation expenses for its representatives in connection with such tests.

6 DELIVERY

6.1 Any agreed trade term shall be construed in accordance with the INCOTERMS in force at the formation of the Contract. If no trade term is specifically agreed the delivery for the Products shall be Ex Works (EXW INCOTERMS 2010) Eldfast’s premises in Vinterbro, Norway or as stipulated on Eldfast’s order confirmation. For the Chemical Products, if no trade term is specifically agreed, the



ELDFAST

delivery shall be ExWorks (EXW INCOTERMS 2010) manufacturing plant of the Chemical Products.

7 TIME FOR DELIVERY, DELAY

7.1 Delivery times indicated in the Contract are estimates, unless otherwise indicated in the Contract. If, instead of a fixed date for delivery, the parties have agreed on a period of time within which delivery shall take place, such period shall be counted from the date of the Contract. The date of the Contract means either date (i) when both parties have signed a written agreement; or (ii) when Eldfast confirms the order submitted by purchaser.

7.2 If Eldfast finds that the delay of delivery seems likely, Eldfast shall forthwith notify the purchaser thereof. Such notice must contain the reason for the delay and if possible the time when delivery can be expected.

7.3 If delay in delivery is caused by the circumstances of force majeure or by an act or omission on the part of the purchaser, the time for delivery shall be extended by a period which is reasonable having regard to all the circumstances of the case. If the purchaser requires any change to content of delivery and/or Product or Chemical Product after the date of the Contract, Eldfast has a right to reschedule delivery time based on free capacity.

7.4 If the Product, Chemical Product or Spare Part is not delivered at the agreed time, the purchaser is entitled to liquidated damages only if a specific provision concerning liquidated damages was expressly made in the Contract. In any case the amount the maximum amount of the liquidated damages shall not exceed 5 per cent of the purchase price of the delayed delivery.

7.5 The purchaser shall forfeit its right to liquidated damages if it has not required in writing such damages within 30 days after the time when delivery should have taken place. All other remedies than liquidated damages defined herein and in Contract against Eldfast based on such delay shall be excluded.

7.6 If the purchaser finds that it will be unable to take delivery of the Product or Chemical Product at the agreed time or if delay on its part seems likely, the purchaser shall forthwith notify Eldfast thereof stating the reason for the delay and if possible the time when the purchaser will be able to take delivery. If the purchaser fails to take delivery at the agreed time, it shall nevertheless pay any part of

the purchase price which becomes due on delivery as if delivery had taken place. Eldfast shall arrange for storage of the Product or Chemical Product, or return of the Chemical Product at the risk and expense of the purchaser.

7.7 Unless the purchaser's failure to take delivery is due to force majeure, Eldfast may by notice in writing require the purchaser to take delivery within a reasonable period. If the purchaser fails to take delivery within such period, Eldfast shall then be entitled to compensation for the loss it has suffered by reason of the purchaser's default.

Additionally Eldfast shall have the option of disposing of the Product or the Chemical Product, in which case the purchaser shall remain responsible for costs and damages incurred.

8 PURCHASE PRICE. PAYMENT

8.1 The purchase price shall be paid according to the terms set out in the Contract. Purchase price shall include Products, Chemical Products and Services expressly indicated in the Contract. If no purchase price has been agreed, the price generally charged for such goods at the time of the conclusion of Contract shall apply.

8.2 Unless otherwise agreed, the purchase price of Products and Chemical Products must be fully paid before shipment of Products from Eldfast. Services shall be invoiced monthly afterwards in accordance with Contract.

8.3 Payment by means of a bill of exchange or other obligation to pay shall not be regarded as completed until such obligation has been honoured in full.

8.4 If the purchaser fails to pay within the stipulated period, Eldfast shall be entitled to interest from the day on which payment was due. The interest shall be fixed at a rate of interest which exceeds the 12-month EURIBOR by ten percentage points or rate which is printed on the invoice, whichever is lower.

9 RESERVATION OF TITLE

9.1 The Product, Spare Parts and the Chemical Product shall remain the property of Eldfast until paid for in full to the extent that such retention of property is permitted by the applicable law. Alternatively, Eldfast is entitled, before any delivery of the Products, without further justification, to demand a bank guarantee or other similar security in a form and value acceptable to Eldfast as a security for the correct payment of the Products or the Chemical Products to be delivered.



ELDFAST

10 WARRANTY FOR THE PRODUCTS

10.1 Pursuant to the provisions of Clauses 10.2-10.3 below, Eldfast warrants that the Products are free from defects resulting from faulty design, materials or workmanship.

10.2 Unless specified otherwise in the Contract, Eldfast's liability is limited to defects which appear within a period of twelve (12) months from delivery to the first user. Warranty for Spare Parts will be six (6) months from delivery to purchaser. Warranty for results of Services is a period of three (3) months from delivery of results to the purchaser.

10.3 When a defect has been remedied, Eldfast is liable for defects in the repaired or replaced Product or Product Component under the same terms and conditions as those applicable to the original Product. For the remaining components of the Product the original warranty period shall be extended only by a period equal to the period during which the Product has been out of operation as a result of a defect for which Eldfast is liable.

10.4 In the event purchaser wants to present a claim based on warranty, the purchaser shall without delay, and in no case not later than two (2) weeks from the appearance of the defect, notify Eldfast or its authorised dealer or representative in writing of such defect which has appeared. This notice shall contain a description of how the defect manifests itself.

In all events, if there is reason to believe that the defect may cause damage, such notice shall be given immediately and the purchaser shall cease using the Product so as to prevent further damage. If the purchaser does not notify Eldfast of a defect within the time limits set forth in this Clause, purchaser shall lose its right to have the defect remedied.

10.5 On receipt of the notice in writing Eldfast or its authorised dealer shall remedy without delay the defect at its own cost as stipulated in Clauses 10.5 - 10.11 below. The defective part or, if possible, the whole Product shall without delay be returned to Eldfast or its authorised dealer indicated by Eldfast for repair or replacement. In any event, the Parties shall agree upon details of such return before purchaser is entitled to send the Product. Unless otherwise agreed, in such event purchaser shall send Product to Eldfast at its sole risk and cost. Eldfast shall send repaired Product back to purchaser at Eldfast's sole risk and cost. In urgent need of help - an interrupted performance - the

repair can be carried out at the purchaser's place of business. In such event purchaser shall carry incurred extra costs (if any). Eldfast or its representative carries out dismantling and reinstallation of the part if this requires special knowledge. If such special knowledge is not required Eldfast or its authorised dealer has fulfilled its obligations in respect of the defect when it delivers to the purchaser a duly repaired or replaced part.

10.6 If the purchaser has given such notice as mentioned in Clause 10.4, and no defect is found for which Eldfast can be held liable, Eldfast shall be entitled to compensation for the work and cost which it has incurred by reason of this notice.

10.7 Unless otherwise agreed, transport of repaired or replaced parts shall be at Eldfast's account and risk. The purchaser shall follow Eldfast's or its authorised dealer's instructions as to the method of transport. Purchaser shall, at its own cost, expense and risk, arrange for the defected part to the location delivered originally by Eldfast, unless otherwise agreed.

10.8 Defective parts which have been replaced shall be placed at the disposal of Eldfast and shall be its property.

10.9 Eldfast is liable only for defects which appear under the conditions of operation provided for in the Contract and under proper use of the Product. The warranty granted herein expires if the purchaser does not use original Spare Parts during the warranty period.

10.10 The liability covers only repairs, which have been made using components and parts accepted by Eldfast.

10.11 Eldfast's liability does not cover defects, damages, losses or claims arising from (i) faulty maintenance, incorrect operation by the purchaser, (ii) alterations carried out without Eldfast's consent in writing, (iii)

faulty repairs by the purchaser, including without limitation use of improper spare parts; (iv) normal wear and tear or deterioration; (v) materials provided by purchaser; (vi) design stipulated or specified by purchaser; or (vii) other acts or omissions of purchaser or any third party. In addition to aforesaid, warranty does not cover consumables or parts having a life expectancy shorter than warranty period.



ELDFAST

10.12 The express warranties granted under this Section “Warranty” are the sole and exclusive remedy given by Eldfast to purchaser in respect of defects of Products or Services. ANY OTHER WARRANTIES, WHETHER EXPRESS, IMPLIED, STATUTORY, CONDITIONS OF MERCHANTABILITY, FITNESS FOR PARTICULAR PURPOSE OR OTHERWISE, ARE HEREBY WAIVED AND EXCLUDED.

11 ACCESS TO DATA

11.1 The purchaser shall allow Eldfast the right to access, collect and further store and use the data generated by any equipment manufactured by Eldfast or its subsidiaries at the purchaser’s use. The purchaser agrees to Eldfast’s access and collection of data in accordance with the foregoing as Eldfast may from time to time reasonably require.

12 WARRANTY FOR THE CHEMICAL PRODUCTS

12.1 The features and quality of the Chemical Products are determined in the documentation applicable to each Chemical Product (e.g. technical data sheet, material safety data sheet or corresponding documentation provided by Eldfast or referred by Eldfast or its suppliers. The purchaser shall solely be liable for (i) selection of the suitable Chemical Products for its purposes; and (ii) transport, handling, storage and use of the Chemical Product; (iii) compliance of the laws, decrees, regulatory regulations, use instruction and/or other documentation concerning handling, storage and use of the Chemical Products. Subject to the provisions of Clauses 12.2-12.6 below, Eldfast warrants that the Chemical Products manufactured by Eldfast are free from defects resulting from materials and workmanship and substantially meet the specifications expressly provided by Eldfast or referred by Eldfast.

12.2 For the Chemical Products not manufactured by Eldfast, Eldfast shall assign the purchaser, in so far as it is able to do so, the benefit of any condition, warranty or guarantee, express or implied, in Eldfast’s contract with its own supplier. Upon request of the purchaser Eldfast agrees to provide such warranties, if not included in the applicable documentation.

12.3 Eldfast’s liability for the Chemical Products manufactured by Eldfast is limited to defects which appear within the shelf life stated in the technical

description of the Chemical Product in question.

12.4 In the event the purchaser wants to present a claim based on warranty, the purchaser shall without delay, in no case later than two (2) weeks from the appearance of the defect, notify Eldfast or its authorised dealer or representative in writing of such defect. This notice shall contain a description of how the defect manifests itself.

12.5 Eldfast warrants that it will, at its own discretion, either replace or refund the purchase price of any Chemical Product found to be defective, but is not obligated to compensate any costs incurred to the purchaser.

12.6 Eldfast is not liable for a defect in Chemical Products caused by abnormal or unsuitable conditions of storage or use or any act, neglect or default of the purchaser or a third party (including but not limited to any default of or failure by the purchaser to comply with specific product storage requirements or use made known to purchaser). Furthermore, limitations of warranty set forth in Clauses 10.9 and 10.11 apply to the Chemical Products.

12.7 The express warranties granted under this Section “Warranty for the Chemical Products” are the sole and exclusive remedy given by Eldfast to purchaser in respect of defects of Chemical Products. ANY OTHER WARRANTIES, WHETHER EXPRESS, IMPLIED, STATUTORY, CONDITIONS OF MERCHANTABILITY, FITNESS FOR PARTICULAR PURPOSE OR OTHERWISE, ARE HEREBY WAIVED AND EXCLUDED.

13 SERVICES AND SPARE PARTS

13.1 Unless otherwise agreed, all services shall be performed in accordance with the general practice of Eldfast.

13.2 Any deliveries of Spare Parts are in accordance with then current delivery policies and delivery times. To minimize the maintenance and repair down-times during the lifetime of the Products it is recommendable to maintain necessary Spare Part stock or make a separate Life Time Service Contract with Eldfast.

14 PRODUCT LIABILITY INSURANCE

14.1 Eldfast is insured by a Product Liability Insurance for losses or damages based on EC Product Liability Directive (85/374/EEC) or other applicable mandatory product liability legislation. Unless otherwise indicated by Eldfast, this insurance



ELDFAST

policy is valid world-wide and covers bodily injury or material damage caused to a third party by Products and Chemical Products supplied by Eldfast, in the event and to the extent according to mandatory product liability legislation Eldfast is held liable for the said injury or damage. Upon reasonable request of purchaser Eldfast provides additional information of such insurance. For avoidance of doubt, this clause is merely informative and does not anyhow expand Eldfast's liability concerning such damages.

15 LIMITATION OF LIABILITY

15.1 ELDFAST SHALL UNDER NO CIRCUMSTANCES BE LIABLE FOR LOSS OF PRODUCTION, LOSS OF PROFIT, DOWNTIME OR PLANT SHUTDOWNS OR ANY OTHER INDIRECT, INCIDENTAL, CONSEQUENTIAL OR PUNITIVE DAMAGES. ELDFAST SHALL NOT ASSUME ANY LIABILITY FOR SAFETY OR ENVIRONMENTAL REGULATIONS OTHER THAN AS EXPRESSLY PROVIDED IN CONTRACT OR APPLICABLE LAW.

15.2 Eldfast's liability hereunder shall be limited to direct damages only and such aggregate liability shall not exceed ten (10) percent of the total purchase price of the Product or Chemical Product to which the damage relates.

15.3 If claim for damage as described in this Clause is presented by a third party against one of the parties, the latter party shall forthwith inform the other party thereof in writing.

16 INTELLECTUAL PROPERTY RIGHTS

16.1 Eldfast agrees, at its option and cost, to defend and settle any patent, trademark or copyright infringement claim or proceeding brought against purchaser in the event and to the extent it is based on a claim that a Product or Chemical Product manufactured by Eldfast when used in accordance with applicable documentation infringes any existing patent, trademark or copyright issued on or before the date of Contract. In such event Eldfast agrees to pay all direct damages and costs awarded against purchaser. Eldfast assumes no liability of non-infringement of Chemical Products manufactured by third parties. In such event Eldfast's obligations towards the purchaser is limited to reasonable assistance by Eldfast.

16.2 The remedy granted in Clause 16.1 is subject that (i) purchaser notifies Eldfast of such claim, without

undue delay, however at latest within ten (10) days from the date purchaser has received information of such claim or threat of claim; and (ii) purchaser gives Eldfast all necessary information required by Eldfast; and (iii) purchaser gives Eldfast authority to defend against and settle such claim; and (iv) purchaser does not make any admission, settlement or other corresponding arrangement without the written approval of Eldfast.

16.3 If there is a claim or threat of claim defined in Clause 16.1, Eldfast has a right, at its discretion, either (i) obtain for purchaser a license to continue using such Product or Chemical Product; (ii) replace or repair the infringing component of the Product or Chemical Product; or (iii) modify the infringing component of the Product or Chemical Product so that it becomes non-infringing.

16.4 Eldfast's liability does not cover any damages, losses or claims arising from (i) faulty maintenance or repair by the purchaser, (ii) alterations carried out without Eldfast's consent in writing, (iii) materials provided by purchaser; (iv) design stipulated or specified by purchaser; or (v) other acts or omissions of purchaser or any third party; or (vi) claims submitted by a company which belongs to the same consolidated group of companies with the purchaser.

16.5 The express warranties granted under this Section "Intellectual Property Rights" are the sole and exclusive remedy given by Eldfast to purchaser in respect of infringement of intellectual property rights.

17 FORCE MAJEURE

17.1 The following circumstances shall be considered as examples of cases of relief if they impede the performance of the Contract or makes performance unreasonably onerous: industrial disputes and any other circumstance beyond the control of the parties such as strike, lockout, fire, war, general mobilisation or unforeseen military mobilisations to a similar extent, requisition, seizure, currency restrictions, insurrection and civil commotion, shortage of transport, general shortage of materials, restrictions in the use of power and defects or delays in deliveries by sub-contractors caused by any such circumstances referred to in this Clause.

17.2 The party wishing to appeal to force majeure shall notify the other party in writing without delay on the intervention and on the cessation of such circumstance. If grounds for relief prevent the

purchaser from fulfilling its obligations, it shall compensate Eldfast for expenses incurred in securing and protecting the subject Products or Chemical Products.

17.3 Regardless of what might otherwise follow from these General Conditions, either party shall be entitled to terminate the Contract by notice in writing to the other party if performance of the Contract is impeded for more than six months (6) by the reason of force majeure.

18 TERMINATION. CANCELLATION CHARGES

18.1 Either party shall have the right to terminate the Contract with immediate effect with written notice thereof to the other party, without prejudice to any other rights exercisable for damages accrued or any subsequent claims for damage or other relief in case of a material breach by the other party of the obligations arising out of the Contract if the party in breach does not rectify such breach within 30 days from receipt or a written notice thereof.

18.2 Furthermore, each party shall have a right to terminate the Contract with immediate effect in the event of the bankruptcy, company reorganization, compulsory or voluntary liquidation or any kind of composition between the debtor and the creditors, or any other circumstances which are likely to affect materially the other party's ability to fulfil its obligations hereunder.

18.3 In the event of total or partial cancellation or termination of the Contract by the purchaser for any other reason than Clause 17.1 or 17.2, Eldfast shall be entitled to receive from the purchaser (i) payment for work actually performed prior to cancellation for which Eldfast has not already received payment, plus reasonable overhead in connection with such work; (ii) to the extent not already received, the profit that Eldfast would have made in connection with such work; and (iii) all other reasonable costs and expenses incurred by Eldfast by reason of the cancellation of the Contract. In any event such amount will not be less than thirty percent (30 %) of the purchase price in accordance with the Contract (minimum cancellation charge). Payment of the foregoing cancellation charge shall be made by the purchaser to Eldfast within thirty (30) days after receipt of Eldfast's invoice. Eldfast may set off the cancellation charge against any advance payment made by purchaser.

19 ASSIGNMENT

19.1 The Contract or any rights or obligations based thereto may not be assigned by purchaser to any third party without prior written consent of Eldfast. However, Eldfast has a right to assign the Contract as a part of total or partial transfer of its business, or within the Eldfast Group.

20 APPLICABLE LAW AND JURISDICTION, LIMITATION OF ACTION

20.1 The Contract shall be governed by the United Nations Convention of Contracts for the International Sale of Goods, United Nations Convention on Limitation Period in the International Sale of Goods and the laws of Iceland, excluding its choice of law provisions.

20.2 Any dispute, controversy or claim arising out of or relating to the Contract and/or these General Conditions that cannot be settled amicably, shall be finally settled under Icelandic law and jurisdiction.

20.3 THE PURCHASER'S FAILURE TO COMMENCE ANY CLAIM OR CAUSE OF ACTION ARISING OUT OF OR RELATING TO THIS AGREEMENT WITH IN ONE (1) YEAR AFTER THE DATE OF DELIVERY SHALL CONSTITUTE A WAIVER BY THE PURCHASER OF ANY OTHERWISE APPLICABLE STATUTE OF LIMITATIONS AND FOREVER BARS ALL RIGHTS TO COMMENCE ANY CLAIM OR CAUSE OF ACTION WITH RESPECT THERE TO.

21 MISCELLANEOUS

21.1 Any amendments or modification to the Contract shall only be valid when made in writing and signed by both parties.

21.2 If any provision of these General Conditions is held to be invalid or unenforceable, such determination shall not invalidate any other provision of these General Conditions shall not affect the validity of the remaining provisions thereof. The invalid or unenforceable provision shall be automatically deemed to be replaced with a provision which serves a mutual purpose of the Parties at the time of the conclusion of the Contract as closely as possible and which has to be valid and enforceable.

21.3 Notices required under the Contract shall be deemed sufficient if in writing in the English language and delivered personally (with an initialled dated receipt), by registered mail, or by telefax, or by e-mail to the other party to the addresses



ELDFAST

defined in the Contract.

21.4 The headings of these General Conditions are for convenience of reference only and shall not in any way limit or affect the meaning or interpretation of the provisions of these General Conditions.

21.5 A failure by either party at any time to require performance of any provision of Contract shall in no

manner affect its right to enforce the same and does not constitute a waiver of the right to require such performance and the waiver by either party of any breach of any provisions of Contract shall not be construed to be a waiver by such party of any succeeding breach of such provision or any other provision of Contract.