



## **ELKAY INTERIOR SYSTEMS**

**Latin America S. de R.L. de C.V.**

### **SUPPLY TERMS & CONDITIONS**

**These Supply Terms and Conditions (hereinafter "Terms and Conditions") are applicable to and are part of all Quotations, Purchase Orders and Supply Contracts (hereinafter "Purchase Order" or "Quotation"), issued by the Client to Elkay Interior Systems Latin America S. de R.L. de C.V. (hereinafter "EIS").**

#### **1. Acceptance of the Terms and Conditions**

The Client expressly accepts these Terms and Conditions, which may be modified in writing by the parties.

#### **2. Duration**

Unless a Quotation specifies something different, the period of validity will be of 30 calendar days.

#### **3. Price**

Prices of the Goods and Services will be included in the Quotation and/or Purchase Order and will be subject to modifications agreed by the parties for reasons such as, without limitation, the increase in the costs of the raw material or components, increases or variations in the exchange rate, labor or other general costs.

If the parties have agreed in writing and signed a Price such Price will be mandatory which may be subject to modifications for any of the abovementioned reasons.

#### **4. Payment**

- A. Client shall pay by deposit or wire transfer in the bank account provided by EIS to the Client, in the currency indicated in the Quotation or Purchase Order or at the exchange rate published in the Mexican Official Gazette ("Diario Oficial de la Federación de los Estados Unidos Mexicanos") on the day the payment is to be made.
- B. Unless otherwise agreed in writing or in the term payment agreed between the parties, Client shall pay the price of the Purchase Orders as follows: (i) 50% (fifty percent) in advance, which must be paid at the time the order is made, the Purchase Order is issued or the corresponding Contract is signed and (ii) the remaining 50% (fifty percent) the date of delivery of the Goods and / or installation.
- C. Interests for non-payment, late or deficient payments will be charged at 2.5% per month on unpaid balances.

#### **5. Delivery and Shipping Costs**

- A. Deliveries may be made in the quantities and dates specified in the Purchase Order.
- B. Client shall pay shipping, unloading, handling, taxes, tariffs costs and/or any other expenses necessary to comply with the delivery and/or installation of the Goods.

## **6. Manufacture, Supply, and Installation**

- A. The Purchase Order will be irrevocable and cannot be canceled or modified for any reason by the Client. EIS will begin production of the goods when the purchase order is issued and the first paid is done.
- B. Any change agreed in writing by both parties will imply a change in the agreed prices.
- C. The delivery or installation will be carried out according to what is established in the calendar of activities agreed in writing and signed by the parties. The delivery and installation of the goods and/or services may be affected by activities or omissions of the Client or a third party, which will not imply a breach attributable to EIS.
- D. EIS will supply and/or install the Goods in accordance to what parties have agreed in writing. If there is no agreement between the parties, EIS decide either to supply, install or not the goods if, in its judgment, the Customer's facilities are not ready for it, which will not imply a breach.
- E. In the event that there are no Client personnel who can attend the personnel of EIS to carry out the installation, supply or delivery of the goods and/or services, the Client shall cover all expenses of the personnel of EIS.

## **7. Worksite Specifications**

- A. On the day of delivery or installation of the goods, the worksite shall be in optimal conditions and in the last stage of construction (meaning as obra blanca), which must include façade closed, windows, doors, flooring, wall finishes, drywall, general painting, finishes, among others before EIS arrives to the work site to carry out the delivery and/or installation.
- B. Client shall provide parking spaces, unload and maneuver areas that EIS may need to deliver or provide the services, otherwise the expenses generated by this concept will be charged to the Client.
- C. During the installation of the Goods, only the personnel designated by EIS will be able to access the worksite and the Client shall not allow access to unauthorized people.
- D. Custody of the Goods in the worksite shall be agreed in writing and signed by both parties. Unless otherwise agreed in writing by the parties, Client shall be responsible of the custody of the Goods at the worksite. EIS will not provide security or custody services at the worksite to safeguard the Goods.
- E. EIS will not perform any work related with any excavation work, site work, plumbing, electrical, masonry, floor covering, painting, or decorating.
- F. Unless otherwise agreed in writing by the parties, Client must provide to EIS toilets, lifting systems, air conditioning, adequate electrical, hydraulic, gas installations among other services and/or installations that EIS may need to carry out the installation work. EIS may request such services and/or installations on writing.

## **8. Scope of the Goods and Services**

- A. Goods and Services provided by EIS shall be performed in accordance with the provisions of the Quotation, Purchase Order or the *submittal drawings (dibujo/fichu técnico)* that the Client shall provide in writing and signed to EIS. Specifications not indicated in this document are not an EIS obligation.
- B. Trash and waste removal is not an EIS obligation. This service and extra maneuver to move or to carry trash and waste somewhere different from the worksite will have an additional cost that must be paid by the Client. Trash garbage and waste will be located in the place of the Worksite that the Client indicates for this purpose.
- C. In the event that EIS is responsible for the transportation of the goods, the parties will agree on the Incoterm 2020 that will apply, as well as the responsibilities for each of the parties.
- D. Client may contract a third party for the installation of the goods that EIS supplies. In this case, Client accepts and acknowledges that EIS does not provide drawings, manuals or installation guides. EIS will only provide overall dimensions and assembly views for the third party to execute the installation.
- E. Client shall provide all the information and facilities needed for the delivery and/ or installation of the goods, including but not limited to places of maneuver, dimensions and measurements of entrances,

doors, windows or any access point, stairs, elevators. Client shall allow EIS to use all the facilities and means available at the place of delivery and/or installation.

- F. Client may hire any third party to transport the goods. In that case, the risk of loss is transmitted from the moment the goods leave EIS' facilities and the Client will be responsible.
- G. The goods and services manufactured and provided by EIS are based on the measurements, dimensions and sizes provided by the Client. EIS is not responsible for variations in measurements, colors or dimensions of the Goods at worksite caused by any reason.
- H. If the goods or services require adjustments due to any difference or variation, the Client must pay the difference or the additional amount that is generated.
- I. Client may request at his expense a site survey by EIS of the place where EIS is going to carry out the installation and/or delivery. Every site survey has a cost and Client shall pay all the expenses of the site survey as agreed between parties. The site survey shall be requested with a period of 1-2 weeks in advance of the estimated date of the installation.
- J. Worksite supervision shall be performed with Customer's personnel to detect potential differences in the floor plan versus field dimensions. Client shall report to EIS all variations in measurements, dimensions and sizes to EIS before submitting the Purchase Order. If the dimensions of the field do not comply with what is shown on the floor plans, the Client will have to pay the modifications or the elaboration of a new Good. If the discrepancies cannot be corrected due to their complexity, Client shall issue a new order with the correct dimensions and EIS will provide a new delivery date based on the manufacturing schedule.
- K. Client shall sign an acknowledgment of acceptance once EIS concludes with the installation or provision of services.
- L. EIS will not provide guides, plans or manuals on the goods or facilities. EIS only provides an approval document if Client requests it on writing.

## **9. Interruptions**

- A. EIS shall not be liable for any delay in the delivery of the Goods in case of force majeure or any cause attributable to a third party.
- B. If there are delays on the site work and/or conditions beyond EIS's control, EIS will not be responsible for any delay, failure or delivery of services or failure to complete services or for the additional time required to complete installation. EIS will schedule a visit to complete the work but will not be responsible for any delay in completion that this may cause.

## **10. Late delivery and Custody of the Goods**

- A. Client may request in writing a change of the delivery date at least 3 working days in advance. If the notice is given in a shorter time, the Client will cover all the expenses and costs incurred by EIS to make the change.
- B. When the modification of the installation dates has been requested, Client shall be subject to the new delivery and installation dates provided by EIS.
- C. If, on the date of installation or delivery of the Goods, the Client does not have the worksite available or cannot receive them, EIS will custody them for a maximum period of 30 calendar days. After this period, Client has to receive the Goods. In the event that the Client is unable to receive the goods, EIS will keep them in deposit with a cost equivalent to 2% per month of the total price of the stored goods. Stored goods may not leave the EIS facilities until the Client pays in full the total amount.

## **11. Intellectual Property**

- A. Each of the parties will retain the exclusive ownership of their intellectual property rights. EIS does not confer in favor of the Client any of its intellectual property rights and the Client must not use them to produce other goods.

- B. The Client guarantees that the Goods object of each Purchase Order do not violate and will not violate Intellectual Property Rights of third parties. The Client: (i) will defend, hold harmless and indemnify EIS, its administrators, officers and directors, employees, agents and clients against all kinds of claims, demands, damages derived or related to any litigation or claim that arises for any real or presumed or direct or contributory or indirect violation of the applicable legislation and (ii) waives its right to claim against EIS and its clients.

## **12. Limited warranty and responsibility**

- A. The warranty will be valid for 1 year, starting from the date of delivery or installation of the goods.
- B. EIS may correct any defective good (understood as that good that is not in accordance with the specifications stated in the submittal drawing) within the period agreed in writing by the parties. Time may vary depending on the supply chain and/or the availability of the material needed.
- C. The warranty will be void due to defects or deterioration caused by external factors, accidents, alterations, corrosion, including those attributed to atmospheres or exposure to extreme conditions, temperatures and/or humidity, unauthorized repair, normal deterioration due to use and/or improper exposure, normal wear and tear, not in accordance with the instructions given by EIS to the Client. EIS will analyze the reason for the defect or deterioration and will determine if the guarantee is applicable or not.
- D. Client shall pay for any repairs or maintenance not covered by this Limited Product Warranty, including service calls related to non-warranty issues. Any defect in appearance should be noted at the time of delivery, and EIS should be notified immediately.
- E. EIS obligation is limited to parts that need repair or replace (at EIS's option) of the goods, which may be performed at the location of the installation. The warranty applicable to any replacement unit shall be the warranty period remaining on the replaced unit. EIS may cover the cost of outbound freight (but not express freight) of the part(s) only if EIS determines that the good is covered by this Warranty.
- F. EIS will not be responsible for any act caused directly or indirectly by the services or goods object of the Quote or Purchase Order.
- G. This Warranty does not include payment for labor or field service for repair or replacement or for normal maintenance.
- H. This Warranty will be void and is not enforceable if a third party makes repairs.
- I. Only the Client can claim this guarantee and cannot assign this right.
- J. This warranty replaces all other warranties derived from law or otherwise.

## **13. Assignment**

Client may not assign or delegate any of its obligations established under any Quotation and/or Purchase Order without the prior consent of EIS granted in writing.

## **14. Transfer of Ownership and Risk of Loss**

- A. EIS transfers the risk of losing the goods at the time of installation, delivery or shipment of the goods depending on the scope of the services that EIS must provide. It's not necessary the material, legal or virtual delivery of the goods in order to transfer the risk of loss.
- B. From the moment the risk of loss is transmitted, the Client will be the only responsible of it. Ownership of the goods will only be transferred in favor of the Client when the goods have been paid in full. Client waives to the right of acquiring the ownership of the goods for the course of time.

## **15. Subcontracting**

EIS may subcontract any third party to perform any of its obligations under any Purchase Order without the prior consent of the Client.

## **16. Goods' identification**

Goods supplied by EIS can only be identified using the information of the Purchase Order.

### **17. Force Majeure**

There will be no default attributable to EIS if it cannot meet its obligations due to an act of God or force majeure reasons.

### **18. Return Policy**

- A. When the Goods are delivered by EIS, the Client will have the obligation to review them and record in the Delivery Certificate whether they comply with the requested specifications or not. If Client does not make a statement at the time of delivery, it will be understood that the Client accepts the goods accordingly.
- B. Return policy will be void when the reason argued by Client is not attributable to EIS. EIS will analyze the reason claimed by Client and will determine if this policy is applicable or not.
- C. Goods that do not meet the requested specifications will be replaced.
- D. Goods that have been damaged during their transfer will be replaced only when EIS is responsible for its transportation.
- E. The replacement of these Goods will be subject to the availability of materials and labor. EIS will notify the Client when the replacement can be made without implying a breach for EIS.
- F. The Client accepts and acknowledges that the goods and services are custom made so that the Client may not return any delivered, opened or installed goods.
- G. If the product does not meet the specifications or is damaged, the Customer must report it within 24 hours of receiving it by sending an email to [servicios.eislatam@elkay.com](mailto:servicios.eislatam@elkay.com).
- H. All other returns and replacements will be at the sole discretion of EIS.

### **19. Divisibility**

In the event that any term is declared void or not unenforceable, such term will be amended or eliminated, as the case may be, and the remaining provisions will remain in full force and in force.

### **20. Notifications**

All notices claims and other communications to EIS must be issued in writing and will take effect until such time as they are received by EIS.

### **21. Confidentiality**

The Client shall: (i) keep all EIS information confidential and disclose it only to its employees who need to be aware of such information in order for EIS to provide the Goods and / or Services and (ii) use EIS information only for the purpose agreed in the Purchase Order.

### **22. Origin of Economic Resources and Anti-Corruption Policy**

The Client agrees to comply with the Federal Law for the Prevention and Identification of Operations with Resources of Unlawful Origin, its regulations and other applicable provisions. The Client declares that the resources with which he will fulfill her obligations are of legal origin and that there is no indication to the contrary.

Client declares that there is no connection between the origin or destination of said resources or the products that such resources generate, with unlawful activities.

Client accepts and acknowledges that for the celebration of this document, he has not received any kind of compensation from any person related to EIS.

Client agrees not to grant to any person related to EIS, gifts, gratuities, payments, loans or benefits for the provision of services.

### **23. Entire Agreement and Modifications**

The Quotation, Purchase Order, including these Terms and Conditions, as well as the modifications they may have, including their annexes, will constitute the entire agreement between the Client and EIS and will replace any previous verbal or written agreement.

#### **24. Choice of Law and Jurisdiction**

The applicable laws of Mexico, Mexico City, without regard to applicable conflict of law's provisions, shall govern each Purchase Order, Agreement and Quotation. The application of the United Nations Guidelines on the International Sale of Goods, United Nations Convention on Contracts for the International Sale of Goods and the Convention on the Limitation Period in the International Sale of Goods (New York, 1974) are expressly excluded. EIS and the Client agree that any dispute between them shall be solved exclusively before the jurisdiction of the local competent courts in Mexico City.

#### **25. Language**

These Terms and Conditions are written in the Spanish and English languages, each of which shall be deemed to be the original. However, for the sake of certainty, the parties agree that the Spanish version will prevail and be determinative in the event of any inconsistency, dispute, interpretation or discrepancy.