

**1. Scope of Application**

All sales, deliveries and services (hereinafter collectively the "Services") of Excelitas Noblelight GmbH domiciled in Germany ("Excelitas") are exclusively subject to the following Terms of Sale. Customers' general terms and conditions of business which deviate from these Terms of Sale or from the law will not be accepted, and they will also not become part of a contract if Excelitas accepts or executes orders from the customer in awareness of the customer's opposing or deviating terms and conditions of business.

**2. Subject Matter and Scope of Services (Offer, Samples, Guarantees, Contract Conclusion)**

2.1 All offers of Excelitas are without engagement, unless specifically agreed otherwise. Contracts shall be deemed concluded only after Excelitas has issued a written order confirmation, effected delivery of the goods ordered or performed the Service.

2.2 Excelitas shall be generally under no obligation to verify the correctness of the information provided by the customer upon which Excelitas' offer or order confirmation is based, and Excelitas shall also not be obligated to investigate if the execution of the customer's order based on such information infringes any third-party property rights. The customer will be advised of all risks which are identified by Excelitas.

2.3 The data and information included in brochures and other promotional and information material of Excelitas serve solely as a guideline and become a binding part of a contract only upon the express written agreement between Excelitas and the customer.

2.4 Characteristics and properties of samples and specimens are only binding if expressly so agreed.

2.5 Information about the quality, condition and (shelf-)life of products shall be deemed to be guarantees only if expressly designated as such. The same applies to the assumption of a procurement risk.

2.6 Unless otherwise agreed in writing, Excelitas will deliver products within the tolerances admissible under the relevant German or European technical standards, in particular DIN, VDE, EN ISO or similar standards.

2.7 Technical changes which are required for manufacturing reasons, or which are necessary due to legislative changes, or which serve the product update and maintenance, shall be admissible if they are reasonable for the customer.

**3. Delivery, Delivery Periods, Packaging, Passing of the Risk**

3.1 The type and scope of Excelitas' Services and the delivery periods are determined by the written order confirmation of Excelitas. Excelitas shall be entitled to partial performance of Services if this is reasonable for the customer.

If the customer wishes to call off portions of an agreed total quantity for delivery in several partial deliveries, the customer shall spread such call-offs evenly over the delivery period. The call-off of more than 10% of the total quantity of one partial delivery on one date is subject to the prior written consent of Excelitas.

3.2 The delivery period commences to run only after all issues which are essential for the performance of the contract have been clarified with the customer and after the customer has performed all essential acts incumbent on him which are required for the performance of the contract by Excelitas. In particular, the delivery period does not commence to run until Excelitas has received all information from the customer which is required to effect delivery, or until the customer has furnished proof that, if required, he has opened a letter of credit, effected prepayment or provided a security, as agreed in the contract. The delivery period will be interrupted by subsequent changes requested by the customer. After agreement about the desired changes has been achieved, the delivery period re-commences to run.

3.3 The products of Excelitas are generally unpacked. If the customer desires packaging, the costs will be borne by the customer.

3.4 Excelitas delivers 'ex factory'/ex works' (Incoterms 2020). If Excelitas solely organizes the transport, the costs of dispatch and the costs of transport insurance will be borne by the customer.

3.5 The price risk (i.e. the risk of accidental loss or accidental deterioration) shall pass to the customer at that point in time at which the goods are placed at the customer's disposal at the factory/works from which delivery is effected, even if Excelitas has accepted to perform additional services such as loading or transportation of the goods.

3.6 If the performance of a Service is delayed for reasons within the customer's responsibility, the risk shall pass to the customer upon receipt of a notification that the Service is ready to be performed. In such case, Excelitas will be permitted to invoice the goods to the customer as having been delivered, and to store the goods at the customer's cost and risk. Upon request of the customer, Excelitas will insure these goods against theft and damage from breakage, transport, fire and water at the customer's cost.

**4. Reservation of Self-Supply, Force Majeure**

4.1 Excelitas shall not be obligated to perform its contractual obligations to the extent and for so long as Excelitas has not been supplied properly and timely by third-party suppliers with the raw materials, precious metals, energies or components which are required for the manufacture of the products. Excelitas will inform the buyer of any impairment in the delivery of the products resulting therefrom. In the event of a considerable delay in delivery, both parties shall be entitled to rescind the purchase contract after a reasonable period of time.

4.2 If any performance of contractual obligations is directly or indirectly prevented, restricted or interfered with by reason of any unforeseeable cause not within the reasonable control of the respective party ("**Force Majeure Event**"), the party so affected shall be excused from the performance of its contractual obligations to the extent and for the duration of such prevention, restriction or interference and shall not be liable for any costs or damages incurred by the other or any third party because of non-performance or late performance. In case of a Force Majeure Event, Excelitas shall be entitled, but not obligated, to entrust a third party with the performance of its contractual obligations.

4.3 A Force Majeure Event shall be deemed to exist not only if it is impossible for the party so affected to avoid or overcome the occurrence or the effects of the event which prevents, restricts or interferes with the performance of its contractual obligations but also if the party so affected cannot reasonably be expected to perform its contractual obligations.

4.4 By way of example only, but without limitation, the following shall be considered as Force Majeure Events: Acts of God such as flood, storm, earthquake, compliance with any governmental rules, regulations or orders of any government, public authority or court (e.g. lack of notification, confiscation, expropriation), fire, war, warlike disputes, explosion, riot, insurrection, accidents, terror, piracy, sabotage, invasion, epidemics, pandemics, legitimate industrial action, currency or trade restrictions, embargoes, export restrictions, import restrictions, sanctions, and any operation disruption if caused directly or indirectly by an event outside the reasonable control of the affected party. A Force Majeure Event affecting Excelitas shall also be deemed to exist where Excelitas' sub-suppliers or contractors are affected by any Force Majeure Events.

4.5 The parties agree that the direct and indirect effects of the spread of the coronavirus SARS-COV-2 (or 2019-nCoV virus, hereinafter referred to as "Covid-19") shall constitute a Force Majeure Event if and to the extent that they delay, restrict or prevent the performance of contractual obligations by the affected party, including, without limitation, by reason of (i) any acts of any government or public authority, including the imposition of quarantine orders, operational shutdowns or company closures, or other restrictions or prohibitions, or (ii) non-availability of labor force or suppliers of the affected party due to illness, quarantine, travel restrictions or curfews, or (iii) production capacity restrictions of the affected party or its suppliers, for instance due to hygiene measures or split work shifts. A Force Majeure Event shall not be deemed to exist if, at the time of contracting, the respective acts of any government or public authority had already been adopted and publicly announced, or if the non-availability of labor force or the production capacity restrictions of the affected party were already known.

4.6 The parties also agree that the occurrence of a shortage of gas and its direct and indirect effects shall also constitute a Force Majeure Event if and to the extent that they delay, restrict or prevent the performance of contractual obligations by the affected party. This shall also apply if, at the time of contracting, the occurrence of a shortage of gas was not foreseeable with certainty but seemed possible and the actual occurrence thereof cannot reasonably be avoided by the affected party. The direct and indirect effects of a shortage of gas which constitute a Force Majeure Event include in particular (i) the total or partial unavailability of gas as auxiliary or operating material in the production process of the affected party or its suppliers, and (ii) the total or partial unavailability of natural gas as energy source for the heating

of production or administrative buildings at Excelitas or its suppliers to a level permitted by labor law.

4.7 The affected party shall notify the other party as to the nature and probable duration of the Force Majeure Event. Furthermore, notification of the actual termination of a Force Majeure Event shall also be given as soon as reasonably possible and also when the end of a Force Majeure Event is already foreseeable.

4.8 The party affected by a Force Majeure Event shall exercise reasonable commercial efforts to resolve the restrictions caused by the Force Majeure Event as promptly as practicable, provided, however, that the limit for "reasonable commercial efforts" shall be reached when the total costs incurred for the performance of the service, including the expenses for resolving the restrictions, exceed 110 % of the price payable by the customer for the specific service affected by the Force Majeure Event. If the price to be paid by the customer includes separately identified costs arising from or in connection with the delivery or provision of precious metals, these costs will be disregarded in the determination of the value limit.

4.9 If the party affected by a Force Majeure Event is required to incur expenditures for resolving the restrictions caused by the Force Majeure Event which exceed the limit for "reasonable commercial efforts" pursuant to clause 4.8 or if the Force Majeure Event continues for an uninterrupted period of forty-five (45) days, each party may terminate any affected contract by giving written notice to the other party or rescind any such contract, provided that the Force Majeure Event is still in effect at the time when written notice of termination is given.

## 5. Prices, Payment, Default

5.1 The prices quoted by Excelitas are exclusive of the statutory value-added tax, outer packaging, shipping charges and insurance costs ('ex works', Incoterms 2020).

5.2 Invoices are due for payment immediately upon receipt and without any deductions. Cheques will be accepted on account of performance only. The customer agrees to the electronic transmission of the invoice. All payments by the customer must be made into the account named by Excelitas. Excelitas will always inform the customer about a change of the payment account by letter (not by e-mail) and at least one month in advance. The customer shall be obligated to have the change of the payment account confirmed by a telephone call to a contact person at Excelitas known to the customer (at a telephone number already known to the customer). Excelitas shall not be liable for erroneous bank transfers by the customer or for the manipulation of bank data by third parties.

5.3 Excelitas may, by giving notice to the customer at any time before delivery, increase the price of the products to reflect any increase in the costs of materials or other costs of manufacture of the products, costs of transport, taxes, customs, levies and other public or administrative duties. Customer shall confirm the increased purchase price within 14 days after receipt of the notice of adaptation of the purchase price by Excelitas. If the customer does not confirm the increased purchase price, Excelitas may terminate the contract by giving written notice to the customer.

5.4 Excelitas charges interest for default in payment at the rate of nine (9) percentage points above the applicable base rate p.a. (Section 247 of the German Civil Code (BGB)). The right to furnish proof of a higher or further damage caused by default remains reserved.

5.5 Excelitas shall not be obligated to perform the contract for so long as the customer fails to perform his own obligations according to contract, including his obligations from other contracts with Excelitas and, in particular, if the customer defaults in the timely payment of invoices due.

5.6 The customer may offset counterclaims or withhold payments based on counterclaims against Excelitas only if such counterclaims are uncontested in writing or non-appealable.

5.7 If the customer is in default of payment or if there are circumstances which, when applying customary banking standards, justify doubts about the customer's ability to pay, Excelitas will be entitled to perform outstanding Services only against payment in advance or subject to the provision of a security. In such case, Excelitas will be permitted to declare all of its claims against the customer immediately due for payment, irrespective of the term of any bills of exchange, and demand securities.

5.8 Subject to evidence of a higher damage, Excelitas will charge 2.50 € for the second and each further reasonable reminder.

5.9 If, despite a reasonable time limit, a Service which is ready for acceptance is not fully accepted or is accepted too late through no fault

of Excelitas, Excelitas will place the goods in storage at the customer's cost and risk. For such storage Excelitas will charge 0.5% of the invoice amount for each month of the delay in acceptance.

## 6. Warranty, Liability

6.1 The products shall be deemed free of defects if they conform to the specifications that have been expressly agreed in writing between Excelitas and the customer. In case there is no express agreement on the specifications, the products shall be deemed free of defects if they conform to the specifications as provided in the data sheet of the product. Any other express or implied warranty for objective or subjective requirements, including the warranty of fitness for purpose and the warranty that the products conform to any sample previously supplied, shall be excluded. The customer shall be solely responsible to check whether the products are suited for the intended purpose.

6.2 The customer shall notify Excelitas without delay of all claims for defects which are asserted by his own customers and which relate to Services of Excelitas, otherwise the customer's claims for defects against Excelitas will be excluded. In addition, the customer shall preserve evidence in the requisite form and provide such evidence to Excelitas.

Excelitas may reclaim from the customer a product complained of as defective (including any existing supporting documents, samples and packing slips) for investigation of the defect. The customer's failure to comply with this reasonable request will result in the exclusion of the customer's claims for defects or incompleteness of Service. The same applies to any claims for defects which are asserted against the customer by his own customers and which relate to Services of Excelitas.

6.3 For defects in a product, Excelitas' obligation to perform the contract shall, at its choice, consist of subsequent performance by remedy of the defect or delivery of a fault free product. The customer will be entitled to cancel the contract or to reduce the purchase price in accordance with the statutory provisions only if the subsequent performance by Excelitas has failed twice or is unreasonable and the defect complained of is not merely a minor defect. Claims for damages are governed by the provisions in clause 6.6 hereof.

6.4 The compensation of any loss or damage is excluded if and to the extent that such loss or damage is caused by the improper use, modification, assembly, installation and/or operation of the products of Excelitas, or by defective instructions of the customer, and not by a fault on the part of Excelitas. The liability of Excelitas for defects in materials which are supplied by the customer and processed by Excelitas is excluded if such defects are caused by the characteristics and properties of the materials so supplied. If defects in the materials supplied by the customer should render these materials unusable during their processing by Excelitas, the customer will nevertheless be obligated to reimburse Excelitas for its processing expenditure.

6.5 Any and all claims against Excelitas from the express assumption or acceptance of a guarantee, warranty or a procurement risk, or from the culpable injury to the life, body or health of any person, as well as any claims under the German Product Liability Act (ProdHG) and any other claims arising from a willful or grossly negligent breach of duty by Excelitas become statute-barred in accordance with the statutory provisions. Above and beyond the foregoing, any claims for material defects and defects of title become barred by the statute of limitations after twelve (12) months from the passing of the risk.

6.6 Excelitas will assume unlimited liability in cases where Excelitas has expressly assumed a guaranty/ warranty or a procurement risk, in the case of a culpable injury to the life, body or health of any person, for claims under the German Product Liability Act, and for other willful or grossly negligent breaches of duty by Excelitas. In the case of slight or ordinary negligence and damage to property or pecuniary losses caused thereby, Excelitas will assume liability only for its breach of essential contractual duties the performance of which is indispensable for the proper fulfillment of the contract and the performance of which the customer must be able to specifically rely upon; however, such liability of Excelitas is limited to the damage which is typical of the contract and which was foreseeable at the time of contracting. The liability of Excelitas for delay is limited to 0.5% of the value of the Service in delay per each completed week of such delay, up to a maximum rate of 5% of the said value. Any further liability for damages is excluded, irrespective of the legal nature of the claim asserted.

6.7 The foregoing limitations of liability apply on the merits and in terms of amount also to Excelitas' legal representatives, agents and employees and/or other persons in Excelitas' services.

## 7. Reservation of Title

7.1 Excelitas retains title to all products delivered until the customer has fully satisfied all of his payment obligations from the business relationship with Excelitas. This applies also if payments are made in satisfaction of specially designated claims, including claims from cheques and bills of exchange, from open bills or current account.

7.2 The customer shall have the right to resell, process, mix, blend or combine the goods subject to reservation of title with other items during his ordinary course of business until revocation by Excelitas, which revocation may be declared at any time and without giving reasons. A resale of the goods subject to reservation of title within the meaning herein defined extends also to the installation of such goods in ground and buildings, or their installation in facilities connected to buildings, or their use for the performance of other contracts.

7.3 The processing or transformation of the goods subject to reservation of title is made for Excelitas as the manufacturer within the meaning defined in Section 950 of the German Civil Code (BGB) without resulting in any obligation on the part of Excelitas. The processed or transformed goods shall constitute goods subject to the reservation of title within the meaning of these Terms of Sale. If the goods subject to reservation of title are processed or inseparably blended/combined with other items which are not owned by Excelitas, Excelitas acquires a co-ownership of the resulting new item in the ratio of the invoice value of the goods subject to reservation of title and the replacement value of the other items used at the time of such processing or blending/combining. If the goods subject to reservation of title are combined or inseparably blended with other items not owned by Excelitas into a uniform item which is to be regarded as main item, the customer hereby assigns to Excelitas a share of co-ownership which is proportionate to the customer's ownership of the main item. Excelitas hereby accepts this assignment. The customer will hold the property so created on behalf of Excelitas free of charge.

7.4 The customer shall insure the goods subject to reservation of title at his own cost against all standard risks, in particular against fire, burglary and water hazards, handle these goods with care and store them properly.

7.5 In the event of a resale of the goods subject to reservation of title by the customer, the customer hereby immediately assigns to Excelitas the purchase price claims against his own customers arising from such resale. If the customer resells the goods subject to reservation of title together with other items not delivered by Excelitas, the foregoing assignment applies only in the amount of the value of the goods subject to reservation of title which is specified in the invoice of Excelitas. In the case of a resale of items in which Excelitas has a co-ownership pursuant to clause 7.3, such assignment applies in the amount of Excelitas' co-ownership. The assigned claims serve as security in the same scope as the goods subject to reservation of title. If an assigned claim is included in a current account, the customer hereby immediately assigns to Excelitas a balance which corresponds to such claim from current account. Excelitas hereby accepts the said assignment of claims.

7.6 The customer shall have the right to collect, within his ordinary course of business, the claims assigned to him by Excelitas until revocation by Excelitas, which revocation may be declared at any time and for no specific reason; this collection right becomes automatically extinct without revocation as soon as the customer defaults in any of his payments to Excelitas. If payment is made by direct debiting, the customer will ensure by prior agreement with its bank. If payment is made by direct debiting, the customer will ensure by prior agreement with his bank that the amounts received are exempt from the bank's lien and that he is at all times able to meet his obligation to transfer his proceeds to Excelitas. At the request of Excelitas, the customer will inform his own customers of the assignment of future claims to Excelitas and provide Excelitas with any and all information and documentation which is required for the assertion of these claims.

7.7 If the aggregate value of the securities existing for Excelitas exceeds the claims of Excelitas by more than 10%, Excelitas will release additional securities of its own choice at the request of the customer.

7.8 Above and beyond the foregoing, the customer is not entitled to make any dispositions in respect of the goods subject to reservation of title (liens, pledging of security interests or other assignments) in respect of the claims specified in clause 7.5. In the event of an attachment or seizure of the goods subject to reservation of title, the customer will point out that these goods are the property of Excelitas and will notify Excelitas of such attachment or seizure without delay, also in writing.

7.9 If the customer is in default of payment and a grace period fixed by Excelitas has elapsed without payment being effected, Excelitas is entitled to take back the goods subject to reservation of title also if Excelitas has not rescinded the contract.

## 8. Weight Accounts for Precious Metals

8.1 In the commercial intercourse involving precious metals Excelitas maintains weight accounts. The precious metal weight accounts are maintained as current accounts per precious metal, on which any receivables from purchases and sales, services, in particular recycling services, as well as any other in- and outflows (such as precious metal transfers, provided metal) are booked by type and amount.

8.2 Any positive balance on a precious metal weight account constitutes a claim for delivery of physical precious metals in the respective amount. Physical return of the precious metals may take up to 10 working days after submitting a corresponding request depending on metal availability.

8.3 Excelitas regularly issues balance confirmations and precious metal account statements by which the parties' mutual claims for the delivery of precious metals during the indicated time period are offset and replaced by a claim to the balance of account. Any objections against a balance confirmation or a precious metal account statement for incorrectness or incompleteness must be raised by the customer no later than prior to the elapse of six (6) weeks after the customer's receipt of such balance confirmation or precious metal account statement. If the customer files the objection in writing, the dispatch of the written objection within the six-week period will be sufficient to meet the deadline. The absence of a timely objection will be deemed to constitute approval by the customer. Excelitas will specifically inform the customer of this consequence when issuing a balance confirmation or a precious metal account statement. The customer may demand a correction of the balance confirmation or the precious metal account statement also after the elapse of the aforementioned time period; always provided, however, that in such case the burden of proof for the unlawful debiting of the customer's metal account or the non-issuance of a credit that is due to the customer will rest on the customer.

## 9. Export

9.1 In the event that the import or export of the products or the fulfillment of any of Excelitas' contractual obligations hereto, is directly or indirectly prevented, restricted or interfered with due to an export or import restriction, sanction, quota or prohibition, or failing to receive a necessary licence or consent ("Export Restriction"), Excelitas shall, without incurring any liability, be excused from such performance to the extent and for the duration of such prevention, restriction or interference.

9.2 An Export Restriction shall also be deemed to exist, if the fulfillment of Excelitas' contractual obligations is not legally prevented, restricted or interfered with, but Excelitas or an affiliated company of Excelitas may be subject to civil or criminal sanctions due to national or international regulations, in particular export control regulations or other sanctions.

9.3 If the Export Restriction prevents, restricts or interferes with the performance of Excelitas' contractual obligations for a continuous period of more than three months, each party is entitled to terminate the respective purchase order(s), without incurring any liability in this respect, by giving written notice to the other party.

9.4 Upon request of Excelitas, customer shall provide Excelitas with all information concerning the final recipient, the final destination, the intended use of the products and, if required, an end-use certificate.

## 10. Choice of Law, Place of Performance, Place of Jurisdiction

10.1 These Terms of Sale and any agreement between Excelitas and the customer shall be governed by and construed in accordance with the law of Germany, without giving effect to its conflict of law provisions and without giving effect to the UN Convention on Contracts for the International Sale of Goods of 11 April 1980 (CISG).

10.2 The place of performance for the Services of Excelitas is the factory/works from which delivery is effected; the place of performance for the customer's payments is Excelitas' registered place of business.

10.3 The place of jurisdiction, also for actions on checks and bills of exchange, is the registered place of business of Excelitas. However, Excelitas shall be entitled to recourse in any court having jurisdiction as to the respective legal action under the laws of Germany or under the laws of the country in which the customer has his registered place of business.