**General conditions for Eldfast deliveries**

**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 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.

**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.

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 MERCHANABILITY, 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 MERCHANABILITY, 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

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 of

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

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.