

The ERWEKA GmbH General Terms and Conditions of Purchase¹

1. SCOPE, FORM

- 1.1. These General Terms and Conditions of Purchase (GTCP) apply to all business relations between ERWEKA GmbH ("ERWEKA") and its business partners and suppliers ("Agents"). These GTCP only apply if the Agent is a contractor as defined in §14 of the German Civil Code (BGB), a legal entity under public law, or a special public fund under public law.
- 1.2. These GTCP apply in particular to contracts for the sale and/or delivery of movable objects ("goods"), irrespective of whether the Agent manufactures the goods himself or purchases them from suppliers (§§ 433, 651 BGB). Unless otherwise agreed, the GTCP in the version valid at the time of ERWEKA's order or at least in the version last communicated by ERWEKA in text form shall also apply as a framework agreement for similar future contracts, without ERWEKA having to refer to them again in each individual case.
- 1.3. These General Terms and Conditions of Purchase apply exclusively. Any differing, conflicting or additional general terms and conditions of the Agent shall only become an integral part of any contract to the extent to which we expressly agree to them. This requirement of consent applies in all cases, for example even if we accept the seller's deliveries without reservation while being aware of the seller's general terms and conditions.
- 1.4. Any individual agreements reached with the Agent (including ancillary agreements, supplements and amendments) shall in all cases have precedence over these GTCPs. Subject to evidence to the contrary, a written contract or written confirmation on the part of ERWEKA shall be authoritative for the content of such agreements.
- 1.5. Legally relevant declarations and notifications of the Agent with regard to the contract (e.g. setting of a deadline, reminder, withdrawal) must be made in writing, i.e. in written or text form (e.g. letter, e-mail, fax). Statutory form requirements and further evidence, in particular in cases of doubt about the legitimacy of the declarant, remain unaffected.
- 1.6. Any references to the validity of the statutory regulations are for the purposes of clarification only. Even without such clarification, the statutory provisions apply, unless directly modified or expressly excluded by these GTCP.

¹ Valid from 7.5.2018

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2. PLACING AN ORDER, CONCLUSION OF CONTRACT

- 2.1. Orders placed by ERWEKA shall only become effective upon written order by ERWEKA. Orders placed orally or by telephone require written confirmation by ERWEKA to be binding.
- 2.2. If the Agent does not accept the order within 14 days, ERWEKA shall be entitled to revoke the order.
- 2.3. If the Agent's confirmation deviates from the order, this must be clearly indicated by the supplier. ERWEKA shall only be bound to the order if it has expressly consented to the deviations. Unconditional acceptance of the delivery does not constitute consent in this sense.

3. DELIVERY PERIOD

- 3.1. Compliance with applicable delivery deadlines is an integral part of proper performance of the contract. An agreed delivery period commences on the day the order is placed. The date of receipt of the goods at the point of use specified by ERWEKA shall be decisive for compliance with the delivery date or the delivery period, even if it is a third-party delivery to another supplier. If no deadline has been agreed, delivery must be made immediately.
- 3.2. As soon as the Agent has reason to believe that he will not be able to deliver all or part of the goods in time, he must notify the delay immediately, stating the reasons and probable duration, without his contractual obligations thereby being changed. A delivery period shall only be deemed to have been extended if ERWEKA has expressly confirmed this.
- 3.3. If the agreed deadlines are not met for reasons for which the Agent is responsible, ERWEKA shall be entitled to withdraw from the contract at ERWEKA's discretion, to obtain replacement from a third party and/or to claim damages after expiry of a reasonable grace period set by ERWEKA, notwithstanding any further statutory claims.

4. EXECUTION

Excess or short deliveries are not permitted unless ERWEKA has expressly agreed to this.

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5. SHIPPING

- 5.1. Unless otherwise specified, deliveries shall be made DDP (Incoterms 2010) to the place designated by ERWEKA, including packaging and preservation. If ERWEKA does not specify a specific mode of dispatch, it is to be sent by the more cost-effective mode of dispatch in each case.
- 5.2. The risk of accidental loss and accidental deterioration of the item shall pass to ERWEKA upon handover at the place of performance. If an inspection of the goods has been agreed upon, this is decisive for the transfer of risk. In all other respects, the statutory provisions of the law governing contracts for work and services shall also apply accordingly in the event of acceptance. If ERWEKA is in default of acceptance, this is equivalent to delivery or acceptance.

Statutory provisions shall apply in the event of a default of acceptance. However, the supplier must then expressly offer ERWEKA its service even if a defined or definable calendar period has been agreed on our part for any activity or involvement (such as the provision of material). If ERWEKA is in default of acceptance, the Agent may demand reimbursement of his additional expenses in accordance with the statutory provisions (§ 304 BGB). If the contract relates to a non-fungible item manufactured by the supplier (custom made), the supplier shall only be entitled to more extensive rights if we have undertaken to cooperate and are responsible for the failure of the cooperation.

- 5.3. The dispatch note must be sent to ERWEKA in duplicate on the day of loading. The scope of the delivery must be sufficiently clear. Accordingly, an exact description of the delivery item, the quantity (number of items), dimensions, weights etc. as well as details of ERWEKA's shipping data and the order number are required. Invoices are not considered to be dispatch notes.

6. WARRANTY

- 6.1. The statutory provisions shall apply with regard to ERWEKA's rights in case of material defects and defects in title of the goods (including incorrect and short delivery as well as improper assembly and defective assembly, operating instructions or directions for use) and in the event of other breaches of duty by the Agent, unless otherwise specified below.
- 6.2. In accordance with the statutory provisions, the Agent shall be liable in particular for the goods having the agreed quality when the risk is transferred to us. In any case, those product descriptions which – in particular through designation or reference in our order – are the subject matter of the respective contract or have been included in the contract in the same way as these GTCP shall be deemed to be an agreement on quality. It makes no difference whether the product description comes from ERWEKA, the Agent or the manufacturer.

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- 6.3. Notwithstanding § 442 para. 1 sentence 2 of the German Civil Code (BGB) we are entitled to claims for defects without restriction even if the defect remained unknown to us due to gross negligence at the time of conclusion of the contract.
- 6.4. The statutory provisions (§§ 377, 381 German Commercial Code (HGB)) apply to the commercial duty of inspection and notification of defects, with the following proviso: Our duty of inspection is limited to defects which come to light during our incoming goods inspection during superficial examination, including the delivery documents (e.g. transport damage, wrong and short delivery), or which are recognisable during our quality control in random sampling procedures. If acceptance has been agreed, there is no inspection obligation. In all other respects, it depends on the extent to which an inspection is feasible in the ordinary course of business, taking into account the circumstances of the individual case. Our obligation to report defects that are subsequently discovered remains unaffected. Irrespective of our duty to inspect the goods, our complaint (notice of defects) shall in any case be deemed to be immediate and timely if it is sent within 10 working days of discovery or, in the case of obvious defects, of delivery.
- 6.5. The Agent is obliged to check the notice of defects made by ERWEKA within 10 working days. The period begins with receipt of the notice of defects by the Agent. If the notice of defects is not processed within this period, the defect notified by ERWEKA shall be deemed to have been accepted by the Agent. However, this shall only apply to the extent that ERWEKA has informed the Agent upon notification of the defect that the failure to carry out the inspection within the time limit shall be tantamount to an acknowledgement of the defect.
- 6.6. Subsequent performance shall also include removal of the defective goods and re-installation, insofar as the goods have been incorporated into another item in accordance with their intended purpose. The costs incurred by the Agent for the purpose of inspection and subsequent performance (including any removal and installation costs) shall be borne by the Agent, even if it turns out that no defect actually existed. Our liability for damages in the event of an unjustified demand to rectify defects shall remain unaffected; in this respect, however, we shall only be liable if we have knowingly or grossly negligently failed to recognise that no defect existed. The Agent may demand the return of the defective parts replaced in the course of the subsequent performance, as well as the dispatch of the defective parts at his own expense.
- 6.7. If the Agent does not fulfil his obligation to subsequent performance – at ERWEKA's discretion by eliminating the defect (remedy) or by delivering a defect-free item (replacement delivery) – within a reasonable period set by ERWEKA, we may remedy the defect ourselves and demand reimbursement from the seller of the expenses required for this, or a corresponding advance payment. If the seller's subsequent performance has failed or is unreasonable for us (e.g. due to particular urgency, danger to operational safety or imminent disproportionate damage), no time limit is required; we shall inform the seller immediately, if possible in advance, of such circumstances.

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- 6.8. In the case of material defect or defect of title, ERWEKA is furthermore entitled to reduce the purchase price or to withdraw from the contract, in accordance with the statutory provisions. In addition, the statutory provisions entitle ERWEKA to compensation for damages and reimbursement of expenses.

7. THIRD PARTY RIGHTS, PRODUCT LIABILITY

- 7.1. If rights are asserted by third parties, ERWEKA may demand that the Agent indemnify ERWEKA from all claims and compensation for the damage incurred by ERWEKA, including the costs of legal defence.
- 7.2. If the Agent is responsible for damage to a product, he must indemnify ERWEKA against claims by third parties insofar as the cause lies within his sphere of control and organisation and he is liable himself in the external relationship.
- 7.3. Within the scope of his obligation of indemnification, in accordance with § 683, 670 of the German Civil Code (BGB) the Agent shall bear expenses that result from or are in connection with a third party claim, including product recalls carried out by ERWEKA. We shall notify the Agent about the content and extent of the recall action and give him the opportunity to make representations, to the extent possible and reasonable. All other claims shall remain unaffected.
- 7.4. The Agent is obliged to take out and maintain a product liability insurance against bodily injury and damage to property with a flat-rate coverage amount and shall submit such insurance policy upon request.

8. DRAWINGS, KNOW-HOW AND OTHER DOCUMENTS, SPARE PARTS

- 8.1. Documents or objects of any kind which ERWEKA makes available to the Agent, such as samples, drawings, models and the like, shall remain the property of ERWEKA and may not be used for other purposes or made accessible to third parties. These documents shall be returned to ERWEKA without special request in the event that an order is not placed and if they are no longer required to complete the order. After completion of the order, the Agent must enclose all documents described above with the delivery of the subject matter of the order. If this data has been made available electronically, it must be deleted from all data carriers. Otherwise ERWEKA is entitled to withhold an appropriate part of its consideration until its return, or to claim compensation.
- 8.2. Documents provided by ERWEKA shall be checked by the Agent for completeness and their internal dimensional accuracy before submitting the offer or commencement of production and shall be corrected if necessary after consultation with ERWEKA. Any missing drawings must be requested from ERWEKA immediately.

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- 8.3. The production equipment manufactured by the Agent according to specifications or documents, such as dies, gauges, matrices, models, samples, tools, moulds, welding templates, CNC programmes and the like, may only be used by the Agent to execute orders for ERWEKA insofar as the costs for their manufacture or procurement have been borne by ERWEKA. In this case, they may neither be used by the Agent for his own purposes nor offered or made accessible to third parties.
- 8.4. All documents and means of production must be insured by the Agent against damage and loss as long as they are in the Agent's possession.
- 8.5. After execution of the delivery/service, the Agent shall surrender to ERWEKA the drawings, calculations and other technical documents relating to the delivery or service item in the contractually agreed scope corresponding to the actual execution. These documents shall be updated as soon as subsequent changes are made to the delivery item. The Agent is obliged to transfer ownership of these documents to ERWEKA without further costs, provided that the preparation of these documents was part of the Agent's service as agreed in the individual contract.
- 8.6. ERWEKA or third parties commissioned by ERWEKA may use these documents free of charge to carry out repairs and modifications and to produce spare parts.
- 8.7. For built-in parts procured according to lists and catalogues, the documents supplied by the manufacturer shall suffice insofar as ERWEKA requires them for repairs and/or new purchases.
- 8.8. All engineering documentation for which the costs have been borne by ERWEKA belongs to ERWEKA. This applies in particular to drawings, parts lists, software developments, etc. The Agent undertakes to grant ERWEKA the unrestricted right to use this documentation, free of charge.
- 8.9. This provision shall apply accordingly to the know-how made available to the Agent by ERWEKA.

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9. SOFTWARE

- 9.1. Insofar as the scope of delivery includes non-standardised software, the Agent agrees, for a reasonable fee, to make changes/improvements to the software in accordance with our specifications, for a period of 5 years from delivery of the delivery item. If the software originates from preliminary suppliers, the Agent shall obligate them accordingly, insofar as he is able to do so. The changes must not impair the existing functions of the software. The Agent shall fully test the software in this respect for appropriate efficacy. The program structure must not be affected. The Agent shall provide ERWEKA with detailed, comprehensible documentation including source and machine code together with the associated documentation and detailed written user documentation as well as a functional description as a basis for the preparation of instructions for use.
- 9.2. All changes must be clearly marked and made available to ERWEKA with the appropriate history and versioning.
- 9.3. The aforementioned documentation must be available to ERWEKA by the time of invoicing at the latest, otherwise the corresponding delivery invoice will not become due.

10. QUALITY MANAGEMENT

- 10.1. The Agent must constantly monitor the quality of his deliveries and services. He is obliged to observe the quality assurance agreement (to be requested from the relevant department). Changes to the delivery item require the prior consent of ERWEKA. For all products delivered to ERWEKA, the Agent shall document in writing when, how and by whom defect-free manufacture of the delivery has been ensured. The details are regulated in the applicable quality assurance agreement. Preliminary suppliers shall be obligated accordingly.
- 10.2. All applicable safety regulations according to the current state of the art as well as the accepted engineering codes of practice shall be taken into account, in particular relevant laws, EU directives, technical standards and similar regulations must be observed.

11. INVOICING AND PAYMENT

- 11.1. Invoices are to be sent to ERWEKA as a single copy. A separate invoice must be created for each order number. Each invoice must show the ERWEKA order number.
- 11.2. Unless otherwise agreed in individual cases, the price includes all the Agent's services and ancillary performances (e.g. assembly, installation) as well as all ancillary costs (e.g. proper packaging, transport costs including possible transport and liability insurance).

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- 11.3. Unless otherwise agreed, ERWEKA shall make payments in euros at its discretion either within 14 calendar days less 3% discount or within 30 calendar days after complete receipt of the delivery/service and proper invoicing. In the case of bank transfers, payment has been made in a timely fashion if our transfer order is received by our bank before the payment deadline; we are not responsible for delays by the banks involved in the payment process.
- 11.4. ERWEKA does not owe interest on maturity. The statutory provisions shall apply to default in payment.
- 11.5. ERWEKA is entitled, within the scope of the law, to the rights of offsetting and retention as well as the right to the defence of lack of performance of the contract. In particular, ERWEKA shall be entitled to withhold due payments as long as we are still entitled to claims towards the seller due to incomplete or defective services.
- 11.6. The seller has a right of offset or retention only due to legally established or undisputed counterclaims.

12. RETENTION OF TITLE AND TRANSFER BY WAY OF SECURITY

- 12.1. Goods made available to the Agent by ERWEKA remain the property of ERWEKA. Should a new item be created by processing, installation or the like, co-ownership of this item is agreed in favour of ERWEKA in the proportion in which the value of the goods delivered by ERWEKA is in relation to the value of the new items.
- 12.2. ERWEKA shall become co-owner by way of security of the delivery item manufactured or being processed at the Agent at the extent of the advance payments in proportion to the full contractually agreed remuneration (excluding transport costs and other ancillary costs).
- 12.3. The transfer of ownership of the goods to us must be carried out unconditionally and regardless of the payment of the price. However, if in specific cases we accept an offer from the seller to transfer ownership that is conditional on the payment of the purchase price, the seller's retention of title expires, at the latest, upon payment of the purchase price for the delivered goods. We remain authorised in the ordinary course of business to resell the goods under advance assignment of the resulting claim, also before the payment of the purchase price (alternatively application of the simple retention of title extended to the resale). Excepted from this in any case are all other forms of retention of title, particularly the extended or forwarded retention of title, as well as the retention of title extended for further processing.

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13. CONTRACTUAL PENALTIES

13.1. If the delivery dates to be observed by the Agent are not adhered to, ERWEKA shall be entitled to impose a contractual penalty to the sum of 2% per week or part thereof of the delay, provided that the Agent is responsible for the delay in delivery.

13.2. Contractual penalties are calculated on the basis of the total order value. Calculation begins on the first Sunday after expiry of the agreed delivery date.

The Agent shall pay the contractual penalties to the Principal in the form of a credit note.

The upper limit for all contractual penalties is a maximum of 15% of the total order value.

The contractual penalties are deemed to have been agreed and do not require any additional notice on the part of ERWEKA prior to acceptance of the delivery, service or documentation. ERWEKA may also demand contractual penalties after acceptance of the services.

Payment of the contractual penalty does not relieve the Agent from the obligation to deliver the goods or service in accordance with the terms of the contract, nor of the obligation to compensate for damage caused by the delay.

ERWEKA shall be entitled to withdraw from the contract if the Agent is in default of delivery for more than 4 weeks insofar as there is no fault on the part of ERWEKA. In such case, despite the withdrawal the Agent must pay the stipulated contractual penalty and compensate ERWEKA for the damage incurred in accordance with the statutory provisions.

13.3. If the Agent does not meet the deadlines for the delivery of planning and shipping documents, he shall also incur a contractual penalty in the amount of 2% per document and commenced week of overrun. The total sum of the resulting contractual penalty shall not exceed 5% of the total net order value.

13.4. Contractual penalties paid by the Agent shall be offset against claims for damages from ERWEKA to which the Agent is entitled.

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14. LIMITATION PERIODS

- 14.1. The mutual claims of the Contractual Parties expire in accordance with the statutory provisions, unless hereinafter otherwise agreed.
- 14.2. Notwithstanding section § 438, paragraph 1 No. 3 of the German Civil Code (BGB), the general statute of limitations is 3 years from the transfer of risk. Insofar as acceptance has been agreed, the limitation period commences upon acceptance. The 3-year limitation period shall also apply accordingly to claims arising from defects of title, whereby the statutory limitation period for third party claims to surrender in rem (§ 438 para. 1 No. 1 BGB) remains unaffected; furthermore, claims arising from defects of title shall under no circumstances lapse, as long as the third party can still assert the right against ERWEKA – in particular in the absence of a limitation period.
- 14.3. The limitation periods of the law governing the sale of goods apply, including the above extension – within the scope of the law – for all contractual claims for defects. As far as we are entitled to non-contractual claims for damages due to a defect, the normal statutory limitation period applies (§§ 195, 199 BGB), insofar as in a particular case the application of the limitation periods of the law governing the sale of goods does not lead to a longer limitation period.

15. DATA PROTECTION

- 15.1. The Agent stores and processes ERWEKA's personal data in order to process the contractual relationships concluded. The data will also be used for the further maintenance of customer relations, provided that ERWEKA has not objected to this in accordance with Section 4.2. Article 21 of the General Data Protection Regulation (GDPR) paragraph 3.
- 15.2. The processing and storage of personal data of ERWEKA employees must be ensured by suitable technical and organisational measures on the part of the Agent, so that the processing is carried out in accordance with the legal requirements and the protection of the rights of the data subjects is guaranteed.
- 15.3. At ERWEKA's request, the Agent shall transfer the processing procedure with regard to the handling of personal data to its designated data protection officer.

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16. FINAL PROVISIONS

- 16.1. Oral declarations and oral ancillary agreements are only binding insofar as they have been confirmed in writing by ERWEKA.
- 16.2. The place of performance for deliveries shall be the shipping address specified by ERWEKA, and in the absence of such information, the ERWEKA plant.
- 16.3. The place of jurisdiction for all disputes arising from the contract, including bill of exchange and cheque litigation relating to it, is Heusenstamm, Germany, insofar as this can be legally agreed. However, ERWEKA shall also be entitled to bring legal action at any place of jurisdiction where the Agent is established. Statutory provisions that take precedence, in particular with regard to exclusive responsibilities, remain unaffected.
- 16.4. Should declarations be made simultaneously in several languages by the parties within the framework of contract execution, the German version shall prevail in each case.
- 16.5. These GTCP and the contractual relationship between ERWEKA and the Agent shall be governed by the law of the Federal Republic of Germany to the exclusion of international uniform law, in particular the United Nations Convention on Contracts for the International Sale of Goods.
- 16.6. Should any provision of ERWEKA's Terms and Conditions of Purchase or of supplementary agreements be or become invalid, the remaining provisions shall thereby remain unaffected. The invalid provision shall be replaced by the wording that is best suited to effectively bring about the purpose of this provision.
- 16.7. The Agent undertakes to treat confidentially all commercial and technical details that are not publicly available, which have become available to him through the business relationship, and to not make them accessible to any third party.
- 16.8. In the event of discrepancies between the German and English version of these GTCP, the German version shall prevail.

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IBAN: DE 50 6005 0101 0001 3793 69
SWIFT: SOLA DE ST 600

Postbank
IBAN: DE 89 5001 0060 0036 7606 09
SWIFT: PBNK DE FF

Frankfurter Sparkasse
IBAN: DE 39 5005 0201 0000 0173 84
SWIFT: HELA DE F1 822

Commerzbank
IBAN: DE 51 5054 0028 0499 6328 00
SWIFT: COBA DE FF 505