

# GENERAL CONDITIONS OF SALE – Erwin Telle GmbH

## Version 01/2018

### I. Validity/Offers

1. These General Conditions of Sale (“Conditions”) shall apply to all present and future contracts with entrepreneurs, governmental entities, or special governmental estates in the meaning of sec. 310 para. 1 BGB (German Civil Code) in regard to deliveries and other services rendered. Buyer's purchase conditions shall not be binding, even if we do not expressly object to them again after their receipt.

2. Our offers are subject to change without notice. Any agreements, especially oral collateral agreements, promises, guaranties and other assurances given by our sales staff before or at conclusion of the contract shall be binding only once they have been confirmed by us in text form.

3. Commercial terms such as „EXW“, „FOB“ and „CIF“ shall be interpreted in accordance with the INCOTERMS in their current version.

### II. Prices

1. Our prices are free our business, excluding packaging, unless something else is agreed upon. Statutory Value Added Tax will be added.

2. If the items are to be delivered packaged, we will charge the packaging at cost price. We will take back the packaging delivered according to statutory provisions if it is returned to us freight free within a reasonable period of time.

### III. Payment and Set-Off

1. Payment shall be made immediately without cash discounts so that we can dispose of the sum on the due date. Unless otherwise agreed, our invoices are due 14 days from date of invoice. . The payment must take place so that the amount invoiced is available to us at the latest on the due date. The Buyer will be in default at the latest 10 days after payment is due and without the need for a reminder.

2. Cash discount periods granted shall begin with the invoice date. Any cash discount agreed to al-ways applies to the value of the invoice excluding freight and has a pre-requisite that all amounts due by the Buyer have been paid at the time of the discount.

3. Invoices for amounts under EUR 50.00 as well as for assembly, repairs, forms and tooling costs are due immediately without deductions.

4. Counterclaims which we have contested or which have not yet been legally determined to be final and conclusive do not entitle Buyer to withhold or offset payments. This shall not apply if the counter-claims result from the same contractual relation and/ or would entitle the Buyer to refuse the fulfilment of his contractual obligations under Section 320 of the German Civil Code.

5. When payment is not on time, at the latest by default, we are authorized to invoice interest at the level of the appropriate bank rate for overdraft credits, at a minimum, however, at the statutory default interest. Additionally, we charge a default allowance of EUR 40.00. A claim for further damages due to this delay remains reserved.

6. Should it become evident after the conclusion of the contract, that payment is jeopardised by the Buyer's ability to perform, or should other circumstances arise which show a material deterioration in the Buyer's ability to perform we are entitled to refrain from any further performance and exercise the rights of Sec. 321 of the German Civil Code. This also applies in case the performance of our contractual obligation is not yet due. In such cases, we are also authorised to make due any and all of our accounts receivable resulting from the same legal relationship. Buyer's ability to perform shall be deemed jeopardised also if the Buyer is for at least three weeks in default with a considerable portion (10 % or more) of the amounts due; further, in case of a considerable downgrading of his existing credit limit by our credit insurance.

### IV. Delivery Deadlines

1. Delivery deadlines and dates are considered to have been met when the goods have left our plant by the time due.

2. Our commitment to deliver is subject to our correct and timely self-delivery unless we are responsible for the deficient or late self-delivery.

3. Force majeure events entitle us to postpone the deliveries for the period of the hold-up and an appropriate start-up time. This also applies if such events occur during a present default. Force majeure is the equivalent of monetary or trade measures or other acts of sovereignty, strikes, lockouts, break-downs not caused by us, obstruction of transport routes, delays in clearing the goods for import and in customs clearance as well as of all other circumstances, that essentially impede or render the deliveries and performances impossible, without being caused by us. Thereby, it is irrelevant if the circumstances occur at our place, the delivering plant or at another presupplier. If performance becomes unacceptable for one of the parties due to the abovementioned events, this party shall be able to with-draw from the contract by instant declaration in text form.

### V. Retention of Title

1. All goods delivered by us remain our property (Reserved Property) until all claims arising from our business contacts have been settled, regardless of the origin of the claims

and including future or conditional claims (current account reservation). The current account reservation is not applicable in in prepayment or delivery vs payment cases. In these cases, the goods remain our property until the purchase price for these goods has been paid in full.

2. With regard to processing or manufacturing of the Reserved Property, we shall be deemed to be manufacturer within the meaning of § 950 BGB (German Civil Code) without committing us in any way. The processed or manufactured goods shall be regarded as Reserved Property within the meaning of clause V/1 of these Conditions. When the Buyer processes, combines or mixes the reserved goods with other goods, we retain co-ownership in the new product in the relation of the invoice value of the reserved goods to the invoice value of the other goods produced. If our property disappears due to combination or mixture, the Buyer transfers to us already his property rights in the new goods or items in relationship to the invoice value of the reserved goods and will retain them for us without cost. The resulting co-ownership counts as Reserved Property in the meaning of Section V/1 of these Conditions.

3. The Buyer may re-sell the Reserved Property only in his normal business relations and to normal business conditions as long as he is not in arrears and only on the condition that the claims from the related sale are transferred to us according to Sections V/4 to V/6 of these Conditions. He is not authorized to use the Reserved Property for any other purpose.

4. The claims of the Buyer from the further sale of the Reserved Property count already as transferred to us. They count, in the same relationship, as security as does the Reserved Property. If the Reserved Property is sold by the Buyer together with other goods not sold by us, the assignment of the claim from the further sale is only in the amount of the sales value of the Reserved Property. With the sale of goods on which we have co-ownership according to Section V/2 of these Conditions, the assignment of the claim is in the amount of this co-ownership.

5. The Buyer is authorized to collect claims from the further sale until we exercise our rights of revocation at any time. In addition, when Buyer defaults in payment we are entitled, after expiration of an appropriate extension period, to take back the goods delivered and to request that they not be sold or processed. This taking back shall not constitute a withdrawal from the contract. At our request, the Buyer is required to inform his customers immediately about the assignment to us – as far as we do not do it ourselves – and to provide us with the necessary information and details to accomplish collection.

6. The Buyer must inform us immediately about any seizure or other adverse actions on the part of third parties.

7. Should the value of the existing securities exceed the value of the secured claims by more than 50 %, we are required to release securities of our choice upon demand of the Buyer.

### VI. Carrying out Deliveries

1. When the goods are handed over to a forwarding agent or a carrier, at the latest, however, when the goods leave the warehouse or – with direct sales – the supplying plant, the risk is transferred to the Buyer in all cases, even those which are prepaid or free house deliveries. The Buyer must bear the responsibilities and costs of unloading. We shall obtain insurance only at the instruction of and at the cost of the Buyer.

2. We are permitted to make partial deliveries in reasonable amounts. With goods we produce, deliveries are permitted which are up to 10 % more or less than the quantity ordered.

3. With call contracts, we are permitted to produce or have the total quantity produced at one time. Any changes desired cannot be considered after the order has been given unless this has been specifically agreed to. Unless there is a firm agreement, call up times and quantities can only take place according to our supply or manufacturing capabilities. Should the goods not be called according to the contract, after a reasonable additional period of time we are authorized to invoice them as having been delivered.

4. For business with continuous deliveries we must receive release orders and type categories for roughly the same amount per month. If the release orders or type categories are not given on time, we are entitled after the expiry of a fixed period to make the type categories and deliver the goods or to cancel the outstanding part of the contract and demand compensation instead of payment. At the end of the contract, Buyer has to accept and pay for the remaining goods on stock.

### VII. Liability for Defects

1. Any of properties of the goods, in particular to their quality, grade and measures will follow the agreed standards and, in default of such an agreement, any DIN and EN-standards which may be applicable at the time of the conclusion of the contract, and in absence of such standards the trade use and practice. Any reference to standards and to similar guidelines as well as to quality, grade, measure, weight and usage of the goods, any information given in drawings and illustrations as well as any predictions given in our advertising material shall not be regarded as representations or guaranties, unless we have expressly referred to them in text form. The same shall apply to declara-

rations of conformity and to similar characteristics such as CE and GS signs. The Buyer shall bare any risks as to the suitability and usage of the goods.

2. As to the Buyer's obligations to examine the goods and to notify us of any defects, the statutory provisions of the German HGB (Commercial Code) shall apply, subject to the following conditions:

- The Buyer shall examine the goods immediately after delivery with regard to the properties relevant for the use of the goods and shall notify us in text form of any defects of the goods immediately thereafter. In case the Buyer intends to install the goods into another object or attach the goods to another object, the properties relevant for the installation or the attachment include the inner properties of the goods. The Buyer's obligation to examine the goods exists even in cases where an inspection certificate or any other material certificate is provided. Defects which, even upon most careful inspection, cannot be discovered immediately after delivery must be notified to us in text form immediately after their discovery.

- In case the Buyer, in the event of an installation of the goods into another object or attachment of the goods to another object, fails to inspect the properties of the goods relevant for the designated end use at least at random prior to installation resp. attachment (e.g. by function tests or a trial installation), this represents a particularly grave disregard of the care required in the ordinary course of business (gross negligence) in relation to us. In such a case, the Buyer may assert any rights in relation to these properties only if the defect had been deliberately concealed or in case of a guarantee for the respective quality of the goods.

3. In case the Buyer discovers defects of the goods when inspecting the goods or thereafter, he shall make the defective goods or samples thereof available to us in order to give us the possibility to convince ourselves of the defect within a reasonable period of time. Otherwise, the Buyer cannot claim that the goods are defective.

4. In case the goods are deficient, the Buyer shall be entitled to his statutory rights under the German BGB (Civil Code) - subject to the conditions that we shall be entitled to choose between repair and delivery of substitute goods and that minor (insignificant) defects shall limit the Buyer's rights only to reduce the purchase price (reduction).

5. In case the Buyer has installed the goods, in accordance with the goods' type and designated use, into another object or attached the goods to another object, he may claim reimbursement of his necessary costs for the dismantling of the defective goods and the installation or attachment of goods free from defects ("dismantling and installation costs") only in accordance with the following provisions:

- Necessary dismantling and installation costs are only those, which directly result from the dismantling resp. removal of the defective goods and the installation resp. attachment of identical goods, have accrued on the basis of competitive market prices and have been proven by the Buyer by appropriate documents in text form.

- Additional costs of the Buyer for consequential damages such as e.g. loss of profit, down time costs or additional costs for cover purchases are no dismantling and installation costs and therefore not recoverable under Sect. 439 para. 3 of the German Civil Code. The same applies for sorting costs and for supplementary costs resulting from the fact that the sold and delivered goods are at a place other than the agreed place of delivery.

- The Buyer is not entitled to request advance payments for dismantling and installations cost or other expenses required for the remedy of the defective delivery.

6. In case, on an individual basis, the costs incurred by the Buyer for the remedy of the defective delivery are disproportionate, namely with regard to the purchase price of the goods being free from defects and under consideration of the importance of the infringement of the contract, we are entitled to refuse the reimbursement of such costs. Disproportionate costs are especially given in case the costs requested by the Buyer, in particular dismantling and installation costs, exceed 150 % of the purchase price of the goods invoiced by us or 200 % of the value of the defective merchandise.

7. In accordance with Section VIII of these Conditions, additional claims are not acceptable. This applies in particular to claims for

- damages which did not occur to the goods themselves (consequential damages),

- costs of the Buyer related to the self-remedy of defects without the legal requirements being fulfilled and

- dismantling and installation costs, in case due to a transformation undertaken by the buyer before the installation of the goods into another object or before attachment of the goods to another object, the installed or attached goods provide substantially different features than the original goods delivered by us or have been transformed to new products.

8. An unjustified request to remedy an alleged defect entitles us to claim compensation for damages or costs incurred if the Buyer could have recognized upon careful inspection that the goods were not defective.

## **VIII. General Limitations of Liability and Statute of Limitations**

1. We are liable for breach of contractual and non-contractual duties, especially those due to impossibility, delay, false advice, culpa in contrahendo and tortuous acts – also those of our managerial staff and other personnel – only in cases of intent or gross negligence and shall in case of gross negligence be limited to foreseeable losses and damages characteristic for the type of contract in question.

2. The restrictions in VIII.1 shall not apply to such cases where we breach our essential contractual obligations. Considered essential to the contract are the obligations for prompt supply free of defects and duties of consultation, protection and care which serve the purpose of protecting Buyer or its personnel against considerable damages. The restrictions shall neither pertain to damages to life, to the body or to health caused by our fault nor to any cases where we have guaranteed certain characteristics of the goods. Nor shall such clause affect our statutory liability laid down in the Product Liability Act. Any statutory rules regarding the burden of proof shall remain unaffected by the aforesaid.

3. Should we default on a delivery of performance, the Buyer shall be entitled to damages due to this delay; in case of slight negligence, however, the claim of the Buyer is restricted to maximum 10 % of the agreed purchase price for the performance in default. The rights of the Buyer for damages instead of performance in accordance with No. VIII.1 and VIII.3 remain unaffected by the aforesaid.

4. Unless otherwise agreed to, any contractual claims which the Buyer is entitled to in connection with the delivery of the goods shall fall under the statute of limitations within a period of one year after the goods have been delivered to the Buyer. This shall not apply insofar as Section 438 para. 1 No. 2, Section 478, 479 or Section 634 lit a) para. 1 No. 2 of the German Civil Code BGB require longer limitation periods, in cases of injuries to life, body and health, breaches of contract caused by our wrongful intent or by our gross negligence or in cases where a defect is fraudulently concealed. Our substitute deliveries shall not cause the renewal of the initial limitation period.

## **IX. Copyrights**

1. We reserve our property and our copyrights of all cost estimates, drafts, drawings and other supporting papers. They may be made available to third parties only after our agreement. Drawings and other supporting documents relating to offers must be returned at our request.

2. So far as we have delivered items according to drawings, models, samples or other supporting documents supplied by the Buyer, he takes over the liability that protected rights of third parties have not been damaged. If third parties, with reference to protected rights, do not permit the manufacture and delivery of those types of items, we are permitted – without being required to check the legal situation – to stop all further activities and to request damages when the Buyer is liable. In addition, the Buyer is responsible to immediately hold us free from all claims of third parties in this connection.

## **X. Test Parts, Forms, Tooling**

1. If the Buyer is required to provide parts to complete the order, they must be delivered free of cost to the place of production in the required quantity, or with an additional quantity to cover any scrap, on time, without cost and free of any defects. If this does not occur, any resulting costs and other consequences will be for his account.

2. The construction of experimental parts, including the costs for forms and tools are for the account of the Buyer.

3. Our liability for tools, forms and other manufacturing devices provided by the Buyer is limited to the care which we would normally apply in our own affairs. The Buyer takes over the cost for maintenance and repair. Our safekeeping responsibility ends – independently of the ownership rights of the Buyer – at the latest two years after the last manufacturing using the form or tool.

## **XI. Place of Performance, Jurisdiction and Applicable Law**

1. The place of performance for our deliveries, for subsequent performance and for payments of the Buyer is the place of our warehouse. The place of jurisdiction is the location of our main place of business. We may also sue the Buyer at his domicile.

2. In addition to these Conditions, German law shall apply for the legal relationships between us and the Buyer, excluding the provisions of the United Nations Convention on Contracts for the International Sale of Goods from 11.04.1980 (CISG).

## **XII. Authoritative Version**

In case of doubt, the German version of these General Conditions of Sale shall prevail.