

General Terms and Conditions of Purchase of Erni Deutschland GmbH

§ 1 Contractual basis

- (1) These General Terms and Conditions of Purchase of ERNI Deutschland GmbH (hereinafter: **"General Terms and Conditions of Purchase"**) are an integral part of all contracts for sales and contractual deliveries and services (hereinafter: **"Deliveries"**) to ERNI Deutschland GmbH (hereinafter **"ERNI"**). These General Terms and Conditions of Purchase apply to business transactions with entrepreneurs, legal entities under public law and special funds under public law. Contrary conditions of the Supplier or those deviating from these General Terms and Conditions of Purchase shall not be recognized; this shall also apply in the event of unconditional acceptance of the delivery and unconditional payment to the Supplier. ERNI does not recognize conflicting terms even if ERNI does not expressly object to them or if ERNI refers to letters from the Supplier referencing its terms. These General Terms and Conditions of Purchase shall also apply to all future transactions of the same type with the Supplier within the framework of an ongoing business relationship, even if they are not expressly included again.

§ 2 Orders and conclusion of contract

- (1) The conclusion of a contract between ERNI and the Supplier requires written confirmation of the conclusion of the contract by ERNI. Verbal declarations by ERNI prior to or upon conclusion of the contract are non-binding. This requirement for the written form shall not affect any verbal agreements concluded subsequent to the contract. However, ERNI remains entitled to bring about the conclusion of a contract by accepting deliveries or making payments without reservation.
- (2) If the content of the Supplier's order confirmation deviates from the content of ERNI's order, the Supplier must particularly highlight this in the order confirmation; such deviations shall only become part of the contract if ERNI accepts them in writing.
- (3) If ERNI does not receive an order confirmation from the Supplier within five (5) days of receipt of an order by the Supplier, ERNI is entitled to revoke the order.
- (4) Quotations from the Supplier must be made free of charge for ERNI. ERNI may accept a quotation from the Supplier within two weeks of its submission. Until the end of this period, the Supplier shall be bound by its offer. Silence on the part of ERNI does not mean that trust should be placed in the conclusion of a contract. If the acceptance of a quotation from the Supplier is delayed, the Supplier shall inform ERNI of this immediately.

§ 3 Prices and terms of payment

- (1) The price agreed between ERNI and the Supplier is binding.
- (2) Unless otherwise agreed, the agreed price is based on DAP (Incoterms 2020) plus the statutory value-added tax valid at the time of delivery, including packaging, insurance, freight and storage costs, customs duties, taxes, installation costs and all other ancillary costs, unless expressly agreed otherwise.
- (3) ERNI is entitled to set-off and retention rights to the extent permitted by law, without prejudice to further contractual rights.
- (4) Unless otherwise agreed, payments by ERNI shall be due within 30 days of receipt of the delivery, including contractually agreed documentation or other documents, or, if acceptance is required, after acceptance and after receipt of a proper and verifiable invoice. In the case of payments within 14 days of the aforementioned date, ERNI is entitled to a deduction of 3% dis-

count. In the case of more favorable payment terms of the Supplier, these shall apply without otherwise acknowledging the General Terms and Conditions of the Supplier.

- (5) Payment shall be deemed to have been made in good time if the bank has been instructed to transfer the remuneration owed on the due date.

§ 4 Delivery time and delay in delivery; contractual penalty

- (1) The agreed delivery dates are binding. The Supplier shall immediately notify ERNI as soon as it has to assume that it will not meet the delivery dates or will not meet them on time; the notification shall include the reason and expected duration of the delay in delivery; if the Supplier breaches this obligation, it cannot invoke the impediment.
- (2) In the event of a delay in delivery, ERNI shall be entitled to demand a contractual penalty to the amount of 0.3% of the delivery value (net without VAT) of the goods affected by the delay per working day of the delay; however, ERNI may claim a maximum of 5% of the delivery value (net without VAT) of the goods affected by the delay as a contractual penalty.

Further legal or contractual claims (particularly damages due to breach of duty) remain reserved. However, any contractual penalties already paid shall be offset against any claims for damages.

ERNI may also assert the contractual penalty if a reservation is not made upon acceptance of the deliveries, but beyond the final payment of the deliveries only if ERNI reserves the right to do so upon final payment.

§ 5 Outgoing goods inspection, obligation to inspect and report defects

- (1) The Supplier undertakes to carry out a thorough outgoing goods inspection before delivery and concludes a quality assurance agreement with ERNI, unless otherwise agreed between the parties. Goods that have not passed the outgoing goods inspection may not be delivered.
- (2) ERNI's legal obligation to inspect the deliveries (§ 377 of the German Commercial Code [HGB]) is limited to the inspection of the deliveries with regard to quantity, type, externally visible defects (e.g. transport damage) and other obvious defects immediately after delivery. Notices of obvious defects shall be deemed to have been made in good time if ERNI sends them within five (5) working days of delivery of the deliveries and then sends them to the Supplier. In the case of hidden defects, this period runs from their discovery. Insofar as acceptance has been agreed, ERNI shall have no obligation to examine or report defects prior to acceptance. This Section 5 (2) does not apply to contracts for work and services.
- (3) If, in individual cases, the "immediate period" from § 377 HGB should be longer than five (5) working days, this longer period shall apply.
- (4) ERNI has no further obligations to examine and report defects than those set out above.

§ 6 Liability for defects and defects of title

- (1) ERNI shall be fully entitled to all statutory rights in the event of material defects and defects of title.
- (2) The Supplier guarantees that the deliverables comply with the contractual and legal requirements. In particular, and without prejudice to further contractual or legal requirements, the Supplier guarantees compliance with the agreed quality, including the agreed product or service specifications, whereby the

agreed quality also includes all descriptions of the characteristics of the deliveries, in particular their type, quantity, quality, functionality, compatibility and interoperability, as well as the suitability of the deliverables for the contractually stipulated use. The deliverables must comply with the current rules of science and technology as well as the applicable environmental, occupational health and safety and accident prevention regulations.

- (3) All documents and files that are relevant for the delivery must be submitted by the Supplier at the latest upon delivery without being requested to do so.
- (4) If the deliveries of the Supplier contain digital products or goods with digital elements, the Supplier shall, unless otherwise agreed, provide updates at its own expense during the period that ERNI or customers of ERNI can expect due to the nature and purpose of the digital products or goods with digital elements delivered and taking into account the circumstances and the type of contract, which are necessary for the maintenance of the contractual conformity of the deliverables, and shall inform ERNI or customers of ERNI accordingly. In the event that a permanent provision for the digital products or the digital elements is agreed, the updates must be provided during the provision period, but at least for a period of two (2) years from the date of delivery.
- (5) In the event of a defect in the deliveries, ERNI shall in particular be entitled to demand the rectification of defects or delivery of a defect-free item (supplementary performance) in the event of defects at its own discretion; the Supplier shall bear the costs required for this in full.

Furthermore, ERNI shall be entitled to the statutory claims for damages in full and without limitation.

Acceptance of the goods or a sample does not automatically release the Supplier from liability for defects.
- (6) Claims for defects fall under the statute of limitations within three years from the start of this statutory limitation period, unless a longer period is provided for by law.
- (7) A notice of defects declared by ERNI within the limitation period shall impede the limitation period from the time of receipt of the notice of defects by the Supplier until there is agreement between ERNI and the Supplier on the elimination of the defect and any consequences; however, the suspension shall end after final rejection of the notice of defects by the Supplier. The limitation period for claims for defects shall come into effect at the earliest three (3) months after the end of the suspension, but in no case before the expiry of the limitation period in accordance with § 6 (6).
- (8) In the event of subsequent performance, there will be a one-time restart of the limitation period for claims for defects upon delivery of the new delivery or manufacture or termination of the repair work. Insofar as acceptance of the supplementary performance is legally required or agreed, there will be a one-time restart of the limitation period upon acceptance. The provision of this Section 6 (8) shall not apply if ERNI, based on the conduct of the Supplier, must assume that the Supplier did not feel obliged to take the measure, but only carried out the rectification of defects or new delivery as a gesture of goodwill or similar reasons.
- (9) In urgent cases (risk of delay or particular urgency), ERNI shall be entitled to rectify the defect itself at the Supplier's expense. An urgent case is when it is no longer possible to inform the Supplier and set a (albeit short) deadline for subsequent performance.

§ 7 Provisions

- (1) If ERNI provides items to the Supplier (hereinafter referred to as "**Provisions**"), the Provisions shall remain the property of ERNI.
- (2) The Supplier shall be entitled only to process, combine and mix the materials provided, insofar as corresponding authorization does not result from the purpose of the contract, with the prior written consent of ERNI. ERNI as the manufacturer within the

meaning of Section 950 of the German Civil Code [BGB] shall always process or convert the materials provided. If, in the event of processing or transformation with objects of third parties, their right of ownership remains, ERNI shall acquire co-ownership in proportion to the objective values of the materials provided to the other processed objects at the time of processing or transformation.

In the event of mixing or combining the materials provided with other items, ERNI shall also acquire co-ownership in the aforementioned ratio. If the transaction is carried out in such a way that the Supplier's item is to be regarded as the main item, it is agreed that the Supplier shall transfer co-ownership to ERNI on a pro rata basis.

- (3) The Supplier may use the materials provided only for the fulfillment of its obligations under the contract concluded with ERNI. The Supplier must store the materials provided with customary care and take all necessary measures to prevent actions by third parties that could impair the materials provided.
- (4) Once the materials provided have been handed over, the risk of accidental loss and accidental damage to the materials provided shall pass to the Supplier. In the event of theft, damage or destruction of the materials provided, the Supplier must inform ERNI immediately. The Supplier is obliged to carry out the necessary maintenance and inspection work on the materials provided as well as maintenance and repair work in good time and at its own expense.
- (5) The Supplier must take out sufficient all-risk property insurance at the new value for the supplies at its own expense under normal insurance conditions and maintain this insurance for the duration of the respective contract. ERNI's interest must be co-insured. The materials provided must be insured against the risks of unforeseen damage or destruction, including force majeure, including natural disasters, as well as against loss due to theft. Upon ERNI's request, the Supplier shall provide evidence of such insurance confirmations.

§ 8 Indemnity

- (1) If a claim is made against ERNI due to a defect in a delivery by the Supplier due to manufacturer liability, product liability or other circumstances of liability, the Supplier shall indemnify ERNI from the liability resulting from the defect insofar as it is responsible for the defect.
- (2) Within this framework, the Supplier is also obliged to reimburse ERNI for any costs and expenses arising from or in connection with a required recall action. To the extent reasonably possible, ERNI shall immediately inform the Supplier of the content and scope of the recall action.
- (3) The right is reserved to make further legal claims.

§ 9 Intellectual property rights

- (1) The Supplier guarantees that no third-party rights are violated in connection with its delivery and that no property rights, industrial property rights or copyrights (hereinafter: "**Industrial Property Rights**") can be asserted against third parties.
- (2) If claims are asserted against ERNI by third parties due to the infringement of an industrial property right, the Supplier shall be obliged to indemnify ERNI from these claims, insofar as the infringement of industrial property rights is due to a breach of duty on the part of the Supplier. ERNI is not entitled to conclude any agreements (in particular settlements) with the third party without the consent of the Supplier.
- (3) This indemnification obligation also applies to all expenses that ERNI incurs as a result of or in connection with a claim by a third party.
- (4) Unless a longer period is provided for by law, the limitation period for these claims is three years from the start of the statutory limitation period.
- (5) Any further statutory claims remain unaffected.

§ 10 ERNI Liability

- (1) Subject to the provisions below, ERNI shall not be liable to the Supplier for damages and reimbursement of expenses, regardless of the legal grounds (contract, tort, breach of obligations arising from the obligation – including pre-contractual obligations – and all other legal grounds).
- (2) The above exclusion of liability does not apply in the case of mandatory liability in accordance with the Product Liability Act, in cases of intent or gross negligence, in the case of culpable injury to life, limb or health, as well as in the case of culpable breach of contract, i.e. obligations the fulfillment of which is essential for the performance of the contract and the observance of which the Supplier regularly relies on and may rely on.
- (3) However, ERNI's liability for culpable breach of material contractual obligations is limited to compensation for foreseeable damage typical for the contract, unless ERNI is liable due to intent or gross negligence, injury to life, limb or health or in accordance with the Product Liability Act.
- (4) Insofar as ERNI's liability is excluded or limited in accordance with the above provisions, this shall also apply to the corresponding personal liability of legal representatives of vicarious agents and employees of ERNI.
- (5) A reversal of the burden of proof is not intended with the above provisions.

§ 11 Documents, confidentiality, advertising

- (1) Design drawings, plans, papers, models, electronic data carriers, drawings and similar company documents remain the property of ERNI. Upon request and after termination of the order, the documents, together with copies and reproductions, must be handed over to ERNI.
- (2) The Supplier is obliged to treat as confidential all information, in particular expertise and trade secrets, which it obtains from ERNI and which is marked as confidential or which results from the circumstances that it is confidential (hereinafter referred to as "**Confidential Information**"), regardless of whether it has been communicated in written, electronic, embodied, or oral form to third parties. In particular, the Supplier is not entitled to disclose or make the confidential information accessible to third parties without the prior consent of ERNI. The Confidential Information is to be used only for the purposes of the contract.
- (3) Information that (a) was demonstrably already known to the Supplier at the time of conclusion of the contract or subsequently becomes known to the Supplier from a third party without breaching a confidentiality agreement, legal provisions or official orders, (b) was already generally known at the time of conclusion of the contract or subsequently became generally known, unless this is due to a breach of this contract, (c) was independently developed by the Supplier without access to confidential information, or (d) it must be disclosed on the basis of legal obligations or on the order of a court or an authority is excluded from the obligation in § 11 (2).
- (4) The Supplier is obliged to also impose the obligations pursuant to Section 11 (2) and (3) on its personnel and subcontractors.
- (5) The obligations pursuant to Section 11 (2) to (4) shall also remain in force beyond the end of the contract and the business relationship, regardless of the manner in which the contract or business relationship is terminated.
- (6) Reference advertising with the name of ERNI and similar is permitted only with prior consent.

§ 12 Compliance; social responsibility and environmental protection; foreign trade law

- (1) The Supplier undertakes to comply with the applicable statutory provisions on the treatment of employees, animal protection, environmental protection, health and safety at work and internationally recognized human rights and to make every effort to prevent adverse effects on people and the environment within its activities. In this regard, the Supplier shall comply with the principles of the UN Global Compact initiative (<http://www.unglobalcompact.org>), the International Labour Standards of the ILO

(<http://www.ilo.org>), the current version of ERNI's policy on Supplier's Social Responsibility (TEC 1015), with ERNI's Human Rights Policy (TEC 04-37) as well as with the Declaration of Principles on Human Rights ("Grundsatzserklärung") in its latest version ([ERNI's Supplier Portal](#)), which set forth ERNI's expectations towards its suppliers.

- (2) The above-mentioned regulations relate mainly, but not in an exhaustive manner to: the abolition of child labour, forced labour and slavery of any kind; compliance with applicable health and safety rules at work, including adequate safety and protection standards, adequate organizational measures to prevent fatigue (inter alia, through adequate working hours and breaks, sufficient training and instructions); the freedom of association; the prohibition of discrimination at work, e.g., based on gender, race, caste, color of skin, disability, trade union membership, political views, origin, religion, age, pregnancy or sexual orientation; the obligation to pay adequate salaries, at least in compliance with locally applicable minimum wage regulations; the causation of harmful soil changes; contamination of water or air; harmful noise emissions or disproportionate water consumption; unlawful deprivation of land or evictions, or the hiring of security forces who disrespect the prohibition of torture or injury to life and limb as well as the prevention of corruption.
- (3) The Supplier will also address the above-mentioned regulations and ERNI's expectations towards its suppliers as set forth in ERNI's Human Rights Policy (TEC-04-37) and in the Declaration of Principle on Human Rights to its suppliers and do everything in its powers to bind its sub-suppliers and their sub-suppliers to abide by the same. The Supplier will also carry out related control measures at its suppliers. ERNI or a third party commissioned by ERNI may verify the compliance with the foregoing obligations and check the content of the related commitments. The Supplier shall respond to related queries under observance of applicable formalities and demonstrate its measures adequately.
- (4) Upon prior notice, ERNI or a third party commissioned by ERNI may carry out on-site and quality audits at the Supplier, which shall be at ERNI's own costs, unless otherwise agreed. For these purposes, the Supplier shall allow access to all relevant documents, manufacturing facilities and processes. ERNI and any third parties commissioned by ERNI will treat the information obtained in the course of such audits as confidential.
- (5) The Supplier shall, at ERNI's request, facilitate the participation of its employees in trainings on human rights and environmental matters, which are offered by the Supplier, ERNI or a third party on behalf of ERNI.
- (6) In case of a potential breach of the above-mentioned regulations, the Supplier shall investigate such potential breaches without undue delay and inform ERNI about any action taken by the Supplier. If justified, the Supplier shall also disclose its relevant supply chain to ERNI. In case of an actual breach, the Supplier shall, and if so requested, jointly with ERNI, develop and implement measures to end or minimize the respective breach.
- (7) In case of a breach of any obligation set out in this §12, the Supplier shall indemnify and hold ERNI harmless from and against claims of third parties, including the obligation to pay related fines that are imposed on ERNI.
- (8) ERNI reserves the right to terminate existing agreements, with or without notice, in case the Supplier: (i) repeatedly and/or despite a corresponding notification breaches the law or the aforementioned regulations, and (ii) does not demonstrate that the respective breach has been cured to the extent possible and that the Supplier has taken adequate measures to prevent future breaches.
- (9) To the extent that it is reasonably possible, the Supplier shall develop and implement a management system in accordance with ISO 14001 (environmental management).
- (10) The Supplier is aware that deliveries may be subject to export and import restrictions. In particular, approval obligations may exist or the use of the deliveries abroad may be subject to restrictions. The Supplier shall comply with the applicable export and import control regulations of Germany, the European Union and/or the European Economic Area, Switzerland, the United

Kingdom of Great Britain and Northern Ireland and the United States of America as well as all other relevant export regulations, and shall provide ERNI with all information required by the Supplier to comply with the applicable regulations as early as possible.

- (11) Fulfillment of a contract on the part of ERNI is subject to the reservation that the fulfillment not be opposed by any obstacles owing to national or international regulations of foreign trade law and embargoes and/or other sanctions.

§ 13 Place of performance, place of jurisdiction, applicable law, insurance and burden of proof

- (1) The place of performance for obligations of ERNI (particularly for payments by ERNI) is the registered office of ERNI.
- (2) The place of jurisdiction is the registered office of ERNI. ERNI is also entitled to sue the Supplier in other permissible jurisdictions.
- (3) The law of the Federal Republic of Germany shall apply with regard to all claims and rights arising from this contract. The UN Convention on Contracts for the International Sale of Goods (CISG) is expressly excluded. The contract language is German.
- (4) The Supplier must take out extended business and product liability insurance at its own expense with an appropriate insured sum, but at least in the amount of EUR 5 million per case of damage, the existence of which must be proven to ERNI on request.

Furthermore, the Supplier must take out sufficient transport insurance at its own expense.

- (5) None of the clauses agreed in these Terms shall change the legal burden of proof.

§ 14 Other provisions

- (1) Amendments to the Agreement may be effective only with the consent of ERNI.
- (2) Should individual provisions of these conditions be wholly or partially invalid or void, the remaining provisions shall remain unaffected. The contracting parties undertake to agree to a provision by means of which the meaning and purpose of the invalid or void provision is largely achieved in the economic area.
- (3) All terms and regulations are to be understood as gender-neutral.

Erni Deutschland GmbH

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