

# **General Terms and Conditions of Purchasing of Erich Rothe GmbH & Co. KG**

## **§ 1 General Provisions, Scope of Application**

- 1) These General Terms and Conditions of Purchasing apply for all business relations with our business partners and suppliers (hereinafter: the „Seller“). These Terms and Conditions of Purchasing exclusively apply if the Seller is an entrepreneur in terms of Section 14 of the German Civil Code (BGB), a legal person under public law or a special fund under public law within the meaning of Section 310 (1) of the German Civil Code (BGB).
- 2) These Terms and Conditions of Purchasing apply in particular to contracts for the sale and supply of movable goods (hereinafter also referred to as „Goods“), irrespective of whether the Goods have been manufactured by the Seller himself or have been purchased from suppliers by the latter (Sections 433, 651 BGB). The Terms and Conditions of Purchasing in their updated version apply as a framework agreement also to future contracts for the sale and delivery of movable goods from the seller without us having to expressly refer to them each time.
- 3) These Terms and Conditions of Purchasing apply exclusively. Any diverging, conflicting or supplemental general terms and conditions of the Seller shall only become a part of the contract in so far as their validity has expressly been agreed to by us. This requirement of consent applies in any event, e.g. even if, having knowledge such the general terms and conditions of the Seller, we accept the latter's delivery without reservation.
- 4) Any individual agreements concluded with the Seller (including side agreements, supplements and amendments) shall in any event prevail over these Terms and Conditions of Purchasing. The content of such agreements shall be decisively defined by a written contract or a written confirmation on our part. Legally relevant declarations and notices that a Seller has to issue to us after conclusion of the agreement (e.g. notices setting deadlines, reminders, notice of withdrawal) shall be validly done at least in text form.
- 5) The invalidity of individual provisions of these Terms and Conditions of Purchase shall not affect the validity of the remaining provisions. The invalid provisions shall be replaced by the legally permissible provision which comes closest to the economic purpose pursued by the invalid provision.

## **§ 2 Order and Order Confirmation**

- 1) Orders are only binding on us if they have been made in writing or in text form. We are entitled to revoke an order if it has not been accepted by the Seller in writing or text form within two weeks after receipt (order confirmation).
- 2) If the order confirmation deviates from the order, we will only be bound to the confirmation if we have agreed to the deviation in written or text form. In particular, we are bound by the general terms and conditions of the Seller only if they coincide with our terms and conditions or if we have expressly agreed to

them in writing. The acceptance of deliveries and services, as well as payments, does not amount to consent.

- 3) The Seller shall treat the conclusion of the contract as confidential, unless we expressly agree in text form to its publication.

### **§ 3 Delivery Date**

- 1) The delivery date stated in our order is binding. If the delivery date is not specified in the order and has not been agreed otherwise, it shall be two weeks from the conclusion of the contract. The seller is obliged to inform us immediately in writing, stating the reasons and the expected duration, if he is unlikely to be able to meet the agreed delivery date.
- 2) If the Seller does not provide his delivery/service within the agreed delivery date or if delivery is delayed, we shall be entitled to the statutory relief, in particular to the right of withdrawal and to damages. The provisions of sub-clause (3) remain unaffected.
- 3) If the Seller is in delay, we shall be entitled to claim a lump-sum compensation for the damage incurred as a result of the delay in the amount of 0.5% of the net price for each full calendar week, up to a maximum of 5% of the net price of the delayed Goods. We reserve the right to claim further damages. The Seller remains entitled to show that we have incurred in general no or substantially less damage.

### **§ 4 Delivery, Transfer of Risk, Default of Acceptance**

- 1) Without our prior written consent, the Seller is not authorised to have the performance owed by him provided by third parties (e.g. subcontractors). The Seller bears the risk of procurement for his services, unless it is a custom-made production.
- 2) Delivery – unless otherwise agreed – shall be made „DAP“ in accordance with INCOTERMS 2020 of the ICC to the place specified in the order. If the final destination is not stipulated and in the absence of any other agreement, delivery shall be made to our warehouse in Flugplatzstraße 64, D-97318 Kitzingen. The specified destination is also the place of performance (obligation to be discharged at creditor's domicile).
- 3) The delivery must be accompanied by a delivery note stating the date (of issue and dispatch), the content of the delivery (article number and number of items) as well as our order ID (date and full number). We shall not be held liable for any resulting delays in the processing or payment of the order caused by a missing or incomplete delivery note. Separately from the delivery note, a corresponding dispatch note with the same content as well as, if agreed, a certificate of conformity according to EN 10204 or an equivalent internationally recognised certificate, in which the characteristic data agreed with the Seller are listed, must be enclosed.
- 4) The risk of accidental loss and accidental deterioration of the goods shall pass to us upon handover at the place of performance. Delivery or acceptance shall be deemed to have taken place if we are in default of acceptance.
- 5) Our default of acceptance shall be determined in accordance with statutory provisions. However, in such case, the Seller must also offer us his performance explicitly, if a certain or ascertainable calendar time has been agreed for any act

or assistance on our part (e.g. provision of material). If we are in default of acceptance, the Seller is entitled to demand compensation for additional expenses in accordance with statutory provisions. If the contract concerns a non-fungible item to be produced by the Seller (custom-made product), the Seller shall only be entitled to the additional rights if we have undertaken to cooperate and are responsible for any failure to cooperate.

- 6) Events of force majeure which make the delivery by our Seller or the acceptance or use of the delivery in our business or at our customer's impossible or substantially more difficult shall postpone our obligation to take delivery appropriately in accordance with our actual requirements. In cases of force majeure on our side or on the side of our seller, we are also entitled, at our discretion, to withdraw from the contract in whole or in part.

## **§ 5 Prices and Terms of Payment**

- 1) The price stated in the purchase order is binding. All prices are exclusive of VAT.
- 2) Unless otherwise agreed in an individual case, the price includes all services and ancillary services of the Seller (e.g. assembly, installation) as well as all ancillary costs (e.g. proper packaging, transportation costs, including any transport and third-party liability insurance). At our request, the Seller shall take back packaging material.
- 3) Unless otherwise agreed in individual cases, the agreed price is due for payment within 60 calendar days after complete delivery and performance (including any agreed acceptance) and receipt of a proper invoice. To the extent that the Seller has to provide test samples, test reports, quality documents or other documents, full performance and delivery shall also mean receipt of these documents. An early-payment discount of 3% on the net invoice amount shall be granted if payment is made within 14 calendar days. The choice of the means of payment shall be up to us.
- 4) We shall not be obliged to pay any due date interest. The claim of the Seller for payment of default interest remains unaffected. Any default on our part shall be determined in accordance with statutory provisions. In any event a reminder by the Seller is required.
- 5) We shall be entitled to assert a right to set-off or retention, as well as the defence of breach of contract, within the legal framework. In particular, we may retain any due payments for as long as we are still entitled to assert claims for incomplete or defective delivery vis-à-vis the Seller. The Seller shall be entitled to exercise his right of set-off or retention only on the basis of legally binding or undisputed counterclaims.

## **§ 6 Confidentiality**

- 1) All information, recipes, drawings, models, plans, tools, technical records, process methods, software and other technical and commercial know-how made available by us or obtained by the Seller through us as well as work results achieved in connection therewith (hereinafter: Confidential Information) shall be kept secret by the Seller from third parties and may be used in the Seller's own business exclusively for the execution of deliveries to us and may only be made available to such persons who must have knowledge of the Confidential Information within the scope of the business relationship and have been obliged to maintain secrecy in accordance with this provision. This shall also apply beyond the duration of the business relationship as long as and insofar as the Seller cannot prove that the confidential information was already known to him

at the time it was obtained or that it was evident or became evident later through no fault of his.

- 2) All documents (e.g. drawings, illustrations, test specifications), samples and models etc. which we make available to the Seller within the scope of the business relationship shall remain our property and shall be returned to us at our request at any time, at the latest upon termination of the business condition (including any existing copies, transcripts, extracts and replicas) or destroyed at the Seller's expense at our discretion. The seller shall not be entitled to a right of retention in this respect.

## **§ 7 Acquisition of Ownership, Retention of Title**

- 1) Upon transfer of risk at the place of performance or upon handover to a carrier specially commissioned by us, we shall acquire ownership of the goods without reservation of any rights for the seller.
- 2) In any case, all forms of extended or prolonged retention of title are excluded, so that any retention of title validly declared by the seller only applies until payment has been made for the goods delivered to us and for these.
- 3) We retain title to goods provided by us (e.g. parts, components, finished products). The retention of title also extends to the products resulting from processing, mixing or combining our goods at their full value, whereby these processes are carried out for us so that we are deemed to be the manufacturer. If, in the event of processing, mixing or combining with goods of third parties, their ownership rights remain, we shall acquire co-ownership of the product in proportion to the objective values of the goods.
- 4) Tools made available to the Seller and tools manufactured by the Seller on our behalf or ordered from third parties, for which we have made a contribution to the costs, shall remain our property or shall become our property upon manufacture or acquisition by the Seller and shall be clearly marked as our property and visibly stored separately.

## **§ 8 Liability of the Seller for Defects and Other Breaches of Duty**

- 1) The statutory provisions shall apply to our rights in the event of material defects and defects of title of the goods (including wrong delivery, over-delivery and under-delivery as well as improper assembly, defective assembly, operating or operating instructions) and in the event of other breaches of duty by the Seller, in particular for any defects in the delivery and the suitability for the agreed use known to us or recognisable by us or our customers, without this liability being limited or excluded in terms of reason or amount, unless otherwise stipulated below.
- 2) In accordance with the statutory provisions, the Seller shall warrant in particular that the Goods shall have the agreed quality at the time of passing of risk. For all purposes, the product specifications which form part of the contract concerned or which have been incorporated into the agreement in the same way as these Terms and Conditions of Purchasing – in particular by designation or reference in our order – shall be deemed to be an agreement on the quality of Goods.
- 3) In deviation of sentence 2 of Section 442(1) BGB we shall be entitled to all claims for defects without any restriction even if we remained unaware of the defect at the time of conclusion of the contract through gross negligence.
- 4) We shall inspect the delivered Goods on the basis of the accompanying documents only for identity and quantity as well as externally recognisable transport damage. No duty of inspection shall apply if acceptance has been agreed. In all other cases, it depends on the extent to which an inspection is

feasible in the ordinary course of business and having regard to the circumstances of each individual case. Our duty of notification for defects detected at a later stage remains unaffected. In any event our notification (notification of defect) shall be deemed to have been made without undue delay and timely if it is received within five working days by the Seller.

- 5) If the seller does not fulfil his obligation of subsequent performance – at our choice either by removing the defect (repair) or by delivery of non-defective goods (substitute delivery) – within a reasonable time-limit set by us, we shall be entitled to remove the defect by ourselves and claim compensation for the expenses incurred in this connection or demand a corresponding advance payment from the Seller. The Seller may refuse the type of subsequent performance chosen by us if it is only possible at disproportionate cost. If cure by the Seller fails or is unreasonable for us (e.g. due to special urgency, a risk to operational security or the imminent threat of disproportionate damage), we shall not be required to set a time-limit for the cure; in this case, the Seller shall be informed without undue delay, and if possible in advance.
- 6) In all other respects we shall be entitled to reduce the purchase price or withdraw from the contract in accordance with the statutory provisions in the event of a material or legal defect. In addition, we shall be entitled to gain compensation and reimbursement of expenses in accordance with the statutory provisions.
- 7) The Seller shall also be liable for expenses that we are legally obliged to bear vis-à-vis our buyers, if such expenses are caused by the defective nature of the Goods supplied by the Supplier.
- 8) If we incur transportation, route, labour or material costs or excessive costs for an incoming goods inspection as a result of the defective performance or delivery of the Seller, the latter shall reimburse such costs. The same applies to all expenses that we are obliged to bear vis-à-vis our customers for their claims for cure.
- 9) If we take back the Goods manufactured and/or sold by the Seller due to the defective nature of the performance or delivery of the Seller, or if the purchase price charged by us is reduced or if we are exposed to other claims for defects for this reason, we shall be entitled to take recourse against the Seller without setting any time-limit as otherwise required.
- 10) If an incoming goods inspection exceeding the usual scope becomes necessary as a result of defective delivery, the Seller shall bear the costs thereof.

## **§ 9 Product Liability, Recall, Indemnity, Insurance Cover**

- 1) If product liability claims are asserted against us, the Seller shall indemnify us against all expenses upon first request if and to the extent that the cause thereof lies within the Seller's sphere of control and organisation.
- 2) In the cases described in sub-clause 1, the Seller shall bear all expenses incurred in this connection, in particular for legal defence and any recall actions initiated by us. In this context, the Seller shall also be obliged to reimburse us for all expenses in accordance with this contract and, in addition, the statutory provisions on management without a mandate, which we incur as a result of or in connection with a recall action or other measure carried out by us or our customers. We shall inform the Seller of the content and scope of such recall actions - to the extent possible and reasonable. We reserve the right to assert further legal claims.
- 3) Sub-clause (1) and (2) apply with the necessary modifications, to the extent that product defects result from performances or deliveries of upstream suppliers or subcontractors to the Seller.

- 4) The Seller undertakes to maintain product liability insurance (including extended product liability and recall cost cover) with a sum insured of at least € 3 million (in words: three million Euros) each as a lump sum for personal injury, property damage and product asset damage and to provide us with evidence of this at any time upon request.

## **§ 10 Limitation**

- 1) Unless otherwise agreed herein below, the mutual claims of the Contracting Party shall be subject to limitation according to statutory provisions.
- 2) Unless otherwise agreed or the statutory provisions provide for longer periods, claims for material defects shall become statute-barred 36 months after the sale of the end product to the consumer, but no longer than 48 months after delivery to us. In the case of work performances, the limitation period shall be 36 months from written final acceptance. If the delivery has been used for a building in accordance with its customary use and has caused its defectiveness, the limitation period shall not commence until after five (5) years. Further statutory rights shall remain unaffected by this provision.
- 3) In the event of defects of title, the Seller shall also indemnify us against any existing claims of third parties. A limitation period of ten (10) years shall apply to claims due to defects of title, including claims for indemnification pursuant to sub-clause 1.

## **§ 11 Compliance with Regulations, Export Control**

- 1) The Seller shall comply with all relevant standards, laws and legal provisions, in particular with the relevant environmental protection, hazardous substances, hazardous goods and accident prevention regulations applicable in Germany and/or the European Union, when providing the services.
- 2) When delivering machines and systems that fall under the EU Machinery Directive 2006/42 EC or the national laws and regulations issued on this basis, the Seller shall include a hazard analysis or risk assessment according to DIN EN ISO 12100:2011 in accordance with the EU Machinery Directive 2006/42/EC free of charge.
- 3) The Seller warrants that he complies with the requirements of the EU Chemicals Regulation REACH (Regulation (EC) No 1907/2006 of December 30th, 2016) in the currently valid version - hereinafter referred to as the REACH Regulation - and in particular that the substances have been registered. We are not obliged to obtain authorisation under the REACH Regulation for goods supplied by the Seller.

The Seller further warrants that he will not deliver any delivery items containing substances pursuant to

- Annexes 1 to 9 of the REACH Regulation in the currently valid version;
- Council Decision 2006/507/EC (Stockholm Convention on Persistent Organic Pollutants, in the currently valid version);
- the EC Regulation 1005/2009 on Ozone Depleting Substances, in the currently valid version.

The Seller is obliged to indemnify us against any liability in connection with the Buyer's non-compliance with the above-mentioned regulations or to compensate us for any damage incurred by us as a result of or in connection with the Seller's non-compliance with the regulations.

- 4) The seller is obliged to keep a so-called proof of origin of the goods, i.e. the seller must both forward the required declarations on the commercial and preferential origin of the goods to us in good time at his own expense and also notify us of a

change of origin immediately and without being asked to do so. If necessary, the seller must provide evidence of his information on the origin of the goods by means of an information sheet confirmed by his customs office. If the seller fails to comply with this obligation, he shall be liable for all resulting damages and commercial disadvantages.

- 5) The Seller is obliged to inform us of any licensing requirements or restrictions in connection with the (re-)export of goods, software and/or technology in accordance with the applicable export control and customs regulations.
- 6) The Seller warrants that he will provide the performance owed pursuant to § 1 sub-clause 1 by himself and that he will use subcontractors or sub-subcontractors (hereinafter referred to as "subcontractor chain") only with our prior written consent.

## **§ 12 Property Rights**

- 1) The Seller warrants that, in connection with its delivery and its use, no industrial property rights or other rights of third parties are infringed or violated by statutory or official regulations of any kind whatsoever.
- 2) If claims are asserted against us by a third party in this respect, the Seller shall be obliged to indemnify us against such claims upon first written request; we shall not be entitled to make any agreements with the third party - without the Seller's consent - in particular to conclude an agreement.
- 3) The indemnification obligation of the Seller relates to all expenses incurred by us due to or in connection with a claim asserted by a third person.

## **§ 13 Notification Obligations of the Seller upon Changes of the Product**

- 1) The Seller must give us advance notice in good time (at least six months in advance) about the following changes:
  - product modifications
  - changes in manufacturing systems as well as of procedures and materials
  - changes in packaging
  - relocation of manufacturing locationsto allow us to check if our changes will have an adverse effect on our production process. Changes may only be performed after release by us.  
In the event of non-compliance, we reserve the right to pass on any subsequent costs to the Seller.

## **§ 14 Compliance, Social Responsibility and Sustainability**

- 1) The Seller shall commit to and comply with international standards and initiatives such as UN Global Compact, International Labour Standards (ILO) and other applicable national and international laws, in particular laws on the prevention of human rights violations in supply chains and minimum wage laws, and guidelines, and the Seller shall ensure to impose the same obligations on persons and companies in the subcontractor chain.
- 2) The Seller shall comply with all applicable legal provisions relating to bribery and corruption (including the UK Bribery Act 2019 and the US Foreign Corrupt Practices Act 1977). The Seller shall maintain appropriate measures and processes for this purpose with the Seller itself, its employees and subcontractors.
- 3) The Seller shall respond to all enquiries regarding compliance, social responsibility and sustainability in the subcontractor chain without delay and in the required form. In addition, in the event of actual or potential breaches of the obligations under this § 14,

the Seller will investigate and promptly inform us of the investigations and disclose the subcontractor chain. In the event of actual breaches, the Seller will immediately inform us of any measures taken to avoid future breaches. Should the Seller fail to comply with these obligations within a reasonable period of time, we reserve the right to withdraw from contracts or to terminate them with immediate effect.

- 4) We reserve the right to verify the Seller's compliance with its obligations under this § 14 at any time during normal business hours. We will give reasonable notice to the Seller of our intention to conduct a review and will endeavour to ensure that our representatives conducting the review cause as little disruption as possible to the Seller's business activities.
- 5) In the event of serious violations of the law or non-compliance with the obligations under this § 14, we reserve the right to withdraw from contracts or to terminate them with immediate effect.

## **§ 15 Choice of Law and Jurisdiction**

- 1) These Terms and Conditions of Purchasing and the entire legal relationship between us and the Seller shall be governed by the laws of the Federal Republic of Germany, subject to the exclusion of all international and supranational (contractual) legal systems, in particular the UN Convention on Contracts for the International Sale of Goods. The prerequisites and effects of the retention of title are subject to the law of the respective location of the item, insofar as the choice of law made in favour of German law is inadmissible or ineffective thereafter.
- 2) If the Seller is an entrepreneur within the meaning of the German Commercial Code, a legal person under public law or a special fund under public law, the exclusive - including international - place of jurisdiction for all claims arising from our business relationship with the Seller, in particular from contracts or legal disputes regarding their validity, shall be our registered office in Kitzingen. However, we are also entitled, at our discretion, to sue the seller at any other general or special place of jurisdiction.
- 3) If the Seller has its registered office outside the Federal Republic of Germany, we shall also be entitled, at our discretion, to have all disputes arising from and in connection with our business relationship with the Seller, including disputes about the validity of contracts, finally decided under the Rules of Arbitration of the German Institution of Arbitration (DIS), excluding the ordinary course of law. At the Seller's request, we shall exercise this right of choice before the commencement of the proceedings. The arbitration court shall have its seat in Frankfurt am Main, Germany. The arbitration proceedings shall be held in German, unless the Seller requests English as the language of the proceedings.
- 4) We wish to draw attention to the fact that personal data are being electronically stored by us in line with statutory provisions and processed in connection with the relevant business transactions.

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