General terms and conditions for purchases for ERS EuRope-Systems GmbH

Last updated 18/06/21

§ 1 Scope, form

1. These general terms and conditions for purchases (GTC) apply to all business relationships with our business partners and suppliers ("vendors"). These GTC apply only if the vendor is an entrepreneur (§ 14 BGB), a legal entity under public law or a special fund under public law.
2. These GTC apply in particular to contracts for the sale and/or delivery of movable goods ("goods"), irrespective of whether the vendor manufactures the goods or purchases them from suppliers (§§ 433, 651 BGB). Unless otherwise agreed, the GTC in the version valid at the time of the buyer's order, or at least in the version communicated to the buyer in text form as a general agreement, also apply to similar future contracts, without the need for us to refer to them again in each individual case.
3. These GTC apply exclusively. Deviating, conflicting or supplementary terms and conditions of the vendor only become part of the contract if and insofar as we have expressly consented to their validity. This consent requirement applies in any case, for example, even if accept the delivery unconditionally with knowledge of the terms and conditions of the vendor.
4. In individual cases, individual agreements with the vendor (including collateral agreements, additions and changes) always take precedence over these GTC. A written contract or our written confirmation is definitive for the content of such agreements, subject to the contrary evidence.
5. Legally relevant declarations and advertisements of the vendor in relation to the contract (e.g. setting of deadlines, warning, withdrawal) must be made in writing, i.e. in written or text form (e.g. letter, email, fax) **.** Statutory regulations regarding form and further proof, especially in the event of doubt about the legitimacy of the declaring party, remain unaffected.
6. References to the validity of statutory provisions are only of clarifying significance. Even without such clarification, the statutory provisions apply unless they are directly amended or expressly excluded in these GTC.

§ 2 Conclusion of contract

1. Our order is binding at the earliest with written delivery or confirmation. For obvious errors (e.g. typing and miscalculation) and incompleteness of the order, including the order documents, the vendor must notify us for the purposes of correction or completion before acceptance; otherwise the contract is considered not concluded.
2. The vendor is obliged to confirm our order in writing within a period of two weeks or in particular to carry it out unreservedly by shipment of the goods (acceptance).

Late acceptance is considered a new offer and requires acceptance by us.

§ 3 Delivery period and delivery default

1. The deadline period specified by us in the order is binding. If the delivery period is not specified in the order and has not been agreed otherwise, it is two weeks from the conclusion of the contract. The vendor is obligated to inform us immediately in writing if they are not able to comply with agreed delivery periods for whatever reason.
2. If the vendor does not deliver their service or does not do so within the agreed delivery period or if they are default, our rights – in particular to withdrawal and compensation for damages – are determined by the statutory provisions. The regulations of para. 3 remain unaffected.
3. If the vendor is in default, we may – in addition to further statutory claims -– demand a flat-rate reimbursement for default damages in the amount of 0.3% of the net price per working day, but not more than 5% of the net price of the goods that are delivered late. We reserve the right to prove that higher damages have occurred. The vendor is entitled to prove that no or only significantly lower damages have occurred.

§ 4 Performance, delivery, transfer of risk, delay in acceptance

1. The vendor is not entitled, without our prior written consent, to have the performance owed by the vendor undertaken by third parties (e.g. subcontractors). The vendor bears the procurement risk for their services, unless otherwise agreed in individual cases (e.g. limitation to stock).

2. The delivery takes place within Germany “with free shipping” at the place specified in the order. If the destination has not been specified and nothing else has been agreed, the delivery must be made to our registered office in Lorsch. The destination is also the place of performance for the delivery and any subsequent performance (delivery debt).
3. The delivery must be accompanied by a delivery note specifying the date (issue and shipping), content of the delivery (item number and quantity) as well as our order code (date and number). If the delivery note is missing or incomplete, we are not responsible for the resulting delays in processing and payment. We must send you a corresponding shipping notice with the same content separate from the delivery note.
4. The risk of accidental loss and accidental deterioration of the goods passes to us at the place of performance upon delivery. Insofar as acceptance has been agreed upon, it is decisive for the transfer of risk. In addition, the statutory provisions of labour contract law apply accordingly to an agreed acceptance. The transfer or acceptance is the same if our acceptance is delayed.
5. The statutory provisions apply regarding entry of our delay in acceptance. The vendor must also expressly offer us performance if a specific or determinable calendar time has been agreed for a measure or cooperation on our part (e.g. provision of material). If we are in delay regarding acceptance, the vendor may demand compensation for their additional expenses in accordance with the statutory provisions (§ 304 BGB). If the contract relates to an unacceptable item to be produced by the vendor (one-off production), the vendor is entitled to further rights only if we are committed to cooperation and are responsible for the failure to cooperate.

§ 5 Prices and payment terms

1. The price stated in the order is binding. All prices include statutory VAT, unless otherwise stated.
2. Unless otherwise agreed in individual cases, the price includes all services and ancillary services of the vendor (e.g. assembly, installation) as well as all ancillary costs (e.g. proper packaging, transport costs including any transport and liability insurance).
3. The agreed price is payable within 30 calendar days of complete delivery and performance (including any agreed acceptance) as well as receipt of a proper invoice. If we make payment within 14 calendar days, the vendor shall grant us a 3% discount on the gross amount of the invoice. In the event of a bank transfer, payment is made on time if our transfer order is received by our bank before the expiration of the payment period; we are not responsible for delays by the banks involved in the payment transaction.
4. We do not owe any maturity interest. The statutory provisions apply to payment default.
5. We are entitled to rights of set-off and retention as well as plea of non-fulfilled contract to the extent legally permissible. In particular, we are entitled to withhold payments due as long as we still have claims against the vendor from incomplete or defective services.
6. The vendor has a set-off or retention right only for legally established or undisputed counter-claims.

§ 6 Confidentiality and retention of title

1. We reserve the rights of ownership and copyrights to illustrations, plans, drawings, calculations, execution instructions, product descriptions and other documents. Such documents are to be used exclusively for the contractual service and to be returned to us after completion of the contract. The documents must be kept confidential with regard to third parties, even after the contract has ended. The confidentiality obligation expires if and insofar as the knowledge contained in the provided documents has become generally known.
The above provision applies mutatis mutandis to materials and objects (e.g. software, finished and semi-finished products) as well as tools, templates, samples and other items that we provide the vendor for the purposes of manufacturing. Such items must be kept separate at the expense of the vendor and adequately insured against destruction and loss until they are processed.
3. Working, mixing and combination (further processing) of provided items are undertaken by the vendor for us. The same applies to further processing of the delivered goods by us, so that we are considered to be the manufacturer and acquire ownership of the product at the latest with further processing in accordance with the statutory provisions.
4. The transfer of the goods to us must be unconditional and without consideration for the payment of the price. If, however, in individual cases we accept a conditional sale of the vendor due to the purchase-price payment, the retention of title on the part of the vendor expires at the latest upon payment of the purchase price for the delivered goods. In the ordinary course of business, we remain authorised to resell the goods prior to payment of the purchase price, subject to advance assignment of the resulting claim (in the alternative, validity of the simple retention of title extended to resale). In any case, this excludes all other forms of retention of title, especially extended, transferred retention of title and retention of title extended to further processing.

§ 7 Defective delivery

1. Unless otherwise stated below, the statutory provisions apply regarding our rights in the event of material or legal defects of the goods (including incorrect or deficient delivery as well as improper installation, faulty assembly, use or operating instructions) and other breaches of obligations by the vendor.
2. In accordance with the statutory provisions, the vendor is liable in particular for ensuring that the goods are in the agreed condition upon transfer of risk to us. Any product descriptions which are the subject matter of the respective contract or are included in the contract in the same way as these GTC, in particular by designation or reference in our order, are deemed as an agreement regarding the condition. It is not relevant whether the product description comes from us, the vendor or the manufacturer.
3. By way of derogation from § 442 para. 1 p. 2 BGB, we are fully entitled to claims for defects even if the defect due to gross negligence remained unknown to us at the conclusion of the contract.
4. The statutory commercial provisions (§§ 377, 381 HGB) apply regarding the obligation to inspect and to report defects, with the following proviso: Our obligation to inspect is limited to defects which become apparent during our incoming goods inspection under external inspection including of the delivery documents (e.g. transport damage, incorrect or deficient delivery) or can be identified during our quality control in the sampling procedure. Insofar as acceptance has been agreed, there is no obligation to inspect. Moreover, it depends on the extent to which an inspection, taking into account the circumstances of the individual case in the ordinary course of business, is feasible. Our obligation to report defects discovered later remains unaffected. Notwithstanding our obligation to inspect, our complaint (report of defect) is in any case to be deemed prompt and timely if it is sent within eight working days from discovery or, in the case of obvious defects, from delivery.
5. Supplementary performance also includes the removal of defective goods and reinstallation if the goods have been incorporated into another object in accordance with their intended purpose. The costs incurred by the vendor for the purpose of testing and supplementary performance (including possible removal and installation costs) shall be borne by the vendor even if it turns out that there was actually no defect. Our liability for damages in case of unjustified demand for removal of defects remains unaffected; however, we are liable only if we recognised or were grossly negligent in not recognising that there was no defect.
6. If the vendor does not comply with their obligation to supplementary performance – at our discretion by rectifying the defect (rectification) or by delivering a defect-free item (replacement) – within a reasonable period set by us, we may remedy the defect ourselves and require that the vendor reimburse the necessary expenses or provide a corresponding credit. If the supplementary performance by the vendor has failed or is unreasonable for us (e.g. due to special urgency, endangerment of operational safety or imminent occurrence of disproportionate damage), no notification of deadline is required; we will inform the vendor immediately, if possible in advance, regarding such circumstances..
7. In addition, we are entitled in the event of a material or legal defect to reduce the purchase price or to withdraw from the contract in accordance with the legal provisions. We are also entitled to damages and reimbursement of expenses according to the legal provisions.

§ 8 Vendor recourse

1. Our statutory claims for recourse within a supply chain (vendor recourse in accordance with §§ 478, 479 BGB) without limitation in addition to the claims for defects. In particular, we are entitled to demand exactly the type of supplementary performance (repair or replacement) from the vendor, which we owe to our buyer in individual cases. Our legal right to choice (§ 439 para. 1 BGB) is not limited by this.
2. Before we acknowledge or fulfil a claim asserted by our customer (including reimbursement of expenses according to §§ 478 para. 2, 439 para. 2 BGB), we will inform the vendor and ask for a written statement with a short explanation of the facts. If the statement is not delivered within a reasonable period of time or if no mutually agreed solution is brought about, the defect claim actually granted by us shall be deemed due to our customer; the vendor is responsible in this event to provide counter-proof.
3. Our claims arising from vendor recourse also apply if the goods were further processed by us or one of our customers prior to their sale to a consumer, e.g. by incorporation into another product.

§ 9 Manufacturer liability

1. If the vendor is responsible for product damage, the vendor must indemnify us in this respect from claims of third parties, insofar as the cause is within the vendor's area of control and organisation and the vendor is liable in the external relationship.

2. As part of his indemnification obligation, the vendor must reimburse expenses pursuant to §§ 683, 670 BGB, which result from or in connection with a claim of third parties, including recalls carried out by us. We will inform the vendor – as far as possible and reasonable – about the content and extent of recall measures and give the vendor the opportunity to respond. Further statutory claims remain unaffected.
3. The vendor must purchase and maintain product liability insurance with a lump-sum coverage of at least EUR 10 million per case of personal injury/property damage.

§ 10 Statute of limitations
1. The reciprocal claims of the contracting parties expire in accordance with the statutory provisions unless otherwise stated below.
2. Deviating from § 438 para. 1 no. 3 BGB, the general limitation period for claims for defects is 3 years from the transfer of risk. Insofar as acceptance has been agreed, the limitation period begins with acceptance. Accordingly, the 3-year limitation period also applies to claims arising from legal defects, whereby the statutory limitation period for claims in rem on the part of third parties (§ 438 para. 1 no. 1 BGB) remains unaffected; claims arising from legal defects in no case become statute-barred as long as the third party can still assert the right against us – in particular due to inapplicability of the statue of limitations.
3. The limitation period for commercial rights including the above extension applies – to the legal extent – for all contractual claims for defects. Insofar as we are entitled to non-contractual claims for damages due to a defect, the statutory limitation period applies (§§ 195, 199 BGB) if the application of the limitation periods of the commercial right in individual cases does not lead to a longer limitation period.

§ 11 Notes on data processing
1. The provider collects data from the customer as part of the processing of contracts. He observes in particular the regulations of the Federal Data Protection Act and the Telemedia Act. Without the consent of the customer, the provider will only collect, process or use the customer's inventory and usage data, insofar as this is necessary for the execution of the contractual relationship and for the use and billing of telemedia.

2. Without the consent of the customer, the provider will not use the customer's data for advertising, market or opinion research purposes.

§ 12 Choice of law and jurisdiction
1. For these GTC and the contractual relationship between us and the buyer, the law of the Federal Republic of Germany applies to the exclusion of international uniform law, in particular the UN Sales Convention.
2. If the vendor is a merchant within the meaning of the German Commercial Code, a legal entity under public law, or a special fund under public law, the exclusive place of jurisdiction for all disputes arising from the contractual relationship is the seat of our business in Lorsch. The same applies if the vendor is an entrepreneur within the meaning of § 14 BGB. However, in all cases, we are also entitled to file a claim at the place of performance of the delivery obligation in accordance with these GTC or a prior individual agreement or at the general place of jurisdiction of the vendor. Statutory provisions that take priority, especially regarding exclusive jurisdictions, remain unaffected.

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This document is only a translation of the original.