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

Last updated 18/06/21

§ 1 Scope, form

1. These general terms and conditions for sales (GTC) apply to all our business relationships with our customers (“buyers”). These GTC apply only if the buyer 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 we manufacture the goods ourselves or purchase 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. Our GTC apply exclusively. Deviating, conflicting or supplementary terms and conditions of the buyer shall 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 we carry out the delivery to the buyer unconditionally with knowledge of the terms and conditions of the buyer.
4. In individual cases, individual agreements with the buyer (including collateral agreements, additions and changes) shall in any case 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 buyer in relation to the contract (e.g. setting of deadlines, reporting of defects, withdrawal or reduction) 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 offers are non-committal and non-binding. This also applies if we have provided the buyer with catalogues, technical documentation (e.g. drawings, plans, calculations, invoices, references to DIN standards), other product descriptions or documents – including in electronic form – regarding which we reserve property rights and copyrights.
2. The order of the goods by the buyer is considered a binding contract offer. Unless otherwise stated in the order, we are entitled to accept this contract offer within seven days of its receipt by us.
3. The acceptance can be declared either in writing (e.g. by order confirmation) or by delivery of the goods to the buyer.

§ 3 Delivery deadline and delivery delay

1. The delivery deadline is individually agreed or specified by us upon acceptance of the order. If this is not the case, the delivery deadline is twelve weeks from the conclusion of the contract.
2. If we are unable to comply with binding delivery deadlines for reasons for which we are not responsible (unavailability of the service), we will inform the buyer without delay and at the same time notify the buyer of the expected new delivery deadline. If the service is not available within the new delivery deadline, we are entitled to withdraw from the contract in whole or in part; we will reimburse immediately any consideration already provided by the buyer. The non-availability of the service in this sense applies in particular to non-timely delivery by our supplier, if we have concluded a congruent hedging transaction, neither we nor our suppliers are at fault, or we are not obliged to procurement in the particular case.
3. The occurrence of a delivery delay on our part is determined by the statutory provisions. In any case, a reminder from the buyer is required. If we are delayed in our delivery, the buyer may demand flat-rate reimbursement for damages due to the delay. The flat rate for each completed calendar week of delay amounts to 0.5% of the net price (delivery value), but in total shall be no more than 5% of the delivery value of the goods that have been subject to a delivery delay. We reserve the right to provide proof that the buyer has incurred no damages or only significantly lower damages than the above flat rate.
4. The rights of the buyer pursuant to § 8 of these GTC and our statutory rights, in particular in the event of an exclusion of the obligation to perform (e.g. due to impossibility or unreasonableness of the service and/or subsequent performance), remain unaffected.

§ 4 Delivery, transfer of risk, acceptance, delayed acceptance

1. Delivery is ex warehouse, which is also the place of performance for the delivery and any subsequent performance. At the request and expense of the buyer, the goods will be shipped to another destination (consignment purchase). Unless otherwise agreed, we are entitled to determine the nature of the shipment (in particular transport company, shipping route, packaging).
2. The risk of accidental loss and accidental deterioration of the goods passes to the buyer at the latest upon transfer. However, for a shipment purchase, the risk of accidental loss and accidental deterioration of the goods as well as the risk of delay shall pass to the forwarder, the carrier or the person or institution otherwise responsible for carrying out the shipment. 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 the buyer's acceptance is delayed.
3. If the buyer is delayed in acceptance, fails to cooperate, or if our delivery is delayed for other reasons for which the buyer is responsible, we are entitled to demand compensation for the resulting damages including additional expenses (e.g. storage costs). We charge for this a flat-rate compensation of 0.5% of the net purchase price of the goods not accepted per calendar week, but not more than a maximum of 5% of the net purchase price of the goods not accepted, starting with the delivery deadline or – in the absence of a delivery deadline – with the notification of readiness for shipment of the goods.

Proof of higher damages and our legal claims (in particular compensation for additional expenses, reasonable compensation, termination) remain unaffected; the flat rate is however to be counted toward further money claims. The buyer is entitled to prove that we have incurred no or only significantly lower damages than the above flat rate.

§ 5 Prices and payment terms

1. Unless otherwise agreed in individual cases, our current prices at the time of the conclusion of the contract apply, ex warehouse, plus statutory value-added tax (VAT).
2. Unless otherwise agreed, the buyer bears the transport costs ex warehouse and the costs of any transport insurance desired by the buyer for a shipment purchase (§ 4 para. 1). If we do not charge the actual transport costs incurred in the individual case, a flat-rate transport cost (excluding transport insurance) in the amount of EUR 50 is regarded as agreed. Any duties, fees, taxes or other public charges shall be borne by the buyer.
3. The purchase price is due and payable within 30 days of invoicing and delivery or acceptance of the goods. However, we are entitled at any time, even in the context of an ongoing business relationship, to carry out a delivery in whole or in part only with advance payment. We will declare this stipulation at the latest with the order confirmation.
4. The buyer is in default with expiry of the above payment deadline. The purchase price is subject to interest during the default period at the applicable statutory interest rate for default payment. We reserve the right to assert further damages caused by default. Our claim to commercial maturity interest (§ 353 HGB) remains unaffected for merchants.
5. The buyer is entitled to set-off or retention rights only insofar as they buyer's claim is legally established or undisputed. In the event of deficiencies in the delivery, the counter-rights of the buyer remain unaffected in accordance with § 7 para. 6 sent. 2 of these GTC.
6. If after conclusion of the contract it becomes recognisable (e.g. by application for the opening of insolvency proceedings) that our claim to the purchase price is jeopardised by lack of capacity of the buyer to performance, we are entitled, according to the statutory provisions, to refusal of performance, and – if necessary after setting a deadline – to withdraw from the contract (§ 321 BGB). We may declare the withdrawal immediately for contracts for the production of unacceptable items (custom-made productions); the statutory provisions regarding the dispensability of the setting of a deadline remain unaffected.

§ 6 Retention of title

1. We retain title to the goods sold until full payment of all our present and future claims arising from the purchase contract and an ongoing business relationship (secured claims).
2. The goods subject to retention of title may not be pledged to third parties or transferred as collateral before full payment of the secured claims. The buyer must notify us immediately in writing if an application for the opening of insolvency proceedings is made or if third-party access (e.g. seizure) is given to the goods belonging to us.
3. In the event of breach of contract by the buyer, in particular in the event of non-payment of the due purchase price, we are entitled to withdraw from the contract in accordance with the statutory provisions and/or to demand return of the goods on the basis of the retention of title. The demand for return of goods is not however equivalent to a declaration of withdrawal; we are entitled to demand only the return of goods and at the same time to reserve the right of withdrawal. If the buyer does not pay the due purchase price, we may assert these rights only if we have unsuccessfully set a reasonable deadline for payment to the buyer or if such a deadline is dispensable according to the statutory provisions.

4. The buyer is authorised until further notice according to (c) below to resell and/or process the goods subject to retention of title in the ordinary course of business. In this event, the following provisions additionally apply. (a) The retention of title extends to the full value of the products resulting from the processing, mixing or combination of our goods where we are considered the manufacturer. If the property rights of third parties are retained in the event of processing, mixing or combination with goods from third parties, we acquire co-ownership in proportion to the invoice values of the processed, mixed or combined goods. In addition, the same provisions apply to the resulting product as to the goods delivered under reservation of title.
(b) The buyer hereby assigns to us the claims arising from the resale of the goods or the product against third parties as a whole or in the amount of our applicable co-ownership share in accordance with the preceding paragraph. We accept this assignment. The obligations of the buyer mentioned in paragraph 2 also apply with regard to the assigned claims.
(c) In addition to our authorisation to collect the claim, the buyer remains authorised to collect the claim. We undertake not to collect the claim as long as the buyer meets their payment obligations to us, there is no defect regarding their capacity to performance, and we do not violate the retention of title by exercising a right according to art. Para. 3. If this is the case, we may demand that the buyer inform us of the assigned claims and their debtors, provides all information necessary for collection, hand over the related documents, and notify the debtors (third parties) of the assignment. In addition, in this case, we are entitled to revoke the buyer's authority to resell and process the goods subject to retention of title.
(d) If the realisable value of the collateral exceeds our claims by more than 10%, we will, at the request of the buyer, release collateral of our choice.

§ 7 Claims on the part of the buyer regarding defects

1. The statutory provisions apply, unless otherwise stated below, regarding the rights of the buyer in the event of material and legal defects (including incorrect and deficient delivery as well as improper installation or faulty installation instructions), In all cases, the statutory special provisions remain unaffected for final delivery of the goods to a consumer (supplier recourse in accordance with §§ 478, 479 BGB).
2. The basis of our liability for defects is first and foremost the agreement made regarding the condition of the goods. All product descriptions which are the subject of the individual contract or have been made public by us (in particular in catalogues or on our internet homepage) apply as an agreement regarding the condition of the goods.

In particular, there is no defect if
• A minimum length of at least 5 cm, which ensures the load capacity, does not protrude from the RopeFix if the ropes are cut/shortened by the purchaser;

• Ropes or suspension components from other manufacturers are used: the stated strength values apply only to combinations with ERS products. When using products from other manufacturers, a load guarantee can be made only if this is tested in advance by us;

• Mechanics are opened and manipulated on other product components;

• The RopeFix clamping mechanisms are not used with the rope diameters specified for this purpose in the production specifications;

• The customer uses self-produced rope fasteners, such as loops or ferrules crimped with a pair of pliers.
3. Insofar as the condition has not been agreed, judgement must be made according to the legal regulations regarding whether or not there is a defect (§ 434 para. 1 p. 2 and 3 BGB). We assume no liability for public statements by the manufacturer or other third parties (e.g. advertising statements).
4. The claims of the buyer regarding defects presuppose that the buyer has complied with their statutory inspection and complaint obligations (§§ 377, 381 HGB). We must be notified immediately in writing if there is a defect at the time of delivery, the inspection, or at any later time. In any case, obvious defects must be reported in writing within eight working days from the date of delivery; any defects that cannot be identified during the inspection must be reported within the same period following their discovery. If the buyer fails to properly inspect and/or report a defect, our liability for a defect that is not reported or is not reported in a timely manner or is reported improperly is excluded under the statutory provisions.
5. If the delivered item is defective, we may first choose whether we will provide supplementary performance by rectifying the defect (rectification) or by delivering a defect-free item (replacement). Our right to refuse supplementary performance under statutory conditions remains unaffected.
6. We are entitled to make the owed supplementary performance dependent on the buyer paying the due purchase price. The buyer is, however, entitled to retain a portion of the purchase price which is reasonable in relation to the defect.

7. The buyer must give us the time and opportunity required for the owed supplementary performance, especially to hand over the rejected goods for testing purposes. In the event of replacement, the buyer must return the defective item according to the legal regulations. Supplementary performance does not include the dismantling of the defective item or its reinstallation if we were originally not obliged to install it.
8. The expenses required for the purpose of testing and supplementary performance, in particular transport, travel, labour and material costs (not: dismantling and installation costs), are borne by us if a defect actually exists. Otherwise, we may demand compensation from the buyer for costs incurred in connection with the unjustified demand for rectification of the defect (in particular testing and transport costs), unless the absence of defect was not apparent to the buyer.
9. In urgent cases, e.g. if operational safety is endangered, or to prevent disproportionate damage, the buyer has the right to remedy the defect on their own and to demand compensation from us for any objectively required expenses. We must be informed immediately, if possible in advance, of the buyer's self-assertion in this regard. The right to self-assertion on the part of the buyer does not exist if we were entitled to refuse a corresponding supplementary performance according to the statutory provisions.
10. If the supplementary performance has failed or if a reasonable period to be set by the buyer for the supplementary performance has expired without success or is dispensable in accordance with statutory provisions, the buyer may withdraw from the purchase contract or reduce the purchase price. However, there is no right of withdrawal in the event of a minor defect.
11. Claims on the part of the buyer for damages or compensation for futile expenses apply, even in the event of defects, only in accordance with § 8 and are otherwise excluded.

§ 8 Other liability
1. Insofar as these GTC, including the following provisions, do not stipulate otherwise, we are liable in the event of a breach of contractual and non-contractual obligations in accordance with statutory provisions.
2. We are liable for damages – for whatever legal reason – in the context of fault liability for intent and gross negligence. In the event of ordinary negligence, we are liable, subject to a milder standard of liability according to the statutory provisions (for example, for due care in our own affairs), only for a) damages resulting from injury to life, body or health,
b) for damages resulting from the material breach of a material contractual obligation (obligation the fulfilment of which enables the proper execution of the contract in the first place and on compliance with which the contractual partner regularly trusts and may trust); however, in this event, our liability is limited to compensation for foreseeable, typically occurring damage.
3. The liability restrictions resulting from para. 2 also apply to breaches of obligation by or on behalf of persons whose fault we are responsible for under the statutory provisions. These liability restrictions do not apply if we fraudulently concealed a defect or assumed a guarantee for the condition of the goods and for claims of the buyer under the Product Liability Act.
4. In the event of a breach of obligation that does not consist in a defect, the buyer may withdraw or terminate only if we are responsible for the breach of obligation. An unrestricted right of termination on the part of the buyer (in particular according to §§ 651, 649 BGB) is excluded. The legal requirements and legal consequences also apply.

§ 9 Statute of limitations
1. Notwithstanding § 438 para. 1 no. 3 BGB, the general limitation period for claims arising from material and legal defects is one year from delivery. Insofar as acceptance has been agreed, the limitation period begins with acceptance.
2. However, if the goods are a structure or an object that has been used for a structure in accordance with its customary use and has caused a defect (building material), the limitation period is 5 years from the date of delivery (§ 438 para. 1 No. 2 BGB). Further special statutory provisions regarding the statute of limitations remain unaffected (in particular, § 438 para. 1 no. 1, para. 3 §§ 444, 479 BGB).
3. The above limitation periods regarding commercial law also apply to contractual and non-contractual claims for damages on the part of the buyer, which are based on a defect of the goods, unless the application of the regular statutory limitation period (§§ 195, 199 BGB) would lead in individual cases to a shorter limitation period. However, claims for damages on the part of the buyer according to § 8 para. 2 sent. 1 and sent. 2(a), as well as according to the Product Liability Act, are subject to the statute of limitation only in accordance with the statutory limitation periods.

§ 10 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.

§ 11 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 buyer 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 directly or indirectly from the contractual relationship is our seat of business in Lorsch. The same applies if the buyer is an entrepreneur in the sense 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 buyer. Statutory provisions that take priority, especially regarding exclusive jurisdictions, remain unaffected.

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This document is only a translation of the original.