

I. Scope

1. These Terms and Conditions of Sale shall apply only vis-à-vis entrepreneurs in terms of § 14 BGB [German Civil Code] when the contract is part of the business of the enterprise, as well as vis-à-vis legal persons under public law and special funds under public law in terms of § 310 (1) BGB.
2. These Terms and Conditions of Sale apply to all business transactions between Erlenbach GmbH (hereinafter referred to as 'Erlenbach') and the buyer, even if they are not mentioned in subsequent contracts. They apply accordingly to work and services. Taking delivery of goods is substituted by acceptance in the case of work and receipt of the service in the case of services.
3. Any terms and conditions of the buyer that conflict with, supplement or deviate from these Terms and Conditions of Sale shall not form part of the contract unless Erlenbach has expressly agreed to their applicability in writing. These Terms and Conditions of Sale apply even if Erlenbach, having knowledge of conflicting or deviating terms of the buyer, makes delivery to the buyer without reservation.
4. Any arrangements made in addition to or deviating from these Terms and Conditions of Sale and that are agreed upon between Erlenbach and the buyer to implement a contract must be put in writing in the contract. This shall also apply for the waiver of this written form requirement.
5. Any rights that Erlenbach is entitled to pursuant to statutory provisions and that go beyond these Terms and Conditions of Sale shall not be affected.

II. Conclusion of Contract and Contract Amendments

1. Quotations are subject to change and non-binding.
2. Illustrations, drawings, specifications on weight, measurement, performance and consumption as well as other descriptions of goods in documents accompanying the quotation are only approximations unless they have been expressly designated as binding. They do not constitute an agreement or a guarantee of the characteristics of the goods.
3. Erlenbach retains property rights and copyright to all quotation documents. Such documents may not be made available to third parties.
4. An order shall only become binding if confirmed with a written order confirmation. An order confirmation placed by use of automatic appliances and lacking name and signature shall be considered a written order confirmation. Erlenbach's silence regarding offers, orders, requests or other declarations from the buyer may only be considered a confirmation if this has been expressly agreed upon in writing. If the order confirmation contains obvious mistakes, misspellings or miscalculations, Erlenbach shall not consider it binding.

III. Scope of Delivery

5. Erlenbach's written order confirmation shall be decisive for the scope of the delivery. Changes to the scope of delivery require Erlenbach's written confirmation to become effective. Erlenbach reserves the right to make changes to the construction and shape of the goods as long as these changes are insignificant and acceptable to the buyer.
1. Operating instructions and certificates from our suppliers are only part of the delivery in digital form in German and/or English.
2. Partial deliveries shall be permitted.

IV. Delivery Period

1. Any agreement on delivery periods and dates must be made in writing. Delivery periods and deadlines shall not be binding unless they have been specified as binding.
1. The delivery period shall commence when Erlenbach has dispatched the order confirmation, however not before all documents, permits and approvals that the buyer has to provide have been furnished, all technical questions have been clarified as well as an agreed down payment has been received. Compliance with the delivery period is conditional on the timely and correct fulfilment of the buyer's other obligations.
2. The delivery period is deemed to have been met when the goods have left the factory by the time specified or Erlenbach has communicated the readiness for shipment of the goods. Observing the delivery period is subject to punctual and correct supply of Erlenbach by its own suppliers.
3. In the event of a delay in delivery, the buyer shall be entitled to rescind the contract after a reasonable extension period with a warning to refuse performance, which was set by the buyer after the occurrence of delay of delivery, has expired unsuccessfully.
4. Should Erlenbach have concluded a framework agreement with the buyer for future deliveries with fixed delivery dates and the buyer fails to call off the goods on time, Erlenbach is entitled to deliver and invoice the goods after a reasonable extension period has expired unsuccessfully, to rescind the contract or, if the buyer was at fault, to claim damages in lieu of performance.

V. Transfer of Risk

2. The risk shall pass to the buyer as soon as the goods have been handed over to the person effecting transport or have left the Erlenbach warehouse for the purpose of shipment. If the buyer collects the goods, the risk shall pass to the buyer when readiness for shipment has been communicated. Sentences 1 and 2 also apply to partial deliveries or if Erlenbach has assumed additional services such as bearing transportation costs or the installation of the goods at the buyer's premises. At the request and expense of the buyer, Erlenbach shall take out transport insurance covering risks specified by the buyer.
1. If the buyer is in default of acceptance or violates any other duties to cooperate, Erlenbach shall be entitled to demand compensation for damages incurred including possible additional expenses. The risk of accidental loss or accidental deterioration of the goods passes to the buyer once the buyer starts being in default of acceptance. Erlenbach is entitled to dispose of the goods otherwise after an appropriate extension period has expired unsuccessfully and may supply the buyer within a reasonably extended period.
2. Without prejudice to its warranty claims, the buyer is obliged to accept delivered goods even if they show minor defects.

VI. Prices and Payment

1. Unless otherwise agreed, the prices are 'ex works' excluding packaging. Packaging shall be charged separately. Value added tax is not included in the price and shall be stated separately on the invoice at the statutory rate valid on the day the invoice is issued.
2. Orders for which fixed prices have not been explicitly agreed shall be invoiced at Erlenbach's list prices valid on the day of delivery. The recording of the list price valid on the day of order on the order form or order confirmation shall not constitute an agreement of a fixed price. If production-related price increases occur by the date of delivery, Erlenbach shall be entitled to adjust the prices accordingly without regard to quotation and order confirmation.
3. In the absence of a specific agreement, the delivery price must be paid within 30 days net without any deductions after receipt of invoice. Date of payment shall be the day on which Erlenbach has the delivery price at its disposal. In the event of late payment, the buyer has to pay default interest at a rate of 8 percentage points per annum above the prime rate. Erlenbach reserves the right to assert additional claims.
4. Deviating from point 3 above, payment for foreign business must be made prior to delivery unless otherwise agreed in writing.
5. The buyer shall only be entitled to set off if its counterclaim has been established by a legally binding judgement or if it is undisputed. The buyer may only exercise a right of retention when the counterclaim is based on the same contractual relationship.

VII. Claims for defects, warranty and limitation of liability

6. Our liability for defects is based exclusively on the agreed quality of the delivery item, as stated in the order confirmation. Erlenbach does not accept liability for characteristics that fall outside the scope of application of the delivery item expressly specified by the purchaser prior to conclusion of contract, unless expressly agreed otherwise in writing in a specific case. Erlenbach provides no warranties whatsoever, in particular warranties of quality/availability or a warranty of specific cycle times, unless agreed otherwise in writing in a specific case. In particular, references to DIN standards, product data sheets or diagrams produced in the course of preparing an offer do not constitute any undertaking as to the characteristics described therein, but serve solely to describe the delivery item. Erlenbach accepts no liability for public statements (e.g. statements in advertising), unless agreed otherwise in writing in a specific case. Sales employees of Erlenbach, commercial representatives or other sales intermediaries are not authorised to provide warranties on behalf of Erlenbach or give undertakings as to characteristics.
1. The purchaser is expressly notified that, in the event of the integration of production equipment into the purchaser's production process to achieve defect-free functionality of the delivery item, the purchaser must provide the necessary media and materials, observe the operating parameters and the operating instructions and comply with the maintenance procedures. Details are provided in the "Technical conditions and operating parameters for production using Erlenbach equipment", enclosed with the order confirmation.
2. If Erlenbach or the purchaser identifies problems while preparing the offer, approving working drawings, during installation or during commissioning of the delivery item that could jeopardise the purpose of the contract, each shall inform the other of such problems immediately and both work together as partners to solve the problem.
3. If Erlenbach has tools produced for the purchaser's specific applications, Erlenbach shall order such tools in its own name, but with regard to claims for defects, any undertakings or warranties of characteristics, as well as associated claims for consequential damages Erlenbach shall order on behalf of the purchaser. Erlenbach therefore shall only be liable to the extent that a claim can in fact be brought against the tool manufacturer in this regard. Erlenbach may absolve itself of such liability by assigning applicable claims against the tool manufacturer.
4. The purchaser's rights with regard to defects are subject to the delivery item, if formal acceptance does not take place, being inspected immediately on receipt and Erlenbach being notified of defects in writing immediately, at the latest however within two weeks of receipt of the goods. Erlenbach must be notified of hidden defects in writing immediately after they are discovered. If proper inspection is not performed and/or notice of defects is not given/is given late, Erlenbach's liability is excluded to the extent of the defect for which no notice has been given. If, prior to final commissioning and acceptance of the delivery item, preliminary commissioning takes place on Erlenbach's premises, the purchaser is obliged to participate in such preliminary commissioning and preliminary acceptance. If malfunctions occur on final acceptance that was not present on preliminary acceptance, Erlenbach shall not be responsible if the malfunction has not been caused by disassembly and recommissioning.
5. If the delivery item exhibits a defect in spite of all due care, Erlenbach shall be entitled at its choice to cure the defect by remedying the defect or to supply defect-free goods. The right under statutory provisions to refuse to provide cure remains unaffected.
6. Erlenbach is entitled to make the cure that is owed dependent on the purchaser paying the purchase price that is due. However, the purchaser is entitled to retain part of the purchase price to an extent appropriate to the defect.
7. The purchaser's rights with regard to defects are excluded in the following cases:
 - a. there are insignificant deviations from the agreed quality or insignificant impairment of usability; or
 - b. if the defect arises as a consequence of the following:
 - i. normal wear (in particular for wearing parts); or
 - ii. improper handling, assembly, use or storage by the purchaser or a third party; or
 - iii. excessive load or specific external influences that the contract does not provide for; or
 - iv. failure to comply with the "Technical conditions and operating parameters for production using Erlenbach equipment"; or
 - v. improperly performed modifications or repair of the goods by the purchaser or a third party.

To that extent, the purchaser must follow the information, notes and conditions in the technical instructions, assembly and operating instructions and other documents from Erlenbach to avoid typical defects and damage due to corrosion, unsuitable water, excessive pressure, frost or overheating. The purchaser shall also have no claims for defects to the extent that required checks or maintenance and service specified in the notes, assembly or operating instructions and other documents from Erlenbach for the individual products, prescribed by law or by professional associations are not performed correctly or on time and evidence is not provided that they have been performed. The same applies to defects for which the purchaser or a third party is responsible or that have a different technical cause than the original defect.

8. If the purchaser gives notice of a defect, investigation of the delivery item and the performance of repairs or the installation of spare parts does not constitute admission of responsibility by Erlenbach. Such work is performed by Erlenbach in the interests of rapid remedying of the malfunction, but subject to verification of whether their issue involves a defect to be accepted by Erlenbach, ordinary maintenance or a malfunction for which the purchaser is responsible. In the case of a defect to be remedied by Erlenbach, Erlenbach is obliged to bear the necessary costs of remedying the defect, to the extent that they are not increased as a result of the goods having been taken to a location other than the delivery address. The costs of personnel and materials that the purchaser claims in this regard must be calculated on a cost basis without overhead costs. Removed and replaced parts become the property of Erlenbach and must be returned to Erlenbach. However, cure does not include removing or disassembling the defective goods or assembling or installing them again if Erlenbach was not originally under obligation to perform assembly or installation. If Erlenbach considers it appropriate, for the purposes of remedying a defect or further investigation of a malfunction, to disassemble the supplied equipment and to perform (repeat) preliminary commissioning at its factory, the purchaser must permit Erlenbach to do so. If it is found that the demand to remedy a defect was unjustified, Erlenbach is entitled to demand that the associated costs are reimbursed at its standard rates for maintenance and repairs.
9. If Erlenbach is not prepared or in a position to cure the defect, the purchaser may withdraw from contract or reduce the agreed price at its choice without prejudice to any other claims for damages or reimbursement of expenses. The same applies if cure fails, is unreasonable for the purchaser or its delayed for an unreasonable period for reasons for which Erlenbach is responsible.
10. The purchaser's right to withdraw is excluded if it is not in a position to return the received performance and this is not because return is impossible by the very nature of the received service, Erlenbach is responsible for the impossibility or the defect has only become apparent when processing or altering the goods. The right to withdraw is further excluded if Erlenbach is not responsible for the defect and if Erlenbach is required to provide compensation in lieu of return. An unrestricted right of termination in favour of the purchaser (in particular in accordance with Sections 651 and 649 BGB) is excluded.
11. Erlenbach shall only bear unlimited liability for claims arising from and in connection with the delivery contract in the following cases:
 - a. breach of a warranty;
 - b. culpable injury to life, limb and health;
 - c. malice or intent; and
 - d. gross negligence of its owners, directors (managing directors, board members, supervisory board members) or officers.

For simple negligence, Erlenbach shall also be liable for damage to the delivery item itself or to the extent that essential obligations are breached that arise from the nature of the contract and that are of particular significance with regard to achieving the purpose of the contract. In these cases, however, Erlenbach's liability is limited to compensation for foreseeable, typical damage. The same applies in the case of delay and impossibility. Mandatory statutory liability for product defects remains unaffected. Greater liability for claims arising from and in connection with the delivery contract is excluded.

If by way of exception Erlenbach provides a warranty or a gives an undertaking as to characteristics, liability in these cases shall only extend beyond the liability as described above to compensation for foreseeable, typical damage excluding consequential loss or loss of profits, unless there is agreement otherwise in writing in the specific case.

Furthermore, unless there is agreement otherwise in writing in the specific case, such liability shall be limited to 10% of the net order value.

12. Claims by the purchaser for reimbursement of expenses in lieu of damages instead of performance are excluded, in so far as a reasonable third party would not have made such claims.
13. Claims for defects expire in 12 months from receipt of the goods. If acceptance is agreed, the period of limitation starts on acceptance. To the extent that longer mandatory periods of limitation are prescribed by law in accordance with Section 438 paragraph 1 No. 2 BGB (buildings and things for buildings), Section 438 paragraph 3 BGB (fraudulent concealment), Section 479 paragraph 1 BGB (recourse claim) and Section 634a paragraph 1 BGB (building defects), the statutory periods of limitation shall apply from receipt of the goods or acceptance.
14. The statutory periods of limitation apply to all claims for damages in cases of malice, intent or gross negligence or injury to life, body and health caused by an intentional or negligent breach of duty by Erlenbach. Any statement by Erlenbach regarding a claim made by the purchaser for a defect does not constitute entry into negotiations regarding the claim or the circumstances giving rise to the claim, if the claim for a defect is rejected by Erlenbach in entirety.
15. To the extent that Erlenbach's liability is excluded or limited, this also applies to the personal liability of employees, colleagues and representatives and agents of Erlenbach.

VIII. Retention of Title

1. Erlenbach shall retain title to the goods supplied until all Erlenbach's claims against the buyer from the business relationship have been paid in full. The buyer is obligated to treat the goods subject to the retention of title with due care for the duration of the retention of title. In particular, the buyer is obligated to adequately insure the goods at their replacement value against damage from fire, water and theft at its expense. At Erlenbach's request, the buyer must provide proof of insurance cover. The buyer already now assigns all compensation claims from such an insurance contract to Erlenbach. Erlenbach herewith accepts the assignment. Should an assignment be inadmissible, the buyer herewith irrevocably advises its insurer to make any payments solely to Erlenbach. Any further claims of Erlenbach shall remain unaffected.
2. The buyer may only sell goods subject to the retention of title within the normal course of business. The buyer is not entitled to pledge goods subject to the retention of title, to assign them by way of security or make any other dispositions that jeopardise Erlenbach's ownership. In the case of attachments or other encroachments by third parties, the buyer must notify Erlenbach in writing immediately and supply all necessary information, inform the third party about Erlenbach's property rights and cooperate in measures that Erlenbach takes to protect the goods subject to retention of title.
3. The buyer already now assigns the claims arising from the resale of the goods to Erlenbach, including all ancillary rights, irrespective of whether the goods subject to the retention of title are resold without or after further processing. Erlenbach already now accepts this assignment. Should an assignment be inadmissible, the buyer hereby irrevocably advises the third-party debtor to make payments exclusively to Erlenbach. The buyer is granted the revocable right to collect the claims that have been assigned to Erlenbach in a fiduciary capacity for Erlenbach in the buyer's own name. The amounts collected must be paid to Erlenbach immediately. Erlenbach may revoke the buyer's power of collection as well as the buyer's authority to resell goods if the buyer fails to fulfil its payment obligations towards Erlenbach properly, falls into arrears with payments, stops payments or if the institution of insolvency proceedings against the buyer's assets has been filed. In the case of a blanket assignment on behalf of the buyer, the claims assigned to Erlenbach have to be expressly exempted.
4. If the buyer defaults on payment, Erlenbach is entitled, without prejudice to its other rights, to rescind the contract without setting a prior deadline. The buyer must grant Erlenbach or its representative's immediate access to the goods subject to the retention of title and surrender them. After a timely warning, Erlenbach may otherwise dispose of the goods subject to the retention of title in order to satisfy its matured claims against the buyer.
5. Any processing and transformation of goods subject to the retention of title by the buyer is always effected on behalf of Erlenbach. The buyer's expectant right to the goods subject to the retention of title continues in respect of the processed or transformed object. If the goods are processed or transformed with items that are not owned by Erlenbach, Erlenbach shall acquire co-ownership in the new item in proportion of the value of the goods delivered to the value of the other processed objects at the time of processing or transformation. The same applies if the goods are combined or mixed with items not owned by Erlenbach in such a manner that Erlenbach loses title thereto. The buyer shall store the new object on behalf of Erlenbach. In any other respects, the same conditions apply to the item created through processing or transformation as well as combination and mixing as those that apply for goods subject to the retention of title.
6. At the buyer's request, Erlenbach is obligated to release its securities to the extent that the realisable value of the securities exceeds Erlenbach's claims from the business relationship with the buyer by more than 20%, while taking the valuation discounts customary in banking into account. The valuation shall be based on the invoice value of the goods subject to the retention of title and the nominal value of the claims. The choice of securities to be released lies with Erlenbach.
7. For goods that are delivered to destinations with other legal systems where this retention of title regulation provides less security than in the Federal Republic of Germany, the buyer herewith grants Erlenbach an equivalent security interest. The buyer shall cooperate in all further measures necessary and conducive for the validity and enforceability of such security interests.

IX. Product Liability

1. The buyer shall not modify the goods, in particular it shall not change or remove existing warnings about the dangers of using the contractual products incorrectly. If this duty is violated, the buyer shall indemnify Erlenbach in the internal relationship from any product liability claims of third parties unless the buyer is not responsible for the defect that gives rise to liability.
2. Should Erlenbach be required to recall products or issue a warning due to a product defect, the buyer shall use its best efforts to cooperate in the measures deemed necessary and appropriate by Erlenbach and support Erlenbach, in particular in collecting customer data. The buyer is obliged to bear the costs of the product recall or warning unless it is not responsible for the product defect and the subsequent damage pursuant to principles of product liability laws. Any further claims of Erlenbach shall not be affected.
3. The buyer shall notify Erlenbach in writing without delay if it becomes aware of any risks when using the goods or possible product defects.

X. Force Majeure

1. Should Erlenbach be prevented from fulfilling its contractual obligations, in particular the delivery of goods, due to an event of force majeure, Erlenbach shall be released from its obligation to perform for the duration of the event and a reasonable start-up period without being liable for damages to the buyer. The same shall apply if Erlenbach's performance of its obligations becomes unacceptably difficult or temporarily impossible due to unforeseeable circumstances for which Erlenbach is not responsible, in particular industrial action, official measures, energy shortages, delivery problems on the part of a sub-supplier or significant operational disruptions. This applies equally if these circumstances occur at sub-suppliers and also if Erlenbach is already in default. Should Erlenbach be released from the duty to deliver, Erlenbach shall refund any advance payments made by the buyer to it.
2. After setting a reasonable time limit, Erlenbach is entitled to rescind the contract if such a disruption continues for more than four months and Erlenbach is no longer interested in performing the contract due to the disruption. At the buyer's request, Erlenbach shall declare after the expiry of this period whether it intends to exercise its right to rescind the contract or deliver the goods within a reasonable period of time.

XI. Confidentiality

1. The parties undertake not to disclose any information made accessible to each other and marked confidential or otherwise recognisable as business or trade secrets for an unlimited period and not to record or divulge or utilise it unless this is necessary for the business relationship.
2. The parties shall ensure by way of suitable contractual agreements with their employees and representative that they also refrain from using, disclosing or recording without authority any of these business and trade secrets for an unlimited period.

Final Provisions

1. The buyer may only assign rights and duties to third parties with Erlenbach's written consent.
2. The law of the Federal Republic of Germany shall govern all legal relationships between the buyer and Erlenbach to the exclusion of the UN Convention on Contracts for the International Sale of Goods (CSIG).
3. The registered office of Erlenbach shall be the exclusive place of jurisdiction for all disputes arising from the business relationship between Erlenbach and the buyer. In addition, Erlenbach shall be entitled to bring legal action at the registered office of the buyer as well as at any other permissible legal venue.
4. The registered office of Erlenbach shall be the place of fulfilment for all duties of the buyer and Erlenbach.
5. Should any of the provisions of this contract be or become totally or partially invalid or unenforceable, or should a regulatory gap be identified in this contract, the validity of the remaining provisions shall not be affected. In place of the invalid or unenforceable provision, a valid and enforceable provision that comes closest to the purpose of the invalid and unenforceable provision shall be agreed upon. In the case of a regulatory gap, the provision is deemed to be agreed upon that corresponds to the purpose of this contract and that would have been agreed upon, had the contracting parties considered this matter from the outset.

Lautert, 01.07.2015

