

**General Terms and Conditions**  
**Erhard Luttkau GmbH**

**1. Validity**

- a) These General Terms and Conditions shall apply to all deliveries and services supplied or provided by us (Erhard Luttkau GmbH) to our customers and/or service recipients (hereinafter referred to as "Customer").
- b) Our General Terms and Conditions shall apply exclusively; we do not recognize terms and conditions of the customer that conflict with or deviate from our General Terms and Conditions unless we have expressly agreed to their application in writing.

**2. Quotations, Scope of Supply or Service**

- a) Our offers are always subject to change; therefore, they shall merely be considered as an invitation to make an offer unless we have agreed to a different arrangement.
- b) Our quotations are submitted without any agreement. Drawings, pictures, estimates of cost or other performance data will only be considered to be binding if we expressly confirm them in writing.
- c) We reserve the ownership rights and copyrights in images, drawings, calculations and other documents. The same shall apply to those written documents, in particular, that are designated as "confidential". The customer may only disclose them to third parties with our express written consent and is obliged to return them to us on demand.
- d) If during the execution of an order it becomes obvious that the repair is impossible or inefficient we shall invoice the services rendered and the supplies performed up to that moment.

**3. Delivery, Reservation of Delivery by Ourselves**

- a) As a matter of principle, delivery dates or delivery periods are non-binding unless otherwise agreed in the order confirmation in writing. Any delivery period specified by us will only start after all technical issues have been resolved. If we are not able to deliver on time, we will notify the customer immediately.
- b) In addition, compliance with our duty to deliver the goods is subject to the customer's timely and proper fulfilment of its duties.
- c) Delivery is subject to us receiving our supplies punctually and in good order.

- d) We are entitled to partial deliveries if such are not unreasonable to the customer.
- e) In case of absence of special instructions the carrier and forwarding agent as well as the transport means can be chosen at our discretion.
- f) If the customer does not accept the goods as agreed in the contract, or if it violates other duties to cooperate, we are entitled to demand compensation of the damage incurred by us in this respect, including any additional expenses, unless the customer is not responsible for the breach of contract. We reserve the right to assert further claims.
- g) If the customer is in default of acceptance, the risk of accidental loss or deterioration of the item being purchased shall pass to the customer.
- h) In case of force majeure or unforeseeable and unusual events for which we are not responsible (e.g. an energy shortage, delays in deliveries from suppliers, difficulties related to imports, disruptions of operations or transport, strikes, lockouts, force majeure) shall extend the delivery period by a corresponding amount of time. If we are unable to perform after that extension, both parties are entitled to withdraw from the contract. If either party exercises the right to withdraw, the performances rendered up to that point shall be refunded. Claims for damages are subject to the conditions of sec 7.

#### **4. Passing of the Risk**

Unless otherwise agreed, the delivery is agreed "ex works" (EXW - Incoterms 2010) at my premises at 25436 Heidgraben, Federal Republic of Germany.

#### **5. Prices, Terms of Payment**

- a) Unless otherwise agreed, our prices are quoted "ex works" (EXW - Incoterms 2010), exclusive of transport and packaging; the packaging will be invoiced separately. The statutory value-added tax is not included in our prices; it will be shown separately on the invoice.
- b) Should we have simultaneous claims for payment against the customer, the we shall be entitled to stipulate the individual claims against which any payments are to be set off, insofar as we have not put in place any redemption terms upon payment. Should the customer be late in settling an outstanding sum, we shall be entitled without special notice to suspend all further deliveries until the customer has paid the outstanding sum. Should we establish after a contract has been concluded that our payment claims are jeopardised by the customer's inability to meet its payment obligations, we shall be entitled, even in the event of it being required to give advance performance, to refrain from performing our contractual obligations, should the customer not make payment or provide security in respect of such payment. The detailed provisions applicable hereto are set out in section 321 of the German Civil Code (BGB).

- c) Rights of set-off and retention may only be exercised by the customer if its counterclaims have been judicially established, are undisputed or have been acknowledged by us. The customer is only entitled to hold back payments or to settle them with counterclaims if his counterclaims are uncontested or have been established as final and absolute. This does not apply to counterclaims on the part of the customer, which a) are associated directly with remedying defects or reverse transactions due to a defect that has not been remedied by us during subsequent fulfilment or which is to be remedied, and b) which are based on the same contractual relationship as our claim to payment.
- d) We are entitled to claim default interest in the amount of nine (9) percentage points above the base interest rate per year and a flat rate payment of EUR 40.00 from the occurrence of a default of payment, notwithstanding the option to assert a claim for damages for any additional actual damage. We reserve the right to calculate statutory interest payable after the due date.

## **6. Liability for defects**

- a) The customer has a duty to inspect the goods upon receipt without undue delay. It shall notify us of apparent defects upon receipt of the goods without undue delay in writing. The customer shall notify us of hidden defects as soon as it discovers them. If the customer fails to comply with these duties, the goods shall be deemed accepted.
- b) If the item being purchased is defective, the customer is entitled to have the defect remedied or to receive a new item that is free of defects, at our discretion. If we remedy the defect, we shall bear all expenses necessary to remedy the defect within the limits of the duties imposed by law unless they are increased due to the fact that the item being purchased was taken to a place other than the place of performance. If attempts to remedy the defect fail repeatedly, the customer may, at its discretion, withdraw from the contract or reduce the purchase price by an appropriate amount.
- c) We shall only be liable for damages in accordance with the provisions of sec. 7.
- d) The warranty periods are 12 months, calculated from the time of the passing of the risk. This does not apply to claims for damages.

## **7. Liability for damages**

- a) Claims for damages of any kind against us or our legal representatives or persons employed by us in the performance of our obligations shall be limited to damage resulting from intentional acts or gross negligence or the breach of a material contractual duty.

A "material contractual duty" shall be defined as any duty that must be complied with in order to make the proper performance of the contract possible in the first place and on the observance of which the customer may regularly rely.

- b) To the extent that we are liable in accordance with the aforementioned provisions, our liability shall be limited to the foreseeable damage typically incurred with this type of contract unless it is due to an intentional act.
- c) The aforementioned limitations and exclusions of liability do not apply to liability pursuant to the Product Liability Act or other national laws implementing the Product Liability Directive or injuries to life, body or health.
- d) Claims to the compensation of expenses in place of the service are not permitted, provided that liability is excluded as a possibility in accordance with the above-stated regulations.

## **8. Retention of title**

- a) We will retain the title to the products delivered until all claims from the business relationship with the customer are settled in full.
- b) Any processing or treatment of the goods subject to retention of title by the customer will always be performed on our behalf without creating any obligations for us. We are entitled to the ownership of the new items in their respective state of treatment or processing. If our goods subject to retention of title are processed, treated, mixed or combined with other products that are not owned by us, we will acquire a (co-)ownership interest in the new item based on the share of invoice price of the goods subject to retention of title compared to the invoice price of the other products. The customer hereby assigns to us in advance, as of now, its co-ownership interests that arise in the situations specified in the previous sentence up to the amount of the invoice price of the goods subject to retention of title.
- c) The customer may sell the goods subject to retention of title in which we hold the sole or a co-ownership interest in the normal course of business; it must not pledge or assign the goods as collateral. The customer already now and in advance assigns to us all claims it is entitled to from selling the goods subject to retention of title or with regard to the products resulting from the processing, treatment, mixing or combination. This also applies if the products are sold with other products that are not owned by us at a combined price. If a third party has acquired ownership or co-ownership interests in the product pursuant to a legal regulation as a consequence of the processing, treatment, mixing or combination, the customer also now and in advance assigns to us the claims accrued to it against the third party. All assignments in terms of this paragraph are always limited to the amount of the invoice price of the goods subject to retention of title. The customer may collect the assigned claims until such permission is revoked; the permission may be revoked at any time. The customer undertakes to take out and maintain insurance coverage against typical risks for the goods subject to retention of title. It already now and in advance assigns to us its claims for compensation based on the loss or any damage to the goods subject to retention of title against its insurer. We already now accept the assignments of the customer provided for in this Section.

- d) We undertake to release the collateral that we are entitled to based on the aforementioned provisions upon the customer's request at our discretion and to the extent that their value exceeds the claims to be secured by more than 10%.
- e) If the customer's cooperation is required to make the retention of title effective, for example with regard to registrations that are required in accordance with the law of the country in which the purchaser is located, the customer shall perform such acts upon our request.
- f) If the customer is in default of payment, we may prohibit it from disposing of the goods subject to retention of title completely or, at our discretion, in part, e.g. only with regard to selling or further processing, etc. If the customer meets the objective requirements of the duty to file for insolvency, it shall refrain from disposing of the goods subject to retention of title in any way, without being specifically requested to do so. The customer shall report the inventory of goods subject to retention of title to us without undue delay. In this event we are also entitled to withdraw from the agreement and demand the return of the goods subject to retention of title. If the goods subject to retention of title were processed, treated, mixed or combined with other products, we are entitled to demand that they be transferred to a trustee; the customer shall provide a list of all co-owners of the goods subject to retention of title, stating their company name and/or name, address and all co-ownership interests. The same, by analogy, applies to the claims that have been assigned to us in accordance with the previous paragraphs; in addition, the customer shall send us the names and addresses of all debtors and a copy of the documents evidencing the claims against them without being specifically requested to do so.

## **9. Applicable Law, Place of Jurisdiction, Place of Performance**

- a) If the customer is a businessman, a legal entity under public law or a special fund under public law or does not have a general place of jurisdiction in Germany, the competent court in Hamburg shall have exclusive jurisdiction. However, if the customer has its legal place of business outside the European Union, the claiming party may also bring suit against the other party at the other party's place of business or, alternatively, before the court of arbitration of the Chamber of Commerce in Hamburg. In the latter case, the place of arbitration will be Hamburg and the language used in the proceedings will be German.
- b) This Agreement shall be governed by the laws of the Federal Republic of Germany, to the exclusion of the United Nations Convention on Contracts for the International Sale of Goods.
- c) Unless otherwise agreed, our place of business shall be the place of performance.

Status: 12/2015