

**General Terms and Conditions of Business**  
**ERNI Electronics AG (ERNI), Switzerland**

**1. General**

- 1.1 These General Terms and Conditions of Business (GTC) apply to all sales, deliveries and other services (collectively also referred to “deliveries”), of ERNI Electronics AG (ERNI). Contrary conditions of the customer are not binding on ERNI even if the order is based upon them or if the customer refers to them on forms or in other documents.
- 1.2 ERNI’s GTC likewise apply to all subsequent business, even if no further reference is made to them at the time when such transactions are concluded.
- 1.3 Secondary agreements, together with amendments and additions to the agreement and ERNI’s GTC, are valid only if they are agreed in writing with ERNI.

**2. Offers, Documentation**

- 2.1 Offers of ERNI are always made without obligation and are valid for not more than 60 days from the date of the offer made by ERNI unless specifically stated otherwise in the offer.
- 2.2 No particulars given in ERNI’s catalogues, price lists and further documentation are binding, but are provided “as is” only. Amendments to the specifications, product designs and other changes are reserved. They may influence delivery dates and prices.
- 2.3 Drawings, documentation, samples and other materials remain the property of ERNI. No licenses are granted in any intellectual property rights of ERNI and its affiliated companies. Intellectual property rights must be respected. In particular, the duplication or disclosure of supporting materials, documents or samples, especially of materials which are protected by copyright, is prohibited without the consent of ERNI. On request, all such documents and samples must be returned to ERNI.

**3. Prices**

- 3.1 Prices are quoted in the offered currency with packaging, exclusive of VAT, and save where otherwise agreed in writing FCA ERNI Plant/Warehouse (Incoterm 2020). The place of the ERNI Plant/Warehouse is determined in the provided offer.
- 3.2 Prices are generally adjusted once each year.  
All agreed prices and payment terms remain valid for not more than twelve (12) months from the date of the ERNI offer. If costs incurred by ERNI, in particular raw material costs, undergo significant changes ERNI is entitled to request an appropriate change of the agreed product prices. If the customer declines such price changes or if negotiations between the parties on such price changes do not result in a new agreed price within one month of the notice to take part in such negotiations, ERNI is entitled to give unilateral written notice of termination of the agreement with immediate effect and without any liability. The foregoing is without prejudice to individual orders confirmed by ERNI but not yet fully processed at the time notice is given. The parties are at liberty to extend the one-month negotiation period for price changes by mutual agreement in writing.

**4. Delivery Lead-Times, Part-Delivery, Force Majeure**

- 4.1 If the delivery lead-time is indicated as a period (and not as a specific date) it begins upon the date of the written order confirmation based on the unchanged offer.
- 4.2 Every delivery lead-time shall be suitably extended if required information or documents are not received in due time by ERNI, if these are subsequently amended by the customer with the consent of ERNI or if a down payment is received late.
- 4.3 If failure to comply with the delivery lead-time is not caused by the sole fault of ERNI, the customer shall not derive from that fact a right to withdraw from the agreement or to waive delivery or seek compensation. For the rest, the limitation of liability stated in Sec. 10 shall apply.
- 4.4 In the event of force majeure or other exceptional events for which ERNI is not responsible (including strikes) which make delivery impossible or substantially more difficult, ERNI may restrict or suspend the delivery for the duration of such obstacle or withdraw from the agreement. Force majeure includes, but is not limited to, war, unrest, rebellion, acts of sabotage

and similar events, strikes or other industrial conflicts, newly enacted laws and regulations, delay caused by actions or omissions on the part of a government/authorities, fire, explosion or other unavoidable events, flood, storm, earthquake or other exceptional natural events. Under no circumstances shall ERNI be held liable for claims related to non-performance, improper performance or belated performance of contractual obligations.

- 4.5 Part-deliveries are permitted. In the case of long-term supply contracts each part-delivery shall be regarded as a separate transaction. The impossibility of making a part-delivery or delay in effecting a part-delivery does not entitle the customer to withdraw from the whole agreement or to claim compensation.

## **5. Dispatch, Acceptance of the Goods by the Customer**

- 5.1 If acceptance is either delayed or rendered impossible for reasons for which ERNI is not responsible, ERNI is entitled to store the goods for the account and at the risk of the customer on its own premises or with third parties. The relevant obligations of ERNI shall then be deemed to have been performed.
- 5.2 If the customer does not announce his requirements in good time, the goods will be packaged for transport by road. The standard ERNI packaging consists of cartons which are not suitable for stacking.

## **6. Documents, Payment, Offsetting, Interest on Late Payment**

- 6.1 If the goods are picked up by a carrier or another 3<sup>rd</sup> party or if the goods are picked up by the customer at the ERNI location or if ERNI delivers the goods to a cross-dock, the customer is obliged to make available to ERNI copies of the transportation documents as well as, in case the goods are exported from the EU, copies of the customs documents within one month from when the goods have been picked-up or from when the goods have arrived at the cross-dock respectively. If within the above time frame the customer has not provided the required documents, ERNI reserves the right to charge possible VAT as well as, other expenses resulting from this.
- 6.2 At any point in time during the contractual relationship, the customer is obliged to ensure that ERNI is notified of the correct and valid VAT identification number of the part of the enterprise (main company/branch office) under which the goods or services are ordered from ERNI.
- 6.3 All invoices are payable net within 30 days after the invoice date. Different agreements may be reached between the parties.
- 6.4 Offsetting of counter-claims of all kinds is excluded, save where such counter-claim is not contested or is finally awarded.
- 6.5 Where several claims are outstanding, ERNI is entitled to decide which particular claims are settled by the customer's payments.
- 6.6 The withholding or reduction of payments because of complaints is permitted only with the express consent of ERNI.

## **7. Late Performance by the Customer, Insolvency**

- 7.1 If the customer is late in making a payment, either in whole or in part, all payment obligations existing in relation to ERNI, including those arising from other contracts, shall fall due for immediate settlement. Payments made by bills will not be accepted. The same provision applies if the customer is in cessation of payments or if legal composition, bankruptcy or similar proceedings are applied for or imposed with respect to his assets and if other circumstances which threaten to result in the customer's insolvency become known.
- 7.2 In the event of late payment by the customer, ERNI, without prejudice to its other statutory and contractual rights, may decline in whole or in part to make further deliveries under this or any other contract or make them dependent upon an advance payment or provision of surety.

**8. Retention of Title**

The goods which have been sold remain the property of ERNI until full payment of the sale price has been received. If the customer fails to fully meet his payment obligation, he thereby acknowledges the right of ERNI to require immediate return of the goods concerned and to arrange for the refund of any installment payment already received.

**9. Warranty**

- 9.1 The warranty period is two years calculated from the date of transfer of risk.
- 9.2 ERNI makes no express or implied warranty extending beyond the ERNI product specifications or agreed product specifications. In no case does the warranty of ERNI extend to merchantability or fitness for a particular purpose.
- 9.3 ERNI must be notified of any defects in the goods without delay in writing. Obvious defects must be reported within five working days of handover. Hidden defects must be reported immediately but no later than within five working days of the time when they were detected or could have been detected. If this is not done, the customer shall forfeit all claims arising out of the warranty.
- 9.4 In the event of defective performance, ERNI shall, at its option, either provide a replacement free of charge or effect repairs or grant an appropriate price reduction. If the substitute delivery or repair is likewise defective, the customer may request an appropriate price reduction. Further claims of the customer, in particular for termination of the contract are specifically excluded, regardless of the legal basis on which they are made. The limitation of liability pursuant to Sec. 10 likewise applies.
- 9.5 Complaints regarding part-deliveries do not entitle the customer to decline performance of the whole contract by ERNI.

**10. Liability**

- 10.1 To the extent permissible by law, liability of ERNI shall be limited in every case – even in the event of liability based on the infringement of intellectual property rights – to compensation for direct damages (i.e. re-installation or product exchange costs, sorting costs, direct labor costs or direct recall costs where recalls are mandatory under the applicable law). Any other liability including but not limited to loss of profit, loss of revenues, loss of data, loss of use, indirect or consequential damages is hereby excluded. ERNI is only liable for damages to the extent that it has caused such damages at least by negligence.
- 10.2 To the extent permissible by law, in no event shall ERNI be liable for more than 5 percent of the value of the individual delivery concerned.

**11. Intellectual Property Rights**

ERNI or its affiliated companies are and remain the owners of all intellectual property rights. In the case of orders whose performance includes development services, ERNI is the sole proprietor of the development results including, but not limited to, all concepts, drawings, samples, ideas, software, documentation and all other material, together with all intellectual property rights relating thereto or filed thereon. Rights of use or licenses for the customer in the developing result or in intellectual property rights are not granted either implicitly or explicitly.

**12. Trademarks**

Trademark rights of ERNI or of companies affiliated to it are not transferred with the purchased object. The acquisition of products identified with trademarks of ERNI or with trademarks of its affiliated companies does not mean the acquisition of rights in such trademarks or the right to use them independently of the acquired product. To acquire such rights, a separate trademark right agreement must be concluded.

**13. Confidentiality**

The customer must keep secret all confidential information received from ERNI in the context of the business relationship and refrain from disclosing it to third parties.

**14. Invalidation, Severability**

Should any provision of these GTC be or become invalid, that fact shall not affect the validity of the other provisions. The invalid provision shall be replaced by a valid provision which as far as possible satisfies the same legal, economic and originally intended purpose.

**15. Place of Performance, Applicable Law and Place of Jurisdiction**

- 15.1 The place of performance for the performance by the customer or by ERNI is Schaffhausen, Switzerland.
- 15.2 Legal relations between ERNI and the customer shall be governed solely by Swiss law to the exclusion of the conflict of laws principles. The Vienna Purchasing Convention (United Nations Convention on Contracts for the International Sale of Goods, 11 April 1980 (CISG)) is hereby specifically excluded. Rights accruing to ERNI on the basis of statutory provisions are not affected by these GTC.
- 15.3 All disputes arising out of the contractual relationship, relating to it or affecting its validity or the validity of these GTC of Business shall fall within the sole jurisdiction of the courts at the place where ERNI has its registered office, namely Schaffhausen, Switzerland.