

# GENERAL CONDITIONS OF PURCHASE

ERNI Production GmbH & Co. KG 73099 Adelberg, Germany



These General Conditions of Purchase (hereinafter "GCP") apply, where no other arrangement has been agreed in writing between ERNI Production GmbH, Adelberg (hereinafter "GmbH"), and the Contractor (hereinafter "Contractor"), for all deliveries and services commissioned by the GmbH. These GCP are also applicable to all future business with the Contractor. By submitting an offer, by confirming an order, by accepting or executing an order, the Contractor makes himself subject to these GCP, where the GmbH has notified him of this in connection with an invitation to tender, an inquiry or an order, or has made it generally known to him in some other manner such that he must count on their being applied. Conditions which are opposed to these GCP, contained in the General Conditions of Business of the Contractor, are only applicable if and insofar as they have been expressly recognized by the GmbH in writing. This also applies in the event that the Contractor makes reference to his general conditions of business in the offer or in the order confirmation.

## I. General

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### 1. Offers

All offers submitted shall conform to our inquiry in terms of quantity and quality. In the event of deviations, this must be expressly pointed out. The preparation and submission of offers by the vendor shall be without any obligation on our part whatsoever and free of charge.

### 2. Requests for delivery

Requests for delivery can also be made using remote data transfer.

### 3. Orders and agreements

Orders and agreements shall be binding upon us if they have been issued or confirmed by us in writing and if such documentation bears our legally binding signature. If an order is not confirmed by us within 10 days following the date of issue, stating our order number and six-digit part number and indicating the binding delivery time and prices, we shall be entitled to rescind the contract. If our order is issued in duplicate, the copy shall as a rule serve as a confirmation of order after being duly signed by us.

### 4. Scope of Conditions of Purchase

Upon submission of your offer or upon receipt of our order, the Contractor shall confirm its agreement with these conditions of purchase. However, even where there is no express declaration of agreement, the conditions of purchase shall form a part of the contract with acceptance of the order.

## II. Deliveries

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### 1. Delivery Note

All deliveries shall be accompanied by a delivery note stating precisely our order number, part number, point of delivery, number of units and the weight, with a detailed description of the goods delivered.

If the above-mentioned delivery note is not enclosed with the delivery, then the applicable period for the examination of goods and giving notice of defects shall commence only when the afore-mentioned delivery note is received by us.

### 2. Delivery Times and Dates

The delivery time shall run from the date the order was placed. The agreed delivery dates shall be binding. Where delivery is made in advance of the agreed delivery date, the GmbH reserves the right to undertake return of the goods, at the expense and risk of the supplier. Where goods

are not returned in the event of early delivery, then the goods are stored at the GmbH at the expense and risk of the Contractor.

The Contractor is fundamentally responsible for a delayed delivery, when compared to the agreed or promised delivery date. *Force majeure* and labor disputes release the contractual partners for the duration of the disruption and to the extent of its effects from the obligations to provide service.

The contractual partners shall be obliged, within the scope of what is reasonable, to provide the information required without delay and to adjust their obligations in good faith to the changed circumstances. The Contractor is obliged to notify us without delay in writing in the event that circumstances arise or become known to him which seem likely to make delivery in good time impossible. The Contractor is not entitled to transfer the order to third parties without our prior written consent. If the Contractor is changing any confirmed delivery date the reason of change has to be indicated in written form.

### 3. Dispatch

All consignments shall be shipped carriage paid to the receiving plant specified by us, and shall be appropriately packaged. Return of the packaging materials shall be subject to special agreement.

### 4. Part Deliveries, Surplus Deliveries

Part deliveries at variance with our delivery allotments shall require our prior written consent. The rights deriving in this eventuality from § 434 BGB [Bürgerliches Gesetzbuch – German Civil Code] remain unaffected by this consent. For all surplus deliveries exceeding our order, in the event of refusal to accept the goods on our part we reserve the right of our choice to return them at the expense and risk of the Contractor or to hold them available for a maximum period of six weeks for the Contractor to pick up against reimbursement to us of our storage and handling fees. All quantities, weights, measurements and other performance criteria shall be governed by the data which forms the basis of our order.

### 5. Conditions Governing Physical Acceptance of Merchandise

Operating difficulties, exceeding the stated delivery period or interruptions at subcontractors, shortages of energy or raw materials, transport difficulties, insofar as such events were not foreseeable, and also strikes, lock-outs, actions by the authorities and acts of *force majeure* release us for the duration of the problem and in the scope of their effect from the obligation to effect physical acceptance of merchandise. In the event that the delivery/service can no longer be used by us for these reasons, taking the economic viewpoints into consideration, we shall be entitled to the exclusion of all further claims to rescind the contract in respect of the quantity affected by the acceptance impediment.

### 6. Reservation of Ownership

The Contractor's reservation of ownership shall apply only to the goods delivered up to the time of further processing by us or resale to a third party. The Contractor hereby expressly gives an assurance that the goods are not subject to the extended reservation of ownership of a third party, unless the Contractor names this third party at the time of entering into the contract.

## III. Payments

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### 1. Prices, Invoices

The agreed prices shall be deemed to be fixed prices and are understood to be exclusive of the respectively applicable statutory value-added tax.

Invoices shall be sent to us separately and in duplicate for each order and for each agreed part delivery or service rendered. Invoices must never be enclosed in any consignments. All invoices shall show our order number and part number. Value-added tax is to be shown separately.

## **2. Terms of Payment, Periods of Payment**

All payments shall be made using the mode of payment of our choice by the agreed dates and subject to our prior verification of the correctness of the invoice, to an account to be specified by the Contractor. Insofar as payment is made by bill of exchange or acceptances, we shall reimburse the discount at the rate to be agreed. Where there is no special agreement, we shall pay:

**within 14 days – 3 % cash discount, within 30 days – 2 % cash discount, or 60 days net.**

The effective date for the payment deadline shall be the date on which the Contractor's delivery of goods was received by us, or the date on which we received the invoice where this occurs after receipt of the consignment of goods.

## **3. Assignment to Third Parties**

The Contractor may assign his claims against us to a third party or for collection only with our prior written consent.

## **IV. Warranty and Remedy of Defects**

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The statutory arrangements are applicable as set out in the provisions below. Acceptance or approval by us of any drawings submitted shall not constitute a waiver on our part of any future warranty claims. We shall be deemed to have satisfied our obligation to examine incoming goods and to make complaints regarding any obvious defects in every instance where we issue such notice within 14 days following arrival of the goods.

In the case of hidden defects, such notice of defects may be given any time within 4 weeks of their discovery.

The costs of return shipment of defective deliveries shall be borne by the supplier. In urgent cases or in the event that the Contractor fails to fulfill his obligations under the warranty without delay, we shall be entitled at the Contractor's expense to replace or repair any defective parts and remedy any damage to the goods.

## **V. Quality**

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In respect of all deliveries, the supplier shall be obligated to comply with the accepted technical standards, the pertinent regulations, the safety regulations and the required technical data as set out in our specifications.

The supplier shall warrant the stipulated quality standards and that his goods and services are free from defects with the help of a suitable quality assurance system (in accordance with the requirements pursuant to DIN ISO 9001:2008).

As a rule, initial sample test reports shall be enclosed with all consignments containing goods based on drawings when supplied for the first time and each time changes have been made to the goods supplied.

All further agreements, subsidiary agreements and possibilities for quality improvements shall be agreed with the party placing the order and recorded in a separate quality assurance agreement.

## **VI. Product Liability, Third-Party Liability Insurance**

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Insofar as the supplier is deemed liable under the product liability act, he shall be obligated to indemnify us against all liability for damages in respect of third parties upon the latter's first demand, insofar as the cause is deemed to have been in the supplier's power of control and organization and he is deemed to be liable to third parties.

In this respect, the supplier shall also be obligated to reimburse us any costs we may have incurred as a result of or in connection with any

recall operation of faulty goods. For our part, we shall inform the supplier about the content and extent of any recall measures required – to the extent possible and reasonable – and grant him the opportunity to state his position.

The supplier undertakes to take out and maintain a third-party liability insurance contract, the minimum sum insured being EUR 2.5 million per personal injury/instance of damage to property. This shall not affect any additional damage claims to which we may be entitled.

The supplier shall be obligated to maintain the stipulated insurance cover which shall also be valid in law in the event of a waiver of the plea of notification of defects pursuant to § 377/378 HGB [Handelsgesetzbuch – German Commercial Code] and the obligation of the supplier's customers to examine all incoming goods.

## **VII. Infringement of Industrial Property Rights**

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The supplier shall bear sole responsibility for ensuring that no third-party patents, registered utility models or other industrial property rights are infringed as a result of the supply and use of any goods offered by the supplier.

The supplier undertakes to indemnify us against all claims asserted by third parties resulting from an alleged possible infringement of rights and to reimburse us any costs associated with this. In the event of any such infringement of third-party rights, we shall be entitled to assert all legal claims against the supplier on the grounds of material defect/defect of title, also insofar as the parts or services in question had been procured from a third party. We are entitled at the Contractor's expense to obtain consent to use the supplied goods and services in question from the party authorized to grant such consent.

## **VIII. Drawings and Documentation**

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We retain the right of ownership and copyright in respect of all drawings, documentation, plans, models, samples, records, etc. made available to the Contractor. The supplier shall be responsible for keeping these documents in safe and secure custody. All such documentation shall be immediately returned to us free of charge and without retention of costs upon our request or upon termination of our co-operation at the latest. The documentation may not be used for any purposes other than those designated by us and may not be made available to any third parties without our express consent.

The supplier may not offer for sale, supply or make available to any third party any products manufactured in accordance with our drawings, documentation, plans, models, samples, specification, etc., or in accordance with any of our confidential information, or manufactured using our tools or tools copied from our tool designs.

## **IX. Place of Performance and Jurisdiction**

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The place of performance for all deliveries and services shall be the receiving plant specified by us.

The place of jurisdiction shall be Göppingen, Germany, if the supplier is a registered trader. The same place of jurisdiction shall apply if the supplier has no jurisdictional venue in Germany, relocates his domicile or his habitual place of residence abroad after entering into the contract or if his domicile or habitual place of residence is not known at the time of filing an action.

The contractual relationship shall be governed by the laws of the Federal Republic of Germany.

Should individual parts of these GCP be or become invalid or legally unenforceable, then these shall be replaced by a legally valid provision corresponding in its content to that of the invalid provision. This shall not affect the validity of the remaining provisions.