

General Conditions of Sale (as of: July 2018)

1. Scope of Conditions

a) All deliveries, services, sales and quotes with all of our clients are based solely on these Conditions of Sale. These Conditions apply to businesses, and thus to all future business relations, even if they are not expressly agreed.

b) We hereby expressly reject any general terms and conditions of the customer. Commercial letters of confirmation of the customer do not obligate us even if we do not explicitly contradict them.

c) The invalidity of any single provision in this Agreement shall not affect the validity of the contract and the remaining provisions of these General Conditions of Sale.

d) These General Conditions of Sale do not apply if the Customer is a consumer within the meaning of § 13 of the BGB (German Civil Code).

a) **2. Offer and Conclusion of Contract** Our quotes are always subject to change and non-binding. Declarations of acceptance and all orders require our written confirmation for legal validity.

b) Drawings, illustrations, dimensions, weights or other performance data are only binding if this has been expressly agreed. To the extent that it is not unreasonable to the customer, we reserve any customary or technically unavoidable deviations from physical and chemical quantities, especially of colours, composition, chemical contaminations, the use of raw materials and production processes. Apart from this, the desired quality of our contractual fulfilment is derived from the expressly agreed performance characteristics. We are not bound to provide quality-related specifications other than those expressly agreed. In particular, the information provided in catalogues, product information, electronic media or on labels or accompanying documents represent approximate values only, which are based on general experience with and knowledge of performance ob-

jects. Certain operational purposes or certain aptitudes, including the duration of use and durability of our services must be agreed separately, otherwise the customer is obliged to accept sole suitability and application risk, and must test the suitability of the goods for their intended purpose and ensure suitable storage.

c) We are not obliged to procure any diplomas or certificates or obtain other documents not expressly agreed, and are in no way responsible for fulfilling the duties associated with the circulation of goods outside Germany.

d) The customer may assign claims arising from legal transactions agreed with us solely with our express permission.

e) Provided that we are performing in advance, for example in the cases of payment upon invoice receipt after delivery of the goods, the customer authorises us to submit his data to Creditreform Bielefeld Riegel & Unger KG, Sunderweg 3, 33649 Bielefeld in order to carry out a solvency check. We retain the right to refuse the payment method demanded by the customer, if the results of a solvency check imply such refusal.

3. Prices and Shipping Costs

a) The prices stated in our order confirmation, plus the relevant statutory VAT (value added tax), are decisive. The weights, item quantities and square meters determined by us are further decisive for calculation. Additional deliveries and services that are not included in the order confirmation and have been requested by the customer shall be charged separately.

b) The prices stated apply to deliveries ex works excluding packaging, freight and insurance only. These are separately invoiced. Packaging is not taken back unless there is a legal obligation to do so and the package is returned to us carriage paid.

c) In the event that significant increases in the prices of raw materials, energy prices or increased costs due to changes in legal standards - in particular customs, import and export levy,

currency conversion - come into play for contracts with a delivery period of more than 4 months, the contractual partners undertake to begin negotiations to establish a new purchase price. If no agreement can be reached, the contractual parties each are authorised to withdraw separately from the contract. Any further claims (e.g. compensation for damages and reimbursement of expenses) are excluded.

4. Period of Delivery and Performance, Partial Deliveries, Call Orders

a) Delivery periods and dates are non-binding, unless expressly agreed otherwise.

b) Delivery dates and times must be correspondingly extended in the event of force majeure, labour disputes, riots, official measures, absence of deliveries from our suppliers for which we bear no responsibility and other unforeseeable, unavoidable and serious events for the duration of the disruption. The aforementioned obstructions to delivery also entitle us to withdraw from the contract without the customer being entitled to damages or other claims. We are obliged, with respect to the customer, to provide the required information immediately and within reasonable bounds and to adjust obligations to the changed circumstances in good faith.

c) If the dispatch of the goods is impossible as a result of extraordinary circumstances for which we bear no responsibility, we are authorised, irrespective of immediate billing, to store those goods for the account and risk of the customer by other means should our storage space be insufficient.

d) We are authorised to provide partial deliveries and services. In the case of customised or standard-packed goods, we are authorised to provide long or short deliveries to the industry-standard extent, and up to a minimum of 10 %.

e) The expiry of specific delivery periods and dates does not absolve any customer who wishes to withdraw from the contract or demand compensation for damages instead of the provision of goods from the obligation to stipulate a

reasonable period of grace, to be notified in writing and generally not exceeding two weeks, for the provision of goods.

f) If delivery is delayed at the instance of the customer, we can demand compensation for storage costs incurred by us, starting one month after notification of readiness to deliver, to a minimum 0.5 % of the invoice amount for the ordered goods for a period of one month, irrespective of any other claims. The customer is entitled to prove that no or less damage was caused as a consequence of the delay.

g) An application for the opening of insolvency proceedings or comparable proceedings in accordance with the law of another country, the delivery of information on assets in accordance with § 807 of the German Code of Civil Procedure (ZPO), emergent payment difficulties or the discovery of a considerable deterioration in the customer's financial circumstances shall entitle us to suspend deliveries immediately and refuse the fulfilment of current contracts insofar as the customer fails to provide counter-performance or to provide adequate security on our request.

h) In the case of call orders, we are authorised to produce the entire ordered quantity as a closed quantity and to retain them in stock. Any change requests following the submission of an order can only be taken into account if this has been expressly agreed. Payments for outstanding amounts from call orders become due with the passing of the agreed end date, regardless of the delivery status of the call order. If no end date has been agreed, we are authorised to invoice the remaining payments as immediately due and payable at the latest one year after the conclusion of the contract.

5. Passing of Risk

Risk passes to the customer once the subject of delivery has been handed over to the person carrying out the transport or when they have left our warehouse for the purposes of shipment. Goods will be shipped without carriage insurance. This also applies to CPT (Carriage Paid To) deliveries in the sense of the Incoterms 2010 and irrespec-

tive of the means of transport used. Transport insurance is only agreed at the express request of the customer. Any costs arising from this shall be at the expense of the customer alone. We retain the right to choose the route and the means of shipment, without assuming any liability for the provision of the cheapest and fastest means of transport. Freight shall be calculated according to freight rates in effect on the date of calculation. Any increase in freight costs through retrospective changes to the type of packaging, transport route, destination or similar aspects that impact on the cost shall be borne by the customer, insofar as the customer has instigated the changes. In the case of customers who pick up goods themselves (customer collection), risk passes to the customer on the provision of goods at the agreed place of delivery and the notification of the customer of the delivery. Should the customer provide the means of transport, he shall be responsible for timely provision. We must be informed of any delays in good time. Any costs incurred by this shall be borne by the customer.

6. Warranty

- a) The quality of goods is determined according to commercial custom, insofar as no deviations have been agreed or confirmed by us.
- b) We bear liability for defects in the meaning of § 434 BGB according to the following criteria: The customer must examine the goods received immediately for defects and quality. The customer shall test the functionality of the goods in addition to and independently of the incoming goods inspection, which must be carried out in accordance with the preceding clause at the earliest possible stage during the customer's production process. If possible and economically reasonable, this should be carried out before the installation or processing of the goods supplied by us, but at the latest before the products in which the goods were fitted are delivered. We must be informed in writing of any obvious defects no later than within 14 days. In the case of reciprocal trade transactions among businesses, § 377 HGB remains unaffected.
- c) Should the customer determine the existence of any defects in goods, they are not permitted to use those goods, i.e. the goods may not be divided, resold or processed, until an agreement on

the settlement of the claim is made or an independent evidentiary procedure has been performed.

- d) The customer must inform us immediately of any transport damage. The customer must settle the required formalities with the carrier.

- e) If the complaint is justified, we are entitled to decide, at our discretion, whether to repair or replace the defective goods. Multiple repairs are permitted.

- f) The warranty does not cover damage caused by incorrect specifications provided by the customer, storage that is in breach of instructions or incorrect processing or usage.

- g) If we are unable to remedy the defect or deliver a replacement within a reasonable period of time set by the customer, the customer shall, to the exclusion of all other claims, only be entitled to withdraw from the contract or receive a discount on the purchase price.

- h) Should the customer fail to give us an opportunity and adequate time to inform ourselves of the claimed defect and, if appropriate, remedy this accordingly (repair or replacement), all warranty claims are forfeit. This does not apply to consequential damage where the requirements pursuant to section 7 have been met.

7. Limitation of Liability

- a) We bear liability in the event of wilful misconduct, gross negligence and as regards the breach of substantial contractual obligations in the event of slight negligence, as well as for errors in guaranteed characteristics. In the case of breach of substantial contractual obligations in the case of slight negligence, the liability is limited to the amount of the typical foreseeable damage. Substantial contractual obligations are obligations that enable the execution of the contract, so that the customer may regularly trust in the fulfilment of these obligations. Furthermore in cases of slight negligence, the liability for indirect as well as unforeseeable damages, loss of production or usage, loss of profit or savings and economic loss of third parties is excluded.

b) Insofar as our liability is excluded or limited, this also applies to the personal liability of employees, statutory representatives and agents.

c) The statutory provisions covering burden of proof remain unaffected.

d) The above limitations do not apply to claims arising from the Product Liability Act (Prod-HaftG) for damages resulting from injury to life, body or health or damage to privately used objects.

e) Additionally, we can only be held liable in cases, where a product has been used within the scope of the intended use and in accordance with the instruction manual or has been reasonably foreseeable misused.

8. Statute of Limitation

All claims of our customers, regardless of the legal grounds which they are based on, lapse after a period of 12 months. The statutory periods shall apply to wilful, grossly negligent or fraudulent behaviour and claims under the Product Liability Act or arising from the customary ordinary use of the delivered goods for construction works and the causation of the defectiveness of a building thereby. The start of the limitation period is governed by statutory regulations.

9. Payment

a) Unless otherwise agreed, all payments must be made within 14 days from the invoice date.

b) We expressly reserve the right to reject cheques and promissory notes and will only accept them as offered in lieu of performance of contract. Any charges, fees and other costs incurred by the drawing of bills of exchange such as the aforementioned cheques and promissory notes shall be borne by the customer and be due and payable immediately. Excluding §§ 366, 367 BGB and notwithstanding any provision of the customer, on concluding the contract we shall stipulate which receivables shall be paid through payments of the customer.

c) The customer shall automatically be in default at the latest 10 days after performance is due and without the requirement of prior warning notice. From the moment of default, we are entitled to demand the common bank interest, but at least 9 percentage points above the base interest rate pursuant to § 247 BGB. If after the conclusion of the contract it becomes apparent that our entitlement to payment is jeopardised on grounds of the customer's inability to perform, we may raise the defence of uncertainty pursuant to sec.321 German Civil Code.

d) Our customers are only entitled to offset, retention or reduction with claims that have been established by court or approved by us.

10. Retention of Title

a) We retain title to delivered goods until the purchase price has been paid in full. Until that point, customers may not pledge the goods, transfer them as security or burden them with other rights.

b) In the case of goods acquired from us by the customer as part of an ongoing business relationship, we retain title until all claims against the customer deriving from contracts agreed as part of the business relationship have been settled. This shall also apply if individual or all claims have been included in a current invoice and the balance is struck and approved by the customer. If in connection with the payment of the purchase price a liability for us arises due to any bills of exchange transaction (cheque, promissory note), the retention of title shall not expire before redemption of the change by the customer as drawee. In the event of default on payment by the customer, we are authorised to claim back the goods after a warning notice has been given and the customer is obliged to surrender the goods.

c) If goods which are subject to retention of title are processed by the customer to form a new movable object, processing is carried out on our behalf without establishing any obligation; the new object is our property. When the buyer processes goods which are subject to retention of title with other goods which do not belong to us, we thereby have co-ownership of the new item, proportionate to the value of the goods subject to

retention of title to the other processed goods at the time of processing. If the goods which are subject to retention of title are combined, mixed or blended with goods that do not belong to us pursuant to §§ 947, 948 BGB, then we acquire co-ownership in accordance with statutory provisions. Should the customer acquire sole ownership through combination, mixing or blending, they shall transfer co-ownership to us now according to the proportionate value of the goods which are subject to retention of title to the other goods at the time of combination, mixing or blending. In such cases, the customer must store free of charge any items that are owned or co-owned by us and that are at the same time goods which are subject to retention of title within the meaning of these terms and conditions.

d) If goods which are subject to retention of title are sold alone or in combination with goods that do not belong to us, the customer shall assign us the receivable resulting from the re-processing to an amount equivalent to the value of the reserved goods with all ancillary rights and priority over the remainder; we accept this assignment. The value of the goods is the amount resulting from our invoice which, however, shall not be enforced so long as the goods are subject to opposing third-party rights. Should the resold goods which are subject to retention of title remain in our co-ownership, the assignment of claims shall extend to the amount that corresponds to the proportional value of the co-ownership.

e) The customer is entitled to resell and use or process the goods which are subject to retention of title solely in the course of usual and proper business and only on condition that the claims pursuant to the preceding paragraphs are actually transferred to us. The customer shall have no further right to dispose over the reserved goods, in particular with regard to pledging and transfer of ownership.

f) Subject to reserve of revocation, we authorise the customer to collect the claims assigned to us in accordance with paragraphs c) and d). We shall not exercise our own authority to collect so long as the customer meets its payment obligations, including to third parties. In the event of a breach of payment obligations, the customer

must name, at our request, debtors of outstanding transferred claims and notify the assignment to these debtors; we are then authorised to also notify the assignment to these debtors. In the event of any enforcement measures by third parties relating to goods which are subject to retention of title or assigned receivables, the customer must notify us immediately, while handing over documents necessary for objection to these proceedings.

g) In the event of the cessation of payment or the opening of insolvency proceedings, the right to resell, the right to the use or processing of goods which are subject to retention of title and authorisation to collect assigned claims lapse; direct debit authorisation also lapses in the event of the protesting of a cheque or promissory note. This does not apply to the rights of the insolvency administrator.

h) Should the value of the securities granted exceed the collateral receivables (less deposits and part payments where applicable) by more than 20%, we shall be obliged to either reassign or release the security at our discretion. Ownership of the goods which are subject to retention of title and the assigned claims are transferred to the customer on the fulfilment of all claims deriving from the business relationship.

11. Intellectual Property

a) We retain all property rights, patent rights, rights of use, rights to registered designs, trademark rights, copyrights, personal rights and any other property rights, in particular those relating to illustrations, drawings and other documents, designs, design proposals, templates, work documents, forms, copyrights, know-how and costings belonging to us. Granting permission of use does not constitute any transfer of the right to or arising from such an item. The customer acknowledges our right to the trademarks and any other marks used, will not use them for other purposes and, in particular, will not pass them on to third parties.

b) The customer is not entitled to use our intellectual property for purposes other than the agreed contractual purpose. Following termination of the contract the customer must, upon request by us, return to us the drawings made available to it.

The customer accepts that it must make a declaration about our intellectual property rights in any advertising material produced by it, or for it, in connection with the products. The customer undertakes to use the same labels that we use. The customer is not allowed to remove or alter the labels on the products or to attach other labels to the products without our prior consent in writing.

c) If a claim is made against us or a company affiliated with us by a third party due to an infringement of intellectual property rights committed by the customer, the customer will indemnify us or the company affiliated with us against this claim.

d) The customer's obligation to indemnify us or the company affiliated with us, as stated above, relates to all costs and expenses incurred by us or the company affiliated with us as a result of or in connection with the claim by this third party.

12. Confidentiality, Data Protection

a) We and the customer mutually agree to treat any information deriving from the business relationship as confidential, regardless of whether the information is noticeably confidential or not. This does not apply to information which before disclosure has either been known by the other party or is in the public domain with respect to the relevant business surroundings. The obligation to confidentiality remains in effect for further five years as per the date of the cessation of the business relationship. We shall be permitted to forward confidential information to our affiliates, consultants, suppliers and other third parties, insofar as the respective third party necessarily needs to know the confidential information in order to serve the purpose of the contractual relationship concluded between us and the customer, and provided that the third party is equally obliged to confidentiality.

b) Each party shall at all times comply with its respective obligations under the applicable data protection laws and regulations. For purposes of this section 12, the term 'personal data' means any information relating to an identified or identifiable individual.

c) The parties acknowledge and agree that, where in the course of performing our obligations under the agreement we process personal

data on behalf of our customer, we shall not be entitled to use or otherwise process such personal data for any other purpose. Accordingly, we shall in connection with that processing:

(aa) process personal data only on the written instructions of our customer, unless required to do so by law;

(bb) keep confidential the personal data and take appropriate technical and organizational measures to protect personal data against accidental or unlawful destruction or accidental loss, alteration, unauthorised disclosure, use or access and against all other unlawful forms of processing, including controls over entry, access, intervention, disclosure, input and preservation of and to such data;

(cc) enable the customer to audit our compliance with the obligations of this section 12 and in particular the technical and organisational measures referred to in sub (b) above. We shall provide the customer with all reasonably required assistance and evidence in connection therewith;

(dd) notify the customer without undue delay about, and no longer than 24 hours after becoming aware of, any breach of security leading to accidental or unlawful destruction, loss, alteration, unauthorised disclosure of, or access to, personal data (a "Data Breach"). Upon a Data Breach, we shall take adequate remedial measures as soon as possible and shall promptly provide the customer with all relevant information and assistance as requested by the customer regarding the Data Breach;

(ee) ensure and upon request certify that any copies of those personal data in our possession or under our control are permanently destroyed upon termination or expiry of the agreement or when they are otherwise no longer required for the performance of our obligations under the agreement;

(ff) ensure that personal data is only accessible to members of our personnel who have committed themselves to confidentiality and who need to have access to the data in order to carry out their roles in the performance of our obligations under an Agreement;

(gg) allow the customer to inform third parties of the processing of the personal data by us;

(hh) give the customer such co-operation, assistance and information and do all things and execute all documents as the customer may reasonably request to enable the customer to comply with its obligations under any data protection laws and timely co-operate and comply with the directions or decisions of any

competent data protection and privacy authority in relation to those data; and

- (ii) not transfer any personal data to any country outside the country in which the services or goods are delivered or make such personal data accessible from any such country, other than with the specific prior written approval of the customer.

d) Customer hereby provides its general authorisation for us to engage sub-contractors and affiliates (each a “sub-processor”) to process personal data in connection with the performance of our obligations under the agreement, subject to the following. We shall:

- (aa) ensure that our subcontractors and affiliates abide by a level of data protection no less protective than the obligations as set out in this section 12;
- (bb) upon request inform the customer of the identity of all sub-processors;
- (cc) keep the customer updated on any changes to sub-processors; and
- (dd) give the customer the opportunity to object to any sub-processors based on reasonable grounds.

In the event that the customer objects to any sub-processor and the parties cannot reach a mutually acceptable solution, we shall refrain from allowing the sub-processor to process personal data, or allow the customer to terminate the agreement without cost.

e) We shall defend and hold harmless customer against any claim, demand, suit or proceeding made or brought against the customer by a third party (including any supervisory authority and/or regulator) based on a breach by us or our affiliates (or by their personnel or other third parties for which we are responsible) of its obligations under this section 12 or applicable data protection laws. Any limitations of our liability included in these terms do not apply to this indemnity.

f) The customer is hereby informed that we process personal data acquired during the business relationship in accordance with the provisions of the German Federal Data Protection Act. For further information please verify our data privacy policy, which you can find under <https://www.eriks.de>.

13. Compliance

a) The customer assures and guarantees that it is not subject to any trade sanctions imposed by the USA, the EU and/or the UN. The customer also guarantees that it maintains neither direct or indirect business links nor any other links to terrorists, terrorist organisations or other criminal, anti-constitutional organisations or business partners that are subject to sanctions. In particular the customer shall take suitable organisational measures to ensure that current embargoes, the European counter-terrorism and crime control regulations applicable in the context of the supply relationship, and the corresponding US or any other applicable regulations relating to its business operations are applied, in particular by providing adequate systems. As soon as goods have left the respective ERIKS production site, the customer has sole responsibility for ensuring compliance with the aforementioned regulations and will indemnify ERIKS against all claims made against it and costs incurred by it due to a breach of the respective laws by the customer, its affiliated companies, employees, representatives or vicarious agents – including reasonable legal and consulting fees, administrative charges and fines.

b) The customer undertakes to comply with foreign trade regulations, in particular the applicable German, European and US export control regulations.

c) If the products are destined for export, a written end-use statement including the identity of the end user and confirmation that the products will be for non-military and non-nuclear use must be presented upon placement of the order at the latest. If the customer has not provided this information by the time of order placement or if the delivery is in breach of national, European or US export control laws, we will be entitled to withdraw our offer and refuse to accept the order and/or withdraw from the contract. In this case the customer shall not be entitled to claim for damages due to non-acceptance of the order or non-performance of the contract.

d) The customer undertakes to comply with all applicable laws, statutes, regulations and codes, including those combating bribery and/or corruption, and not engage in any activity, practices or behaviour which would constitute a criminal offence.

e) The customer undertakes from time to time to provide appropriate proof of its compliance with the above.

14. Place of Performance, Jurisdiction and Applicable Law

a) Our headquarters shall be the place of performance for all contractual rights and obligations for both parties for delivery, service and payment.

b) The sole place of jurisdiction for disputes arising either directly or indirectly from the contractual relationship (including proceedings on claims arising from a bill of exchange and proceedings on claims arising from a deed, in which solely documentary evidence may be submitted) is Bielefeld, Germany. We may, however, also choose a different place of jurisdiction.

c) The law of the Federal Republic of Germany alone shall be applied to these Terms and Conditions and all legal relations between us and the customer. The application of the UN - Convention on Contracts for the International Sale of Goods of 11 April 1980, as well as other bilateral and multilateral agreements serving to unify international sales law, is excluded.