

General Terms and Conditions of Erhardt+Leimer GmbH

1. Scope of Application

1.1 The general terms and conditions of Erhardt + Leimer GmbH (E+L) govern exclusively. Any other conditions of the purchaser will not be acknowledged. These general delivery and payment conditions will also operate in place of any contrary or conflicting conditions of the purchaser, even where E+L delivers in full knowledge of these contrary or conflicting conditions.

1.2 The general terms and conditions of E+L apply only to entrepreneurs as defined in § 310 para. 1 BGB (German Civil Code).

1.3 These general terms and conditions of E+L govern the sale and delivery of goods, the placing into operation of the delivered goods, as well as such services which are not governed by a separate service agreement.

2. Contract Conclusion

2.1 The conclusion of the contract requires the written acceptance of order by E+L if the acceptance of the customer does not confirm the original written commercial offer of E+L completely. Written form, in the sense of these general terms and conditions, also includes conveyance via fax or e-mail.

2.2 If, in the case of a service order, the order is placed orally (for instance via telephone), the customer is obliged to confirm the order in writing on the site of the service. If no authorized representative of the customer is on site, the technician of E+L is authorized to execute the services at his own discretion.

2.3 Our offers are only binding if they are laid down in written form. Also every other agreement in connection with this contract is only binding if it is made or at least confirmed in writing. Our offers are valid for a maximum of two weeks from the date of the offer.

2.4 During the contractual negotiations the customer is already obliged to inform us about above-average operational demands, operation purposes and increased risks, which may arise in his area of responsibility upon use of the services and deliveries of E+L.

2.5 We are not liable for defects due to performance data or other faulty or incomplete information issued by the customer.

3. Nondisclosure, IPR

3.1 Title to documents which we hand over to the customer will not pass. They are protected by copyright laws and must not be duplicated, modified or handed over to third parties without the written consent of E+L. Furthermore, the customer is obliged not to disclose any information handed over to him, as well as inventions and know-how, which were accessible to the customer, irrelevant whether they are in writing, oral or as an object. The duty of nondisclosure does not end upon termination of the contractual relationship unless the documents and the further information not to be disclosed will become public knowledge. If there are copyrights on certain contractual products, the duty for nondisclosure will stay in force until the last copyright has ended. The employees of the customer have to be instructed accordingly. E+L will disclose documents, which were marked by the customer as confidential, to third parties only after the customers' approval.

3.2 E+L is solely entitled to every and all rights in inventions and other processing results, which were achieved by employees of E+L during the contractual or pre-contractual services for the customer.

3.3 If the employees of E+L and an employee of the customer make the invention together, E+L is solely entitled to file the trademark or intellectual property right with the competent authority. The customer is obliged to make an unlimited claim on the invention in due time vis-a-vis its employee and to transfer the relevant part of the invention to E+L. In return, the customer will be entitled to a free, irrevocable, non-exclusive license to use the invention. The license does not include the production of goods, devices or systems, which are based upon the invention. If E+L claims the part of the joint invention, E+L will refund the customer

for any compensation which the customer has to pay to its employees according to Section 9 of the German Act concerning inventions of employees ("Arbeitnehmererfindungsgesetz"), if these compensations are appropriate.

3.4 The customer is not entitled to dispute or to assist any third person disputing any copyrights or filings for trademarks or other intellectual property, which were achieved during the contractual or pre-contractual relationship between E+L and the customer, irrespective whether by issuing materials or documents or in any other way.

4. Execution of Services

4.1 E+L will execute orders by qualified employees or sub-contractors according to the principles of proper professionalism. The selection of the employees or sub-contractors appointed to the execution of the services, lies at the sole discretion of E+L.

4.2 E+L is entitled to partial deliveries and partial services, as long as it does not amount to an unacceptable additional effort for the customer.

5. Delivery

5.1 The time of delivery shall not begin prior to the fulfillment of all preparatory work to be made by the customer as well as the fulfillment of the obligations to co-operate. If the customer is in delay with preliminary works or services, the terms of delivery shall be prolonged for the time of the delay.

5.2 The delivery deadline shall be deemed to have been met if the products have left the factory of E+L or if the customer has been notified of the goods' readiness for shipment prior to the expiration of the delivery date.

5.3 The delivery date as well as any other time limit shall be reasonably prolonged, at least for the term of the delay, in cases of any unforeseen event, which is not due to negligent behaviour and beyond the control of E+L. This applies where the delay is due to force majeure, strikes, lockouts, system malfunctions or rulings by the authorities. This applies also if these reasons apply to a subcontractor or supplier of E+L, provided that the hindrances do significantly affect the execution of the services and deliveries of E+L.

5.4 If the customer is entitled to damages caused by the delay, the damages to be paid by E+L are limited in cases of slight or normal negligence to the amount of the predictable damage, not higher however, than the value of the part of the delivery which could not be used in time or as provided in the contract.

5.5 If the delivery is postponed due to the customers' orders, the expenses for storing shall be borne by the customer, beginning one month after the notification of the goods' readiness for shipment. If the goods are stored in the facilities of E+L, the actual storing costs will be charged, at least however, 0.5% of the relevant invoiced net-amount of the stored goods per each commenced month. If the customer can prove that the costs to E+L were lower, the customer is only obliged to pay the lower costs. If the customer does not collect the goods after E+L has set a reasonable time-limit, E+L is entitled to distribute the goods otherwise and to deliver to the customer in a reasonably postponed period.

6. Prices

6.1 The prices listed are net prices and do not include the current value added tax (VAT) at the time of delivery. Costs of packaging, freight, insurance and duty are not included. The prices therefore are according to the written contractual agreements. Costs for assembly and start-up will be charged separately. This also applies for technical works and project engineering, including the issuing of blueprints and sketches, if E+L has to supply them additionally.

6.2 In order to meet the prices agreed it is necessary that the positions relevant for this agreement do not change during the execution and that the services can be accomplished without hindrances coming from the side of the customer. In the case of any alteration of the costs of materials, wages, freight or of any other cost factors E+L reserves the right to adjust the prices accordingly if the period elapsed between the conclusion of contract and the date of delivery is longer than four months. An agreed fixed price remains unchangeable.

7. Terms of Payment and Set-Off

7.1 If payments are made within 10 days of the issuing of the invoice, the customer will be entitled to a discount of 2%. Otherwise, the customer shall pay the contractually agreed price no later than 30 days after the date of the issuing of the invoice, with no discount.

7.2 The payment period is only met, if the amount to be paid by the customer is received by E+L on the relevant payment date. Payment via bills of exchange or checks are only accepted on account of performance and not in discharge of the payment obligation. Transaction fees and other expenses in connection with the payment via bills of exchange or checks shall be borne by the customer. E+L shall not be liable for submission of bills of exchange and checks in due time and the right form.

7.3 In case of deterioration of the customer's financial situation after conclusion of the contract, E+L may suspend its performance until the customer has entirely fulfilled its obligations, or made available a bank guarantee or other enforceable security as per discretion of E+L. The same applies in cases of repeated and/or substantial delay of the customer's payments.

7.4 In the event that a payment is not made to E+L by the due date the customer is in arrears with his payment obligations. E+L shall – without prejudice to other rights – be entitled to charge interest on the amount due. Interest will be charged at a rate of 8% per annum above the base rate according to § 247 of the German Civil Code (Bürgerliches Gesetzbuch). The issuance of a reminder is not necessary. E+L may charge a higher amount if E+L can establish that the amount of damage was higher.

7.5 The customer may only retain payments or set-off a claim against the claims of E+L if its counter-claim is undisputed or based on a final and binding court decision or the court decision is at least imminent. The customer shall have no right to detain advance payments if E+L fulfills its obligations or makes available an enforceable security to the customer.

7.6 The claims of E+L concerning the remuneration are subject to a limitation of five years.

8. Retention of Title

8.1 E+L shall retain title to the delivered products until all claims arising out of this delivery as well as out of any other open claims against the customer have been entirely fulfilled. If the customer is in delay of payment and a grace period, set by E+L, has expired fruitlessly, E+L shall be entitled to cancel the contract, take back the delivered products and the customer shall be obliged to surrender them.

8.2 The customer is entitled to resell the delivered products, which are still owned by E+L ("retained goods"), in its ordinary course of business. In order to secure E+L's claims the customer hereby assigns to E+L all claims arising out of the resale of the retained goods in the amount of the price of the delivery.

8.3 After the transfer of the claims to E+L, the customer shall be authorized to collect payment. E+L shall be authorized to revoke this right to collect payment and shall collect open claims itself, if the customer does not fulfil its payment obligations vis-a-vis E+L properly, is in delay of payment, files for insolvency or ceases its payments. In this case, the customer is obliged to transmit the data necessary for collecting the claim, to forward the necessary documents to E+L and to inform its customer of the transfer of title.

8.4 Any processing or converting of any retained goods, shall be performed on behalf of but without any obligation for E+L. The processed or converted product shall replace the original good as a retained good. If the retained good is incorporated or combined with other goods by the customer, E+L shall acquire joint ownership of the new goods up to the ratio of the price of the retained goods to the price of the other goods.

8.5 If the title of E+L will expire due to combination, processing or assembly, the customer hereby transfers ownership of the newly established product up to the extent of the delivery price of the retained goods. The customer will safeguard the newly established product for E+L with due diligence and free of charge. The newly established products shall be deemed as retained goods up to the ratio of the joint ownership.

8.6 If and in so far as the value of the securities exceeds the claims to be secured by more than 10 per cent, E+L shall release the assigned securities in so far.

8.7 In case of a forced lien or any other impairment of the proprietary rights of E+L, the customer shall notify E+L immediately thereof.

9. Passing of Risk

9.1 Risk shall pass to the customer at the moment and to the extent at which the product or parts of the product leave the facility of E+L or to which the customer has been informed of readiness for shipment.

9.2 If a part of the product cannot be delivered due to default of acceptance by the customer, E+L will fulfill its obligations by placing the product in storage. In this case all expenses incurred by E+L shall be paid to E+L by the customer upon submission of the invoice(s). E+L shall notify the customer in writing immediately upon placing such products in storage. Any other legal remedies available to E+L remain unaffected. In this case the risk of accidental loss or coincidental deterioration of the product passes to the customer at the moment in which the customer delays acceptance.

9.3 If, in the case of performance of services, the customer is in default of acceptance, for instance due to the fact that the service technician of E+L does not get access to the relevant machines or components, the customer shall bear all costs and expenses, incurred by the delay. The travel time of the service technician as well as other travel expenses will be charged according to the usual rates of E+L. The customer may establish that the amount of the expenses was less.

10. Warranty

10.1 For material defects and defects of title, E+L shall only be held responsible under the exclusion of any further claims and under the exceptions according to section 10.6 and 11., if the customer has notified E+L in writing within eight days in the case of obvious defects or such defects that could be discovered without thorough investigation and in all other cases immediately after discovery and provided further that the customer has observed the instructions of E+L with respect to the operation and storage of the delivered products. § 377 of the German Commercial Code (Handelsgesetzbuch) remains unaffected.

10.2 The warranty of E+L does not cover normal wear and tear as well as parts which, owing to their inherent material or their intended use, are subject to natural wear and consumption. The warranty shall not include damages caused by inadequate storage, treatment, operation, inadequate equipment or the use of unsuitable operating resources. E+L shall only be held responsible as provided within this section 10 under the exclusion of any other warranty claims, irrelevant whether orally, in writing, legally or otherwise.

10.3 It is in the sole discretion of E+L whether it fulfils its obligation concerning the warranty either by replacement or improvement of the delivered product. The Customer shall grant E+L sufficient time and opportunity to make such improvements and replacements as are necessary in the opinion of E+L; otherwise, E+L is released from any liability for resulting consequences. The Customer may only in urgent cases (endangering of safe operation; protection against excessive damages) repair the defect by himself or by a qualified third party, provided, however, that E+L is immediately informed thereof. The customer may only then and to that extent, request any compensation for the related repair costs, if these costs were necessary and, according to the relevant circumstances, not excessive.

10.4 E+L shall obtain title of the replaced parts.

10.5 To the extent legally permissible, the customer shall have the right to withdraw from the contract if E+L – unless permitted by law – makes no effort to repair or replace the defective products within a reasonable period of time set by the customer. In case of minor defects which do not affect commercial operability significantly, the customer is only entitled to a price reduction. In all other cases the right to a price reduction or damages is excluded

10.6 Any warranty claims of the Customer – irrespective of its legal basis – are time barred after 12 months from delivery.

11. Limitation of Liability

11.1 If the contractual product or the product subject to the performance of services cannot be operated in the contractually agreed manner due to missing or defective implementations, proposals or consultations made after conclusion of the contract, or through other breaches of ancillary obligations (especially misleading instructions as to the intended operation of the product), Section 10 and the next paragraph shall be applicable under exclusion of any further claims. E+L shall not be liable, and the customer agrees to indemnify E+L from all claims, liabilities and damages that might occur if and to the extent that the customer does not follow the instructions and warnings given by E+L.

11.2 For damages caused outside the delivered product or the product subject to the performance of services and outside of the express warranty contained in Section 10, E+L shall only be held responsible in cases of willful misconduct, gross negligence of representatives or leading employees of E+L, culpable injury to life, body or health, defects that have been maliciously kept secret or whose absence has been guaranteed, or personal injury or damages to property, provided that there is strict liability under the product liability laws. In the case of a breach of essential contractual obligations, E+L shall be liable even if the non-managerial employees have acted gross negligently as well as in cases of ordinary negligence. In the latter case, however, the liability of E+L is restricted to reasonably foreseeable damages.

11.3 Any further claims for damages are excluded.

12. Data Protection

E+L points out that the data handed over by the customer to E+L will be stored and used for purposes of the contract.

13. Place of Performance, Jurisdiction, Applicable Law

13.1 The contract shall be governed by the laws of the Federal Republic of Germany. The United Nations Convention on the International Sale of Products (CISG) is not applicable and shall be excluded.

13.2 Unless otherwise indicated in the acceptance of order, the designated place for execution as well as place of exclusive jurisdiction shall be the registered place of business of E+L. In case of lawsuits concerning patent rights or utility patent rights, as well as any other lawsuits in connection with information, inventions and know-how, the authority competent for patent lawsuits at the District Court München (Landgericht München, Patentstreitkammer) shall have exclusive jurisdiction.

13.3 Should any of the provisions contained in this contract or in these General Terms and Conditions bear become invalid for any reason, the validity of all other provisions shall not be affected. The invalid provision shall be replaced by a valid provision that reflects the original intention of the parties as much as possible.