



## 1. General

- 1.1 The contract shall be concluded on receipt of the written confirmation of the supplier that he accepts the order (order confirmation).

Offers which do not include a time limit for acceptance shall not be binding.

- 1.2 These terms and conditions of sale shall be binding if they are declared to be applicable in the offer or in the order confirmation. Contrary terms and conditions of the customer shall apply only insofar as they have been accepted by the supplier expressly and in writing.

- 1.3 All agreements and legally relevant declarations by the contracting parties shall only be valid if they are made in writing. Declarations in text format which are transmitted via or held on electronic media shall be deemed equivalent to written declarations if specifically agreed by the parties.

- 1.4 If any provision of these terms and conditions of sale shall prove to be partially or wholly invalid, the contracting parties shall replace that provision with a new stipulation that shall as nearly as possible produce the legal and commercial outcome of the original.

## 2. Scope of deliveries and performances

The deliveries and performances of the supplier shall be definitively listed in the order confirmation, including any supplements thereto. The supplier shall be authorised to make any amendments that result in improvements, provided these do not give rise to any price increase.

## 3. Plans and technical documentation

- 3.1 Prospectuses and catalogues shall not be binding except as otherwise agreed. Specifications in technical documentation shall be binding only insofar as they are expressly guaranteed.
- 3.2 Each of the contracting parties shall reserve all rights to plans and technical documentation that they have given to the other party. The recipient contracting party acknowledges these rights and shall not make all or part of the documentation available to third parties, nor use it for any other purpose than that for which it was given to the recipient party, without the prior written authorisation of the other contracting party.

## 4. Regulations in the country of destination and safety devices

- 4.1 The customer must make the supplier aware of regulations and standards that relate to the execution of deliveries and performances, the operation, and disease and accident prevention, not later than when the order is given.
- 4.2 In the absence of any agreement to the contrary, the deliveries and performances shall comply with the regulations and standards at the domicile of the customer of which the supplier has been notified by the customer in accordance with subsection 4.1 above. Additional or other safety devices shall be delivered insofar as this is expressly agreed.

## 5. Prices

- 5.1 In the absence of any explicit, written agreement to the contrary, all prices shall be net, ex-works, exclusive of packaging, in freely disposable Swiss Francs, without any deductions whatsoever, even of commercial standard.

All ancillary costs, such as for freight, insurance, export, transit, import and other permits and certifications shall be borne by the customer. The customer shall also bear all kinds of taxes, charges, fees, customs duties and the like that are levied in connection with the contract, or refund such charges at any time against the relevant documentary proof to the supplier, where the latter has been made liable for the payment thereof.

- 5.2 The supplier shall reserve the right to amend prices where wage rates or materials prices have changed between the date of the offer and execution of the contract in accordance with the terms thereof. A reasonable adjustment of prices shall also be made, where

- the delivery date is subsequently extended for one of the reasons indicated in subsection 8.3 below, or
- the nature and scope of the agreed deliveries or performances have been subject to change, or
- the material or execution are subject to change because the documentation supplied by the customer did not correspond to the actual circumstances or were incomplete.

## 6. Payment terms

- 6.1 The due date for payment shall, unless otherwise stipulated in the order confirmation, be the end of the month following delivery ex-works. If delivery cannot be effected immediately following readiness for delivery on grounds for which the supplier is not responsible, the due date for payment shall remain the same, calculated from the notification of readiness for delivery.
- 6.2 Payment dates also have to be complied with where transport, delivery, assembly, commissioning or acceptance of deliveries or performances is delayed or made impossible on grounds for which the supplier is not responsible, or where non-essential parts are missing or extra work is necessitated, and this does not make it impossible to use the items delivered.
- 6.3 If the customer fails to meet the stipulated payment dates, the customer shall be charged interest without further reminder, from the stipulated date of payment based on the standard rates of interest at the domicile of the customer, but not less than 4% above the respective CHF 3-month LIBOR. The right to further compensation shall be reserved.
- 6.4 If the initial payment or the securities to be lodged on conclusion of the contract are not effected in accordance with the terms thereof, the supplier shall be entitled to adhere to the contract or to withdraw from the contract, and in both cases to demand compensation. If the customer is in default with any further payment for any reason whatsoever, or if the supplier has serious grounds to fear that he will not receive payment in full or in due time from the customer because of circumstances that arose after the conclusion of the contract, the supplier shall be entitled, without restriction of its



statutory rights, to suspend further performance of the contract and withhold deliveries that are ready for dispatch, until new payment and delivery terms are agreed and the supplier has received adequate securities.

If such agreement cannot be reached within a reasonable time, or if the supplier does not receive adequate securities, the supplier shall be entitled to withdraw from the contract and to demand compensation.

- 6.5 The customer waves his claim to balance the invoices of EROWA with possible invoices of his part.

## 7. Reservation of title

The supplier shall remain the owner of all deliveries made until he has received payments in full in accordance with the contract.

The customer shall undertake to cooperate with measures that are necessary to protect the ownership of the supplier; in particular the customer shall empower the supplier on conclusion of the contract and at the customer's expense to record or note the reservation of title in official registers, business records or the like, in accordance with the relevant laws of the country, and to comply with any formalities in this respect.

The customer shall maintain the items supplied at its own expense for the period of the reservation of title, and shall insure them in favour of the supplier against theft, breakage, fire, water and other risks. The customer shall also take all measures to ensure that the supplier's right of ownership is neither prejudiced nor annulled.

## 8. Period for delivery/delivery terms

- 8.1 The period for delivery shall begin as soon as the contract is concluded, all official formalities such as import, export, transit and payment authorisations are obtained, payments and any securities due on order are effected, and the essential technical points have been settled. The delivery period shall be deemed to have been adhered to where notification of readiness for dispatch has been sent to the customer by the last date thereof.

The interpretation of the EXW delivery clauses shall be in accordance with the Incoterms 2010 (International Rules for the interpretation of standard trade contract terms).

- 8.2 Adherence to the delivery period assumes that the customer has complied with its contractual obligations.

- 8.3 The period for delivery shall be extended appropriately:
- if the supplier has not received in due time the specifications that he requires for execution of the contract, or if the customer subsequently amends them, thereby causing a delay in deliveries or performances;
  - if impediments occur that the supplier is unable to avert despite having exercised due care, irrespective of whether they have arisen with the supplier, the customer or a third party. Examples of such impediments are epidemics, mobilisation, war, insurrection, substantial interruptions to operations, accidents, labour disputes, delayed or incorrect supply of the requisite raw materials, intermediate or finished products, substandard key work pieces, official measures or omissions, and natural events;

- c) if the customer or third parties are in arrears with the work to be carried out by them, or are in default

in fulfilling their contractual obligations, and in particular if the customer has not complied with the payment terms.

- 8.4 Where deliveries are delayed, the customer shall be entitled to claim compensation for delayed performance, provided such delay can be shown to be the fault of the supplier, caused by gross negligence, and the customer is able to prove loss or damage as a consequence of this delay. If the customer receives help in the form of replacement delivery, the right to compensation for delayed performance shall lapse. The compensation for delayed performance shall amount to not more than ½% for each full week of delay, but in any case not more than 5%, calculated on the contract price of that part of the delivery that is delayed. The first two weeks of delayed performance shall not give any right to compensation for delayed performance.

After the maximum compensation for delayed performance has been reached, the customer must set the supplier a reasonable additional period of time in writing. If this additional period of time, for which the supplier is responsible, is not complied with, the customer shall be entitled to refuse acceptance of that part of the delivery that is late. If partial acceptance is not economically viable for the customer, he shall be entitled to withdraw from the contract and to ask for payments already made to be reimbursed against return of deliveries that have been effected.

- 8.5 If a specific date is agreed instead of a delivery period, this shall be equivalent to the last day of a delivery period; subsections 8.1 to 8.4 above shall apply mutatis mutandis.

- 8.6 Because of delayed delivery or performance, the customer shall have no rights and claims other than those expressly indicated in the present section 8. This restriction shall not apply in the case of unlawful intent or gross negligence on the part of the supplier, but it shall apply in the case of unlawful intent or gross negligence on the part of ancillary persons.

## 9. Packaging

Shipping containers shall be invoiced separately by the supplier and not returned. If, however they are specifically designated to be the property of the supplier, they must be returned by the customer free of charge to the point of departure.

## 10. Inspection and acceptance of deliveries and performances

- 10.1 The supplier shall inspect deliveries and performances prior to dispatch insofar as this is normal practice. If the customer demands more detailed inspections, these must be agreed separately and paid for by the customer.
- 10.2 The customer shall inspect the deliveries and performances within a reasonable time and notify the supplier immediately in writing of any defects. If the customer fails to do this, the deliveries and performances shall be deemed to have been approved.



10.3 The supplier must rectify any defect(s) of which he is notified in accordance with subsection 10.2 above as quickly as possible, and the customer must give the supplier the opportunity to do so. Once the defect(s) has/have been rectified, an acceptance inspection shall take place at the request of the customer or of the supplier in accordance with subsection 10.4 below.

10.4 The carrying out of an acceptance inspection and the establishment of the terms and conditions applicable thereto require (subject to subsection 10.3 above) a separate agreement. Subject to any agreement to the contrary, the following shall apply:

- The supplier must advise the customer of the carrying out of the acceptance inspection in time to enable the customer or his representative to attend the inspection.
- A protocol of the acceptance shall be drawn up, and must be signed by the customer and the supplier or by their representatives. The protocol shall record that the acceptance inspection has been carried out, or that it was carried out under reserve, or that the customer refused acceptance.

In each of the last two instances, the asserted defects must be listed individually in the protocol.

The customer may not refuse acceptance or refuse to sign the acceptance protocol on account of minor defects, in particular such defects as do not substantially impair the functional execution of the deliveries or performances. Such defects must be immediately rectified by the supplier.

- In the event of substantial deviations from the contract or serious defects, the customer must give the supplier an opportunity to rectify these within a reasonable additional period of time. A further acceptance inspection shall then take place.

If, when this further inspection is carried out, substantial deviations from the contract or serious defects are again evident, the customer may, in the event that the contracting parties have in this respect agreed a reduction of the price, payment of compensation or other benefits, demand these from the supplier. If, however, the defects or deviations that come to light when this inspection is carried out are so serious in nature that they cannot be rectified within a reasonable period, and the deliveries and performances are not usable for the intended purpose, or useful only to a very limited extent, the customer shall have the right to refuse acceptance of the defective part or, if partial acceptance is not economically viable for the customer, withdraw from the contract. The supplier may in this case only be obliged to reimburse those amounts that have been paid to him for the parts of the delivery that have been returned.

10.5 Acceptance shall also be deemed to have taken place

- if the acceptance inspection cannot be carried out on the scheduled date on grounds for which the supplier is not responsible;
- if the customer refuses acceptance without being entitled to do so;
- if the customer refuses to sign an acceptance protocol drawn up in accordance with subsection 10.4 above;
- as soon as the customer uses deliveries or performances provided by the supplier.

10.6 The customer shall not have any rights and claims because of defects of any kind whatsoever in deliveries and performances, other than those expressly indicated in subsection 10.4 above and subsection 11 (Warranty, liability for defects) below.

## 11. Warranty, liability for defects

11.1 *Warranty period (guarantee period)*  
The warranty period shall be 12 months. It shall begin on dispatch of the deliveries ex-works or on agreed acceptance of the deliveries and performances or, insofar as the supplier is also responsible for assembly, on completion thereof. If dispatch, acceptance or assembly are delayed on grounds for which the supplier is not responsible, the warranty period shall end not later than 18 months after notification of readiness for dispatch. For replaced or repaired parts, the warranty period shall commence anew, and shall last for 6 months from replacement, completion of the repair or from acceptance, but in any case not later than at the end of a period totalling twice the warranty period in accordance with the foregoing clause. The warranty shall lapse prematurely if the customer or third parties undertake improper modifications or repairs, or if the customer, where a defect has occurred, fails immediately to take all appropriate measures to reduce loss or damage and to give the supplier an opportunity to rectify the defect.

11.2 *Liability for defects in material, construction and design*  
The supplier shall, at the written request of the customer, undertake as quickly as possible and at its option to repair or to replace all parts of deliveries from the supplier that are shown to have become defective or unusable as a consequence of poor materials, faulty construction or defective design up to the end of the warranty period. Replaced parts shall be the property of the supplier. The supplier shall bear costs incurred at its factory for subsequent improvement.

11.3 *Liability for warranted properties*  
Warranted properties shall be only those that have been expressly described as such in the order confirmation or in the specifications. The warranty shall apply for not longer than up to the end of the warranty period. If an acceptance inspection is stipulated, the warranty shall be deemed to have been fulfilled if documentary evidence of the properties concerned has been provided at the time of this inspection.

If the warranted properties are not fulfilled, or only partially fulfilled, the customer shall in the first instance have the right to immediate subsequent improvement by the supplier. The customer shall grant the supplier the requisite time and opportunity to do so.

If this subsequent improvement is unsuccessful, or only partially successful, the customer shall have the right to the compensation agreed for this eventuality, or, insofar as no such agreement has been made, to an appropriate reduction of the price. If the defect is of such a serious nature that it cannot be rectified within a reasonable time, and if the deliveries or performances are unusable for the intended purpose, or only usable to a much reduced extent, the customer shall have the right to refuse acceptance of the defective part or, if partial acceptance is not economically viable for the customer, to withdraw from the contract. The supplier may only be obliged to reimburse such amounts as have been paid to him for those parts that have been returned.



## 11.4 Exclusions from liability for defects

Excluded from the warranty and liability of the supplier are such losses and damage that cannot be proved to have arisen as a consequence of poor materials, faulty construction or defective design, e.g. as a consequence of natural wear and tear, faulty maintenance, disregard of operating instructions, excessive stress, unsuitable machinery and equipment, chemical or electrolytic influences, building or assembly work not carried out by the supplier, and for any other grounds for which the supplier is not responsible.

## 11.5 Deliveries and performances from sub-suppliers

For deliveries and performances from sub-suppliers specified by the customer, the supplier shall assume warranty only under the terms of the warranty obligations of the sub-suppliers concerned.

## 11.6 Exclusivity of warranty claims

The customer shall have no rights and claims arising from defects in materials, construction or design, and from the absence of the warranted properties, other than those expressly indicated in subsections 11.1 to 11.5 above.

## 11.7 Liability for accessory obligations

The supplier shall be liable for claims of the customer arising out of inadequate advice and the like, or from the violation of accessory obligations of any kind, only in the event of unlawful intent or gross negligence.

## 12. Non-performance, defective performance and the consequences thereof

12.1 In all instances of defective performance or non-performance not expressly covered by these terms and conditions, in particular where the supplier, without any reason, commences the execution of the deliveries and performances so late that completion on time is no longer likely, or where execution in contravention of the contract by the supplier is definitely foreseeable, the customer shall be entitled to set the supplier a reasonable additional period of time for the deliveries and performances concerned subject to the threat of withdrawal in the event of default. If this additional period of time expires unutilised as a consequence of default by the supplier, the customer may withdraw from the contract in respect of the deliveries and performances that have been executed in contravention of the contract, or the execution of which in contravention of the contract can definitely be expected and demand reimbursement of that part of payments already effected that relate thereto.

12.2 In such an event the provisions of section 14 below shall apply in respect of any possible claim for compensation by the customer and of the exclusion of additional liability, and the claim for compensation shall be limited to 10% of the contract price of the deliveries and performances which give rise to the cancellation.

## 13. Termination of the contract by the supplier

Where unforeseen events substantially alter the commercial importance or the content of the deliveries and performances, or substantially affect the work of the supplier, and in the event of performance subsequently proving unfeasible, the contract shall be adjusted as appropriate. Insofar as this is not economically viable, the supplier shall have the right to terminate the contract or those parts of the contract affected thereby.

If the supplier wishes to terminate the contract, the supplier shall notify the customer of this immediately after becoming aware of the implications of the event, and also where an extension of the delivery period has been initially agreed. In the event of the contract being terminated, the supplier shall have the right to be reimbursed for those deliveries and performances already supplied. Claims for compensation by the customer in consequence of such termination of the contract shall be excluded.

## 14. Exclusion of additional liability of the supplier

All instances of violation of the contract and the legal consequences thereof, together with all claims by the customer, irrespective of the legal grounds under which they are made, shall be covered definitively by these terms and conditions. In particular, all claims for compensation, reduction, annulment of the contract or withdrawal from the contract not expressly indicated shall be excluded. In no instance is the customer entitled to claim for redress for loss or damage that has not occurred on the actual deliveries or performances supplied, such as loss of production, loss of usufruct, loss of orders, loss of profit and other indirect or direct losses or damages. This exclusion of liability shall not apply to unlawful intent or gross negligence on the part of the supplier, but shall apply to unlawful intent or gross negligence on the part of ancillary persons.

This exclusion of liability shall otherwise not apply where it is subject to binding law.

## 15. Place of jurisdiction and applicable law

15.1 **The place of jurisdiction for the customer and the supplier shall be the domicile of the supplier.**  
The supplier shall nevertheless be entitled to sue the customer at his place of domicile.

15.2 The legal relation shall be governed by and construed in accordance with Swiss law without regard to its principles of conflict of laws.

Büron, January 1, 2018

**EROWA Ltd**