

ERNE Fittings GmbH

Terms and Conditions for the Sale of Goods and Services

§ 1 Scope of application

- (1) Unless otherwise agreed in writing, these Terms and Conditions apply to all contracts concerning services of Erne Fittings. These Terms and Conditions apply also to all future transactions without Erne Fittings being required to separately refer to that fact.
- (2) Any contrary or deviating terms and conditions of the buyer will not apply even if Erne Fittings did not expressly object to such terms and conditions or provides the services ordered being aware of those terms and conditions.

§ 2 Order response

Erne Fittings shall be bound only by purchase orders that were confirmed in writing (by letter, fax, email). Also variations of an offer or a contract, especially if related to quantity, price, technology and dates, shall only be binding for Erne Fittings if confirmed by Erne Fittings in writing.

§ 3 Delivery periods/target dates

- (1) Details about delivery periods and target dates are only approximate. Delivery periods will be reasonably extended if any unforeseen events occur. In case of late delivery by a supplier of prematerial, Erne Fittings may prolong delivery periods and target dates by the delay caused by such late delivery of prematerial.
- (2) Periods and target dates shall be deemed complied with if the goods leave Erne Fittings's plant at the agreed time or the buyer has been advised that the goods are ready for shipment. In case of late delivery, the buyer shall grant Erne Fittings a reasonable grace period.
- (3) Erne Fittings shall not be liable for late deliveries in case of minor fault.
- (4) Partial supplies are permitted. Erne Fittings is allowed to deliver ordered items prior to the agreed delivery target date.

§ 4 Transport

- (1) Goods will be shipped for the buyer's account and at the buyer's risk, even if Erne Fittings carries out or organizes the transport.
- (2) Erne Fittings will purchase transport insurance or insurance against accidental loss of the goods only at the buyer's express instructions and at the buyer's cost and expense.

§ 5 Delivery (service) location, transfer of risk

- (1) Delivery location shall be Erne Fittings's plants.
- (2) Any risk of accidental loss shall transfer to the buyer once the goods are made available at the delivery location.

§ 6 Inspection

The buyer shall thoroughly inspect the supplied goods. Supplies shall be deemed approved, unless the buyer reports to Erne Fittings by written notice within eight days from delivery which defects were discovered, indicating the inspection method applied and the inspection results. Once the buyer or a third party starts to further process or install the goods, supplies shall be deemed approved in any event.

§ 7 Prices, invoice, payment

- (1) The agreed prices are net prices, exclusive of packaging cost. Erne Fittings may adjust the prices to reflect any change in commodity prices and external costs.
- (2) Unless otherwise agreed, invoices shall be paid within 30 days without any deduction.
- (3) If the buyer is in default with acceptance, the purchase price shall be immediately payable without deduction.
- (4) All taxes, customs duties or other duties pertaining to the import or acceptance of the goods shall be borne by the buyer.
- (5) In case of late payment, the buyer owes statutory default interest at a rate of at least 6 % p.a.

§ 8 Reservation of title

- (1) Erne Fittings reserves title to the supplied goods until payment of all claims arising from the business relations (goods subject to reservation of title).
- (2) Until further notice, the buyer may sell the supplied goods in the ordinary course of business. He assigns to Erne Fittings all claims, whether present or future, from any resale or any other realization of goods subject to reservation of title up to the amount of all claims arising from the business relations. Until further notice, the buyer may collect the assigned claims on its own behalf for Erne Fittings's account.
- (3) If the buyer resells the goods subject to reservation of title on credit, he is required to reserve title to the goods subject to reservation of title as escrow agent of Erne Fittings. The buyer assigns all rights under that reservation of title to Erne Fittings pending complete satisfaction of all claims arising from the business relations.
- (4) Erne Fittings will take goods back only as a matter of precaution; this shall not constitute a cancellation of the contract even if partial payments were permitted retroactively.

§ 9 Warranty and damages

- (1) Erne Fittings warrants that the supplied goods comply with the state of the art and the relevant standards. Erne Fittings shall not be liable that these goods are fit for a certain purpose.
- (2) In case of any defects, Erne Fittings may at its election rectify the defect or grant a reasonable price reduction. Erne Fittings shall be liable for consequential damage caused by defects only if it has caused such damage; its liability shall not exceed the purchase price of the defect item. For damages to third parties Erne Fittings shall only be liable as far as statutory product liability regulations apply. Any liability exceeding statutory product liability regulations is excluded.

§ 10 Confidentiality

- (1) The buyer shall not disclose his business relationship with Erne Fittings and shall keep confidential any information obtained from Erne Fittings also after the performance of the contract.
- (2) The buyer undertakes to resell the purchased goods only in compliance with all UN embargos and all statutory export and transport restrictions. The buyer also undertakes to assign this obligation to the buyers of the supplied goods.

§ 11 Final provisions

- (1) All legal relationships between Erne Fittings and the contracting partner shall be governed by and construed in accordance with Austrian substantive law, without giving effect to the UN Sales Convention.
- (2) The exclusive place of jurisdiction for any disputes with contracting partners that are domiciled in a state which has ratified the Lugano Convention dated 16 September 1988 or where Regulation (EC) No 44/2001 on Jurisdiction and the Recognition and Enforcement of Judgments in Civil and Commercial Matters is applicable shall be Feldkirch.

Any disputes with contracting partners that are domiciled in any other state shall be decided by the International Arbitral Center of the Austrian Federal Economic Chamber in Vienna.

However, Erne Fittings may in both cases sue the buyer also at another court having jurisdiction for the buyer.

- (3) The English version shall be authoritative for purposes of interpreting the contract and the Terms and Conditions of Sale.
- (4) Should any term of the contract or of the Terms and Conditions of Sale be or become invalid or unenforceable, this shall not affect the remaining terms of the contract and the Terms and Conditions of Sale. Any invalid or unenforceable term shall be deemed replaced by a term reasonable parties would have agreed on to achieve the intended economic purpose of the invalid term.