

ERNE Fittings GmbH

Terms and Conditions for the Purchase of Goods and Services

§ 1 Scope of application

- (1) Unless otherwise agreed in writing, these Terms and Conditions apply to all purchase orders and contracts in respect of which Erne Fittings acts as principal or buyer, or orders a work. These Terms and Conditions apply also to all future transactions without Erne Fittings being required to separately refer to that fact.
- (2) The contracting partner's terms and conditions shall not apply. There is no need to object to these.
- (3) The contracting partner acknowledges in the context of any supply or service the exclusive application of these Terms and Conditions for the Purchase of Goods and Services.

§ 2 Purchase orders

Erne Fittings is bound by a purchase order only if the purchase order is placed in writing (by letter, email, fax).

§ 3 Supplies/services

- (1) The delivery/service target date is the date indicated by Erne Fittings on which the ordered goods shall be delivered to the delivery location along with all transport, customs and accompanying documents or on which the service shall be provided at the location where the service is performed.
- (2) Erne Fittings may refuse to accept early or delayed supplies/services and return the goods for the supplier's account and at the supplier's risk or it may store the goods with third parties.
- (3) If the contracting partner becomes aware that he will not be able to provide all or parts of supplies/services in due time, he shall immediately give notice thereof, indicating the date when he will provide the supplies/services (new delivery/service target date).

Erne Fittings may cancel the contract or accept the new delivery/service target date.

Erne Fittings may refuse to accept partial, insufficient or additional supplies/services.

- (4) If the contracting partner is in default, Erne may in any case demand an immediately payable penalty equal to 1% of the purchase order sum for each commenced week of delay which shall not exceed 10%. Any additional loss shall be compensated.
- (5) Except with Erne Fittings's consent, a purchase order placed may not be forwarded to a subcontractor, whether in whole or in part.
- (6) Supplies/services will be provided free and clear of all encumbrances and reservations, including, without limitation, liens and reserved title.

§ 4 Transport

- (1) The contracting partner shall comply with the shipping policies of Erne Fittings and those of the forwarding agent or the carrier. The shipping documents shall indicate the purchase order and position numbers.
- (2) Goods will be shipped for the account and at the risk of the contracting partner, who shall also bear all costs of insurance and packaging.

§ 5 Delivery/service location, transfer of risk

- (1) Unless otherwise agreed, the delivery/service location shall be the business premises of Erne Fittings for which the supplies/services are intended.
- (2) Any risk shall transfer not until after unloading of the goods at the delivery location and provision of any other service at the location where the service is performed.

§ 6 Prices, invoice and payment

- (1) Prices are fixed prices and include all expenses arising for the complete provision of the supplies/services.
- (2) Invoices shall become due and payable only if they quote Erne Fittings's purchase order and position number.
- (3) If supplies/services are defective, Erne Fittings may retain payment pending complete performance.
- (4) Provided that supplies/services are defect-free and complete and properly invoiced, payment will be made within 14 days after receipt of the invoice with 3 % cash discount or within 90 days without deduction.

- (5) Default interest is 4% p.a.

§ 7 Warranty

- (1) The contracting partner warrants that the supplies/services are in line with the agreement and the usually expected qualities, including, without limitation, relevant standards and the state of the art. Any machinery and facilities shall particularly comply with the functional specifications and the product-specific safety and functional standards.
- (2) The contracting partner shall verify the quality and quantity of his supplies/services. Erne Fittings is expressly not required to inspect supplies and to give notice of defects.
- (3) At Erne Fittings's election, the contracting partner is required to rectify defects within a reasonable time or to grant Erne Fittings a price reduction.
- (4) In urgent cases, Erne Fittings may rectify defects itself or procure the rectification of defects by third parties. All related costs will be borne by the contracting partner.

§ 8 Property rights

The contracting partner warrants that his supplies/services will not infringe upon any rights of third parties, and he shall hold harmless and indemnify Erne Fittings for and against all claims that are asserted on the grounds of an infringement of such rights.

§ 9 Confidentiality

The contracting partner 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.

§ 10 Tools and other parts

- (1) Any tools provided or paid for by Erne Fittings will remain the property of Erne Fittings or shall be transferred to Erne Fittings's property. They may be used only for goods which are delivered to Erne Fittings. The contracting partner shall insure the tools at the replacement value at his own cost and expense. He hereby assigns to Erne Fittings all compensation claims he may have under that insurance.

- (2) The contracting partner shall inspect, maintain and repair the tools at his own cost and expense. He shall immediately report any loss or damage to Erne Fittings.
- (3) The contracting partner shall immediately return the tools at Erne Fittings's request at his own cost and expense.
- (4) Any other parts provided or paid for by Erne Fittings shall also remain Erne Fittings's property or shall be transferred to Erne Fittings's property. If these parts are combined with other parts or are processed, Erne Fittings obtains co-ownership of the new item in proportion of its parts' value (cost of acquisition) compared to the other combined or processed items.

§ 11 Damages

- (1) The contracting partner shall be liable to Erne Fittings for any drawback arising from a violation of the contract, including, without limitation, disadvantages from late or defects in supplies/services. This liability also covers any supply/service of subcontractors and up-stream suppliers. The contracting partner shall also bear all costs that may arise in connection with any recall action.
- (2) At Erne Fittings's request, the contracting partner shall purchase, and maintain for at least three years after the provision of supplies/services, liability insurance that provides insurance cover of at least EUR 5 million. He shall evidence that insurance to Erne Fittings upon request.

§ 12 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 contracting partner also at another court having jurisdiction for the contracting partner.

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