

## General Terms and Conditions of Payment and Delivery of Erska GmbH

As of January 1 2012

The following Terms and Conditions are only valid for use with business owners as provided for by § 14 of the German Civil Code, legal persons under public law or separate assets in accordance with public law.

The Supplies – which include services, proposals, advice and ancillary services – shall only be made under the following terms and conditions. These nullify any Customer's terms and conditions to the contrary; these shall not be recognised even if the Supplier does not oppose them again on receipt.

### I. Offer

- (1) The documents forming part of the offer, such as drawings, plans, weights and measurements, are definitive within the usual tolerances accepted within the industry, provided they are not expressly designated as binding.
- (2) The Supplier shall reserve ownership rights and copyrights to all quotations, drawings and other documents; such documents must not be made accessible to any third parties. Any breaches of the foregoing provisions shall render the party at fault liable for full damages. The Supplier shall be obliged not to disclose to third parties any plans designated by the Customer as confidential, without the consent of the Customer. Any subsidiary agreements must be made in writing, including any alteration to this clause requiring written form.
- (3) The prices for supplies are the sales prices and conditions valid on the day of delivery.
- (4) Delivery deadlines given only apply subject to uninterrupted production and sufficient supplies of raw materials and ancillary materials. Interruptions to the production processes of the Supplier or its suppliers, which could not have been avoided with reasonable care, such as industrial disputes, legal or official orders which prevent supply, or cases of force majeure, shall entitle us to extend the delivery period within reason. If delivery ultimately becomes impossible under such circumstances, the Supplier shall not be obliged to deliver, and shall not be liable for the payment of compensation.
- (5) The Supplier reserves the right during the delivery period to make changes to the design or form of the products which are reasonable to the Customer.
- (6) Contractual agreements on the quality of the products may not be understood as a warranty for the purposes of § 276 (1) of the German Civil Code, unless any assurances to the contrary are expressly made at the request of the Customer.

### II. Delivery and transfer of risk

- (1) In the area of soldering tools, delivery will be CPT (Incoterms 2010) named place of destination in Germany, in the case of a net order value in excess of € 250.00. The delivery outside of Germany will be FCA (Incoterms 2010), Erska, Wertheim. In case of dangerous goods we will calculate dangerous goods charges regardless of the value of goods. Exceptions in the case of soldering tools are rework and inspection systems, which will be delivered FCA (Incoterms 2010), Erska, Wertheim. The selection of dispatch method and means of transport in respect of soldering tools shall be at the reasonable discretion of the Supplier. If the Customer requires another type of dispatch method, the Customer shall be liable for the costs thereof. For deliveries of soldering tools with a net product value up to € 75.00 the Supplier shall invoice for a € 5.00 processing fee. In the area of soldering machines, deliveries shall be FCA (Incoterms 2010), Erska, Wertheim, excluding packaging. For deliveries with a net product value of up to € 75.00 the Supplier shall invoice for a € 15.00 processing fee.
- (2) Expenses for the installation, assembly and commissioning of machines shall be invoiced on a cost basis.
- (3) Dispatch shall be at the Customer's risk, subject to the Supplier taking all reasonable precautions.

### III. Warranty

In the case of defects of quality or title of the goods, or in the case that delivery is delayed or becomes impossible, the Supplier offers the following warranty, to the exclusion of any further claims and without prejudice to Section IV:

#### Defects of quality:

- (1) Any parts which prove to be defective due to circumstances prior to the transfer of risk shall be improved or replaced, at the Supplier's reasonable discretion, free of charge. The Supplier must be informed immediately, in writing, of the discovery of such defects. Parts which have been replaced become the property of the Supplier.
- (2) The Customer shall give the Supplier sufficient time and opportunity, by arrangement, to undertake any improvements and deliveries of replacement parts which the Supplier deems necessary; failing this, the Supplier shall be released from any consequential liability arising therefrom. Only in urgent cases of danger to the operational safety or for the prevention of comparatively major damage, in which case the Supplier must be notified immediately, shall the Customer have the right to rectify the defect itself, or have it rectified by a third party, and to demand repayment of the necessary costs from the Supplier.
- (3) Of the costs arising from the improvements and/or deliveries of replacements, the Supplier shall bear the following, provided the claim is proved

to be justified: the cost of the replacement part including dispatch and the reasonable costs of removal and re-installation, and in addition, provided this may reasonably be required depending on the individual circumstances, the costs of making available any necessary fitters and ancillary staff.

- (4) Within the scope of the legal provisions, the Customer has the right to withdraw from the contract if the Supplier - taking account of the legal exceptions - allows a reasonable period, which may have been set for it to carry out improvements or supply replacement parts due to a defect, to elapse without result. If only a slight defect arises, the Customer has only a right to reduce the contractual price. In all other circumstances the right to reduce the contractual price is excluded.
- (5) If the Customer or a third party makes improper improvements or repairs, the Supplier shall not be liable for the consequences. The same applies to any changes to the products supplied, undertaken without the prior consent of the Supplier.
- (6) Returns of defect-free products will only be accepted following written confirmation by the sales management. Depending on the condition of the packaging, and the versions of the products in question, an ex gratia payment of up to 60% of the purchase price will be credited.

#### Defects in title:

- (7) If the use of the products supplied leads to a breach of intellectual property rights or copyrights in Germany, the Supplier shall, at its own expense, obtain the right for the Customer to continue to use the product, or modify the product, to an extent reasonable for the Customer, in such a way that it is no longer in breach of the intellectual property rights. If this is not possible under reasonable economic conditions, the Customer shall be entitled to withdraw from the contract. Under such conditions, the Supplier shall also be entitled to withdraw from the contract. Moreover, the Supplier shall indemnify the Customer against the effects of any claims by the owner of the relevant intellectual property rights which are uncontested or confirmed by a final judgement.
- (8) The obligations of the Supplier specified in Section III 7 apply subject to the provisions of Section IV 2 in the case of breach of intellectual property rights or copyrights.  
These obligations shall only exist provided
  - the Customer informs the Supplier immediately of any breaches of intellectual property rights or copyrights claimed,
  - the Customer supports the Supplier to a reasonable extent in defence against the claims made, or allows the Supplier to undertake modifications in accordance with Section III 7,
  - the Supplier retains the right to all preventive measures, including out-of-court settlements,
  - the defective title is not due to instructions received from the Customer,
  - the infringement has not been caused by the Customer altering the products supplied without proper authority, or using them in a way which is not in accordance with the contract.

#### Inability to deliver, delay in delivery:

- (9) The Customer may withdraw from the contract if the Supplier becomes unable to make final and complete delivery prior to transfer of risk. The same applies in the case of insolvency of the Supplier. The Customer may also withdraw from the contract, if, in the case of an order of a batch of similar goods, it is impossible to supply a part of the total number, and the Customer has a justified interest in refusing a partial shipment; if this is not the case, the Customer may reduce the payment accordingly.
- (10) If the inability to deliver arises during a delay in acceptance, or due to the fault of the Customer, the Customer shall still be obliged to pay.
- (11) If the Customer suffers loss or damage due to a delay resulting from a fault by the Supplier, the Customer shall be entitled to demand compensation for the delay in accordance with Section IV 2.
- (12) If the Supplier is in delay - taking account of the legal exceptions - and the Customer grants a reasonable period for performance, and such period is not complied with, the Customer shall be entitled to withdraw from the contract within the scope of the legal prescriptions. Further claims arising from delay or inability to deliver shall be determined exclusively in accordance with Section IV 2 of these Terms and Conditions.

### IV. Liability

- (1) If the products supplied cannot be used by the Customer in accordance with the contract due to breach of contractual accessory obligations, in particular the provision of instructions for the operation and maintenance

of the products supplied, the provisions of Sections III and IV 2 shall apply accordingly, to the exclusion of any further claims by the Customer.

- (2) The Supplier shall only be liable - regardless of the legal grounds - for damages arising other than to the actual products supplied
  - in the case of intent,
  - in the case of gross negligence by the proprietor / managing body or senior employees of the Supplier,
  - in the case of culpable physical injury or damage to health,
  - in the case of defects which it has kept silent about, or in respect of which it has warranted their absence,
  - insofar as liability exists in accordance with the Product Liability Law governing personal injury or damage to property in respect of objects for private use, and this can be traced back to defects in the products supplied. In the case of culpable neglect of essential contractual obligations, the Supplier shall also be liable in case of gross negligence of non-senior employees, and in the case of ordinary negligence; in the latter case liability shall be limited to contractually typical, reasonably foreseeable damage. Any further claims are excluded.

#### **V. Limitation**

The Customer's entitlement to make any claim - regardless of the legal grounds - shall expire in 12 months. In the case of negligent or malicious behaviour, and in the case of claims in accordance with the Product Liability Law, the legally-prescribed periods apply. These also apply in the case of defects to a structure, or to products supplied which are used for a structure in accordance with their normal use, which have caused defects in the said structure.

#### **VI. Payment**

- (1) Invoices are payable as follows:
  - In respect of soldering tools and production equipment, within 14 days from the date of invoice with 2% discount, or within 30 days net. The discount will only be granted if there are no outstanding arrears.
  - In respect of soldering tools for rework and inspection systems, within 30 days net from issue of invoice.
  - In respect of soldering machines, 50 % with the order and 50 % on readiness within 30 days from issue of invoice, in all cases net.
  - Services are payable without deduction net.
- (2) If payment deadlines are not met, the Supplier reserves the right to charge interest of 8% above the base rate at the time of the European Central Bank.
- (3) In the case of first orders, the Supplier is entitled to supply under cash-on-delivery conditions, or to deliver on receipt of a prepayment. Similarly, if the creditworthiness of the Customer deteriorates, deliveries may be made cash-on-delivery or subject to a prepayment.
- (4) In the case of overdue accounts receivable, the Supplier is entitled to declare all accounts receivable due and payable. All accounts receivable shall likewise be immediately due and receivable in the event of a subsequent deterioration of the Customer's creditworthiness.

#### **VII. Retention of title, assignment by way of security**

- (1) The products remain the property of the Supplier pending fulfilment by the Customer of all claims arising from the business relationship.

- (2) All accounts receivable accruing to the Customer from the delivery to a third party of Goods under Title Retention are herewith assigned to the Supplier for security purposes in an amount equivalent to the accounts receivable of the Supplier from the overall business relationship.
- (3) If the Customer processes the goods of the Supplier, the latter shall be deemed the manufacturer and acquire ownership of the new goods being created. If such processing involves the use of other materials, the Supplier shall acquire co-ownership at the ratio of the invoice value of the Supplier's goods to the invoice value of the other materials used. If in the event of the combining or mixing of the Supplier's goods with an object of the Customer, such object is considered the principal object, with the co-ownership of the object devolving on the Supplier at the ratio of the invoice value of the Supplier's goods to the invoice value or - in the absence of such - the fair market value of the principal object. In these cases the Customer shall be deemed to hold any such goods subject to the Supplier's co-ownership.
- (4) The Supplier must be notified immediately of any loss, damage, pledging or other interventions by third parties with relation to goods under retention of title, or pledging of assigned accounts receivable. Any costs arising from the making of claims in this regard by the Supplier shall be borne by the Customer.

#### **VIII. Exports**

- (1) The export of the Supplier's products to countries in respect of which the Supplier has exclusive marketing rights is only permitted subject to the Supplier's express consent.

#### **Foreign Trade Law**

- (2) The delivered goods can contain components and / or software subject to applicable export control regulations of the European Community, the Federal Republic of Germany as well as of the export control regulations of the United States of America.  
The Customer agrees to observe the export control regulations of the above-mentioned countries and not to deliver to so called critical countries, critical recipients, for critical end-uses.  
The Supplier is not obliged to fulfil the contract to the Customer, unless this would lead to violations of export control regulations.

#### **IX. Final provisions**

- (1) The place of performance for delivery and payment is Wertheim/Main. The place of jurisdiction, including in respect of any proceedings relating to bills of exchange or cheques, is Würzburg. The Supplier is also entitled to initiate litigation proceedings at the location of the Customer's head office.
- (2) The laws of the Federal Republic of Germany shall apply.
- (3) Should any of the above provisions be or become invalid, this shall not affect the validity of the remaining provisions of the General Terms of Sales, Delivery and Payment. In such a case the parties shall be obliged, in place of the invalid clause, to agree on a valid clause which approximates as closely as possible to the economic intent of the original. The same shall apply in the event of an omission in the provisions of these General Terms of Sales, Delivery and Payment.