

**General Terms and Conditions for Purchase**  
**ERLUS Aktiengesellschaft (Co. Ltd.)**  
Version 12/2004

**I. Scope, Written Form**

1. Purchases of all goods and factory deliveries of the Erlus AG (hereinafter referred to as Erlus) in current as well as future business connections shall be performed exclusively according to these General Terms and Conditions for Purchase, even if the goods must still be manufactured.
2. The General Terms and Conditions of the contractual partner or partners (hereinafter referred to as the Supplier), especially General Sales or Ordering Terms and Conditions, shall only apply insofar as they have been specifically approved in writing by Erlus. The approval of individual, third-party clauses through Erlus shall not affect the validity of the remaining clauses.
3. All declarations from both contractual parties based on this contract, as well as contractual amendments and supplementary agreements, require written form (including via telefax) in order to be valid. The parties may only waive this condition for written form in writing.

**II. Conclusion of Contract, Subject Matter**

1. For a first-time order submitted to a Supplier, a contract is established with Erlus if the Supplier has provided confirmation to Erlus of the order placed within three days using a written and signed proper order form. Oral or telephone orders, as well as orders for which the proper order form has not been used, shall only be valid if they are confirmed in writing by Erlus. Within the context of an ongoing business relationship, a contract shall exist between Erlus and the Supplier if the supplier does not object to a written order from Erlus in writing within three days of receipt of said order.
2. The characteristics and specifications of the goods as stated in the written order from Erlus as well as any further publicity information, product descriptions, assurances or other information from the Supplier shall become subject matter of the contract.

**III. Delivery, Delivery Costs, Packaging**

1. Delivery shall be performed to the target address indicated on the written order, or otherwise to the headquarters of Erlus in Neufahrn in Lower Bavaria.
2. The Supplier shall only be authorised to make partial deliveries if this has been expressly stipulated in writing between both parties.
3. Delivery costs to the target location as well as for packaging shall be borne by the Supplier. The Supplier shall be obligated to take back empty packaging at their fullest value without billing for freight costs.
4. In the event that Erlus is to assume the costs of delivery based on a specific written agreement with the Supplier, the Supplier shall be obligated to commission the forwarding agent requested by Erlus; if no forwarding agent is named, shipping must be done via the least expensive method.

5. The type and method of packaging for the goods is to be agreed in writing with Erlus; if no such agreement is made, the safest type of packaging is to be used.

#### **IV. Delivery Dates, Delayed Delivery**

1. The delivery dates and deadlines cited in the written order are binding and refer to the receipt of the goods at the delivery address. Delivery deadline periods shall begin on the day of receipt of the order by the Supplier.
2. The Supplier shall be considered in default of delivery if the stipulated delivery dates are exceeded, without the need of sending a special reminder.
3. After a reasonable grace period set by Erlus has expired without performance of a service, Erlus may withdraw from the contract and also demand compensation instead of the service. The setting of a deadline is not necessary if the goods are no longer of interest to Erlus following a delay, or if circumstances exist which make an additional waiting period unacceptable to Erlus. A withdrawal may also be limited to that part of the service not performed.
4. Erlus may also assert the rights stemming from IV.3 before a delay occurs if it is obvious that the conditions for such a delay exist.
5. In the event of a delay, the Supplier must bear all resulting damages, especially additional costs for a replacement shipment through third parties, resulting from said delay.
6. If the Supplier can foresee that he will not be able to meet the stipulated deadlines or delivery dates, he must notify Erlus in writing within three business days, indicating the respective reasons and estimated duration of said delay. If he fails to do so, he shall be liable to compensate for all damage resulting from the failure to notify.
7. In the case of a delay of delivery, the Supplier shall be subject to a contract penalty of 0.3% of the contractual value per day, with a maximum of 10% of the contractual value. Erlus can assert said contract penalty up to the issue of the final invoice, but at least within 14 days of accepting the service of the Supplier. Any claims for damage compensation or any other claims shall remain unaffected.

#### **V. Risk Assumption, Transit Insurance**

1. The Supplier shall bear the risk of transit, regardless of who has ordered the shipment and from where the shipment is sent.
2. The Supplier shall insure the goods against transport damage at his own cost.

#### **VI. Acceptance**

Any and all circumstances beyond the influence of Erlus through which it becomes impossible or unacceptable for Erlus to accept the goods or act of participation for fulfilment of contract shall release Erlus from the obligation of punctual receipt and/or acceptance of the service for the duration of said circumstances. Acceptance as required by law shall be specifically declared in writing and shall not be replaced by simple initial use.

## **VII. Prices, Invoicing, Payment**

1. The stipulated prices are fixed prices and shall recompense all services related to the contractual fulfilment and obligation to service of the customer.
2. The manufacture of drawings, samples, etc. by the Supplier for the fulfilment of his work shall not be reimbursed separately.
3. The Supplier can only submit a separate invoice for partial deliveries if said partial deliveries have been stipulated in accordance with Item III. 2. Otherwise, the goods shall only be invoiced after complete delivery of all parts.
4. Payment instalments are to be specifically indicated on the final invoice.
5. Payments shall be made after complete execution of the delivery and after submission of an auditable invoice within 14 days at a 3% discount, in 30 days at a 2% discount or in 60 days strictly net. Delays caused by incorrect or incomplete invoicing shall not influence the discount deadlines.

## **VIII. Offsetting**

The Supplier may only offset claims by Erlus with uncontested or legally determined receivables.

## **IX. Warranty**

1. The Supplier shall warrant that the goods comply with stipulated characteristics, are suitable for the use stated in the contract and correspond with the promised characteristics. The minimum requirement is the state of the art at any given time.
2. The length of warranty for those goods that are used in their normal manner for a building and cause its defectiveness shall amount to five years, and in all other cases, two years.
3. Defects
  - a) Defects are any deviation, even minor, from the contractually stipulated composition in accordance with II 2. or the state of the art. In the case of contrary information, the goods must correspond to the respective, higher demands. A defect exists especially if
    - systems, machines and other devices do not conform to the requirements of equipment safety laws;
    - electrical material does not conform to regulations of the Association of German Electrical Engineers (VDE) or
    - building materials, iron and steel, etc., do not correspond to valid legal regulations and DIN standards or do not display regulatory approval or are not subject to goods control. Said approval must be presented upon request.
  - b) A defect also exists if the goods are burdened with the laws of third parties, e.g. patents and/or other commercial trademark rights or if they do not correspond to legal and regulatory requirements and conditions.
4. Legal cut-off periods set by the Supplier for the assertion of claims regarding defects are not binding. Complaints regarding obvious defects made up to 14 days following transfer of goods to Erlus or after acceptance of the goods is still considered to be immediate and thus in good time. The conditions of §377 and §378 of the German

Commercial Code shall be excluded.

5. Subsequent Performance

- a) The Supplier shall be obligated to immediately eliminate defects at his own cost upon being notified of them, either via rectification of defects or a new shipment, depending on the choice made by Erlus. In addition, he shall be obligated to provide compensation to Erlus for any resulting damages.
- b) In the case of subsequent performance, limitation shall begin anew with regard to the defects for which performance was subsequently rendered and for replaced parts.
- c) If the Supplier should not fulfil his obligation to subsequent performance within a reasonable, set grace period, Erlus may either have the defect repaired itself at the cost of the Supplier or withdraw from the contract. Return of the goods in the case of a withdrawal shall be done at the risk of the Supplier. In addition, Erlus shall be entitled to receive compensation for damages instead of the respective service. A deadline is especially not necessary if the Supplier contests the existence of the defect or refuses the warranty altogether, or if, due to circumstances particular to an individual instance, it is unacceptable for Erlus to initially wait for an attempt at subsequent performance.

6. Rescission and Abatement

Following an unsuccessful subsequent performance (Item 1), Erlus may withdraw from the contract or demand abatement of the price. In addition, Erlus may demand compensation for damages from the Supplier.

7. The period of limitation of the warranty shall be suspended by the assertion of claims of defect during the respective current warranty period. Said suspension shall not end before the warranty claims have been fulfilled.

**X. Liability**

1. The Supplier shall be liable, regardless of liability standard, for all damage in an unlimited fashion. The Supplier shall especially be liable for eliminated consequential damage of the defect and pecuniary loss.
2. Erlus
  - a) Erlus shall only be liable for damage caused deliberately and with gross negligence.
  - b) Liability for slight negligence – regardless of legal grounds – shall be excluded. In the event of a negligent violation of a primary compulsory treaty indemnity, liability for such direct damage which could not reasonably be foreseen or upon whose occurrence Erlus has no influence, shall be limited to the amount equalling twice the contractual sum (purchase price), and liability for direct damage and consequential damage caused by Erlus shall be excluded.
  - c) The liability of Erlus for damage to life, limb or health shall be limited to cases of deliberate or negligent breach of duty.
  - d) All warranty limitations shall also apply to the benefit of the vicarious agents of Erlus.

**XI. Samples and Drafts**

1. Drawings, samples and models, as well as plans and goods manufactured to the specifications of Erlus shall be made for Erlus as the manufacturer. In the event that Erlus has not already become the legal owner of these objects, the Supplier shall now transfer ownership to Erlus. The Supplier shall be obligated to store the objects at his

own cost.

2. Erlus shall keep all intellectual property rights for all objects cited above as well as other rights of intellectual property. Further utilisation of said objects by the Supplier or third parties requires the explicit written permission of Erlus.

## **XII. Place of Execution, Forum, Jurisdiction**

1. The place of execution shall be the target city indicated in the order.
2. German law shall prevail.
3. For full commercial transactions, the jurisdiction shall be the County Court of Landshut in Lower Bavaria, Chamber for Commercial Cases. However, Erlus may also file suit against the Supplier at another court of its choice.