

## **1. General**

- 1.1 The following Terms and Conditions shall exclusively apply to all business transactions with the Purchaser. They apply to business transactions with business entities, legal public entities and trusts governed by public law. Conflicting general terms and conditions of the Purchaser shall only apply if they are expressly confirmed in writing by **ERC**.
- 1.2 These Terms and Conditions also apply, without the need for an express agreement, to all future transactions between the Parties as well as when **ERC**, in the knowledge of the Purchaser's opposing or different terms and conditions, carries out the delivery or service without reservation.
- 1.3 To the extent that these Terms and Conditions provide for the written form, this requirement shall be satisfied by transmission using fax or electronic means.

## **2. Offers and Prices**

- 2.1 **ERC's** offers are subject to change without notice unless otherwise agreed in writing.
- 2.2 All prices are understood to be the price charged for delivery ex **ERC's** works, without cash payment discount or any other such discounts, plus value added tax. Additional services (for example, transit costs) and any other costs (for example for transportation or packaging, loading, shipping and customs duties) shall, unless otherwise agreed, be borne by the Purchaser.
- 2.3 If **ERC** undertakes the installation and commissioning or operates After Sales Services (**Clause 5.**) the amount of payment shall be agreed between the Parties. If the amount of payment has not been agreed, it shall be based on the respective outlay according to the then valid charging rates of **ERC**. In addition to the amount of payment the Purchaser shall pay all additional costs like travel costs, accommodation costs and transport costs. **ERC** shall select using equitable discretion the most suitable option for travelling, promotion and accommodation. If the Parties enter into an agreement on payment by the hour, the travelling times of **ERC's** personnel shall be deemed to be working hours.
- 2.4 A cost estimate for installation and commissioning or After Sales Services shall only be prepared by **ERC** if expressly requested. It shall not be binding for **ERC**. **ERC** gives no guarantee for the accuracy of the cost estimate.
- 2.5 The price quotations are based upon the material and labour costs prevailing at the time an order is confirmed. In the event of a change of such costs between the confirmation of order and the agreed delivery date, **ERC** shall retain the right to undertake a corresponding price adjustment after the expiry of four weeks after receipt of the confirmation of order. **ERC** will prove the changes of such costs to the Purchaser upon request. In the event that this adjustment leads to a price increase which exceeds either the general cost of living index or the then current cost of similar items by a significant amount, the Purchaser may withdraw from the contract. Any withdrawal must be declared to **ERC** in writing (with advice of receipt) immediately following notification of the price increase. Otherwise the withdrawal will not be effective. The Purchaser's withdrawal from the contract shall also not be effective if **ERC**, immediately after receipt of the withdrawal notice, declares that it will perform the contract under the originally agreed price.
- 2.6 If performance is to take place more than four months after conclusion of the contract and **ERC's** list prices have changed in the meantime, **ERC** may demand in place of the agreed price, a price which is subject to the percentage of change to the list price without the Purchaser having a right of withdrawal, unless otherwise agreed in advance.

## **3. Contract Conclusion and Subject Matter**

- 3.1 A contract shall be concluded if **ERC** have either confirmed the acceptance of the purchase order and/or the order for installation and commissioning or After Sales Service in writing, or if they have carried out the delivery or provided the service. Any requirement of **ERC** for a signed copy of the confirmation of order to be returned shall only be for the alleviation of the burden of proof.
- 3.2 **ERC's** written confirmation of order shall determine the nature and scope of **ERC's** obligations, provided the Purchaser does not oppose the content of the confirmation of order in writing without delay after receipt of the confirmation of order.

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- 3.3 To the extent that there are no limits on permissible variations stated in the confirmation of order, and that such limits do not result from expressly acknowledged Purchaser specifications, variations which are customary in trade are permitted. A guarantee (§ 443 German Civil Code) shall only be given by **ERC** if **ERC** expressly indicates in writing that these amount to guarantees.
- 3.4 Unless expressly and bindingly agreed between the parties: Advice provided by **ERC** on manufacturing or application options of products of **ERC**, as well as technical consulting and other information of **ERC** is given to the best of knowledge, but without commitment and without any liability unless **ERC** acts with gross negligence. With respect to analyses and attributes of the products of **ERC**, samples are considered as approximate and shall be non-binding demonstration material.3.5 Legal Provisions for Exports:
- (a) If a necessary export licence is not granted or the pre-requirements for an export licence which has already been granted subsequently fall away, without **ERC** being responsible for this, or if the Purchaser appears on a national or international sanctions list or appears after the conclusion of the contract, **ERC** is entitled to a right of rescission or cancellation. The Purchaser shall immediately inform **ERC** in writing of such relevant circumstances in this connection. The scheduling shall be reasonably postponed in proportion to the period of delay resulting from the subsequent examination of the pre-requirements.
  - (b) If **ERC** exercises its right of rescission or cancellation pursuant to **Clause 3.5(a)**, the Purchaser is liable for all direct and indirect damage (including lost profits, financial penalties, legal costs etc.), which are incurred by **ERC** as a result of the early termination of the contract. In this case, the Purchaser is not obliged to provide any consideration and shall receive back from **ERC** any payments already made, as far as **ERC** does not set-off such amounts with possible counterclaims; the Purchaser is not entitled to any further claims against **ERC**, in particular claims for damages.
  - (c) The goods to be delivered by **ERC** are designed for disposition in the country for delivery agreed with the Purchaser. The Purchaser is obliged to consider whether the re-export of the goods is subject to the laws on foreign trade and payments and export control provisions of the Federal Republic of Germany, the country of delivery as well as, where applicable, other countries, and whether the Purchaser can be obliged to obtain a licence. The Purchaser is obliged to inform himself in individual cases of the decisive Law on Foreign Trade and Payments and where applicable to apply for and obtain the necessary licences.
  - (d) The Purchaser is exclusively responsible for compliance with all import provisions and permits as well as for obtaining any technical permission, operational or special permissions etc. in relation to the goods required in countries outside Germany. The non-grant of permissions, approvals etc. which may be required for the use outside of Germany shall not in particular constitute a defect or grounds for rescission or avoidance of the contract by the Purchaser. Upon request however, **ERC** will assist the Purchaser with obtaining the permissions etc. by making available documentation concerning the goods; any costs thereby arising (e.g. for translations, certifications etc.) shall be borne by the Purchaser.

#### **4. Payment Terms**

- 4.1 The payment is to be effected within 14 days from date of invoice..
- 4.2 If periods for payments are exceeded **ERC** shall charge interest at 8 percentage points above the respective basic interest rate of the European Central bank per annum, unless **ERC** can prove higher damages.
- 4.3 Notwithstanding any other claims, **ERC** has the right to demand advance payment or provision of security and to delay the fulfilment of its own obligations in the event that, following contract closure, facts become known which question the Purchaser's reliability, in particular with respect to the Purchaser's ability to pay. **ERC** shall be entitled to withdraw from the contract if the Purchaser has provided false information regarding its credit worthiness, or when, based upon reliable information, the Purchaser's credit worthiness is objectively found not to exist. Any and all claims for compensation by the Purchaser arising from **ERC**'s withdrawal from the contract are excluded.

- 4.4 The Purchaser is not entitled to reduce **ERC's** claims to counter claims or to exercise a right of retention unless the counter claims or right of retention have been acknowledged by **ERC** in writing or legally ascertained.

## 5. After Sales Services

- 5.1 After Sales Services are all services offered by **ERC** through its customer service department for customer support for products, in particular, assembly, start-up, maintenance, repairs, fitting of exchange units and spare parts as well as advice.

### 5.2 Offers, prices and payment

- (a) The Purchaser shall pay all costs for the exchange units, spare parts, packaging as well as transport and insurance of materials.
- (b) Following completion of the service the **ERC** Service personnel shall submit to the Purchaser a statement of the working hours and materials required for the Service. A confirmation of this statement by the Purchaser shall be binding for the Purchaser.
- (c) The Purchaser shall also bear the agreed remuneration in relation to the provided service and the incurred expenditures if an order is discontinued or cannot be carried out due to a reason for which **ERC** is not responsible. This applies in particular if faults which have been complained about do not appear upon examination, if the Purchaser terminates the order whilst it is being carried out or if necessary parts cannot be obtained within a reasonable period of time.
- (d) If the Purchaser cancels an appointment for After Sales Services later than three (3) working days before the agreed appointment or misses an agreed appointment, he shall pay a flat charge in the amount of 30% of the order value unless he is not responsible for this. Further claims for damages remain unaffected.

### 5.3 Content and Extent of the Service Agreement

- (a) **ERC** is entitled to appoint third parties to carry out the After Sales Services.
- (b) **ERC** reserves the right to provide additional services which are not anticipated in the order, if this corresponds to the actual or presumed wishes of the Purchaser. **ERC** shall always try and obtain the agreement of the Purchaser prior to providing a service which goes beyond the order.
- (c) The **ERC** Service personnel may only give legally binding declarations on behalf of **ERC** within the framework of the Service order which has been placed.

### 5.4 Obligations of the Purchaser

- (a) The Purchaser shall provide the Service personnel with any documents, material, personnel and equipment which are necessary for the provision of the Service. Costs arising from a breach of this obligation shall be borne by the Purchaser.
- (b) The Purchaser shall make available to the Service personnel suitable rooms for the safe storage of the parts and tools of the **ERC** Service personnel in particular. The Purchaser is responsible for the safety of the workplace, adherence to safety provisions and reasonable working conditions. The Purchaser must point out to the Service personnel any particular regulations relating to its operation. Any internal approvals, authorisations and identification cards must be obtained by the Purchaser at its own cost.
- (c) The Services are to be accepted by the Purchaser as he receives notification of completion or when, in individually contractually agreed cases, a test has been carried out. If no notification is given, acceptance is deemed upon the operational start-up of the subject of the Agreement. If within a period of 14 days from the notification of readiness for acceptance the Purchaser does not accept the services for reasons for which **ERC** is not responsible, the Service is deemed to have been accepted.

5.5 Unless otherwise provided in this paragraph, the usual provisions of these general terms and conditions shall also apply.

## **6. Incoterms**

If and insofar as agreed, the Incoterms 2000 at its latest version shall apply.

## **7. Delivery**

7.1 **ERC** reserves the right to choose the route and the mode of transport. **ERC** will endeavour to consider the requests of the Purchaser. Any additional costs resulting from special shipping requests made by the Purchaser shall be borne by the Purchaser.

7.2 The dates and periods named by **ERC** are always non-binding, unless they are expressly marked as binding in the confirmation of order. Absolute fixed dates must be marked with a corresponding suffix. Periods shall commence only after receipt of any agreed pre-payments as well as receipt of all documents pertaining to the order, and proper clarification of all details of the order as well as provision of potentially required official permits. Subsequent changes to a contract will automatically result in a reasonable postponement of the scheduled dates. Dates and periods for installation and commissioning are with the reservation of the fulfilment of the Purchaser's obligations stipulated under **Clause 10**.

7.3 Two weeks after a non-binding date or period has been exceeded, the Purchaser may request in writing delivery and installation respectively by **ERC** within a reasonable period of time. Upon expiry of this delivery deadline **ERC** shall be in delay, unless **ERC** is not responsible for the non-performance.

7.4 **ERC** shall be entitled to make partial deliveries and to invoice them separately.

7.5 The determination of dimensions and weight for the purpose of invoicing shall be carried out at the dispatch point of **ERC**'s works. If the Purchaser requests official weighing by the railway authorities at the station of departure, it shall be at his expense.

7.6 **ERC**'s duty to perform is suspended in case of force majeure (including disruptions in the ordinary course of business or of traffic, disturbances in shipment, business interruptions due to technical reasons, war, strike, lock out, insufficient delivery of operational material, administrative legal measures or other similar events) to the extent that **ERC** is not responsible for this, as well as incorrect or late supplies being made to **ERC** for which **ERC** is not responsible. **ERC** must inform the Purchaser without delay of the unavailability of the service. In these cases **ERC** is entitled to postpone their performance, for as long as such events continue, however, up to a maximum of four months. In case of a permanent disturbance of the performance or if the disturbance lasts more than four months, **ERC** is entitled to withdraw from the contract either in whole or in part. In the event of (partial) withdrawal from the contract, the Purchaser is not obliged to pay any (pro-rata) consideration, and any advance payments shall be paid back (pro-rata) to the Purchaser without delay; the Purchaser is not entitled to claim for compensatory damages.

## **8. Package**

8.1 The Purchaser is liable for damage or loss of packages, which are left to the Purchaser or a third party denominated by the Purchaser, from the day of delivery until the day of return to the return address stated by **ERC**. The Purchaser shall discharge the packages immediately, at the latest 48 hours after delivery, and immediately return the packages in a clean condition to the return address carriage paid and free of costs.

8.2 In case of delayed return which the Purchaser is responsible for, the Purchaser shall bear the customary demurrage and stall fees as well as package rents. **ERC** is entitled to repair the packages to the expense of the Purchaser, if the Purchaser is responsible for the damage. Beyond that, further claims of **ERC** shall remain unaffected.

8.3 **ERC** is not obliged to examine packages, especially containers, tank wagons and road tankers, which are furnished by the Purchaser, as whether they are suitable and neat.

## **9. Passing of Risk / Default of Acceptance**

- 9.1 All sales are calculated ex works.
- 9.2 Shipping and transport shall always be at the risk of the Purchaser. The risk shall be transferred to the Purchaser, also in the case of partial deliveries, at the latest when the shipment has been handed over to the carrier - irrespective of whether it belongs to **ERC** or is a third party -or for the purpose of the shipment the item has already left **ERC's** works. The passing of risk shall also take place in the case of default of acceptance on the part of the Purchaser.
- 9.3 In the event that the Purchaser is in default of acceptance, **ERC** is entitled to claim compensation for additional expenditure arising as a result. Any possible claims for compensation by **ERC** on account of culpable breaches of (secondary) obligations by the Purchaser shall remain unaffected.
- 9.4 **Clause 9.3** shall apply correspondingly to the delayed calling of deliveries, to the extent that delivery on call is agreed, as well as to failure of the Purchaser to carry out any required cooperation.
- 9.5 During the default of acceptance by the Purchaser, **ERC** shall only be liable for deliberate acts and acts of gross negligence.
- 9.6 If at the request of the Purchaser **ERC** continues to store the subject matter after the delivery date, the risk of accidental loss and accidental damage to the subject matter shall pass to the Purchaser on the originally agreed date of acceptance. During such storage period, **ERC** shall only be liable for deliberate acts and acts of gross negligence.
10. Installation and commissioning
- 10.1 In the case that **ERC** undertakes the installation and commissioning of the subject matter the Purchaser is obliged to provide all preparations necessary on his part at its own expense and in due time. In particular, the Purchaser has to undertake and to ensure:
- (a) all preparations and ancillary work outside **ERC's** scope, in particular construction, earth and masonry work;
  - (b) the supply of the installation point with electricity, water, lighting, heating, connections for computers and feeders;
  - (c) the availability of equipment and materials such as scaffolds, lifting equipment, fuels and lubricants as well as appropriate staff for the unloading of the subject matter and the transport on the Purchaser's premises;
  - (d) the availability of suitable rooms for the secure storage of machine parts and tools of the installation staff as well as adequate working and recreation rooms and sanitary facilities for the installation staff.
- 10.2 The Purchaser is responsible for the security at the installation point and the observance of security regulations. The Purchaser provides the installation staff with protective clothing and protective devices if necessary. Furthermore, the Purchaser is obliged to advise the installation staff of particular risks and regulations in its factory and procures internal permissions, authorisations and identifications at its own expense.
- 10.3 The Purchaser makes available without being asked any necessary information concerning structural data, the location of concealed water, electric power and gas lines or similar installations.
- 10.4 At the latest by the date of the agreed beginning of the installation the point of installation must be in a suitable condition for installation. Any preparatory work must be finished to such a degree that the installation can be commenced and carried out without interruption. The point of installation as well as access roads must be level, clear and accessible.
- 10.5 The Purchaser bears any costs which are caused by the disregard of its obligations set out in this **Clause 10** if the Purchaser is responsible.
- 10.6 **ERC** is entitled to appoint third parties to carry out the installation and commissioning.
- 10.7 **Clause 5.2(c)** (discontinuance or unfeasibility of the order) and number **5.2(d)** (cancellation of an appointment) apply accordingly.

## 11. Retention of Title

- 11.1 All products delivered shall remain **ERC's** property (*retained goods*) until the Purchaser has completely settled all claims existing and arising after the conclusion of the business relationship with **ERC**.
- 11.2 The Purchaser is obliged to use and handle the retained goods with care. During the period of the retention of title, the Purchaser shall be entitled to possession and conventional use of the retained goods.
- (a) Any treatment or processing of the retained goods shall take place for **ERC** as manufacturer within the meaning of § 950 German Civil Code, without any obligation on **ERC's** part. Treated and processed goods shall be deemed retained goods. If the Purchaser carries out any treatment, processing, combination or mixing of the retained goods with goods from another source to make a new item or mixed item respectively, **ERC** is entitled to co-ownership in proportion to the invoice value of the retained goods at the time of delivery as against the value of the other processed or mixed goods. The part that is co-owned shall be deemed to be retained goods.
- (b) If the retained goods are combined with other things and one of the things which belongs to the Purchaser can be regarded as the principal thing within the meaning of § 947 BGB, it is hereby agreed that a co-owned part in proportion to the invoice value of the retained goods as against the value of the principal thing shall be assigned to **ERC** and the Purchaser shall preserve it for **ERC** free of charge. The part that is co-owned shall be deemed to be retained goods.
- 11.3 The Purchaser must preserve any retained goods for **ERC** free of charge. Upon request at any time in the place of storage, **ERC** shall have the possibility of carrying out stock taking and sufficient labelling. The Purchaser shall inform **ERC** without delay of all details of any distraint or derogation of **ERC's** rights by third parties so that **ERC** may use all legal means to prevent this from happening.
- 11.4 The Purchaser may only sell the retained goods in the normal course of business under his normal conditions and under an agreement as to a retention of title, if it is guaranteed that the Purchaser's claims under this further sale are assigned to **ERC** in accordance with this **Clause 11.4**:
- (a) The Purchaser hereby assigns to **ERC** any claims arising out of the further sale of the retained goods (as well as in the context of contracts for services or contracts for works and materials) together with all ancillary rights. These shall serve to the same extent as **ERC's** security for the retained goods.
- (b) The Purchaser is only entitled to assign claims arising out of the further sale of the retained goods to third parties with **ERC's** prior written consent.
- (c) If the Purchaser sells the retained goods together with other goods which were not supplied by **ERC**, the assignment of the claims arising out of the further sale shall only be up to the value of the invoice value of **ERC's** retained goods at the time of the delivery.
- In the case of the sale of goods in which **ERC** has co-ownership rights pursuant to **Clause 11.2(a)** or **11.2(b)** respectively, the assignment of claims shall only be up to this co-owned share.
- (d) If the assigned claim is included in an ongoing invoice, the Purchaser shall hereby transfer a portion of the balance in an amount corresponding to this claim, including the final balance, to **ERC's** current account.
- (e) Until cancellation, the Purchaser is entitled to make any claims arising out of further sales.
- 11.5 If the Purchaser fails to fulfil its obligations under this contract or other contracts with **ERC** or if **ERC** become aware of circumstances which reduce his credit worthiness, then:
- (a) after the expiry of a fruitless extension of time, **ERC** can withdraw from the contract (in whole or in part); then the Purchaser's right of possession in the retained goods shall expire and **ERC** can demand the retained goods;

- (b) **ERC** may prohibit the further sale, treatment, processing as well as mixing or combination of the retained goods with other goods;
- (c) the Purchaser shall inform **ERC** on demand of the name of the debtor of the claims that have been assigned to **ERC**;
- (d) **ERC** is entitled to cancel the direct debit authorisation that was granted.

Any further claims of **ERC**, in particular claims for damages, shall remain unaffected.

- 11.6 If the value of the security provided to **ERC** exceeds the aggregate of **ERC**'s secured claims by more than 20 %, **ERC** is obliged to release security of **ERC**'s choice to this extent at the request of the Purchaser.

## 12. Obligations to inspect and identify defects

- 12.1 The Purchaser must carefully inspect the goods without delay after their arrival at the destination point, in particular as to condition and quantity, even if examples or samples have been previously sent. In the case of an installation and commissioning of the subject matter by **ERC**, the Purchaser shall carefully inspect the installed subject matter as to obvious defects without delay after the completion was indicated by **ERC**. This applies accordingly to After Sales Services. Obvious defects must be notified by the Purchaser to **ERC** without delay at the latest however within 10 days after delivery or completion. Concealed defects must be notified by the Purchaser in writing to **ERC** without delay at the latest however within 7 days of discovery of the defect. Any breach of this obligation to identify defects excludes a claim for defects to that extent.
- 12.2 If requested, the Purchaser shall allocate samples of the complained-of material immediately to **ERC**. Any negotiations about complaints shall not be considered as a waiver of **ERC** to object that the notification of defects of the Purchaser was not in due time and/or not sufficient.
- 12.3 Damages occurring during transport must be immediately notified to the carrier; the notification obligations under the German General Conditions of Carriage (*Allgemeine Deutsche Speditionsbedingungen*) shall apply to this extent.

## 13. Defects

- 13.1 Insofar as a defect exists which has been notified within the correct time limits prescribed in **Clause 12.1**, **ERC** is entitled at its option to remedy the defect within a reasonable deadline by undertaking repairs or by delivering a non-defective subject matter. In the event that the remedy is ineffective, the Purchaser is entitled at its option to require either a reduction in the purchase price or the cancellation of the contract. The Purchaser has no cancellation rights in the case of immaterial defects.
- 13.2 **ERC** bears the expenses required for the purpose of the remedy. This does not include expenses caused by the dismantling or reinstallation of the defective subject matter.
- 13.3 Furthermore, **ERC** does not bear such expenses which are increased if the subject matter is brought to another place than the place of the Purchaser's registered office. This does also apply if **ERC** delivers the subject matter directly to a third party by the Purchaser's request.
- 13.4 Furthermore, **ERC** shall be liable for possible claims for compensation from the Purchaser arising from or in connection with the defects in the subject matter, exclusively in accordance with the provisions of **Clause 14**.
- 13.5 Warranty claims by the Purchaser shall be excluded, to the extent that defects are causally related to any of the following occurrences, such that:
- (a) the Purchaser failed to provide notice of the defect and an opportunity to repair said defect without delay in accordance with **Clause 12.1**;
  - (b) the subject matter was handled improperly; if the Purchaser does not prove wrong a substantiated assertion by **ERC** that the defect was caused by one of the above stated circumstances.
- 13.6 All warranty claims by the Purchaser shall become statute-barred within one year calculated from the beginning of the limitation period prescribed by statute. This shall not apply when **ERC**

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has fraudulently concealed the defect nor when strict liability on the part of **ERC** to pay compensation exists pursuant to **Clause 14**. Agreements between the Purchaser and its customers shall not be to the detriment of **ERC** if they go beyond statutory claims for defects.

- 13.7 At **ERC's** request, the Purchaser is obliged to pursue at first all claims which come into question against **ERC's** pre-suppliers. For this purpose, **ERC** is obliged to assign to the Purchaser any possible warranty or compensation claims that **ERC** has against **ERC's** pre-suppliers. If the claim made against **ERC's** pre-supplier remains unsuccessful, the Purchaser is entitled to make a claim against **ERC** pursuant to this Conditions to the extent that the Purchaser then assigns back to **ERC** the claims for defects that **ERC** assigned to him.
- 13.8 If it turns out retrospectively that a defect does not exist, the Purchaser is obliged to pay the work performed by **ERC** for the purpose of the remedy according to the then valid charging rates of **ERC**.

#### **14. Liability**

- 14.1 Claims for damages of the Purchaser – regardless of their legal basis for example, delays, defective delivery or performance, breaches of binding obligations or obligations arising from contract negotiations, tortious act – shall be excluded, unless mandatory liability exists. For example, this is the case in the event of injury to life, body or health as well as in the event of deliberate acts, gross negligence, or breach of essential contractual obligations, the fulfilment of which first facilitates the due implementation of the contract and upon their compliance the Purchaser may regularly rely, by **ERC**, their statutory representatives or employees, furthermore in the event of liability pursuant to the Product Liability Act or to the extent that **ERC** has given an express guarantee (§ 443 German Civil Code) in writing as to the quality of a product or an exercise risk. An alteration of the burden of proof to the disadvantage of the Purchaser does not result from this.
- 14.2 The liability of **ERC** for gross negligence as well as negligent breaches of essential contractual obligations shall be limited to the foreseeable damage which is typical for this type of contract.
- 14.3 In particular, **ERC** shall not be liable for damages caused by the improper handling of the subject matter by the Purchaser.
- 14.4 Insofar as the liability pursuant to the preceding provisions is limited, such limitation shall also apply to the personal liability of employees, workers, co-workers, representatives and assistants of **ERC**.
- 14.5 Furthermore **ERC** shall also not be liable for the gross negligence of its ordinary employees to the extent this does not amount to a breach of essential contractual obligations within the meaning of **Clause 14.1** irrespective of any possible liability of **ERC** for default of its organisation pursuant to **Clause 14**.
- 14.6 The Purchaser shall be obliged to give notice in writing without delay of all damages and losses for which **ERC** is to be held answerable.

#### **15. Intellectual Property**

**ERC** is and remains owner of all intellectual property pertaining to the sold goods, to all software programs (including scripts), software components, offers, quotes, drawings, pictures, brochures, catalogues, models and/or other documents provided by **ERC** to the Purchaser. If the goods sold by **ERC** contain software programs (including scripts) or software components or software programs (including scripts) or software components are provided together with the sold goods, **ERC** grants to the Purchaser a simple, worldwide and timely-unlimited right to use the software programs (including scripts) or software components together with the sold goods. The Purchaser is not granted a right to modify or further develop software programs (including scripts) or software components beyond the scope of § 69d or § 69e German Copyright Act.

#### **16. Jurisdiction / Applicable Law / Miscellaneous**

- 16.1 Place of performance and place of jurisdiction shall be **ERC's** registered office. Place of jurisdiction shall be Buchholz i.d.N. **ERC** is entitled to claim against the Purchaser before any other competent court.

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- 16.2 The contractual relationship as well as any other possible tortious claims arising thereunder shall be governed entirely by German law excluding the UN Convention on Contracts for the International Sale of Goods of April 11, 1980 (CISG).
- 16.3 Any transfers of Purchaser rights and obligations arising under the contract shall require the written consent of **ERC**.
- 16.4 **ERC** shall be entitled to use data concerning the exchange of purchased items and payments with the Purchaser in compliance with the respective data protection provisions.
- 16.5 All agreements are to be made in writing to the extent that there is no stricter form required by statute for the validity of the provisions. Any amendments or additions to these General Terms and Conditions – including this written form requirement - shall be made in writing. The same shall apply to side letters and supplementary agreements.
- 16.6 Should one or more provisions of these General Terms and Conditions be, or become legally invalid or un-executable, the validity of the remaining provisions of this contract shall not be affected thereby.