

**General Terms of Delivery  
of Erchinger MedTechnology GmbH & Co. KG, Rudolf-Diesel-Strasse 20  
78532 Tuttlingen („Erchinger“)**

**Status July 31, 2020**

**§ 1 Validity**

(1) All deliveries, services and offers by Erchinger are based exclusively on these General Terms of Delivery. These form an integral part of all contracts that Erchinger concludes with their contracting partners (hereinafter also referred to as the "Client") for the deliveries or services it offers. They shall also apply to all future deliveries, services or offers to the Client, even if they are not separately agreed again.

(2) The Client's or third parties' terms and conditions of business shall not apply, even if Erchinger does not separately object to their validity in individual cases. Even if Erchinger refers to a letter that contains or refers to the Client's or a third party's terms and conditions of business, this does not imply any agreement with the validity of those terms and conditions of business.

**§ 2 Offer and conclusion of contract**

(1) All offers made by Erchinger are subject to change and non-binding, unless they are expressly marked as binding or contain a specific period of acceptance. Erchinger may accept orders or contracts within fourteen days of receipt.

(2) Unless otherwise contractually agreed, Erchinger provides contract labour for the work to be performed. Erchinger is not obliged to check the accuracy of the Client's instructions and/or specifications (in particular pre-processing dimensions and specifications) for carrying out the machining and processing of the contract goods; the Client alone shall be liable for this information. This also applies in particular to liability for any infringement of industrial property rights.

(2) The legal relationship between Erchinger and the Client shall be governed solely by the purchase contract concluded in writing, including these General Terms of Delivery. This fully reflects all agreements between the contracting parties on the subject matter of the contract.

Oral promises made by Erchinger prior to the conclusion of this contract are not legally binding, and oral agreements between the contracting parties will be replaced by the written contract, unless it is expressly stated in each case that they continue to apply with binding effect.

(3) Additions and amendments to the agreements reached, including these General Terms of Delivery, must be made in writing to be effective. With the exception of managing directors or authorised signatories, Erchinger's employees are not entitled to make oral agreements deviating from this. The written form shall be deemed to have been complied with if the signed declaration is transmitted by telecommunications, in particular by fax or e-mail, provided that a copy of the signed declaration is sent.

(4) Information provided by Erchinger on the item of the delivery or service (for example, weights, dimensions, utility values, load-bearing capacity, tolerances and technical data) and the representations of the same (for example, drawings and illustrations) are only approximate, unless their usability for the contractually intended purpose requires exact conformity. They are not guaranteed characteristics of quality, but descriptions or identifications of the delivery or service. Deviations customary in the trade and deviations which are due to legal regulations or represent technical improvements, as well as the replacement of components by equivalent parts are permissible, provided that they do not impair the usability for the contractually intended purpose.

(5) Erchinger reserves the title or copyright to all offers and cost estimates submitted by it, as well as to all drawings, illustrations, calculations, brochures, catalogues, models, tools and other documents and aids made available to the Client. The Client may not make these items accessible to third parties, make them known, use them themselves or have them used or reproduced by third parties, either as such or in terms of their content, without the express consent of Erchinger. At Erchinger's request, they must return these items in full and destroy any copies that may have been made if they are no longer needed by themselves in the ordinary course of business or if negotiations do not lead to the conclusion of a contract. This does not apply to the storage of data made available electronically for the purposes of normal data backup.

**§ 3 Prices and payment**

(1) The prices are valid for the scope of services and deliveries listed in the order confirmations. Additional or special services will be charged separately. The prices are in EURO ex works plus packaging, the statutory value added tax, customs duties for export deliveries as well as fees and other public charges.

(2) Invoice amounts are payable 20 days after the date of invoice without any deductions, unless otherwise agreed in writing. The date of payment shall be determined by the date of receipt by Erchinger. If the Client fails to make payment when due, interest of 5% p.a. shall be charged on the outstanding amounts from the due date; this shall not affect the right to claim higher interest and further damages in the event of default.

(3) The offsetting of counter-claims of the Client or the retention of payments due to such claims is only permissible if the counter-claims are undisputed or have been legally established.

(4) Erchinger shall be entitled to make or provide outstanding deliveries or services only against advance payment or provision of security if, after conclusion of the contract, circumstances become known that are likely to substantially reduce the Client's creditworthiness and jeopardise payment by the Client of Erchinger's outstanding claims arising from the relevant contractual relationship (including those arising from other individual orders to which the same framework agreement applies).

#### **§ 4 Delivery and delivery time**

(1) Deliveries are made ex works.

(2) Any periods and dates for deliveries and services promised by Erchinger are always approximate, unless a fixed period or date has been expressly promised or agreed. If dispatch has been agreed, delivery periods and dates shall refer to the time of handover to the forwarding agent, carrier or other third party commissioned with the transport. The start of the delivery period indicated by Erchinger is subject to the clarification of all technical questions (in particular pre-processing dimensions and specifications), as well as the handover and suitability of the materials, and also the submission of all technical documents, plans and component specifications by the Client.

(3) Erchinger may insist – without prejudice to the rights arising from the Client's default – that the Client extend delivery and performance deadlines or postpone delivery and performance dates by the period during which the Client fails to meet their contractual obligations towards Erchinger. In the case of contracts for the subcontracting of provided materials, the Client shall be responsible for the suitability, quality, delivery date and quantity of the materials to be provided. In this case, Erchinger only owes the processing ordered on the basis of the state of the art. Erchinger is not responsible for material-related rejects, which must be resupplied separately by the client. If agreed delivery dates for the material provided are not met, the Client will not be able to demand the service owed from Erchinger on schedule.

(4) Erchinger shall not be liable for the impossibility of delivery or for delays in delivery, insofar as these are caused by force majeure or other events that were not foreseeable at the time the contract was concluded (for example, operational disruptions of any kind, difficulties in procuring materials or energy, transport delays, strikes, lawful lock-outs, shortages of labour, energy or raw materials, difficulties in procuring the necessary official permits, official measures, or the failure of suppliers to make deliveries, or to do so properly or on time), for which Erchinger is not responsible. If such events make delivery or performance significantly more difficult or impossible for Erchinger and the hindrance lasts for more than 8 weeks, Erchinger is entitled to withdraw from the contract. If the hindrance lasts up to 8 weeks, the delivery or service deadlines shall be extended or the delivery or service dates postponed by the period of the hindrance plus a reasonable start-up period. If the Client cannot reasonably be expected to accept the delivery or service as a result of the delay, they may withdraw from the contract by means of an immediate written declaration to Erchinger.

(5) Erchinger is only entitled to make partial deliveries if:

- The partial delivery can be used by the Client within the scope of the contractual purpose.
- The delivery of the remaining ordered goods is ensured.
- The Client does not incur any significant additional work or costs as a result (unless Erchinger declares that they are prepared to bear these costs).

(6) If Erchinger defaults on a delivery or service, or if a delivery or service becomes impossible for whatever reason, Erchinger's liability for compensation shall be limited in accordance with § 8 of these General Terms of Delivery.

#### **§ 5 Place of performance, dispatch, packaging, transfer of risk, acceptance**

(1) Place of performance for all obligations arising from the contractual relationship is Tuttlingen, unless otherwise specified.

(2) The mode of dispatch and packaging are subject to Erchinger's dutiful discretion.

(3) The risk shall pass to the Client at the latest when the delivery item is handed over to the forwarder, carrier or other third party designated to carry out the shipment (whereby the start of the shipping process is decisive). This shall also apply if partial deliveries are made or Erchinger has taken over other services (for example, shipping or installation). If dispatch or handover is delayed as a result of circumstances for which the Client is responsible, the risk shall pass to the Client from the day on which the item to be supplied is ready for dispatch and Erchinger has notified the Client of this.

(4) Erchinger shall insure the consignment against theft, breakage, transport, fire and water damage or other insurable risks only at the Client's express request and at the Client's expense.

#### **§ 6 Warranty, material defects**

(1) The warranty period is one year from delivery or, if acceptance is required, from acceptance. This period does not apply to claims for damages by the Client arising from injury to life, body or health or from wilful or grossly negligent breaches of duty by Erchinger or their agents, which are subject to the statute of limitations in accordance with the statutory provisions.

(2) The items supplied must be carefully examined immediately after delivery to the Client or to the third party designated by the Client. With regard to obvious defects or other defects that would have been detectable in an immediate, careful inspection, they shall be deemed to have been approved by the purchaser if Erchinger does not receive a written complaint within seven working days of delivery. With regard to other defects, the items delivered shall be deemed to have been approved by the purchaser if Erchinger does not receive the notice of defects within seven working days of the time at which the defect became apparent; if the defect was already apparent to the Client at an earlier time in the course of normal use, this earlier time shall, however, be decisive for the start of the period for lodging a complaint. At

Erchinger's request, any delivery item that is the subject of a complaint must be returned to Erchinger carriage paid. If the complaint is justified, Erchinger will reimburse the costs of the cheapest shipping route; this does not apply if the costs increase because the item delivered is located at a place other than the place of intended use.

(3) In the event of material defects in the items supplied, Erchinger shall be obliged and entitled, at their discretion and within a reasonable period of time, to first remedy the defect or supply a replacement. In the event of failure, that is, impossibility, unreasonableness, refusal or unreasonable delay in rectification or replacement delivery, the Client may withdraw from the contract or reduce the purchase price appropriately.

(4) If a defect is due to the fault of Erchinger, the Client may claim damages under the conditions set out in § 8.

(5) In the event of defects in components from other manufacturers that Erchinger is unable to remedy for reasons of licensing law or for factual reasons, Erchinger shall, at their discretion, either assert warranty claims against the manufacturers and suppliers for the account of the Client or assign them to the Client. Warranty claims against Erchinger for defects of this kind shall only exist under the other conditions and in accordance with these General Terms of Delivery if the legal enforcement of the above-mentioned claims against the manufacturer and supplier has been unsuccessful or, for example, is futile due to insolvency. For the duration of the legal dispute, the limitation period for the relevant warranty claims of the Client against Erchinger shall be suspended.

(6) The warranty shall lapse if the Client modifies the item supplied or has it modified by third parties without Erchinger's consent and if this makes it impossible or unreasonably difficult to rectify the defect. In any event, the Client shall bear the additional costs of remedying the defect that arise as a result of the modification.

(7) A delivery of used objects agreed with the Client in individual cases shall be effected to the exclusion of any warranty for material defects.

#### **§ 8 Liability for damages due to fault**

(1) Erchinger's liability for compensation for damages, irrespective of the legal grounds, in particular for impossibility of performance, delay, defective or incorrect delivery, breach of contract, breach of obligations during contract negotiations and tort, shall be limited in accordance with this § 8, insofar as fault is involved in each case.

(2) Erchinger shall not be liable in the event of simple negligence on the part of their executive bodies, legal representatives, employees or other agents, unless it is a matter of a breach of material contractual obligations. Essential to the contract are the obligation to deliver and install the delivery item in due time, the item's freedom from defects of title and such material defects that impair its functionality or usability more than only insignificantly, as well as consulting, protection and care obligations that are intended to enable the Client to use the delivery item in accordance with the contract or to protect life and limb of the Client's personnel or to protect their property from substantial damage.

(3) Insofar as Erchinger is liable for compensation for damages on the merits pursuant to § 8 (2), this liability is limited to damage that Erchinger foresaw as a possible consequence of a breach of contract at the time the contract was concluded or that should have been foreseen had it exercised the customary care. Indirect damage and consequential damage resulting from defects in the delivery item are also only eligible for compensation if such damage can typically be expected when the delivery item is used for its intended purpose.

(4) In the event of liability for simple negligence, Erchinger's obligation to pay compensation for property damage and any other resulting financial losses is limited to an amount of EUR 400,000.00 per case of damage, even if this involves a breach of material contractual obligations.

(5) The above exclusions and limitations of liability shall apply to the same extent to the benefit of the bodies, legal representatives, employees and other agents of Erchinger.

(6) Insofar as Erchinger provides technical information or acts in an advisory capacity and this information or advice is not part of the contractually agreed scope of services owed by Erchinger, this is done free of charge and to the exclusion of any liability.

(7) The limitations of this § 8 do not apply to Erchinger's liability for wilful conduct, for guaranteed characteristics, for injury to life, body or health or under the German Product Liability Act.

## **§ 9 Reservation of title**

(1) The retention of title agreed below serves to secure all Erchinger's current and future claims against the Client arising from the supply relationship between the contracting parties (including balance claims from a current account relationship limited to this supply relationship).

(2) The goods delivered by Erchinger to the principal shall remain the property of Erchinger until all secured claims have been paid in full. The goods as well as those products covered by the retention of title that take their place in accordance with the following provisions are hereinafter referred to as "reserved goods".

(3) The Client shall store the reserved goods free of charge on behalf of Erchinger.

(4) The Client is entitled to process and sell the reserved goods in the ordinary course of business until the event of realisation (paragraph 9). Pawning and assignment as security are not permitted.

(5) If the reserved goods are processed by the Client, it is agreed that the processing is carried out in the name and for the account of Erchinger as manufacturer and that Erchinger acquires direct ownership or – if the processing is carried out using materials from several owners or if the value of the processed item is higher than the value of the reserved goods – co-ownership (fractional ownership) of the newly created item in the ratio of the value of the reserved goods to the value of the newly created item. In the event that no such acquisition of ownership occurs at Erchinger, the Client hereby assigns to Erchinger by way of security their future ownership or – in the above-mentioned ratio – co-ownership of the newly created item. If the reserved goods are combined or inseparably mixed with other items to form a uniform item, and if one of the other items is to be regarded as the main item, Erchinger shall, insofar as the main item belongs to them, transfer to the Client pro rata co-ownership of the uniform item in the proportion specified in clause 1.

(6) In the event of the reserved goods being resold, the Client hereby assigns to Erchinger by way of security the claim against the buyer arising from this resale – in the case of Erchinger's co-ownership of the reserved goods, in proportion to the share of co-ownership. The same applies to other claims that take the place of the reserved goods or otherwise arise in respect of the reserved goods, such as insurance claims or claims in tort in the event of loss or destruction. Erchinger revocably authorises the Client to collect the claims assigned to Erchinger in their own name. Erchinger may only revoke this direct debit authorisation in the event of realisation.

(7) If third parties seize the reserved goods, in particular by way of attachment, the Client shall draw their attention to Erchinger's ownership without delay and inform Erchinger of this in order to enable it to enforce their ownership rights. If the third party is not in a position to reimburse Erchinger for the judicial or extra-judicial costs incurred in this connection, the Client shall be liable to Erchinger for these costs.

(8) Erchinger shall release the reserved goods and the items or claims replacing them if their value exceeds the amount of the secured claims by more than 50%. Erchinger shall be free to choose the items to be released thereafter.

(9) If Erchinger withdraws from the contract in the event of the Client acting in breach of the contract – in particular default of payment – (event of realisation), it shall be entitled to demand the return of the reserved goods.

## **§ Article 10 Final provisions**

(1) If the Client is a merchant, a legal entity under public law or a special fund under public law or has no general place of jurisdiction in the Federal Republic of Germany, the place of jurisdiction for any disputes arising from the business relationship between Erchinger and the Client shall be either Tuttlingen or the Client's registered office, at Erchinger's discretion. In cases of legal action against Erchinger however, Tuttlingen shall be the exclusive place of jurisdiction. Mandatory statutory provisions on exclusive places of jurisdiction shall remain unaffected by this provision.

(2) The relations between Erchinger and the Client are governed exclusively by the laws of the Federal Republic of Germany. The United Nations Convention on Contracts for the International Sale of Goods of April 11, 1980 (CISG) shall not apply.

(3) Insofar as the contract or these General Terms of Delivery contain loopholes, the legally effective provisions that the contracting parties would have agreed in accordance with the economic objectives of the contract and the purpose of these General Terms of Delivery if they had been aware of the loophole shall be deemed to have been agreed to fill these loopholes.

In the event of language problems, the German version of these General Terms and Conditions shall apply.