

**1. Definitions**

- 1.1. Terms which are capitalized in these Terms and Conditions of Delivery ("Terms and Conditions of Delivery") have the following meaning:
- (a) Agreement means any agreement between ERIKS and Customer related to the sale of Goods or Services by ERIKS entered into as set forth in section 2.2;
- (b) Intellectual Property Rights means all intellectual property rights, including copyrights, patents, utility models, trademarks, service marks, design rights, database rights, proprietary information rights, know-how and all other intellectual or industrial proprietary rights as may or may hereinafter exist anywhere in the world;
- (c) Goods means all items supplied or to be supplied by ERIKS to Customer in the implementation of an Agreement;
- (d) Customer means each person or entity that enters into an Agreement with ERIKS;
- (e) Services means all services performed by ERIKS for or on behalf of Customer in the implementation of an Agreement, whether or not in connection with the supply of Goods.

**2. Formation of the Agreement**

- 2.1. These Terms and Conditions of Delivery apply to and form part of any Agreement and all other legal relationships between ERIKS and Customer connected with the sale of Goods or Services by ERIKS. Unless explicitly agreed otherwise in writing, these Terms and Conditions of Delivery shall take precedence over any other communication [oral or in writing] between the parties relating to the sale of Goods or Services by ERIKS. The applicability of any general terms or conditions used or to be used by Customer is expressly rejected.
- 2.2. An Agreement shall be concluded between the parties at the earliest of (i) conclusion of a written agreement signed by both parties, (ii) ERIKS issuing an order confirmation or (iii) ERIKS fulfilling the order. Any orders submitted by Customer are requests and do not bind ERIKS in any way. ERIKS is under no obligation to accept an order.

**3. Delivery and delivery period**

- 3.1. Delivery will take place Free Carrier (FCA) as defined in the Incoterms 2010.
- 3.2. Customer shall be obliged to take delivery of the Goods and to do all the acts which can reasonably be expected of Customer in order to enable ERIKS to make the delivery according to the agreed Incoterms. In the event Customer breaches this obligation, the risk in the Goods shall, irrespective of what trade term applies, pass to Customer on the moment of such breach and all costs incurred by ERIKS in connection with the delivery, as well as any further costs of transport, safekeeping and storage shall be borne by Customer.
- 3.3. A request by Customer to cancel or modify any order [or part thereof] must be submitted and received in writing by ERIKS and is subject to ERIKS's written approval. Customer may incur charges for order modifications or cancellations. In the event Customer requests expedited delivery of shipments, ERIKS reserves the right to charge Customer for associated costs.
- 3.4. Delivery times are indicative. ERIKS's failure to meet a delivery date or delivery period shall not constitute a breach of the Agreement.
- 3.5. ERIKS reserves the right to deliver in batches and to invoice these batches separately.

**4. Inspection and returns**

- 4.1. If ERIKS has undertaken to arrange the transport of the Goods, Customer must examine the Goods for transport damage and must verify that the correct quantity of Goods has been delivered immediately upon arrival at the agreed destination. If any transport damage or deviation in the delivered number of Goods against the ordered quantity of Goods is found, Customer must make a detailed description thereof on the transport document to be signed after receipt of the Goods. The reporting of damages, non-conformities or deficiencies will not relieve Customer from its payment obligations for the Goods.
- 4.2. Returns will be accepted by ERIKS only provided that: (a) ERIKS has approved the return in writing in advance; (b) this is done carriage paid and with reimbursement of costs; (c) the Goods are stock or standard goods; (d) the delivery was made no longer than six (6) weeks previously; and (e) the returned Goods do not amount to more than 10% of the amount of the original delivery.

**5. Assembly or installation work**

- 5.1. If assembly or installation work has been agreed for the Goods, Customer will be responsible to ERIKS for the correct and timely implementation of all fittings, facilities or conditions needed for [setting up and safely carrying out] the assembly work or the correct operation of the Goods in their assembled state.
- 5.2. Notwithstanding the provisions of section 5.1, Customer will ensure in a timely manner and at its own expense and risk that:
  - (a) ERIKS is given free access and the opportunity to properly carry out the agreed work during normal working hours and, if considered necessary by ERIKS, outside of normal working hours;
  - (b) earthworks, paving, pile driving, demolition, foundation, concrete, carpentry and upholstery work or other accompanying works are ready so that the location is easily accessible and the systems are clean and undamaged;
  - (c) auxiliary, hoisting or lifting equipment is available for moving objects that cannot reasonably be carried by two people;
  - (d) scaffolds, racks and ladders are available and erected;
  - (e) fuels and resources such as compressed air, gas, water, electricity, supply/

- discharge pipes required to carry out the work, as well as for any testing and commissioning work, and the switching and security equipment and cables for the electrical motors or other electrical equipment are available in the right places to ERIKS;
  - (f) for the duration of the work and in its immediate vicinity, a dry, heated, lit and separately lockable room of sufficient size is made available to ERIKS as accommodation for the workers and for the storage of the materials being processed, tools and private property of the employees; and
  - (g) connections, rights and permits are applied for in good time and the amounts owed in that regard are paid.
- 5.3. Damage and costs incurred due to failure to meet the conditions set out in section 5.2 or failing to meet these in time shall be at the expense of Customer.

**6. Embedded Software**

- 6.1. If software or documentation is embedded in or delivered with the Goods, the sale of such Goods shall not constitute the transfer of ownership rights or title in such software or documentation to Customer. Customer is only granted a non-exclusive and non-transferable license to use such software or documentation in conjunction with and as embedded in or delivered with the Goods. If third party software or documentation is embedded in or delivered with the Goods, as may be indicated by ERIKS, Customer acknowledges and accepts that license terms of third parties may apply.
- 6.2. Customer shall not: (a) modify, adapt, alter, translate, or create derivative works from any software that is embedded in or delivered with the Goods; (b) use or make available such software in any way other than as needed to embed in or deliver with the Goods; (c) merge or incorporate such software with or into any other software; or (d) reverse assemble, decompile, disassemble, or otherwise attempt to derive the source code for such software without written authorization from ERIKS except as explicitly allowed under applicable law.

**7. Retention of title**

- 7.1. All of the delivered Goods - even if it has been contractually agreed that they are to be assembled by ERIKS at the location of Customer or his client, remain the property of ERIKS until Customer has remitted full payment of all that owed by Customer to ERIKS under the Agreement or any other related contract, including interest and costs.
- 7.2. Customer is authorised to dispose of the Goods in the context of his normal business operations. Customer shall inform the acquiring third-party of the retention of title for the Goods in favour of ERIKS.
- 7.3. For as long as they are not being used Customer is obliged to clearly separate the delivered Goods from other goods until their ownership has been transferred.

**8. Prices and Payment**

- 8.1. In the absence of written agreement to the contrary, the prices set by ERIKS are based on delivery FCA, Incoterms, are exclusive of VAT and other duties, exclusive of the costs of assembly and commissioning, exclusively of the costs of non-standard packaging and non-standard coating and are given in euros. If the ordered Goods or Services are subject to any taxes, ERIKS may charge the relevant taxes to Customer, which shall be paid by Customer in addition to the prices quoted.
- 8.2. In the event of changes to cost price factors, ERIKS reserves the right to adjust the price accordingly. In addition, ERIKS is authorised to index prices annually.
- 8.3. ERIKS may provide the following payment methods before delivery:
  - (a) Credit card: the Customer can enter its payment details at the time the order is placed using a valid credit card (VISA or Mastercard). The applicable amount will immediately be debited to the Customer's card. ERIKS reserves the right to check the validity of the credit card, its credit status in relation to the order value and whether the address data of the Customer are correct. ERIKS may refuse orders depending on the results of these checks;
  - (b) iDeal: the applicable amount will immediately be debited to the Customer's bank account;
  - (c) Paypal: When Customer is paying by Paypal, ERIKS reserves the right to check the validity of the Paypal account, that there are enough funds to cover the purchase price and validate the billing address details of the Customer. The applicable amount will immediately be debited to Customer's Paypal account. ERIKS reserves the right to deny any purchase.
- 8.4. Payment after delivery may be applicable after specific approval. Unless otherwise agreed, payment is to be made net and without any discount or setoff, by depositing the payable amount or transferring it to a bank account designated by ERIKS within thirty (30) days of the invoice date. For orders with a total net component value lower than € 375.00 [three hundred and seventy five euros] not including VAT, ERIKS reserves the right to charge an administration fee. ERIKS reserves the right to make a late payment surcharge. The value day indicated in the bank statements is determinative and is therefore regarded as the date of payment.
- 8.5. Any amounts which Customer owes ERIKS under the Agreement shall become immediately due and payable in full if:
  - (a) Customer has failed to make a timely payment to ERIKS;
  - (b) ERIKS terminates the Agreement pursuant to section 13;
  - (c) ERIKS has objective and reasonable grounds to expect that Customer is heading towards bankruptcy.
- 8.6. If Customer does not timely pay an amount when it becomes due and payable,

ERIKS is entitled to late payment interest on such amount, to be calculated from the time such amount became due until the time such amount is paid in full. To the extent permitted by law, the rate of late payment interest referred to in section 8.6 shall be the higher of (i) the statutory interest rate, or (ii) one (1) percent per month on the outstanding amount.

- 8.7. ERIKS shall be entitled to demand reimbursement of all costs, both extrajudicial and judicial (including the costs of legal assistance), incurred by ERIKS in the process of the collection of the amounts due by Customer pursuant to the Agreement.
- 8.8. Complaints concerning invoices must be made in writing within thirty (30) calendar days of the invoice date. Customer will lose the right to file complaints if this period is exceeded.

**9. Intellectual property rights**

- 9.1. ERIKS and its licensors reserve all Intellectual Property Rights in respect of the Goods or Services. The Agreement does not entail any transfer of or license to any Intellectual Property Rights or know how relating to the Goods or Services or the drawings, documents or software which may have been made available to Customer, other than a limited license to use the Goods or Services, drawings, documents or software as set forth in, and in accordance with, the Agreement. ERIKS does not guarantee that the Goods or Services do not infringe on any third party Intellectual Property Rights.
- 9.2. If ERIKS creates or authorizes the creation of any work [which may include Goods, documentation or other results of the Services] on the basis of materials provided by Customer the following shall apply, unless otherwise agreed:
  - (a) ERIKS shall be granted an irrevocable, world-wide, royalty-free and fully paid up, non-exclusive and perpetual license under all Intellectual Property Rights to use any such Materials for the purpose of the creation of the work or for ERIKS' internal business purposes;
  - (b) Customer represents and warrants the materials do not and shall not infringe or violate any third party Intellectual Property Rights and shall indemnify and hold harmless ERIKS against any claims or consequences of claims by third parties based on an [alleged] infringement or other unauthorized use of their Intellectual Property Rights in connection with the supplied materials.
  - (c) Any Intellectual Property Rights that apply or are related to the works thus created shall exclusively vest with ERIKS or its licensors.

**10. Warranty**

- 10.1. Notwithstanding section 4.1, Customer shall notify ERIKS in writing of any non-conformity of the Goods within five (5) calendar days from the date when this was discovered by Customer and in no event after expiration of the warranty period specified in section 10.3, specifying the nature of the non-conformity and providing all available documents, reports and other evidence necessary to evaluate the non-conformity by ERIKS, subject to forfeiting the right to invoke any action based on non-conformity.
- 10.2. Upon receiving a notice of non-conformity as set forth in section 10.1, Customer shall arrange shipment to ERIKS and ERIKS shall, upon receipt of the Goods, be granted a reasonable time to evaluate the notice and the Goods and, where relevant, propose an appropriate solution. If ERIKS confirms the non-conformity in writing to Customer, ERIKS shall reimburse the shipment costs incurred by Customer. No Goods shall be returned to ERIKS without prior approval from ERIKS.
- 10.3. ERIKS warrants that under normal use, and in accordance with the Agreement and all other instructions provided by ERIKS, the Goods shall, at the time of delivery to Customer and for a period of twelve (12) months thereafter [or such other period as may be agreed upon in writing by the parties], conform to the published specifications for such Goods. The Goods shall be deemed to conform to such published specifications despite minor discrepancies that do not essentially affect the normal use of the Goods, unless the parties have concluded a separate quality agreement in which case the latter shall prevail. Consumables, such as seals and hoses, are not covered by this guarantee.
- 10.4. ERIKS shall have no obligations under warranty if the alleged defect or non-conformity is found to have occurred as a result of normal wear and tear, stress testing, exceeding specified maximum operation conditions, misuse, neglect, improper handling, improper installation, improper storage, improper transportation, modification, combining it with other goods, or other circumstances attributable to Customer.
- 10.5. ERIKS's sole and exclusive obligation, and Customer's sole and exclusive right, with respect to claims under this warranty shall be limited, at ERIKS' option, either to the replacement or repair of non-conforming Goods or to an appropriate credit for the purchase price thereof. To the extent title has already passed to Customer, the non-conforming Goods shall become ERIKS's property as soon as they have been replaced or credited. Unless otherwise agreed in writing, Customer shall not take any legal action based on non-conformity of the Goods, or make a counterclaim based thereon, as a result of any action taken by ERIKS against Customer based on non-performance of the Agreement, after expiry of the warranty period pursuant to section 10.3.

**11. Liability**

- 11.1. The parties agree that Customer shall in no event be entitled to claim any compensation under the Agreement for indirect, incidental, consequential, or punitive damages including but not limited to loss of profit, decreased turnover, cost of

cover, or property damage, regardless of whether ERIKS has been advised of the possibility of such damages. It is understood, however, that any amounts paid to a third party pursuant to section 11.3 shall, as between the parties, be considered direct damages.

- 11.2. Without limitation to the obligations of ERIKS under section 10, ERIKS's liability for direct damages under an Agreement shall not exceed (a) fifty (50) percent of the purchase price paid to ERIKS for the affected Goods or Services under such Agreement in the twelve (12) months preceding the event giving rise to the claim, or (b) € 100,000.00 (one hundred thousand euros), whichever is less.
- 11.3. ERIKS shall not be liable for any damage caused to third parties resulting from defects in the design and manufacturing of the Goods and their components, unless and to the extent to be established in accordance to applicable mandatory provisions of law regarding the liability for death or bodily injuries or damage to personal property, directly caused by defective Goods.
- 11.4. Customer shall indemnify and hold ERIKS harmless from any claims for damages of third parties who, for whatever reason, allege to have suffered damage resulting from or caused by the Goods or Services, unless ERIKS is liable for these damages pursuant to section 11.3.
- 11.5. Limitations of liability will not apply against the injured party in case the damage resulted from gross negligence or willful misconduct of either party or where liability cannot be excluded or limited under applicable mandatory laws.

**12. Modifications of Goods**

- 12.1. Unless specific agreement to the contrary has been made in the Agreement, ERIKS is permitted to apply a limited deviation with regard to the specifications or quality of the Goods, such as their colour, quantity, size, weight or [shore] hardness. If in the opinion of ERIKS this deviation leads to a material change of the Goods in question, ERIKS will notify its Customer of this in writing within thirty (30) calendar days, after which Customer will have the right to dissolve the Agreement within a period of fourteen (14) days.

**13. Termination, dissolution and suspension**

- 13.1. ERIKS is authorised to terminate, dissolve or suspend execution of the Agreement with immediate effect in full or in part - without legal intervention or any notice of default being required - without prejudice to any of ERIKS's rights under the Agreement or applicable law, if:
  - (a) Customer dies, applies for suspension of payment, applies for bankruptcy, is declared bankrupt or requests admission to the statutory debt management scheme;
  - (b) an application for Customer's bankruptcy has been filed;
  - (c) Customer fails to meet any obligation by law or under these conditions; If an Agreement is dissolved in full or in part by ERIKS, Customer will be obliged to pay compensation to ERIKS for all costs or loss of profits relating to the dissolved Agreement.
- 13.2. Upon termination of the Agreement and irrespective of the reason for this Customer will purchase all of the Goods held by ERIKS in stock for Customer within seven (7) days of the termination of the Agreement for payment of the price applicable at that time and will accept the Goods immediately following payment.

**14. Compliance**

- 14.1. Customer (a) represents and warrants that it is not subject to any trade sanctions imposed by the US, EU, or UN, and (b) shall comply with [and not engage any activity, practice or conduct which would constitute an offence under] all applicable laws, statutes, regulations, and codes, including those relating to (i) trade restrictions or export controls (including trade sanctions imposed by the US, EU or UN) in respect of the Goods, and (ii) anti-bribery and anti-corruption, and provide evidence of compliance with the foregoing as ERIKS may reasonably request from time to time.
- 14.2. Customer shall indemnify and hold ERIKS harmless from any claims, liabilities, penalties and associated costs and expenses, which ERIKS may incur due to Customer's non-compliance with applicable laws, rules and regulations.

**15. Applicable law and jurisdiction**

- 15.1. All Agreements (to be) entered into between the parties, the overall [supply] relationship between the parties (if any), as well as any tort claims related to the Agreement, will be governed exclusively by Dutch law to the exclusion of the UN Convention on the International Sale of Goods [CISG].
- 15.2. The parties irrevocably consent to the exclusive jurisdiction of the competent court in Noord-Holland in connection with any dispute or action arising out of or in connection with all Agreements (to be) entered into between the parties, the overall [supply] relationship between the parties (if any), as well as any tort claims related to the Agreement.

**16. Additional terms**

- 16.1. If any provision of the Agreement or these Terms and Conditions of Delivery is held to be invalid or unenforceable, then the invalid or unenforceable provision will be replaced by a valid, enforceable provision that most closely matches the intent of the original provision and the remaining provisions shall be enforced.
- 16.2. ERIKS may assign its rights and obligations under the Agreement or these Terms and Conditions of Delivery. The Agreement or these Terms and Conditions of Delivery will inure to the benefit of ERIKS's successors and assigns.

16.3. The failure of either party to insist upon or enforce the strict performance of the other party with respect to any provision of the Terms and Conditions of Delivery, or to exercise any right under the Terms and Conditions of Delivery, will not be construed as a waiver or relinquishment to any extent of such party's right to assert or rely upon any such provision or right in that or any other instance; rather, the same will be and remain in full force and effect.