

1. Definitions

- 1.1. Terms which are capitalized in these Terms and Conditions of Delivery have the following meaning:
- (a) "Services": all services performed or to be performed by ERIKS for or on behalf of Customer in the performance of an Agreement, whether or not in connection with the supply of Goods, such as, but not limited to, assembly- or installation work, stock management and engineering work;
 - (b) "ERIKS": the limited liability company ERIKS B.V.;
 - (c) "Data": the data and information made available by ERIKS to the Customer as part of the service, electronically or otherwise, and all other data, processed or otherwise, made available in structured form;
 - (d) "Goods": all items supplied or to be supplied by ERIKS to the Customer in the performance of an Agreement;
 - (e) "Auxiliary Person": an auxiliary person whom ERIKS may engage for the purpose of or in connection with the Agreement, including independent contractors and self-employed workers;
 - (f) "Intellectual Property Rights": all intellectual property rights, including, but not limited to copyrights, patents, utility models, registered and unregistered trademarks, 'topographies of semiconductor products', 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;
 - (g) "Customer": each person or entity that enters into an Agreement with ERIKS;
 - (h) "Terms and Conditions of Delivery": these general conditions of delivery;
 - (i) "Agreement": an agreement between ERIKS and the Customer related to the sale of Goods and/or Services by ERIKS entered into as set forth in section 2;
 - (j) "Software": the software made available by ERIKS to the Customer as part of a service, including, but not limited to mobile applications, graphical user interfaces, application programming interfaces (APIs), web services and webpage code;
 - (k) "Confidential Information": all information (i) relating to the terms of the Agreement and all other arrangements between ERIKS and the Customer, (ii) relating to the supply of Goods and/or Services and/or personnel by ERIKS to the Customer, (iii) relating to business processes, strategies, practices and know-how of ERIKS, its affiliated legal entities and customers, and (iv) in any form whatsoever, which has been disclosed in confidence, or which in view of its nature should be treated as confidential.
- 1.2. These Terms and Conditions of Delivery have been drawn up in both Dutch and English. In the event of any dispute regarding the content or scope of these Terms and Conditions of Delivery, the Dutch text shall be binding.

2. Formation of the Agreement

- 2.1. These Terms and Conditions of Delivery apply to and form part of an Agreement and all other legal relationships between ERIKS and the 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 the Customer are 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 has fulfilled the order, whichever of these three events occurs first. All orders submitted by the 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 of Goods in the Netherlands, Belgium and Luxembourg shall be DDP [Incoterms 2020], unless expressly provided otherwise in writing. Delivery of Goods outside the Netherlands, Belgium and Luxembourg will be FCA [Incoterms 2020], unless expressly provided otherwise in writing. Notwithstanding the applicable Incoterm, all costs of forwarding, transport and delivery in relation to the Agreement shall be at the expense of the Customer; these costs shall be charged to the Customer by ERIKS.
- 3.2. The Customer shall be obliged to take delivery of the Goods and to do all the acts which can reasonably be expected of the Customer in order to enable ERIKS to make the delivery according to the agreed Incoterms. In the event the Customer breaches this obligation, the risk in the Goods shall, irrespective of what Incoterm applies, pass to the Customer on the moment of such breach and all costs incurred by ERIKS such as, (but not limited to) costs in connection with the safekeeping and storage shall be borne by Customer.
- 3.3. A request by the 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. The Customer may incur charges for order modifications or cancellations. In the event the Customer requests expedited delivery of shipments, ERIKS reserves the right to charge for the associated costs.
- 3.4. Delivery times are indicative. ERIKS reserves the right to adjust delivery times should circumstances dictate. 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 shipping or transport of the Goods, the 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, the 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 the 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 ERIKS' handling cost, being twenty (20) percent of the sales value with a minimum of seventy-five (75) euros;
 - (c) the returned Goods have a minimum sales value of one hundred and fifty (150) euros;
 - (d) the Goods are stock or standard goods;
 - (e) the delivery was made no longer than six (6) weeks previously;
 - (f) the Goods are unused and undamaged; and
 - (g) the Goods are in their original packaging.

5. Services

- 5.1. If ERIKS will perform or cause to be performed Services for the Customer pursuant to the Agreement, the Customer is obligated to ensure at his own expense and risk that:
- (a) the Customer duly complies with all laws and regulations relating to safety and healthy working conditions;
 - (b) the location at which and the equipment and materials with which the employee and/or Auxiliary Person of ERIKS performs his duties under the Agreement comply with all relevant safety regulations;
 - (c) the Customer shall do and omit to do all that may reasonably be expected of it to prevent any damage of any kind, such as physical and psychological damage, being sustained by any employee or Auxiliary Person of ERIKS in the performance of the Services;
 - (d) ERIKS is given free access and the opportunity to properly carry out the agreed Services during normal working hours and, if considered necessary by ERIKS, outside of normal working hours;
 - (e) 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;
 - (f) auxiliary, hoisting or lifting equipment is available for moving objects that cannot reasonably be carried by two people;
 - (g) scaffolds, racks and ladders are available and erected;
 - (h) 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;
 - (i) for the duration of the Services 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 employees and Auxiliary Persons and for the storage of the materials being processed, tools and private property of the employees;
 - (j) connections, rights and permits are applied for in good time and the amounts owed in that regard are paid; and
 - (k) for the purpose of engineering work, the correct drawings, plans, and instructions are provided prior to the start of work.
- 5.2. Damage and costs incurred due to failure to comply with the conditions set out in section 5.1 or the failure to comply with them in a timely manner, shall be at the expense and risk of Customer.

6. Embedded Software

- 6.1. If the Software or documentation is embedded in or delivered with the Goods, the sale of such Goods shall explicitly not constitute the transfer of the Intellectual Property Rights or other property titles in such to the Customer. The Customer is only granted a non-exclusive, non-transferable, non-sublicensable and revocable license to use such Software or documentation in conjunction with and as embedded in or delivered with the Goods. The right to use Software extends only to the object code and not to the source code of the Software. If third party Software or documentation is embedded in or delivered with the Goods, as may be indicated by ERIKS, the Customer acknowledges and accepts that license terms of third parties may apply.
- 6.2. The 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 prior written authorization from ERIKS except as explicitly allowed under applicable law.
- 6.3. ERIKS shall be permitted to take technical measures to protect its Software, Goods, Services and Data against unauthorized use. The Customer shall not be permitted to remove or circumvent such technical measures.

7. Retention of title

- 7.1 All the delivered Goods - even if it has been contractually agreed that they will be assembled by ERIKS at the Customer's or its customer's location-, remain the property of ERIKS until the Customer has remitted full payment of all that owed by the Customer to ERIKS under the Agreement or any other related contract, including interest and costs.
- 7.2 The Customer is authorised to dispose of the Goods in the context of his normal business operations. The 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 the delivered Goods are not being used, the Customer is obliged to clearly separate these delivered Goods from other goods until their ownership has been transferred.

8. Prices and Payment

- 8.1 Unless explicitly agreed otherwise in writing, and irrespective of the Incoterm applicable, the prices set by ERIKS are exclusive of the costs of shipping or transport, VAT and other duties, the costs of assembly and commissioning, the costs of non-standard packaging and non-standard coating. Prices shall be quoted in euros. If the ordered Goods or Services are subject to any taxes, ERIKS may charge the relevant taxes to the Customer, which shall be paid by the Customer in addition to the prices quoted.
- 8.2 ERIKS reserves the right to adjust the price accordingly as a result of cost price, material price, energy price and/or currency increases. In addition, ERIKS is authorized to index its prices annually.
- 8.3 ERIKS may provide the following payment methods prior to delivery in her Webshop:
 - (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 the 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 order.
- 8.4 Payment after delivery may be applicable after specific approval by ERIKS. The Customer shall not be allowed to suspend and/or set off its obligation to pay ERIKS.
- 8.5 Unless otherwise expressly agreed in writing, payment is to be made net and without any discount, by depositing the payable amount or transferring it to a bank account designated by ERIKS within thirty (30) days of the invoice date. ERIKS furthermore 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.
- 8.6 ERIKS reserves the right to require a prepayment and/or bank guarantee from the Customer.
- 8.7 Any amounts which the Customer owes ERIKS under the Agreement shall become immediately due and payable in full if:
 - (a) The Customer has failed to make a timely payment to ERIKS; or
 - (b) ERIKS terminates the Agreement pursuant to section 15; or
 - (c) ERIKS has objective and reasonable grounds to expect that the Customer is heading towards bankruptcy.
- 8.8 If the 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 shall be the higher of:
 - (i) the statutory interest rate, or
 - (ii) one (1) percent per month on the outstanding amount.
- 8.9 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 the Customer pursuant to the Agreement.
- 8.10 Complaints concerning invoices must be made in writing within thirty (30) calendar days of the invoice date. The Customer will lose the right to file complaints if this period is exceeded.

9. Intellectual property rights

- 9.1 All existing Intellectual Property Rights in the Goods, Services, Software and Data made available by ERIKS pursuant to the Agreement or arising therefrom shall vest exclusively in ERIKS or its licensors and/or suppliers. The Agreement shall not constitute a transfer to the Customer of any Intellectual Property Rights of ERIKS or its licensors or suppliers in respect of the Goods, Services, Software and/or Data.
- 9.2 Insofar as new Intellectual Property Rights are created or arise in the course of performance of the Agreement, these shall belong exclusively to ERIKS. Insofar as such Intellectual Property Rights do not accrue to ERIKS by operation of law, the Customer shall transfer unconditionally to ERIKS the full intellectual property rights to such Intellectual Property Rights by signing the Agreement, and insofar as applicable in advance, which transfer shall be accepted by ERIKS by signing the Agreement.

- 9.3 ERIKS grants to the Customer a non-exclusive, non-transferable, non-sublicensable, revocable right to use the Goods, Services, Software and Data for the agreed purpose in accordance with and subject to the agreed conditions and limitations.
- 9.4 The Customer shall indemnify ERIKS against all third party claims based on the allegation that the Customer's use of the Goods, Services, Software and/or Data infringes that third party's Intellectual Property Rights as a result of the Customer's improper use of the Goods, Services, Software and/or Data or use thereof contrary to the provisions of the Agreement.
- 9.5 In the event that the Customer makes materials available to ERIKS for the purpose of performance of the Agreement by ERIKS, the Customer grants to ERIKS an irrevocable, worldwide, royalty- and fee-free, non-exclusive and perpetual licence to all Intellectual Property Rights to use such materials in the performance of the Agreement. The Customer shall indemnify ERIKS against all third party claims in relation to the material made available which infringe any right or otherwise appear to be unlawful in relation to those third parties, and shall hold ERIKS harmless in respect thereof.
- 9.6 The Customer shall not use any of ERIKS' brands, trade names and/or logos without ERIKS' express prior written consent.

10. Warranty

- 10.1 Notwithstanding section 4.1, the 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 the Customer, specifying the nature of the non-conformity and providing all available documents, reports and other evidence necessary to evaluate the non-conformity by ERIKS.
- 10.2 Upon receiving a notice of non-conformity as set forth in section 10.1, the Customer shall arrange for the shipment of the Goods to ERIKS and ERIKS shall, upon receipt of the Goods, be granted a reasonable time to evaluate the notice of non-conformity and the Goods and, where relevant, propose an appropriate solution to the Customer. If ERIKS confirms the non-conformity in writing to the Customer, ERIKS shall reimburse the shipment costs incurred by the 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 the 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 provided specifications for such Goods. The Goods shall be deemed to conform to such provided 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 warranty.
- 10.4 Unless expressly agreed otherwise in writing, ERIKS does not warrant that the Goods are suitable for the use intended by the Customer.
- 10.5 ERIKS shall have no warranty obligations if the alleged non-conformity has occurred as a result of normal wear and tear, failed stress tests, exceeding specified maximum operation conditions, misuse, neglect, modification, improper handling, installation, storage, transportation, application, combining it with other goods, or other circumstances attributable to the Customer.
- 10.6 ERIKS's sole and exclusive obligation, and Customer's sole and exclusive right, with respect to claims under the warranty mentioned in section 10.3 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. To the extent that title has already passed to the Customer, the non-conforming Goods shall become ERIKS's property as soon as they have been replaced or credited.
- 10.7 The Customer's right to invoke (in and out of court) the non-conformity of the Goods shall lapse after the expiry of the warranty period mentioned in article 10.3 of these Terms and Conditions of Delivery.
- 10.8 Unless expressly agreed otherwise in writing, the Services provided by ERIKS under the Agreement shall qualify exclusively as best efforts obligations.

11. Auxiliary persons

ERIKS shall have the right to engage the services of Auxiliary Persons. In the event that an Auxiliary Person is faced with a non-contractual claim (relating to or arising from the Agreement), it has been stipulated on ERIKS' behalf that the Auxiliary Person shall be entitled to invoke the provisions of these Terms and Conditions of Delivery relating to exclusion and limitation of liability.

12. Liability and indemnity

- 12.1 ERIKS shall not be liable for any form of indirect, incidental, consequential, immaterial or punitive damage, including but not limited to loss of profit, decreased turnover, cost of cover, or property damage claimed by the Customer in connection with or arising out of the Agreement, the Goods and/or the Services. The foregoing shall apply regardless of whether ERIKS has been advised of the possibility of such damage occurring.
- 12.2 Any liability of ERIKS for direct damage shall be limited to (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.
- 12.3 ERIKS shall not be liable for any damage caused to third parties (i) resulting from defects in the design and manufacturing of the Goods and their components and/or (ii) as a result of the performance of the Service, unless and to the extent

to be established in accordance to applicable mandatory provisions of law regarding the liability for death, personal injury or damage to personal property directly caused by defective Goods.

- 12.4 The Customer shall fully indemnify and hold ERIKS harmless from any claims of third parties who, for whatever reason, allege to have suffered damage, arising out of or in connection with the Agreement, the Goods and/ or Services, unless ERIKS is liable for these damages pursuant to section 12.3.
- 12.5 Limitations of liability of ERIKS shall not apply in case the damage is the result of willful misconduct (*opzet*) or deliberate recklessness (*bewuste roekeloosheid*) on ERIKS' part or if liability cannot be excluded or limited under applicable mandatory laws.

13. Modifications of Goods

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 color, 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 the Customer of this in writing within thirty (30) calendar days, after which the Customer will have the right to dissolve the Agreement within a period of fourteen (14) days.

14. Force Majeure

ERIKS shall not be liable for any damage, and/or delay and/or failure to perform the Agreement which is directly or indirectly related to and/or arises from circumstances or causes beyond its reasonable control, such as, but not limited to, national or international emergencies (such as (civil) war, uprisings, riots, natural disasters public health emergencies of international concern declared by the World Health Organisation, non-performance, shortages of raw materials, supply problems and force majeure on the part of ERIKS' suppliers (or suppliers previously in the chain), staff shortages, unexpected power, electricity, internet, computer and telecom failures, computer viruses, and unorganised and organised strikes.

15. Termination, dissolution and suspension by ERIKS

- 15.1 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' rights under the Agreement or applicable law, if:
- (a) the 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 the Customer's bankruptcy has been filed;
 - (c) The Customer fails to meet any obligation by law or under these Terms and Conditions of Delivery.
- 15.2 ERIKS will be entitled to terminate the Agreement with respect to the provision of Services at any time and for any reason, subject to three (3) months' notice.
- 15.3 If an Agreement is dissolved in full or in part by ERIKS, the Customer will be obliged to pay compensation to ERIKS for all costs or loss of profits relating to the dissolved Agreement.
- 15.4 Upon termination of the Agreement and irrespective of the reason for this, the Customer will purchase all of the Goods held by ERIKS in stock for the Customer within seven (7) days of the termination of the Agreement upon payment of the price applicable at that time and will accept the Goods immediately following payment.

16. Compliance

- 16.1 The Customer represents and warrants that:
- (a) it is not subject to any (trade) sanctions imposed by (bodies and governmental institutions of) the US, EU, one or more EU Member States, the UN or any other State, organization or authority, the decisions and actions of which are legally binding on him;
 - (b) it shall comply with (and not engage in any participation form, activity, practice or conduct which, or refrain from doing so, would constitute an offence under) all applicable laws, statutes, regulations, and policy regulations, including those relating to;
 - (i) trade restrictions or export controls (including (trade) sanctions imposed by the US, EU, one or more EU Member States, the UN or any other State, organization or authority, the decisions and actions of which are legally binding on him in respect of the Goods, and;
 - (ii) the fight against fraud, money laundering, forgery, bribery and corruption, and provide evidence of compliance with the foregoing as ERIKS may reasonably request from time to time;
 - (c) that it operates its business in an environmentally responsible and efficient manner, in accordance with applicable laws and internationally accepted standards (including the OECD Guidelines for Multinational Enterprises and UN Guiding Principles on Business and Human Rights).
- 16.2 The Customer shall indemnify and hold ERIKS harmless from any claims, liabilities, penalties and associated costs and expenses, which ERIKS may incur due to the Customer's non-compliance with applicable laws, rules and regulations.

17. Confidentiality

- 17.1 The Customer shall treat and secure all Confidential Information as confidential and shall only use it for the purpose of the Agreement concluded with ERIKS.
- 17.2 The Customer shall not disclose any Confidential Information to any third party.

18. Hardship

The Customer and ERIKS will consult each other about a suitable solution if, due to fundamentally changed circumstances, execution of the Agreement is no longer possible or is structurally loss-making.

19. Applicable law and jurisdiction

- 19.1 All Agreements entered into (or to be entered into) between ERIKS and the Customer, the overall (supply) relationship between ERIKS and the Customer (if any), as well as any tort claims related to the Agreement will be governed exclusively by the laws of the Netherlands, to the exclusion of the UN Convention on the International Sale of Goods (CISG).
- 19.2 ERIKS and the Customer irrevocably consent to the exclusive jurisdiction of the competent court in Amsterdam, the Netherlands in connection with any dispute or proceeding arising out of or in connection with all Agreements entered into (or to be entered into) between ERIKS and the Customer, the overall (supply) relationship between ERIKS and the Customer (if any), as well as any tort claims related to the Agreement.

20. Additional terms

- 20.1 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. The remaining provisions shall be enforced.
- 20.2 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.
- 20.3 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.
- 20.4 The termination, dissolution, cancellation, revocation, annulment or any other form of termination of the Agreement shall not affect the rights or obligations which by their nature are intended to survive termination, such as, but not limited to, the rights and obligations set forth in sections 9, 11, 12, 16, 17, 19 and 20.