

**ERIKS Industrial Services (Ireland) Limited Terms & Conditions for the Sale of Goods and Services**

**Revision: July 2017**

**1. INTERPRETATION**

1.1 In these Terms:

“**Company**”, means trading divisions of ERIKS Industrial Services (Ireland) Ltd (registered in Ireland);

“**Contract**”, means the contract for the sale and purchase of the Goods and the supply and acquisition of the Services;

“**Delivery Address**”, means the address stated on the Order.

“**Goods**” means the goods (including any instalment of the goods or any part of them and any replacement parts supplied as part of the Services) described in the Order;

“**Order**”, means the Customer’s purchase order;

“**Price**”, means the price of the Goods and/or the charge for the Services;

“**Quotation**”, means the invitation to treat delivered to the Customer in response to an inquiry;

“**Customer**” means the person so described in the Order.

“**Services**” means the services (if any) described in the Order.

“**Specification**” includes any plans, drawings, data or other information relating to the Goods or Services;

“**Terms**”, the standard terms and conditions of sale set out in this document and (unless the context otherwise requires) includes any special terms agreed in Writing between the Company and the Customer;

“**Writing**” and any similar expression, includes facsimile transmission and comparable means of communication, but not electronic mail.

1.2 Any reference in these Terms to a statute or a provision of statute will be construed as a reference to that statute or provision as amended, re-enacted or extended at the relevant time.

**2. QUOTATIONS**

- 2.1 The Quotation issued by the Company, if any, will not be valid unless it is signed by an authorised representative of the Company. The Quotation will be valid for the period stated and may be amended, withdrawn or cancelled by the Company at any time by written or oral notice.
- 2.2 The Quotation is for all of the goods and/or Services for which quotations are given by the Company. Any order for only part of the Goods and/or Services forming the subject of the Quotation may, at the Company's discretion, be subject to a revised quotation.

### **3. FORMATION OF CONTRACT**

- 3.1 All Goods and Services are offered and all contracts are entered into subject to these Terms. All other terms, conditions or warranties whatsoever are excluded from the Contract or any variation thereof unless accepted by the Company in writing. These terms do not apply to the Company as a consumer.
- 3.2 These Terms will be incorporated into any Contract between the Company and the Customer to the exclusion of any terms or conditions stipulated or referred to by the Customer. Any dealings with the Company following receipt by the Customer of notice of these Terms will automatically be deemed acceptance thereof and the basis for all future contracts unless expressly otherwise stated in writing.
- 3.3 The Order constitutes an offer to purchase the Goods and/or Services from the Company subject to the Terms and incorporation of the Quotation, if any.
- 3.4 The Order cannot be cancelled or varied after being accepted by the company except with its written consent and the agreement of the Customer to pay all the costs incurred by the Company in connection with the cancellation or variation.

### **4. PERFORMANCE AND DELIVERY**

- 4.1 The Company will perform the Services using reasonable skill and care.
- 4.2 Delivery of the Goods will be made by the Customer collecting them at the Company's premises or, if some other place for delivery is agreed by the Company, by the Company delivering the same to that place.
- 4.3 All times quoted for performance or delivery will not be of the essence and are not guaranteed. The Customer will have no right to damages or to cancel the Order for failure by the Company for any cause to meet any performance or delivery time stated.

- 4.4 Performance of the contract will proceed upon acceptance by the Company but will in every case be dependent upon prompt delivery of all necessary information, drawings, final instructions and approvals by the customer to the Company.
- 4.5 Subject to safe and adequate access, the Company will deliver as near as possible to the place of delivery agreed in writing by the Company. Unless agreed in writing, the Customer is responsible for providing suitable facilities for unloading the delivery vehicle and will be responsible for all loss of or damage to the Goods during the course of such unloading as a result of unsuitable facilities.
- 4.6 Where the Customer collects or arranges collection of the Goods from the Company's premises will be at the sole risk of the Customer or its agent save to the extent that any claim arises from the Company's negligence resulting in personal injury or death.
- 4.7 Where delivery or performance is postponed otherwise than due to default by the Company or if the Customer fails to take delivery on the agreed delivery date or, if no specific delivery date has been agreed, when the Goods are ready for despatch, the Customer will pay all costs and expenses including a reasonable charge for storage, insurance and transportation costs and all necessary work undertaken by the Company on the Goods incurred in connection with the delay. Payment for the Goods and/or the Services will be made in accordance with these Terms.
- 4.8 The Company may postpone or cancel any delivery or performance either in whole or in part pending payment of any sum not paid in accordance with these Terms and due from the Customer to the Company either under the Contract or any other contract between the Company and the Customer, but without prejudice to any other rights or remedies which the Company may have against the Customer.
- 4.9 Failure by the Customer to take delivery of or to make payment by the due date in respect of any one or more instalments of Goods will entitle the Company to treat the Contract as repudiated by the Customer.

## **5. PRICE**

- 5.1 The Price of the Goods and the Services shall be stated in the Quotation unless otherwise stated and is subject to fluctuation at the Company's sole discretion in the event of any increase in the cost of labour, materials, overheads, transport, taxes, duties or any other costs whatsoever affecting the manufacture or delivery of the Goods or the performance of the Services and any fluctuations in exchange rates affecting the cost of imported goods or prices quoted other than in sterling. Any increase in such costs during the period of the contract will be added to the Price.

- 5.2 In the event of any variation to the Order being requested by the Customer and agreed by the Company, the Company will be entitled to make an adjustment of the Price corresponding to such variation.
- 5.3 The Company will be entitled to make an adjustment to the Price in the event that:
- 5.3.1 the Order is not accompanied by sufficient information or drawings to enable work to commence forthwith;
  - 5.3.2 the information accompanying the Order does not provide a full and accurate description of the work involved; or
  - 5.3.3 delay is caused by the Customer's instructions or lack of instructions.
- 5.4 The cost of delivery, carriage and packaging will unless otherwise stated be charged extra and is not refundable.
- 5.5 Where the Price includes the whole or part of the cost of any tooling the Customer acknowledges that unencumbered the exclusive title in such tooling will have vested in the Company and that the Customer has no claim to or rights therein.

## **6. TERMS OF PAYMENT**

- 6.1 The Company will be entitled to submit its invoice on or at any time after the despatch of the Goods from the Company's premises or the substantial performance of the Services save that where delivery or performance has been postponed as the request or by the default of the customer then the Company may submit its invoice for the Goods at any time after the Goods are ready for delivery or would have been ready in the ordinary course but for the Customer's request or default and may forthwith upon any such postponement invoice the Customer for all Services performed up to that date without prejudice to any other right or remedy of the Company.
- 6.2 Unless otherwise agreed by the Company in writing the Customer will pay the Price or part thereof within 30 days of the date of the Company's invoice notwithstanding that delivery may not have taken place.
- 6.3 All payments made to the Company must be in euro (unless another currency has been otherwise agreed) at the address shown on the Company's invoice or direct to the Company's bank account. Payment will not have been received by the Company until the full amount is credited to the Company's bank account.

- 6.4 Where Goods are delivered by instalments the Company may invoice each instalment separately for part of the Price and the Customer will pay such invoices in accordance with these Terms.
- 6.5 The Customer will pay all amounts owing to the Company in full and will not exercise any rights of set off or counterclaim against invoices submitted.
- 6.6 In the event of default in payment by the Customer the Company will be entitled without prejudice to any other right or remedy to charge the Customer interest (on a daily basis) on the amount unpaid, at the rate of 4% per annum above the base rate of Bank of Ireland PLC from time to time satisfied by examination that the Goods are defective solely due to faulty materials or workmanship at its sole discretion either repair the defective Goods or take back the defective Goods and supply satisfactory substitute goods free of cost and within a reasonable time.

## **7. RISK AND TITLE IN GOODS**

- 7.1 Risk will pass to the Customer, so that the Customer is responsible for all loss, damage or deterioration to the Goods when the Goods leave the premises of the Company. If the Company undertakes to deliver the Goods, risk will pass to the Customer after the time of delivery at the agreed place of delivery.
- 7.2 Notwithstanding delivery and the passing of risk in the Goods, or any other provision of these Terms, title to the Goods will only pass to the Customer upon the happening of any one of the following events:
  - 7.2.1 the Customer has paid to the Company all sums due and payable by it to the Company for all Goods whatsoever supplied under the Contract; or
  - 7.2.2 when the Company serves on the Customer notice in writing specifying that title in the Goods has passed.
- 7.3 Until such time as the property in the Goods passes to the Customer, the Customer will hold the Goods as the Company's bailee, and will keep the Goods separate from those of the Customer and third parties and properly stored, protected and insured and identified as the Company's property and the Customer hereby irrevocably authorises the Company to enter upon the premises of the Customer or of any third party where the Goods are stored for the purpose of ensuring that the provisions of this clause are being complied with.
- 7.4 Until such time as the title in the Goods passes to the Customer, the Customer will be entitled to resell or use the Goods in the ordinary course of its business but such right may be terminated immediately upon notice by the Company to the Customer

and if the Customer is then in possession of the Goods the Customer will forthwith return the same to the Company free of charge and in any event will cease to be in possession of the same with the consent of the Company.

7.5 The Company may recover Goods in respect of which title has not passed to the Customer at any time and the Customer hereby irrevocably authorises the Company to enter upon any premises of the Customer or of any third party, to the extent that the Customer is able to grant such authorisation, where the Goods are stored, with or without vehicles, for the purpose of repossessing any Goods in respect of which title has not passed to the Customer.

7.6 The Customer will not be entitled to pledge or in any way charge by way of security for any indebtedness any of the Goods which remain the property of the Company, but if the Customer does so, all monies owing by the Customer to the Company will (without prejudice to any other right or remedy of the Company) immediately become due and payable.

## **8. SAMPLES AND DESCRIPTIONS**

8.1 The provision by the Company of samples for analysis by the Customer or the inspection of samples by the Customer will not render any sale a sale by sample.

8.2 No guarantee or warranty is given that supplies will correspond exactly to the description or sample and the use of any description or sample will not constitute the Contract a sale by description or sample or a sale by sample and description.

## **9. PRE-DELIVERY TESTING AND INSPECTION**

To the extent required or permitted by the Contract the Customer or its authorised agent will be entitled to test or inspect the Goods prior to their delivery. If this right is not exercised within 7 days of notification to the Customer of readiness for inspection or testing or where the Customer does not within 3 days after inspection or testing notify the Company in writing of its lack of satisfaction then the Customer will be conclusively deemed to have accepted the Goods and to have agreed that the Goods are fully in conformity with the Contract. Any costs incurred in carrying out such testing or inspection including the provision of consumable items will be charged extra to the Customer.

## **10. SHORT DELIVERY AND DEFECTS APPARENT ON INSPECTION AT DELIVERY**

10.1 Without prejudice to clause 9, the Customer will have no claim for shortages, defects or other damage apparent on visual inspection unless:

10.1.1 the Customer inspects the Goods within 3 working days of delivery and notifies the Company of the claim orally within such period;

- 10.1.2 a written complaint is made to the Company; and
- 10.1.3 the Company is given an opportunity to inspect the Goods and investigate any complaint before any use of, or alteration to, or interference with the Goods.
- 10.2 Failure to comply with clause 10.1 will mean the Goods will be deemed to be in all respects in accordance with the Contract. If short delivery does take place, the Customer will not reject the Goods but accept the Goods delivered as part performance of the Contract.
- 10.3 The Customer will have no claim for non-delivery unless a written complaint is made to the Company within 14 days of the date of the Company's invoice.
- 10.4 Subject to compliance by the Customer with the requirements of clause 10, the Company will at its option be entitled to repair or replace free of cost and within a reasonable time any Goods lost in transit or found to be defective or damaged on visual inspection. If the Company does so repair or replace the Goods the Customer will be bound to accept such repaired or replacement Goods and the Company will be under no further liability in respect of any loss or damage whatsoever arising from the delivery, or lack of delivery, or from any delay before the defective Goods are repaired or the replacement Goods are delivered.
- 10.5 The Customer cannot reject the Goods or the Services without giving the Company a reasonable time and opportunity to rectify any defects in the Goods or the Services. If the Company rectifies the defects in the Goods or the Services they shall be deemed to be in all respects in accordance with the Contract. If the Customer does become entitled to reject the Goods or the Services the Company will repay to the Customer any sums paid by the Customer in respect thereof but will be under no further liability in respect of its failure to perform or the consequences thereof. The Customer will in any event have no right to reject the Goods or the Services, or any part of them, on account of minor omissions or defects which do not materially affect the commercial use of the Goods.

## **11. WARRANTIES AND GUARANTEE**

- 11.1 The Company warrants that the Goods will comply with any specification specifically agreed by the Company in writing. All other terms, warranties or conditions as to quality, description, fitness for purpose or otherwise (whether express or implied, statutory or otherwise) are excluded to the fullest extent permitted by law save as set out in Clauses 11.2 and 11.3.

- 11.2 Without prejudice to Clause 10, if the Customer shall, within 14 days of a defect being discovered and in any event within 12 months of the Goods being put into service or within 12 months of delivery (whichever is the earlier), give written notice to the Company that a defect exists in the Goods the Company will upon being satisfied by examination that the Goods are defective solely due to faulty materials or workmanship at its sole discretion either repair the defective Goods or take back the defective Goods and supply satisfactory substitute goods free of cost and within a reasonable time.
- 11.3 The Company gives no guarantee and the Customer will not be entitled to any claim in respect of any repairs or alterations undertaken by the Customer without the prior specific written consent of the Company nor in respect of any defect arising by reason of fair wear and tear or damage due to accident, neglect or misuse nor in respect of any defect in the design of the Goods or the performance of the Services in either case to the Customer's specification.
- 11.4 The Company will not be liable for loss or damage suffered by reason of use of the Goods after the Customer becomes aware of a defect or after circumstances arising which should reasonably have indicated to the Customer the existence of a defect.
- 11.5 The Company gives no guarantee and the Customer will not be entitled to any claiming respect of any defect arising by reason of:
- 11.5.1 any failure to install, operate or maintain the Goods in strict accordance with the Company's instructions and/or any operational manuals supplied by the Company;
  - 11.5.2 any failure to operate or maintain the Goods using competent personnel;
  - 11.5.3 unsuitable lubricant, defective mounting or connection or any other factor causing a defect beyond the reasonable control of the Company.
- 11.6 The Company gives no guarantee in respect of Goods not of the Company's manufacture but will assign to the Customer its rights (if any) against its supplier and these rights will be taken in extinction of and in substitution for any rights which the Customer would otherwise have had against the Company. further in respect of any such Goods or component parts of the Goods the Company gives no assurance or guarantee whatsoever that the sale or use thereof will not infringe patent, copyright or other intellectual property rights of any other person.
- 11.7 All information and details contained in the Company's advertising, sales and technical literature are provided for guidance only and their accuracy is not guaranteed. No such data or information will form part of the Contract and the



Company will not in any event be liable for any inaccuracies or omissions. Unless agreed by the Company in writing the Company will be under no liability whatsoever in respect of any failure of the Goods to achieve indicative performance targets.

11.8 Any advice of the Company relating to the use of the Goods cannot be relied upon by the Customer and therefore at all times it is for the Customer to satisfy itself of the suitability of the Goods for its own particular purpose. Unless expressly agreed by the Company in writing, the Company does not warrant that the Goods are suitable for any particular purpose whether or not such purpose has been notified to the Company and any implied warranty or condition (statutory or otherwise) to that effect is excluded.

## **12. LIMIT OF LIABILITY**

The Company will not be liable for economic, consequential or indirect losses including loss of profits, contribution to overheads, business opportunities, loss of contracts, finance charges, goodwill, loss of production, increased costs of labour and/or materials, or damage to property howsoever caused by any defect in the Goods or a breach of the duty to exercise reasonable skill and care in performing the Services but subject to the exception where any defect in the Goods or breach of the duty to exercise reasonable skill and care in providing the Services gives rise to a claim by reason of death or personal injury or for any other matter which cannot be limited or excluded by law.

## **13. DIMENSIONS**

The Company reserves the right to alter or change the specification of the Goods within reasonable limits having regard to the type and nature of the Goods. Dimensions stated by the Company are approximate unless the Customer has set out in the Order that the dimensions should comply with precise tolerances.

## **14. TERMINATION**

14.1 The Company reserves the right at any time by notice in writing to the Customer to cancel the Contract for the supply of the Goods or the provision of the Services the subject of any quotation in the event of the customer failing to approve forthwith any plans, specifications or other matter submitted to the Customer for such approval, but without prejudice to any other rights or remedies which the Company may have against the Customer.

14.2 If the Customer fails to take delivery of the Goods when required, or makes default or commits a breach of any of its obligations under the Contract, or any other contract with the Company, or

- 14.3 If the Customer is subject to any corporate action, legal proceedings or other procedure or step is taken by or against the Customer in relation to or with a view to
- 14.3.1 the suspension of any payments, a moratorium of any indebtedness, seeking protection from creditors, winding-up, dissolution, administration (whether out of court or otherwise) or reorganisation (by way of voluntary arrangement, scheme of arrangement or otherwise);
  - 14.3.2 a composition, assignment or arrangement with any creditor;
  - 14.3.3 the appointment of a liquidator, provisional liquidator, trustee in bankruptcy, examiner, judicial custodian, compulsory manager, receiver, administrative receiver, administrator or similar officer (in each case, whether out of court or otherwise) in respect of it or any of its respective assets;
  - 14.3.4 the enforcement of any security over any assets, including without limitation an encumbrance taking possession of any of the property or assets of the Customer or a distress, execution or other process is levied or enforced upon or sued out against any of the property or assets of the Customer; or
  - 14.3.5 any action is taken by its officers or any other person (including without limitation the Director of Corporate Enforcement) with a view to the winding-up, administration (whether out of court or otherwise), dissolution or striking off of the Customer; or
  - 14.3.6 the Customer becomes, or is deemed for the purposes of any law to be, insolvent or unable to pay its debts as they fall due or fails to satisfy any judgment against it by any court of competent jurisdiction; or
  - 14.3.7 any action is taken by any person to appoint a receiver, administrator, administrative receiver, examiner, trustee, or similar officer of the Customer or any property or assets of the Customer or any such receiver, administrator, administrative receiver, examiner, trustee, or similar officer is appointed; or
  - 14.3.8 anything analogous to any of the foregoing events occurs in any applicable jurisdiction
- 14.4 In the event of the performance of any obligation accepted by the Company being prevented, delayed, or in any way interfered with by:
- 14.4.1 act of God, explosion, flood, tempest, fire or accident;

- 14.4.2 war or threat of war, sabotage, insurrection, civil disturbance or requisition;
- 14.4.3 acts, restrictions, regulations, bye-laws, prohibitions or measure of any kind on the part of any governmental parliamentary or local authority;
- 14.4.4 import or export regulations or embargoes;
- 14.4.5 strikes, lock-outs, or other industrial actions or trade disputes (whether involving employees or either the Company or the Customer or of a third party);
- 14.4.6 difficulties in obtaining raw materials, labour, fuel, parts or machinery;
- 14.4.7 power failure or breakdown in machinery;
- 14.4.8 non-delivery by the Company's suppliers or damage to or destruction of the whole or part of the Goods; or by any other cause beyond the Company's control the Company may at its option suspend performance or terminate the Contract without liability for any damage or losses resulting from such suspension or termination being without prejudice to the Company's right to recover all sums owing to it in respect of Goods delivered, Services performed and costs incurred to date.

**15. STATUTORY REQUIREMENTS**

The Customer will observe and comply with all statutes, regulations, enactments, bylaws, prohibitions or directions of any governmental, parliamentary or local authority in Ireland or any other country or state in which the Goods are to be used. The Customer will indemnify the Company in full against any liability to which the Company may be under and the consequence thereof in respect of a breach of this clause.

**16. LICENCES AND CONSENTS**

The Customer will be responsible for all consents, approvals, import or other licences, permissions or authorities required by any legislation or regulations whether in Ireland or elsewhere and for any failure to obtain the same unless the Contract specifically provides otherwise. The Order will constitute a warranty and representation by the Customer that it has obtained every necessary consent, approval, licence, permit or authority that may be required in connection with the Goods and their supply to the Customer.

**17. PRODUCT LIABILITY**

- 17.1 In respect of Goods supplied to the Customer for incorporation with, or use ancillary to, any composite products to be produced, manufactured, processed or supplied by

the Customer or otherwise the Customer will indemnify the Company for all losses and damages (including all legal costs) that the Company may incur in the event that any claim or claims are made against the Company pursuant to the Liability for Defective Products Act 1991 relating to the said composite product or products of the Customer or other Goods supplied by the Company in circumstances in which the Goods supplied by the Company were either:

17.1.1 not the defective part of the said composite product,

17.1.2 were only rendered the defective part or became a defective product by reason of actions or omissions of the Customer, or

17.1.3 were only rendered the defective part or became a defective product by reason of instructions or warnings given by the Customer or another supplier of the said composite product or products.

17.2 For the purposes of this term the word "defective" will be interpreted in accordance with the definition in the Liability for Defective Products Act 1991.

17.3 The Customer acknowledges that it is under a duty to pass on to its customers (where appropriate) all instruction, information and warnings supplied to it by the Company with the Goods.

## **18. GENERAL**

18.1 The Customer shall not assign or transfer to any other person any of its rights without the express consent of the Company, nor sub-contract any of its obligations under the Contract.

18.2 A notice under these Terms must be in Writing addressed to that other party at its registered office or principal place of business or such other address as may at the relevant time have been notified under this provision to the party giving the notice.

18.3 No waiver by the Company of any breach of the contract by the Customer will be considered as a waiver of any prior or subsequent breach of the same or any other provision.

18.4 The parties acknowledge and agree that the Contract confers no rights on any third party.

18.5 If any provision of these Terms is held to be invalid or unenforceable in whole or in part the validity of the other provisions of these Terms and the remainder of the provision in question shall not be affected.

18.6 The Contract shall be governed by the laws of Ireland, and the Customer agrees to submit to the exclusive jurisdiction of the Irish courts.