



## **Terms and Conditions for the Sale of Goods ERNE FITTINGS USA, INC.**

### **§1 APPLICABILITY**

The conditions of sale stated herein shall be an integral part of any contract resulting from any purchase order placed with ERNE FITTINGS USA, Inc. ("ERNE USA"). Any statement made on any form issued by Buyer shall not operate to defeat the intent of these General Terms and Conditions unless specifically agreed upon in writing by ERNE USA. Additional specific conditions may be included in an offering and shall apply to that offering in conjunction with these General Terms and Conditions but shall be binding only for that respective individual contract, in which case such additional conditions of sale shall govern in case of inconsistency.

### **§2 QUOTATIONS, ORDERS AND MODIFICATIONS**

- (1) Quotations are offered for orders within ten (10) days, and if not so acted upon shall be deemed withdrawn. Such quotation is not a contract or offer to sell and may only become so upon receipt of Buyer's purchase order and confirmation in writing, which may be by mail, email, or telecopier, of ERNE USA's acknowledgment of order. ERNE USA is under no obligation to enter an order acknowledgment and may rescind its quotation at any time prior to ERNE USA's acknowledgment.
- (2) Any documents accompanying our offers, such as sketches, drafts, samples etc., are only approximate and shall not be considered binding unless expressly declared by us in writing to be binding and acknowledged as such by Buyer. These documents, for which we reserve all copyrights, remain ERNE USA's property and may not be made available to third parties.
- (3) Indications of weights are only non-binding averages, they are always approximate.
- (4) Changes in specification or changes in time of delivery will be permitted only if ERNE USA specifically approves such adjustment in writing. Changes or modifications may result in additional costs which will be to Buyer's account. Changes to specifications may also require adjustment of the delivery schedule, and ERNE USA will advise Buyer as soon as practicable of any such adjustments. Additional costs and/or changes to delivery time in respect of any changes requested by Buyer must be agreed upon prior to ERNE USA's implementation of any change.
- (5) Buyer may cancel an Order only upon written notice and payment to ERNE USA of reasonable and proper cancellation charges. Standard items are subject to a 20% restocking fee.

Cancellations of special orders are treated on a case-by-case basis and are subject to a cancellation fee, normally pro-rated to accrued expenses.

- (6) ERNE USA reserves the right to cancel any portion of an Order affected by any insolvency or suspension of Buyer's operations or any petition filed or proceeding commenced by or against Buyer under any state or federal law relating to bankruptcy, arrangement, reorganization, receivership or assignment for the benefit of creditors.

### **§3 PRICES**

- (1) Prices are valid for ten (10) days from quote issue date.
- (2) Current fluctuation of pricing and material availability worldwide often lead to a situation of unpredictable conditions which are beyond our control. As such, we judge it to be a case of Force Majeure and reserve the right to increase prices and delivery dates prior to order acceptance, upon notification from our suppliers.
- (3) Our prices are exclusive of any and all taxes, duties or government fees. Buyer shall reimburse ERNE USA for all sales, use, excise, value added, goods and services or other taxes that ERNE USA must at any time either pay or collect in connection with the goods or services sold by ERNE USA to Buyer. If, under the laws of the Buyer's territory, Buyer is required to withhold any tax on such payments, then the amount of the payment will be automatically increased to totally offset such tax, so that the amount actually remitted to ERNE USA, net of all taxes, equals the amount invoiced or otherwise due. If an exemption from any tax, duty, fee or permit is claimed, Buyer shall promptly furnish ERNE USA with proof of such exemption satisfactory to ERNE USA and the governing authority, and shall reimburse ERNE USA for any cost or expense, including attorneys' fees, incurred as a result thereof.

### **§4 TERMS OF PAYMENT**

- (1) Payment shall be made in full within 30 days from date of invoice, subject to credit approval.
- (2) ERNE USA reserves the right to assess the continued creditworthiness of Buyer and change its extension of credit terms in its sole discretion. ERNE USA shall have the right to demand different payment terms on a case by case basis, e.g., advance cash payment or security satisfactory to ERNE USA, including but not limited to an irrevocable Letter of Credit at sight drawn on a bank acceptable to ERNE USA and ERNE USA may withhold shipment until receipt thereof.

- (3) Overdue payments shall bear interest at the lesser of 0.5% per month or the maximum permitted by law. In addition, Buyer shall pay all costs of collection on overdue accounts including but not limited to reasonable attorney's fees whether or not litigation is commenced in aid thereof. **BUYER WAIVES ANY RIGHT OF SET-OFF AND SHALL MAKE NO DEDUCTIONS FROM PAYMENTS DUE TO ERNE USA OR FOR ANY DAMAGES OF ANY TYPE CLAIMED BY BUYER AGAINST ERNE USA.**

### **§5 DELIVERY AND SHIPPING**

- (1) All our shipping and delivery dates or schedules are good faith projections only and are not warranties. Shipping schedules are computed from the time of Order acknowledgment, though not before receipt by us of any documents, complete technical specification, approvals, clearances, supply of material to be provided by the Buyer or of any other important condition for the performance of the Contract or of any agreed down-payment; the same applies for the change of delivery dates. Partial shipments will be made when ready and invoiced absent a written agreement to the contrary. **IN NO EVENT SHALL ERNE USA BE IN BREACH OF AGREEMENT, LIABLE FOR DAMAGES OF ANY KIND, LIQUIDATED OR UNLIQUIDATED, INCLUDING CONSEQUENTIAL DAMAGES OR DAMAGES FOR LOSS OF USE OR LOST PROFITS, DUE TO FAILURE TO MAKE TIMELY DELIVERY OR MEET SHIPPING SCHEDULES.**
- (2) Delay in delivery of any installments shall not relieve Buyer of its obligation to pay for any shipments received prior to such delay or its obligation to accept the remaining deliveries. If Buyer is unable to receive the goods when tendered, Buyer shall be liable to ERNE USA for any loss, damage, or additional expense incurred or suffered by ERNE USA as a result thereof.
- (3) Our duty to deliver shall be suspended for as long as the Buyer is in default of any of its contractual obligations.
- (4) ERNE USA shall not be liable for delay in delivery due to causes beyond its reasonable control including, but not limited to, acts of God, acts of government, acts of Buyer, fires, labor disputes, boycotts, floods, epidemics, quarantine restrictions, war, insurrection, terrorism, riot, civil or military authority, freight embargoes, transportation shortages or delays, unusually severe weather or inability to obtain necessary labor, materials or manufacturing facilities due to such causes. In the event of any such delay, the date of delivery shall be extended for a length of time equal to the period of the delay.

### **§6 PASSING OF RISK, DISPATCH**

- (1) The risk shall pass to the Buyer at the latest on dispatch of the goods from our works. If shipping is delayed for reasons beyond our control, the risk shall pass to the Buyer on notification that the goods are ready for shipment.
- (2) All deliveries, also any return deliveries, shall take place at the risk of the Buyer. In the absence of any Buyer's instructions, the mode of dispatch, the dispatch type sequence and the packaging shall be chosen in our discretion.
- (3) The Buyer shall accept delivery of the goods, even with defects, but without any prejudice to his warranty rights under Article VIII.

### **§7 TESTING METHODS AND INSPECTIONS**

- (1) The manner and the extent of any testing of the Products prior to delivery, as well as the issue of test certificates, respectively material certificates have to be expressly stated on the Order.
- (2) After receipt of the goods, Buyer shall, unless otherwise agreed, conduct a reasonable and complete inspection of the goods. All claims for errors, defects (other than warranty defects), shortages or any other nonconformity in any shipment of goods delivered to Buyer must be made in writing to ERNE USA's office as specified in the invoice within ten (10) days after Buyer's receipt of such goods. Buyer's failure to make such claims within such time period shall constitute an irrevocable acceptance of the particular shipment and an admission that such shipment fully complies with all terms, conditions and specifications contained in the terms of sale for such goods.
- (3) If Buyer rejects a shipment of goods or any part thereof, ERNE USA shall have the right to cure in any reasonable manner the error, defect, shortage or other nonconformity giving rise to the rejection.

### **§8 WARRANTY**

- (1) Subject to the limitations in Subsection 5 below, ERNE USA warrants that the goods shall be free from defects in material, workmanship, and title. If it appears within twelve (12) months from receipt of the goods by Buyer that the goods or any part thereof do not conform to this warranty, and Buyer so notifies ERNE USA within a reasonable time after discovery, then ERNE USA shall thereupon promptly correct such nonconformity by repair or replacement of the goods in question. ERNE USA's sole obligation and Buyer's sole remedy under this warranty is repair or replacement at ERNE USA's election.

- (2) To enable us to make any remedies or replacement deliveries which we deem necessary at our reasonable discretion, the Buyer shall, after consultation with us, allow us the necessary time and opportunity for making any such repairs or replacements, otherwise we shall be released from our liability for defects. Only if we are in delay in remedying a defect shall the Buyer have the right to remedy the defect himself or to have it remedied by a third party.
- (3) We are not responsible for repairs or alterations made by others without our written consent. We do not warrant the goods or any repair/replacement part against the effects of erosion, corrosion, or normal wear and tear due to operation or the environment. The warranty and remedies set forth herein are conditioned upon proper storage, installation, use and maintenance of the goods in all material respects, and in accordance with our written recommendations.
- (4) The remedies set forth herein are exclusive, and the total liability of ERNE USA with respect to this Order, or any breach thereof, whether based on contract, warranty, tort (including negligence), indemnity, strict liability or otherwise, shall not exceed the Order price of the specific goods or services which gives rise to the claim.
- (5) **THE EXPRESS WARRANTY SET FORTH HEREIN IS THE EXCLUSIVE WARRANTY OF ERNE USA, AND NO OTHER WARRANTY, EITHER EXPRESSED OR IMPLIED, INCLUDING WARRANTY OF MERCHANTABILITY OR FITNESS FOR PURPOSE, SHALL APPLY. IN NO EVENT, WHETHER ARISING BEFORE OR AFTER COMPLETION OF ITS OBLIGATIONS UNDER THE CONTRACT, SHALL ERNE USA BE LIABLE FOR SPECIAL, INDIRECT, CONSEQUENTIAL, INCIDENTAL OR PUNITIVE DAMAGES OF ANY KIND (INCLUDING BUT NOT LIMITED TO LOSS OF USE, REVENUE OR PROFITS, INVENTORY OR USE CHARGES, COST OF CAPITAL, OR CLAIMS OF CUSTOMERS) INCURRED BY THE BUYER OR ANY THIRD PARTY.**

### **§9 INTELLECTUAL PROPERTY RIGHTS**

In case we manufacture goods according to Buyer's specifications or documents, the Buyer guarantees that intellectual property rights of third parties will not be infringed; this applies also if we have participated in the design and development or have designed according to Buyer's specifications. If third parties enjoin the manufacture and delivery of such goods, we will be entitled, without further inquiry, to stop any activity and to claim compensation for damages. Furthermore, the Buyer commits to indemnify us against any claims by third parties.



### **§10 INFORMATION AND ADVICE**

All information regarding the application of our goods, any technical advice, and any data provided in any of our documents are given to the best of our knowledge, but are non-binding and without any liability and any such information or advice given by us does not release the Buyer from its own testing of our goods regarding the suitability for the intended application.

### **§11 APPLICABLE LAW / DISPUTES**

- (1) This Order shall be interpreted in accordance with the laws of the State of Texas, exclusive of any choice of law provisions. ERNE USA and Buyer expressly agree to exclude from this Order the United Nations Convention on Contracts for the International Sale of Goods, 1980, and any successor thereto and the Contracts (Rights of Third Parties) Act of 1999.
- (2) Except as otherwise specifically agreed in writing, any dispute relating to an Order which is not resolved by the parties shall be adjudicated by a court of competent jurisdiction in the state of Texas.

### **ERNE FITTINGS USA, INC.**

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