

General terms and conditions of business of ERZLABOR Advanced Solutions GmbH

These general terms and conditions of business shall apply to all legal relationships between ERZLABOR Advanced Solutions GmbH (hereinafter referred to as Contractor) and business customers (hereinafter referred to as Principal) who make use of the services of the Contractor. Should you have any questions as a customer concerning these general terms and conditions of business or the rights and obligations arising out of these, please do not hesitate to contact us. We will be glad to provide assistance.

The Contractor will only work for companies, as defined in § 14 of the German Civil Code (BGB). By means of confirming these general terms and conditions of business, the Principal is confirming that it is acting in its capacity as a company as defined in § 14 of the German Civil Code (BGB).

§ 1. General / area of applicability

1. These general terms and conditions of business shall apply to all (including future) transactions and legal relationships between the Contractor and the Principal which makes use of our services. These general terms and conditions of business shall also apply to subsequent (and future) legally binding contracts and orders between the Contractor and the Principal, without a separate agreement being required for such.
2. The Contractor will only work for companies, as defined in § 14 of the German Civil Code (BGB). A company is defined as any natural or legal person or business partnership with legal capacity which is acting in the course of its professional or independent professional activity at the time of conclusion of the contract. By means of confirming these general terms and conditions of business, the Principal is confirming that it is acting in its capacity as a company as defined in § 14 of the German Civil Code (BGB).
3. By means of the conclusion of the contract, the Principal is confirming that it is concluding the agreement in its own name and on its own account. In case of representation, which must be notified, the representative is providing an undertaking that it is authorised to conclude the contract.
4. The Contractor provides all of its services exclusively on the basis of these general terms and conditions of business. The version of the general terms and conditions of business which is valid at the time of carrying out the business transaction shall apply, unless this has been amended by an agreement to the contrary which has been agreed by both parties.
5. These general terms and conditions of business shall also apply if the Principal uses terms and conditions which deviate from these or if services are provided to the Principal in knowledge of such deviating terms and conditions of business. Deviating, supplementary or conflicting terms and conditions of business of the Principal shall not

become part of the contract, even in case of knowledge of such, unless a written agreement by the Contractor to their applicability has been submitted.

6. Special agreements and ancillary undertakings shall require the written agreement of the Contractor to take effect. This also applies in relation to any amendment to this written form clause.

§ 2. Conclusion of the contract / quotation / acceptance / scope of service

1. Unless a different course of action in relation to the conclusion of the respective payable order is mutually agreed, the following provisions shall apply in relation to the conclusion of the respective chargeable engagement.
2. The Contractor shall submit a written quotation to the Principal concerning the conclusion of an order. The submission of the quotation shall be carried out by the Contractor in written or electronic form. This means that the quotation can be submitted in sufficient form also by email, fax or computer fax, without the signature of the Contractor being absolutely necessary in order for the quotation to be valid.
3. The Contractor reserves all ownership rights and intellectual property rights resulting from ownership in relation to cost quotations, drawings and other documents. The Principal is prohibited from making the said documents accessible to third parties, unless the agreement of the Contractor to such is issued in advance. Should the contractual relationship not come into existence, the Principal shall be obliged to return said documents to the Contractor, without the need for a request to be issued.
4. A reference to these general terms and conditions of business is attached to the quotation of the Contractor. By means of accepting this quotation, the Principal confirms that it has familiarised itself with the contents of the general terms and conditions of business and accepts these as being part of the contract.
5. The quotation of the Contractor contains the final contractually agreed scope of service, which the Contractor will provide, as well as a price statement. Should the quotation contain statements concerning delivery times and acceptance deadlines, the regulations and statements concerning these are final. Otherwise, the provisions of this contract which relate to such shall apply.
6. The order shall not be deemed concluded until the Contractor receives the acceptance of the quotation in written or electronic form within the acceptance deadline stated therein. The acceptance of the quotation by the Principal shall require the signature of a person who is authorised to carry out such actions. Should the quotation not be accepted until after the expiry of the acceptance deadline, the order shall still come into effect if the Contractor confirms its effectiveness or the services are provided to the Principal.
7. Any order confirmation which takes place merely summarises the essential contractual positions once again.
8. The Contractor shall be entitled to make use of third parties in relation to the provision of the agreed services.

9. The Contractor provides services in the following areas, which must be agreed individually in relation to the respective order:
 - Preparation of samples
 - Analytic services for material characterisation
 - Training courses connected to preparation of samples
 - Training courses connected to material characterisation
 - Sale of packaging and corresponding boxes

10. It is to be made clear that the Contractor cannot be held responsible accountable for the concrete economic success on the part of the Principal. It is also to be made clear that not every material which is provided and then intended to be subject to material characterisation / preparation of samples is suitable for carrying out such actions correctly.

§ 3. Prices / payment terms / shipping / insurance

1. Unless written individual contractual agreements to the contrary are concluded or unless the quotation of the Contractor contains statements to the contrary, the prices shall apply ex-warehouse / ex-works of the Contractor and contain neither packaging nor transportation / shipping costs or any costs incurred in this respect or connected to delivery. These costs must be paid by the Principal. The stated prices are subject to the value added tax which applies at the time of conclusion of the contract. The prices are stated in the quotation of the Contractor or in an individual agreement between the contracting parties.
2. The Customer shall be obliged to comply with existing customs obligations and to bear the costs which occur as a result.
3. Unless agreed otherwise or otherwise stated in these general terms and conditions of business, the shipping of the service shall take place via the route deemed to be the most cost effective by the Contractor. However, the Contractor cannot provide any guarantee that the route chosen is the most cost effective, quickest or most secure route. The Principal shall be obliged to have the goods insured against damage and other risks. Following a request by the Principal and following an agreement in this respect, the goods (should these be owed) can be insured by the Contractor in consideration of payment of a fee.
4. Additional expenses which are incurred by the Contractor due to acceptance default on the part of the Principal must be reimbursed to this amount by the Principal. The Principal is free to provide proof that no additional expenses were incurred or that the additional expenses were not incurred to the amount which is being claimed.
5. Unless an agreement to the contrary is present, payment must be made to the Contractor at the time of delivery or time of provision of the delivery and receipt of the invoice without any discount within 12 days (payment receipt), commencing on the date of the invoice.

Discount promises shall only apply in case that the Principal is not in arrears with the payment of earlier deliveries.

6. Should change requests on the part of the Principal be notified in the course of the engagement and should the Contractor implement these, the additional expenses must be paid at a respective hourly rate of €75 net.

§ 4. Delivery times / delivery deadlines / delivery procedures / delay / termination / co-operation obligations of the Principal

1. The delivery deadline and the specifics of the corresponding terms of delivery can be found in the contractual agreement of the contracting parties, explicitly in the quotation of the Contractor. The contractually agreed delivery deadline shall commence at the time of receipt of the contractual quotation by the Contractor, however, not prior to the provision of any documents, permits, approvals, the supply of sample materials or any agreed deposit payment by the Principal.
2. Should the documents / materials and the documents which are to be provided by the Principal that are necessary for fulfilment of the contract be received late and/or should necessary permits not be able to be submitted and / or should the Principal have changes carried out to the sample materials, the agreed delivery time shall be reasonably extended. The same shall apply in relation to delays for which the Principal is responsible and in case of non-compliance with the contractual obligations incumbent on the Principal and/or the co-operation undertakings to which the Principal is subject.
3. In particular, the delivery deadline shall be extended by a reasonable period of time if the non-compliance with the deadlines is due to force majeure and/or the behaviour of third parties for which neither the Principal nor the Contractor is responsible and which could not have been prevented even if the necessary care in the sector had been complied with. In such a case, the Principal will be informed immediately and a new delivery date agreed.
4. Compliance with the delivery deadline is subject to fulfilment of the contractual obligations of the Principal.
5. Should the Contractor enter delivery default and should the delivery deadline not be reasonably extended in accordance with the sections above, the Principal must grant the Contractor a period of grace to provide the service. On the expiry of the said period of grace, the Principal can rescind the contract free-of-charge, should the service not yet have been correctly provided by the expiry of the period of grace.
6. In relation to the co-operation obligation to which it is subject, the Principal must ensure that all necessary papers and/or documents and/or materials which are required in order to perform the order are submitted and/or notified to the Contractor free-of-charge and in good time. This also applies in relation to papers and/or documentation and/or materials which the Contractor does not request from the Principal until after conclusion of the contract, should these be required in order to perform the order.

7. Furthermore, within the framework of the co-operation obligation to which it is subject, the Principal must ensure that the corresponding infrastructure which is necessary to fulfil the order is provided. Additionally, this includes free-of-charge access to all premises and installations (hardware, software, networks etc.), should this be necessary in order to properly provide the service.

§ 5. Transfer of risk / acceptance

1. Should such service be owed, the shipping of the goods shall take place at the risk of the Principal, unless otherwise agreed or stated otherwise in these general terms and conditions of business. The risk shall be transferred at the time of handover to a suitable transportation person, should such service be owed. This shall also apply should the Contractor assume the transportation of the goods by its own transportation person.
2. The Customer shall be obliged to declare acceptance at the latest 3 days following the receipt of the service/goods or to provide written notification of the facts which justify refusal of acceptance. Refusal of acceptance due to minor defects is not permitted.

§ 6. Reservation of ownership / notification obligation

1. The Contractor reserves the right of ownership in relation to the goods (goods subject to reservation of ownership) and/or the service until full payment of all claims under the business relationship with the Principal.
2. The Principal shall be obliged to provide the Contractor with immediate written notification in case of attachments or other third party attacks, so that the Contractor can bring a claim under § 771 of the German Code of Civil Procedure (ZPO). Should the third party not be able to reimburse the Contractor in relation to the court costs and out of court costs of a claim under § 771 of the German Code of Civil Procedure (ZPO), the Principal shall be obliged to settle the costs.

§ 7. Warranty / defects / defect claims

1. The right of the Principal to assert claims due to defects shall in all cases be time barred twelve months after the time of transfer of risk.
2. Otherwise, the statutory provisions shall apply. Reference is hereby made to the provisions in number 9 of these general terms and conditions of business.

§ 8. Liability / limitation of liability / damages

1. The liability of the Contractor shall be determined in accordance with the statutory provisions.

2. Further damage claims which go beyond those provided for under this contract, for example due to delayed provision of service and/or breach of a contractual obligation, shall be excluded, unless these are due to intent, gross negligence, fraudulent behaviour or injury to life, body or health.
3. The exclusion of liability above shall also not apply if liability is incurred under the provisions of the German Product Liability Act (Produkthaftungsgesetz) and/or if a significant contractual obligation is breached. In reservation of the provisions above, the Contractor shall also not incur liability for consequential losses connected to defects or for loss of profits.
4. The exclusions named above relate to all actions of vicarious agents and employees of the Contractor.
5. In case of simple negligence, the liability of the Contractor and/or its vicarious agents and/or its legal representatives shall be excluded in case of pecuniary losses which are of an indirect nature, in particular consequential losses connected to defects, unforeseeable losses and non-typical losses.

§ 9. Inspection and complaint obligation / acceptance obligation

1. The Principal shall be subject to the inspection and complaint obligation contained in § 377 of the German Commercial Code (HGB). The Principal must inspect the goods/service immediately following delivery/provision by the Contractor and/or receipt of the goods, provided that this is feasible in the course of proper business dealings. Should a defect come to light at this time, this must be notified to the Contractor immediately. Should the Principal fail to provide the notification, the goods and/or the respective service shall be deemed to have been approved, unless this concerns a defect which was not recognisable at the time of inspection. Should such a defect be noticed subsequently, the notification must be made immediately after discovery. Otherwise the goods and/or service shall be deemed to have been approved, despite the said defect.
2. The Principal is not entitled to refuse acceptance due to minor defects.
3. The inspection of the goods /delivery shall be deemed to have taken place immediately, if a period of 4 working days after the delivery of the goods/provision of the service is not exceeded. The defect notification must take place in writing.

§ 10. Final provisions

1. German law shall apply, to the exclusion of the United Nations Convention governing the International Sale of Goods.
2. The exclusive place of jurisdiction in relation to these general terms and conditions of business or in relation to disputes arising between the contracting parties shall be the place of business of the Contractor.

3. Should any individual provisions of these general terms and conditions of business be ineffective, the remaining clauses of these general terms and conditions of business shall retain their validity. The statutory provisions shall take the place of the ineffective provision. This shall also apply if a contractual loophole is present, unless one of the parties cannot be reasonably expected to continue to perform the contract in such a case.

As of: May 2018