

**STANDARD TERMS OF CONTRACT of**  
**Erbslöh Geisenheim AG**  
**Status from: 01/2011**

**I General information – Scope – Warning**

1. Deliveries and performance from Erbslöh shall be executed solely in accordance with the following standard terms of contract. These standard terms of contract shall apply to transactions conducted with businessmen and entrepreneurs in compliance with § 14 BGB (Federal Statutes at Large). These standard terms of contract shall apply to all future transactions between the partners to the agreement, without specialized further reference.

They shall also apply to future agreements even if Erbslöh does not explicitly quote the terms, in particular when Erbslöh has knowledge of alternative terms of purchase or of terms deviating from the standard terms of contract of the customer's deliveries or performance. You have already been notified of the standard terms of contract by means of our standard forms as well as via e-mail messages and publications in the Internet. The scope of application of these standard terms of contract shall also be valid in all supplier countries in which German legislation is applicable or has been effectively stipulated.

2. **Erbslöh has the intent to supply solely to commercial enterprises, public research-, analytical laboratories and educational facilities.** Customers who do not belong to this specified clientele shall be obliged to provide Erbslöh with information pertaining to the status and/or business operations of their company res. person on establishment of contact res. placement of order. If the relevant information is not furnished, Erbslöh shall be exempted from any liability resulting thereof. Erbslöh shall be entitled to reject orders if there is a possibility that their products may be used in an unauthorized manner.

**II Tenders and Conclusion of Agreement – Performance**

1. Erbslöh's tenders to the prospective customer shall be subject to confirmation. The placing of an order by the customer shall be binding. The acceptance of the order will follow within four (4) weeks by means of the dispatching of a confirmation of order or an unconditional execution of the consigned deliveries or performance.
2. The technical data and descriptions in the respective product information or advertising material from Erbslöh shall not present a guarantee for the quality or durability of goods or performance delivered or supplied by Erbslöh. Warranties will not be furnished unless these have been explicitly agreed upon in separate contracts.
3. In connection with the above mentioned Paragraph 2, Erbslöh draws the attention in particular to the fact that Erbslöh gives all information related to the origin, state, nature, condition, quality and the manufacturing process of the primary product and merchandises to its best knowledge. In this context, Erbslöh is mostly depending and relying on the information, promises, assurances, confirmations and certificates provided by its suppliers. Erbslöh at its stage of production is not able to conduct extensive product testing with all products. As for these reasons it is not possible to trace back in every single case. Erbslöh denies all liability in that respect.

4. In the case of sales in accordance with samples or specimens, this shall merely describe the professional compliance with the sample or specimen, but shall not be a guarantee for the composition or durability of the goods to be delivered by Erbslöh or the performance to be executed.

### **III Prices – Terms of payment – Default of payment**

1. The prices determined by the conclusion of the respective agreement, in particular the prices defined in the order form res. the confirmation of order in EURO should be valid. If a price is not explicitly defined, the prices which are valid at the time when the agreement is concluded in accordance with the current Erbslöh price list should be valid. The statutory value-added tax valid on the day of delivery shall be added to the defined prices.
2. The products shall be delivered ex factory. The prices shall include the costs for the packaging required for the regular shipment of the goods together with the reimbursement for the disposal of the sales-, and transport packaging. The prices do not include the transport costs and/or the costs for a transport insurance policy, if this has not been previously agreed upon in an individual written agreement or if these costs are not shown in the actual price list of Erbslöh. The terms of packaging and transport must be concluded separately for goods to be delivered abroad.
3. Erbslöh shall reserve the right to modify prices in a reasonable manner if alterations in costs due to wage settlements, price increases of suppliers or fluctuations in the monetary exchange rates should arise after the conclusion of the agreement.
4. Invoices received from Erbslöh must be paid within fourteen (14) days from receipt of the invoice minus two (2) percent discount or within 30 days net, if no other terms have been concluded. The customer shall be in default of payment after the expiry of the settlement date stated in the invoice in compliance with § 286 Section 2 No. 2 BGB (Federal Statutes at Large). Default interest in compliance with § 288 BGB (Federal Statutes at Large) will be calculated from the day of expiry of the settlement date with reservation to assertion of further claims.
5. The customer may only exercise the option of offsetting or retention if his counter-claims have been legally justified and Erbslöh has neither recognized nor disputed the claims within two (2) weeks of notification.
6. If the customer should not pay invoices due, when the term of credit has expired, or when the financial circumstances of the customer should deteriorate following the conclusion of the agreement or when Erbslöh should receive unfavorable information pertaining to the customer which query the solvency of the customer, Erbslöh shall be justified in taking measures to procure the entire residual amount from the customer and via an amendment of the terms concluded advance payment or collateral security or immediate settlement of all its claims in the case of executed performance which are based upon this legal relationship. This shall apply, in particular, if the customer does not meet his payments, or a cheque from the customer is dishonored, a bill of draft furnished by the customer should not be redeemed, a bankruptcy process relating to the assets of the customer has been petitioned or initiated or when insolvency proceedings have not been initiated due to insufficient assets.

#### **IV Time of delivery and performance – Default**

1. Determined delivery schedules shall possess only an approximate validity if a fixed delivery date has not been concluded in writing. However, when Erbslöh has exceeded determined delivery schedules due to justifiable circumstances, the customer shall have the option to withdraw from the agreement after an additional respite following the fruitless expiry of a reasonable period defined by the customer. The withdrawal from the agreement must be furnished in writing.
2. Erbslöh shall only be in default following the expiry of the reasonable additional respite of time. In cases of Force Majeure (Act of God) and other unforeseeable, extraordinary circumstances, which cannot be influenced by Erbslöh such as e.g. disturbance in operation as a result of fire, water and similar circumstances, breakdown of production systems and machinery, exceeding the term of delivery or failure to deliver on the part of suppliers together with interruptions in operation due to a shortage of raw materials, energy or working force, strikes, shut-out, problems with the acquisition of transport, traffic disturbance, official administrative measures, Erbslöh – as far as Erbslöh is hindered to fulfill its obligations not due to its own fault – shall be entitled to postpone delivery or performance until the extraordinary circumstances have been alleviated and shall be granted a reasonable respite. If delivery or performance should be delayed by more than one month hereby, both Erbslöh as well as the customer shall be entitled to furnish written notice of withdrawal from the agreement under the ruling out of claims to indemnification with regard to the bulk amount influenced by the disturbance in delivery.
3. In every case of default the liability of Erbslöh to pay compensation is limited by the stipulation of the regulations in Section VIII No. 1 to 6.
4. Erbslöh is entitled to furnish partial deliveries or performance within the scope of the agreed times of delivery and performance if this is acceptable to the customer.

#### **V Passing of risk – Handling of packaging**

1. In as far as no deviating provisions have been defined between the parties in writing or such provisions are shown in Erbslöh's actual price list, the goods shall be picked up by the customer at Erbslöh's premises on his own costs. The risk of accidental perishing, loss or destruction and of incidental deterioration of the object of delivery passes to the customer in the moment of the handing over of the goods (even in case of deliveries which have been insured against transport damage by Erbslöh).
2. The above provision concerning the passing of risks shall also apply in the case when Erbslöh is organizing the transport for the customer and is paying or laying out for transport costs and insurance. In this case the passing of risk to the customer shall be at the moment of handing over the goods to the forwarding agent.

Lended packaging and containers shall be returned to Erbslöh within 60 days from reception in empty condition. The customer shall pay indemnities to Erbslöh for lost or damaged packaging or containers. Lended packaging and containers may not be used for other purposes or for storage of other products. They are exclusively determined for the transport of goods delivered by Erbslöh. Labels may not be removed. Erbslöh will not take one-

way packaging back. The customer must dispose of this packaging in the authorized manner. In particular it must be ensured that emptied containers must not be employed for the storage of other materials. The disposal costs have been calculated into our prices by means of a corresponding compensation (Section III. Paragraph 2., Regulation 2). If another deviating provision has been concluded, Erbslöh shall inform the customer of a third party who will accept the packaging in accordance with the statutory legislation pertaining to packaging disposal in return for reasonable remuneration.

#### **VI Customer obligations – Reservation of title**

1. Erbslöh shall retain title to the delivered products until the entire payment of the purchase price and all pending additional, current or future demands resulting from business relations with the customer has been settled. The settlement of the purchase price in an outstanding invoice and the acceptance of the balance shall not affect the reservation of title.
2. The customer shall be obliged to treat the purchased goods carefully, in particular he shall be obliged to insure the goods at purchase price against loss and damage and destruction, e. g. against damage caused by fire, water and theft at his own costs. The customer shall cede his claims resulting from the insurance policies to Erbslöh at once. Erbslöh shall accept the assignment of the claims herewith.
3. The customer may neither pledge nor give as a security the goods for which Erbslöh has the reservation of title. However, he shall be entitled to sell the delivered goods within the scope of a correct business transaction in accordance with the following terms. The previously mentioned justification shall not hold in as far as the customer transfers or pledges claims against his contractual partner, resulting from the resale of the goods, to a third party or has concluded an effective prohibition of assignment in advance.
4. The customer shall immediately assign to Erbslöh all – including future and contingent – accounts receivable to be acquired from a resale of the goods delivered by Erbslöh for the securing of the fulfillment of claims dealt with in Section VI No. 1 together with all ancillary rights at a sum of 110% gross of the value of the delivered goods which will take precedence over the residual sum of his accounts receivable. Erbslöh shall accept the assignment herewith.
5. As long as and as far as the customer settles his payment obligations to Erbslöh, he shall be entitled to the collection of claims assigned to Erbslöh within the scope of the regular management. However, he shall not be entitled to conclude an accounts correct agreement or prohibition of assignment with his customers in relation to these claims or to transfer or pledge these to third parties. If in opposition to regulation 2 an accounts current agreement should exist between the customer and the purchaser of Erbslöh's reservation goods, the previously assigned claim shall also relate to the accepted balance as well as to the existing balance in the case of insolvency of the purchaser.
6. On demand by Erbslöh, the customer shall be required to establish the accounts receivable which he has assigned to Erbslöh separately and to notify his debtors of the assignment with the request to pay all outstanding invoices to Erbslöh up to the value of the claims to the customer. Erbslöh shall be entitled to notify the debtors of this arrangement at any time and to collect the claims, if necessary. However, Erbslöh will only make use of this authorization if the customer fails to meet his financial obligations or is in

default, or when an insolvency process has been initiated against the customer, or the customer ceases to pay the invoices. If one of the aforementioned cases should arise, Erbslöh can demand that the customer notifies Erbslöh of the assigned claims and the debtors thereof in detail and furnishes all relevant information pertaining to the collection of the accounts receivable and shall hand over the respective documents.

7. In case of seizures or any other interference of third parties, the customer shall immediately (without undue delay) inform Erbslöh in writing in order to enable Erbslöh to react in an appropriate manner and, if necessary, to bring an action according to § 771 Code of Civil Procedure.
8. Erbslöh shall be obliged to release all securities furnished by the customer, if he required, in the event when realizable value of the securities should exceed Erbslöh's account receivables from the customer by more than twenty percent (20%).
9. In the case of customer behavior which is contrary to the terms of the agreement, in particular in case of default of payment exceeding ten percent (10%) of the balance due for a not insignificant period of time, Erbslöh – irrespective of further outstanding or pending (compensation) claims – shall be entitled to withdraw from the agreement and demand return of the goods delivered. Erbslöh shall be authorized to reprocess the returned goods in the required manner. The profits resulting from the reprocessing of the goods must be credited to the outstanding accounts payable to Erbslöh by the customer – minus the appropriate reprocessing expenses.

#### **VII Duties on receiving of incoming goods – Rights of customer in case of non-conformity**

1. The customer is obliged to subject the delivered goods to the customary receiving control on receiving. He must apply the care of a regular businessman in the course of such inspections.
2. Obvious defects, delivery of the wrong goods, and deviation in quantity should be reported to Erbslöh by the customer immediately (without undue delay), or must be reported in writing within seven (7) days, at the latest from the receiving of the goods.

Concealed defects must be reported to Erbslöh in writing within a period of eight (8) days following the discovery of the non-conformity. Notice of concealed defects of quality or quantity shall be excluded and shall be deemed belated after three (3) months beginning with the passing of the risk to the customer according to Section V No. 1, as far as the concealed defects were reasonably recognizable.

In case of a belated or not appropriate notice of defect according to Section VII, the customer shall lose all rights to indemnification, except if the defect was fraudulently concealed by Erbslöh.

3. In the case of non-conformity in goods supplied by Erbslöh, Erbslöh shall only be obliged to rework the goods or deliver of goods free from defects (subsequent fulfillment of contractual obligations). If Erbslöh is not prepared to carry out reworking or is not in a position to carry out these measures, in particular due to the fact that the period required for these measures could be prolonged for reasons for which Erbslöh is responsible or if the reworking or fulfillment of the obligations should not succeed for other reasons, the customer shall be entitled to withdraw from the contract or to demand a reduction of the purchase price.

A reworking measure shall be deemed to have failed following the third unsuccessful attempt, if no other measures have been determined due to the nature of the measures. If the customer has incurred damage or suffered from futile expenditures resulting from non-conformity in goods delivered by Erbslöh, the liability of Erbslöh in this instance is defined in Section VII No. 1, Section VIII No. 1 to 6 and Section IX.

#### **VIII Rights and obligations of Erbslöh**

1. A liability on the part of Erbslöh for damages or futile expenditures – irrespective of the legal basis – shall only arise in the case where the damage or the futile expenditure
  - a) have been caused by Erbslöh or by one of their authorized personnel or subcontractors by means of culpable violation of a significant contractual obligation or
  - b) are due to a grossly negligent or intentional violation of obligations on the part of Erbslöh or one of their subcontractors.
2. In compliance with Section VIII No. 1 Letter a) and b) Erbslöh shall not be liable for damage or futile expenditures, which have been caused by consulting measures or information provided which were not settled separately, but solely in case of intentional or grossly negligent breach of obligations, in as far as the breach of duties has not led to material defect according to § 434 BGB of the goods delivered by Erbslöh.
3. If Erbslöh should be liable for the violation of a fundamental contractual duty in compliance with Section VIII No. 1 letter a), without evidence of gross negligence or intent, the liability to compensation shall be limited to the foreseeable and typically arising damage. In this case Erbslöh shall not be held liable for loss of profit to the customer and also not for unforeseeable consequential damages. The previously mentioned limitations in accordance with regulations 1 and 2 are equally applicable for damages resulting from gross negligence or intent on the part of Erbslöh personnel or authorized persons.
4. Erbslöh shall not be liable for consequential loss of the customer, which is due to the customer due to assertion of a claim to contract penalties of a third party.
5. If Erbslöh shall be liable for the infringement of a fundamental contractual obligation in compliance with Section VIII No. 1 letter a), without evidence of gross negligence or intent, their liability is limited to the sum of 1,0 Mio. Euro per event of damage. Erbslöh shall be obliged to conclude and maintain an insurance policy to cover claims of at least 2.5 million Euros – maximized in duplicate in the policy year.
6. The liability limitations mentioned in Section VIII No. 1 to 3 shall not apply if Erbslöh's liability is conclusive in compliance with the regulations contained in the Product Liability Law, or when claims have been raised due to loss of life, injury to body or health, or when Erbslöh has furnished a warranty; Erbslöh shall only be liable for such damage which is covered by the warranty.
7. An extended liability to the payment of compensation other than defined in Section VIII No. 1 to 4, is excluded, irrespective of the nature of the valid claims. This especially applies to damage claims resulting from negligence in the course of conclusion of the agreement in compliance with § 311 Section 3

BGB, positive violation of contractual duty in compliance with § 280 BGB or due to claims in tort in compliance with § 823 BGB.

8. In as far as the liability for damages is excluded or limited in compliance with Section VIII No. 1 to 5, this shall also apply in relation to the personal liability for damages of the staff, personnel, colleagues, representatives and subcontractors as well as vicarious agents employed or engaged by Erbslöh.

#### **IX Limitation of claims**

1. Customer claims pertaining to defects in goods delivered by Erbslöh or relating to unauthorized performance on the part of Erbslöh – including claims for compensation and claims to replacement of futile expenditure – shall be limited to a period of two (2) years from the beginning of the statutory limitation period, in as far as no other provisions have been defined in the following Section IX No. 2 and 3.
2. If Erbslöh's customer is an entrepreneur (in the sense of § 14 BGB) and has delivered Erbslöh's products, that are to be considered new products, to a consumer, and this consumer has suffered a loss due to the fact that Erbslöh's products were defective, and Erbslöh's customer has indemnified the consumer, the respective claims of the customer shall be – according to § 437, 478 II BGB – subject to a limitation period of two (2) months as of the moment in which the customer has satisfied the consumers' claims. This shall not apply if the customer failed to plead the statute of limitations to the consumer.
3. If Erbslöh has provided incorrect consulting that is not invoiced separately (1) either without delivering goods in connection with the incorrect consulting or (2) without the incorrect consulting creating a defect of the goods delivered in connection with the incorrect consulting (§ 434 BGB), the respective claims of the customer shall be subject to a limitation period of one year from the beginning of the statutory limitation period. Claims raised by the customer against Erbslöh resulting from the violation of contractual, pre-contractual or statutory obligations pertaining to substances delivered by Erbslöh which do not exhibit non-conformity in compliance with § 434 BGB shall also be subject to a limitation period of one year from the beginning of the statutory limitation period.

In as far as the afore mentioned breach of duties is responsible for non-conformity in products delivered by Erbslöh in compliance with § 434 BGB in connection with consulting or advice, claims dealt with shall be subject to the same statutory period of limitation as contained in Number 1 and 2 above.

4. The provisions covered by sections 1, 2 and 3 shall not apply to the limitation of claims resulting from loss of life, injuries to body and health as well as the limitation of claims in compliance with the legislation pertaining to product liability. Furthermore, they shall not apply to the limitation of claims submitted by Erbslöh's customers made on the basis that non-conformity in substances delivered by Erbslöh has been fraudulently concealed or a contractual obligation has been intentionally or in cases of gross negligence hat. The statutory term of limitation shall apply to limitation in the case of any of these aforementioned cases.

#### **X Assignment and Transfer of Claims**

Contractual obligations of Erbslöh or claims raised against Erbslöh, in particular resulting from non-conformity in products delivered by Erbslöh or from the

breach of contractual duties on the part of the Erbslöh may not be completely or partially transferred or pledged to third parties without the explicit written agreement of Erbslöh; § 354 a of the Handelsgesetzbuch (Code of Commercial Law) shall be untouched by these measures.

#### **XI Place of performance – Place of jurisdiction – Applicable law – Trade stipulations**

1. Place of performance and sole place of jurisdiction for all claims between Erbslöh and business or legal entities of a statutory company or where statutory fund assets are involved is Wiesbaden; in as far as there are no mandatory statutory regulations in contradiction to these measures. However, Erbslöh shall also have the right to initiate legal proceedings against a customer in the District Court at the place of jurisdiction of the customer.
2. Exclusively the legislation of the Federal Republic of Germany shall apply to the legal relations between Erbslöh and the customer, as is customary between German businessmen and which can be effectively agreed upon within the respective supplier countries (see Section I of these terms of sales). The application of regulations pertaining to the Unified international Purchase Laws (CISG – UN Purchase Law) and the German Private Law is explicitly excluded.
3. In as far as trade stipulations in compliance with International Commercial Terms (INCOTERMS) have been concluded, the latest edition of the INCOTERMS shall be valid (currently INCOTERMS® 2010).

#### **XII Final provisions**

1. Should one of the above mentioned provisions be invalid, partially invalid or excluded by a special agreement, this shall hereby not affect the validity of the remaining provisions.
2. Erbslöh will store the data of its customers within the scope of the mutual business relations in accordance with the legislation of the Federal Republic of Germany relating to data protection.