

General Terms of Sales and Delivery
of ERGO-FIT GmbH & Co. KG for Use with Enterprises and Consumers

(last revised October 2014)

1. Validity of Terms and Conditions

- 1.1 These general terms of sales and delivery apply to enterprises and consumers. Within the meaning of these general terms and conditions consumers are natural persons concluding a legal transaction for a purpose which can be attributed neither to their business nor to their self-employed activity.
Enterprises are natural or legal persons or partnerships with legal personality concluding a legal transaction for a purpose which can be attributed to their business or self-employed activity. Buyer within the meaning of these general terms and conditions are both consumers and enterprises.
- 1.2 All deliveries, services and offers of ERGO-FIT are made solely on the basis of the terms and conditions provided below. We hereby object to any transaction confirmations by the buyer that refer to his/her own terms and conditions. Deviations from these terms and conditions shall only be effective where they are expressly confirmed in writing by ERGO-FIT.
- 1.3 With regard to companies these terms and conditions are also valid for all future business relations even if not again separately agreed upon.

2. Contract conclusion, Prices

- 2.1 ERGO-FIT offers are subject to change and non-binding. Declarations of acceptance and orders of the Buyer require confirmation by ERGO-FIT in writing or by telephone to be legally valid. This applies also to additions, amendments and supplementary agreements. Confirmation in writing or by telephone can be replaced by proper delivery of the goods/services as ordered on the part of ERGO-FIT.
- 2.2 The prices of the price list valid at the time of order confirmation shall apply. They are exclusive of the applicable VAT. Unless otherwise agreed, they exclude packaging and freight costs, any other extra expenses and any transport insurances taken out at the request of the customer.
- 2.3 ERGO-FIT reserves the right to deliver products with industry standard technical improvements and/or deviations acceptable for the Buyer.
- 2.4 In the event that the Buyer cancels the order ERGO-FIT can – without prejudice to the possibility to set forth a higher damage – claim for 15% of the order amount, at least however 200 Euro, for any expenses occurred from processing the order as well as for loss of profits. The Buyer reserves the right to proof a minor damage.
- 2.5 ERGO-FIT is entitled to send business documents, such as order confirmations, delivery notes and in particular invoices, also electronically. The Buyer declares his consent to this.

3. Delivery

- 3.1 Unless otherwise agreed upon in writing all dates and periods/deadlines stated by us are non-binding.
- 3.2 The period of delivery starts at the date of the order confirmation. In the event that information is needed from the customer to fulfill the order period of delivery starts at the earliest at the date ERGO-FIT receives this information.
Correct and timely parts delivery on the part of ERGO-FIT suppliers remains reserved. This applies only in the event that non-delivery is not attributable to ERGO-FIT, especially in the event of the conclusion of congruent covering transactions with the supplier.
- 3.3 Delivery and performance delays due to force majeure or other unforeseeable events that are beyond the control of ERGO-FIT and impair the delivery or make it impossible to deliver (including but not limited for example to strikes, legitimate lockouts or official instructions) entitle ERGO-FIT to postpone the delivery or service by the duration of such disruption plus an appropriate start-up period or, in the event delivery or partial delivery is not possible, to cancel the contract in full or in parts.
ERGO-FIT will inform the Buyer as soon as possible about the unavailability of the delivery as well as the probable duration of the delay.

In case that the delay exceeds 60 days the Buyer may cancel not yet performed parts of the contract after an appropriate period of grace. If in case of fault of ERGO-FIT any claims for damage exist beyond that, paragraph 10 shall apply accordingly.

- 3.4 ERGO-FIT is entitled to perform partial services and/or partial deliveries to a reasonable extent.
- 3.5 If the products are delivered on road by ERGO-FIT or on behalf of ERGO-FIT the Buyer shall be responsible to ensure appropriate access and suitable unloading facilities at the Buyer's expense. The Buyer further undertakes to provide on the Buyer's expense a sufficient number of aides and, if necessary and upon our request, other auxiliary means (e.g. crane) to unload the products.
- 3.6 The customer has to notify ERGO-FIT of any resale or other distribution of products giving the name of the buyer, or has to ensure by any other appropriate means that ERGO-FIT can at any time receive information about the whereabouts of the products.

4. Transfer of Perils

- 4.1 If the products are delivered by ERGO-FIT or on behalf of ERGO-FIT perils are transferred to the Buyer upon delivery at the destination.
- 4.2 Under other circumstances perils are transferred to the Buyer as soon as the product has been handed over to the person responsible for the transport or when the product has left the factory or warehouse of ERGO-FIT for shipment.
- 4.3 If the conditions described under 1 and 2 are not met perils are transferred to the Buyer at the point he/she falls into default of acceptance.

5. Payment

- 5.1 Unless otherwise agreed ERGO-FIT invoices are payable immediately without deduction. The Buyer shall be in default after 14 days. Deduction of discount is not possible as long as payments for other outstanding invoices have not been made contrary to the contract.
- 5.2 In the case that payments made by the customer do not cover all existing debts the oldest debt has to be settled first even if otherwise stipulated by the customer. Notwithstanding section 1, if expenses and/or interests have already occurred, any payment that does not cover all existing debts will be credited first against the oldest expenses, then against the oldest interests and at last to the primary debt.
- 5.3 If the Buyer is a consumer ERGO-FIT is entitled to charge interests at the rate of 5 percentage points above the relevant base interest rate. If the Buyer is an enterprise the relevant base interest rate amounts to 8 percentage points above the relevant base interest rate. The right for compensation over and above this is reserved. Moreover, if the customer is in default of payment ERGO-FIT is entitled to declare due any outstanding claims against the Buyer and to execute further deliveries only against cash in advance or against any other equivalent securities at the discretion of ERGO-FIT. The same applies if creditworthiness of the customer is impaired after conclusion of the contract or if ERGO-FIT is informed about insufficient creditworthiness after conclusion of the contract in the case that this impaired creditworthiness jeopardizes the fulfillment of payment obligations to ERGO-FIT.
- 5.4 Drafts are only accepted after express agreement. Drafts and checks shall only be deemed as payment upon their final cashing. Costs and expenses for cashing are at the expense of the Buyer.
- 5.5 ERGO-FIT will charge the Buyer for any expenses caused by late payment (e.g. dunning costs, debt collection charges etc.).
- 5.6 The retention of payments or the setting-off with regard to counterclaims that are disputed by ERGO-FIT and are not finally and conclusively determined by a court of law is excluded.

6. Retention of Title

- 6.1 ERGO-FIT retains title to the delivered goods until all claims against the Buyer from the business relationship, including future claims as well as simultaneous or subsequently concludes contracts, have been fulfilled. This will also apply if any or all of our claims are invoiced in a current account and the balance has been settled and acknowledged.
- 6.2 The Buyer is revocably entitled to further sell the product subject to retention of title in the ordinary course of business. Any other dispositions, in particular pledges or assignments as security, are not permitted.

- 6.3 The Buyer hereby assigns to ERGO-FIT - by way of provisional performance - all claims which accrue to him from the resale to other buyers or third parties. ERGO-FIT accepts this assignment with conclusion of the contract. In the event that the product subject to retention of title is sold together with goods that ERGO-FIT has no property in, the accounts receivable of the buyer against his client are regarded as resigned to us at the value of the delivery price agreed between the buyer and ERGO-FIT. ERGO-FIT revocably entitles the Buyer to collect the accounts receivable for the invoice in its own name.
- 6.4 The processing of products subject to retention of title by the Buyer shall always be deemed to be for ERGO-FIT's account, without any obligation of ERGO-FIT resulting from it. In the case that products subject to retention of title are processed or inseparably combined with other products that are not owned by ERGO-FIT, ERGO-FIT acquires co-ownership of the new item in proportion to the value of the products subject to retention of title compared with the processed or combined products at the time of processing or combination.
- 6.5 The Buyer is obliged to treat the product subject to retention of title with due care and attention. The same applies to all processed or combined products.
- 6.6 If third parties gain access to the product subject to retention of title, especially as part of a compulsory execution, the Buyer shall identify the property of ERGO-FIT and immediately notify ERGO-FIT. Paragraph 6.5 sentence 2 applies accordingly.
- 6.7 In the event of action by the purchaser in breach of the terms of the contract, in particular in the event of payment delays, ERGO-FIT is entitled to demand the product subject to retention of title and to revoke the authorization to sell the goods in the due course of business (paragraph 6.2, sentence 1) and the authorization to collect claims (paragraph 6.3 sentence 3). The return of the product subject to retention of title by ERGO-FIT will entail withdrawal from the contract only if ERGO-Fit expressly declares this in writing. After return of the product subject to retention of title ERGO-FIT is authorized to realize the liabilities of the Buyer after offsetting the proceeds less reasonable utilization costs. Paragraph 6.5 sentence 2 applies accordingly.
- 6.8 Should a bill of exchange liability of the Seller be established in connection with the payment of the purchase price by the Buyer, then the retention of title as well as the underlying accounts receivable from delivery of goods shall not be dissolved prior to payment of the bill of exchange by buyer as the drawee.
- 6.9 ERGO-FIT is obliged to release the securities to which it is entitled upon written demand of the Buyer if its value compared to the accounts receivable to be secured is exceeded by more than 20%. The choice of the securities to be released is ERGO-FIT's.

7. Condition of the goods

- 7.1 The quality and workmanship of the products shall be as specified by agreement with ERGO-FIT in writing. If a written agreement does not exist the specifications of ERGO-FIT apply. Any specifications shall be considered to be functional specification only and shall not be taken as any kind of guarantee of appearance and workmanship or durability.
- 7.2 It is the responsibility of the Buyer to inform all users of the products about all applicable safety instructions and warnings. The same shall apply to all non-binding and free test orders.
- 7.3 The lifetime of the equipment is 6 years.

8. Warranty

- 8.1 ERGO-FIT issues a guarantee of 2 years for its own products from date of delivery for new goods; for second-hand, not older than one year, the warranty is 1 year and for used goods which are older than one year, the warranty is six months after delivery. During the first year ERGO-FIT assumes all spare parts and travel expenses as well as labor costs in Germany, during the second year it assumes only the costs of spare parts. Warranty claims outside Germany relate exclusively to spare parts. Good purchased for resale are subject to the guarantee conditions of their respective manufacturer.
- 8.2 Paragraph 9 and 10 remain unaffected.

9. Defect elimination

- 9.1 ERGO-FIT shall assume liability for any defects of the product in that, at its own discretion, ERGO-FIT will replace the product or rectify the defect. If the buyer is a consumer he has the

choice of alternative performance either by replacement to by rectification. Deviations as described in section 2.3. cannot be objected.

- 9.2 Evident defects can only be claimed immediately upon receipt of goods and have to be confirmed in writing by the driver/freight carrier.
ERGO-FIT has to be informed immediately in writing of any hidden defects observed. If the buyer is an enterprise failure to observe the statutory obligations of immediate examination and notification of defects will lead to exclusion of warranty claims. In case of inadequate storage, handling or processing by the Buyer claims of any defects are excluded unless the Buyer provides, on its own expenses, evidence that the responsibility for the defects lies with ERGO-FIT. The Buyer also bears the full burden of proof for all other eligibility requirements, in particular for the defect itself, for the point in time that the defect was found and for promptly lodging a complaint of the defect.
- 9.3 Claims of the Buyer concerning expenses for the purpose of subsequent performance, in particular carriage, road costs, labor costs and material costs, are excluded, as far as the expenses are increased because the object of the delivery has been forwarded afterwards to another place than the Buyer's establishment unless the transfer would correspond to its designated use.
- 9.4 In case of failure of the subsequent performance the Buyer may demand price reduction or cancellation of the contract. Such right of cancellation only exists however if a partial performance is of no interest to the Buyer or if the defect causing the warranty claim is significant. Paragraph 10 applies for possible claims for damage compensation.
- 9.5 If the buyer is an enterprise warranty claims will lapse within one year after delivery of the goods. If the buyer is a consumer warranty claims for new goods will lapse within two years from delivery of the goods, for used goods within one year.

10. Limitations of liability

- 10.1 Liability of ERGO-FIT in the context of this contract shall be excluded unless the cause of the damage does involve intent or gross negligence and unless the damage leads to fatalities, physical injuries or damage to the health of the Buyer. In the case of violations of essential contractual duties by ERGO-FIT that do not imply intent or gross negligence the duty of compensation shall be limited to the typically arising damage.
- 10.2 Compensation claims of the customer concerning defects will lapse within one year from date of delivery, regardless of the legal reason the claims may be based on, unless a longer limitation period is prescribed by law.
- 10.3 Liability of ERGO-FIT under the Product Liability Act is not affected. Above liability limitations also do not apply in the case of fraudulent intent by ERGO-FIT.
- 10.4 Where ERGO-FIT's liability is excluded or limited in accordance with the above provisions, this shall also apply for the personal liability of our employees, representatives or vicarious agents.

11. Regulations concerning the sale of consumer goods in respect to enterprises

- 11.1 The Buyer has legal rights of recourse only unless the Buyer has not reached with his/her purchaser any agreements that go beyond the statutory claims for defects. The buyer shall be obligated to immediately inform ERGO-FIT of any claims resulting from the sale of consumer goods.
- 11.2 Reimbursement of expenses incurred may be requested only if evidence is supplied for these expenses. Otherwise section 9.3 applies accordingly.
- 11.3 Concerning the claim for damages paragraph 10 applies.

12. Use of software

- 12.1 As far as software is supplied with the product the Buyer has the non-exclusive right to use this software and the corresponding documentation. The software is supplied for use with the sold Product. Use of the software on more than one system is prohibited.
- 12.2 The Buyer may copy, revise, translate or convert the software to the source code only to the extent legally permitted (§§ 69 a ff UrhG). The Buyer commits himself not to remove any manufacturer details, including but not limited to references to copyright, or to change such details without prior consent of ERGO-FIT.
- 12.3 All other rights to the software and the documentation including copies thereof shall remain with ERGO-FIT or with the software supplier. The allocation of sublicenses shall be prohibited.

13. Data protection

- 13.1 For the purpose of data processing personal data of the Buyer has to be stored. This is for own purposes only and only to the extent that any provisions of the German Federal Data Protection Act are not violated.

14. Place of performance, jurisdiction, choice of law, contract language, other

- 14.1 Place of performance for all rights and obligations is the place of business of ERGO-FIT.
- 14.2 If the buyer is an enterprise sole place of jurisdiction for all disputes resulting from the contractual relationship is the competent court at the place of business of ERGO-FIT in Pirmasens, Germany.
- 14.3 Applicable law is the law of the Federal Republic of Germany to the exclusion of the UN Convention on Contracts for the International Sales of Goods.
- 14.4 Sole binding contract language is German. This applies also if contracts are moreover written in another contract language.
- 14.5 In the event that individual provisions of the contract are or become partly or as a whole ineffective this will not affect the effectiveness of the remaining terms. The wholly or partially invalid provision shall be replaced by a provision whose economic purpose comes as close as possible to that of the invalid provision. In the case a provision of these General Terms of Sales and Delivery is invalid the statutory provisions shall apply.