



Erdwisch Zerkleinerungs-Systeme GmbH  
Gewerbestraße 6 | D - 86859 Igling



Update: 2021

## General Terms and Conditions of Business

### § 1 Validity

- (1) The General Terms and Conditions of Business of Erdwisch Zerkleinerungs-Systeme GmbH (here below referred to as the supplier) have sole validity; opposing conditions, or conditions of the purchaser which are at variance with those of the supplier will not be recognized unless specifically agreed to by the supplier. These conditions of business also remain valid if the supplier, with the knowledge of conditions of the purchaser which are opposing or at variance to those of the supplier, unconditionally supplies the purchaser.
- (2) All agreements between the supplier and the purchaser arrived at for the purpose of completing this contract are noted in this contract in writing.
- (3) These terms and conditions of business apply solely in respect of businesses according to. § 310 I BGB.

### § 2 Offer- Offer Documents

- (1) The offer of the supplier is made without restrictions. By placing an order, the purchaser explicitly declares the wish to purchase the ordered goods. The supplier has the right to accept the contract offer contained in the order within 2 weeks, either in writing or by delivering the ordered goods.
- (2) All pictures, drawings, calculations and other documents remain the proprietary and intellectual property of the supplier. This applies also to written materials which are marked as „confidential“. They may not be passed by the purchaser to a third party without the specific agreement of the supplier.

### § 3 Price and conditions of payment

- (1) The prices quoted are to be understood as being net and subject to VAT at the level ruling at time of delivery. In the case of changes in price of materials, wage costs, freight or other cost factors, the supplier reserves the right to a price adjustment, so long as a period of at least four months exists between the contract date and the planned delivery date. An agreed fixed price cannot be amended.
- (2) If not otherwise agreed, the prices are ex-works and excluding packing, transport, postage, insurance. Installation and packaging costs are not included. Packaging will be charged at the level of the cost to the supplier and is not returnable. The legal disposal of the packaging is the responsibility of the purchaser.

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- (3) The preparation of production, installation and other documents required for the project must be paid for separately in the case that a delivery contract does not arise, or the costs of preparing them are disproportionately high compared to the delivery costs.
- (4) The purchaser hereby agrees to pay the contracted sum in cash or by bank transfer to the account of the supplier, within 10 days of receipt of the invoice. Invoices for repair and for delivery of replacement parts are to be met immediately and without rebate.
- (5) Default is deemed to have occurred in the event of payment not being made by the due date, even without further warning from the supplier. In this case the supplier is entitled to demand default interest to the amount of 8% above the current base rate p.a. without loss of other legal recourse, without having to submit a warning. Should a higher level of damage resulting from the payment delay be demonstrable, the supplier is entitled to enforce reparation. The right of the purchaser to present evidence of a lesser damage remains intact.
- (6) If, after closing the contract, it becomes evident that the financial situation of the purchaser has significantly deteriorated, the supplier can stop further processing of the contract until such time as the purchaser is capable of entirely fulfilling his performance or can produce a bank guarantee or similar security in a form acceptable to the supplier. The same applies if the purchaser is repeatedly and/or considerably in default with his payments.
- (7) If settlement of a cheque or bill of exchange is protested, the claims of the supplier arising from the entire business agreement become due for immediate settlement, irrespective of the agreed settlement dates, so long as no opposing argument of the purchaser exists. Further, the supplier has the right to present all current bills of exchange, whereby all costs which arise are to be met in full by the purchaser. Bills of exchange will be accepted by previous agreement and for the purpose of payment. All additional costs arising are to be met in full by the purchaser and must be settled immediately in cash. The supplier accepts no responsibility for timely presentation and protest.
- (8) Rights of set-off are only accredited to the purchaser in the event that the right of his opposing arguments have been legally proved, are uncontested or have been recognized by the supplier and are based on the same form of contract.
- (9) Claims from the supplier for recompense lapse after five years.

#### § 4 Delivery

- (1) Delivery commencement, as defined by the supplier, presupposes that all technical matters, timely arrival of documents which are to be obtained by the purchaser, such as official permits, and the payment of an agreed initial sum, have all been resolved.

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- (2) Part delivery by the supplier is permitted, as long as they are reasonable for the purchaser. They represent individual transactions and can be separately accounted.
- (3) Acts of God (e.g., Pandemic), strikes, extreme weather conditions, delays in inbound supply and other such events which lead to delivery delays, so long as the supplier is not responsible for these events, effectively extend the agreed due delivery date to the extent of the delay. Should the aforementioned causes make all or part of the delivery impossible, the supplier has the right to fully or partially withdraw from the contract. The purchaser will be informed immediately of the extent of such a delay according to clause 1 or in the event of a withdrawal, clause 2. In the event of a withdrawal from the contract the performance rendered by the customer will be recompensed without delay. A right to damages by the purchaser does not arise in this case.
- (4) The due delivery schedule is deemed to have been met, when the delivery objects have left the suppliers premises, or their readiness for transport has been reported by the agreed delivery date.
- (5) In the event of a delivery delay, the purchaser is required to set a reasonable extended delivery date before he has the right to withdraw from the contract.
- (6) Unless otherwise specified by the purchaser, packing and form of delivery will be decided by the supplier, who undertakes to provide the most business efficient solution. In this case the purchaser has no entitlement to claim.
- (7) At the request and cost of the purchaser the supplier will insure the delivery against the risks defined by the purchaser.

#### **§ 5 Passage of Risk - Acceptance delays**

- (1) The risk passes to the purchaser at the moment and in the degree that the product or part thereof leave the premises of the supplier or when the purchaser has been informed that the goods are prepared for dispatch. This also applies to deliveries undertaken by employees of the supplier, for deliveries free of transport and packing and in the cases when assembly, installation or other services are provided by the supplier.
- (2) In as much as a part of the product cannot be delivered, as a result of a delay on the part of the purchaser and after having been informed by the supplier that the goods are ready for dispatch, the supplier completes his performance by storing the goods. In this case the purchaser is committed to meet all arising costs incurred by the supplier after receiving the invoice from the supplier. The supplier commits to informing the purchaser in writing immediately following the removal to store of the goods. Legal claims for compensation by the supplier are not affected by this clause. In this case, the risk associated with a chance destruction or decay of the goods passes to the purchaser from the point in time that he is in arrears with accepting delivery or making due payment.

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## § 6 Liability for Defects

(1) For material and legal defect relating to a delivery, the supplier is only responsible, with exclusion of other claims - subject to paragraphs 6.8 and 7 - when the purchaser has informed the supplier in writing of obvious defects or such that could only be discovered through closer examination, within 10 days of delivery, and all other defects without delay after their discovery and the purchaser has complied with all instructions of the supplier relating to putting into operation, usage and maintenance of the delivered products and complied with the specified service intervals. The rights according to §377 of HGB (Trading Law Book) remain unaffected for traders.

(2) The liability of the supplier in particular does not cover the normal wear and tear incurred by components, which as a result of the materials required to be used in their construction or as a result of their intended use are subject to natural wear and tear or consumption, nor damage resulting from inappropriate storage, treatment or use, incorrect assembly or inaugural use, unsuitable accessories, unsatisfactory building work or foundations, unsuitable construction base, the use of unsuitable process materials, electrochemical or electronic influences. The liability of the supplier applies as described in §6 but excluding all other liability commitments, regardless of whether they are verbal, written, expressed, interred or legally established.

(3) The choice, whether a guarantee is to be satisfied by repair or replacement is a matter for the supplier. The purchaser must allow the supplier the time and opportunity considered necessary by the supplier to carry out the necessary repairs or replacement deliveries; otherwise, the supplier is released from all responsibility for anything which may arise as a result. Only in urgent situations (threat to works safety or to avoid damage of a much greater degree), in which case the supplier must be informed immediately, is the purchaser allowed to carry out the repairs himself or employ a third party to this end and to claim compensation from the supplier for the resulting costs. The supplier in no wise is liable for improper repairs carried out by the purchaser or third party.

(4) The purchaser is liable for the transport costs and insurance (to the extent of the complete product value) for returns to the supplier. The costs related to the repairs or replacements in executing the liability are the responsibility of the supplier -so long as it is established that the claim for repair was valid - the costs of replacement parts including transport „ex works“. Extra costs associated with the repair, arising from bringing the materials to be delivered to locations abroad, or their installation there, e.g. extra transport or travel costs are at the purchaser's expense. Claims for compensation for subsequent loss, e.g., lost profit, production delays or loss of production are excluded.

(5) Parts replaced in association with fulfilling the liabilities become the property of the supplier.

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Hausanschrift:  
Gewerbestraße 6  
D-86859 Igling  
USt-IdNr. DE 128 667 093

Geschäftsführung:  
Harald Erdwisch, Florian Böhm-Feigl  
Amtsgericht Augsburg HRB 3329  
Gerichtsstand Landsberg am Lech

Telefon: (+49) 08191/9652-0  
Fax: (+49) 08191 / 96 52-16  
Internet: [www.erdwisch.com](http://www.erdwisch.com)  
E-Mail: [infoline@erdwisch.de](mailto:infoline@erdwisch.de)

HypoVereinsbank  
(BLZ 720 200 70) 5 800 510  
IBAN: DE60 7202 0070 0005 8005 10  
SWIFT-Code (BIC): HYVE DEMM 408

VR Bank Starnberg-Herrsching-Landsberg eG  
(BLZ 700 932 00) 8 687 153  
IBAN: DE66 7009 3200 0008 6871 53  
SWIFT-Code (BIC): GENO DEF1 STH



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Systeme GmbH

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(6) Within the framework of the legal regulations, the purchaser has the right to withdraw from the contract when the supplier - taking into account the legal exceptions - fails to successfully meet a reasonably set deadline for repair or replacement of the defective products.

(7) In the case of alterations to the products, undertaken without the prior consent of the supplier, the supplier has no liability for any ensuing disadvantageous results. The same applies if the purchaser or a third-party repairs or alters the delivered objects against the instructions of the supplier or in an improper manner.

(8) All claims of the purchaser - regardless of the legal grounds for them - lapse in 12 months from the time of passage of risk, and not later than 15 months after the informing of the availability of the goods for delivery or dispatch. This time period commences for repaired or replacement parts at the time of their delivery.

## **§ 7 Liability**

(1) If the delivered materials cannot be used in the manner intended as set out in the contract due to the fault of the supplier and as a result of non-provision or incorrect execution of recommendations and advice subsequent to the sealing of the contract or by way of breaches of other contractual obligations - in particular misleading instructions relating to installation, use and maintenance of the delivered objects - then the rules set out in §6 as also the following paragraph (2). apply and exclude every other claim of the purchaser. Damages, which may arise when and so far as the purchaser has not adhered to the instructions and warnings of the supplier, are not the responsibility of the supplier. The purchaser hereby declares himself to agree that he will not burden the supplier with any possible resulting claims, cases of liability and damages claims.

(2) For damages which arise other than to the delivered objects and which are not covered by liability commitment of the supplier under §6, the supplier is only liable - regardless of the legal grounds - only in the event of:

- i. intent;
- ii. gross carelessness of the owners/ the organization or other leading employees of the supplier;
- iii. culpable injury to life body and health;
- iv. problems deliberately kept secret or which it was guaranteed did not exist,
- v. Problems with the delivered objects where the law relating to product liability, liability is enforced in the case of privately used objects for personal or material damage. In the event of culpable infringement of significant contract duties arising from gross carelessness of other than leading employees, the supplier is also liable,

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Geschäftsführung:  
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Amtsgericht Augsburg HRB 3329  
Gerichtsstand Landsberg am Lech

Telefon: (+49) 08191/9652-0  
Fax: (+49) 08191 / 96 52-16  
Internet: [www.erdwisch.com](http://www.erdwisch.com)  
E-Mail: [infoline@erdwisch.de](mailto:infoline@erdwisch.de)

HypoVereinsbank  
(BLZ 720 200 70) 5 800 510  
IBAN: DE60 7202 0070 0005 8005 10  
SWIFT-Code (BIC): HYVE DEMM 408

VR Bank Starnberg-Herrsching-Landsberg eG  
(BLZ 700 932 00) 8 687 153  
IBAN: DE66 7009 3200 0008 6871 53  
SWIFT-Code (BIC): GENO DEFI 5TH



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and by carelessness, in the latter case limited to the contract typical, common-sense predictable damage.

(3) Other claims are excluded.

### § 8 Ownership provisions

(1) The ownership of the product remains with the supplier until all demands arising from the current business relationship have been met in full.

(2) The purchaser is bound to handle the product with due care. In particular he is bound to insure the product against damage through fire water and theft to the extent of replacement with new. Service and inspection work, in as much as it is required, must be carried out promptly at his own cost, by the supplier.

(3) In the event of conduct contrary to the terms of the contract by the purchaser, in particular delayed payment or the breaching of duties according to point 2 above, the supplier has the right to withdraw from the contract and demand return of the goods.

(4) The purchaser is entitled to dispose of the products by means of normal business dealings. Hereby he assigns to the supplier all demands, to the sum total of the invoices, which arise from the disposal to the third party. This assignment is hereby accepted. After the assignment the purchaser is empowered to enforce these demands. The supplier reserves the right itself to enforce these demands as soon as the purchaser fails to meet his financial commitments to the supplier and goes in arrears. In this case, the purchaser is committed to informing the third party of the assignment.

(5) Eventual adaptations and works carried out by the purchaser occur always in the name and on behalf of the supplier. If work is carried out using materials not the property of the supplier, the supplier is appointed joint ownership of the new object on the basis of the value of goods delivered by the supplier in relationship to the value of the other processed objects.

(6) If the existing securities exceed the demands of the supplier by more than 10%, the supplier is bound, at the request of the purchaser, or an affected third party guarantor, to release securities of the supplier's choice.

### § 9 Final Clauses

(1) The laws of the Federal Republic of Germany apply except for the UN Trading Laws (CISG).

(2) Unless otherwise stated in the contract, the place of fulfilment is the registered office of the supplier.

(3) If the purchaser is a trader, legal representative of the public law or a public law special property, then the place of jurisdiction is, in all events, the registered office of the supplier for any

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Harald Erdwisch, Florian Böhm-Feigl  
Amtsgericht Augsburg HRB 3329  
Gerichtsstand Landsberg am Lech

Telefon: (+49) 08191/9652-0  
Fax: (+49) 08191 / 96 52-16  
Internet: [www.erdwisch.com](http://www.erdwisch.com)  
E-Mail: [infoline@erdwisch.de](mailto:infoline@erdwisch.de)

HypoVereinsbank  
(BLZ 720 200 70) 5 800 510  
IBAN: DE60 7202 0070 0005 8005 10  
SWIFT-Code (BIC): HYVE DEMM 408

VR Bank Starnberg-Herrsching-Landsberg eG  
(BLZ 700 932 00) 8 687 153  
IBAN: DE66 7009 3200 0008 6871 53  
SWIFT-Code (BIC): GENO DEFI 5TH



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disagreement arising out of this contract. The courts responsible for the registered office of the supplier are also responsible, when a part of the contract is not the responsibility of any particular court in Germany or when a party to the contract, subsequent to making the contract, moves residence or normal place of stay outside of the Federal Republic of Germany or if his residence or normal place of stay is unknown at the time of claim. Notwithstanding, the supplier is entitled to charge the purchaser before a court in the place of his residence.

(4) If individual points of the contract with the purchaser, including these General Terms and Conditions of Business, are or become, in whole or in part, invalid, the validity of the rest of the points in the contract are in no way affected. Those points which are in whole or in part invalid will be replaced by rules which as nearly as possible achieve the same business ends as those which are invalid.