

# General Terms of Sale and Delivery of the EREMA Group of Companies\*

dated 1<sup>st</sup> of Oct. 2016, following the General Terms of Delivery of the Austrian Association for the Machine-Building and Steel Construction Industry: The present General Terms of Sale and Delivery shall apply in addition to all sale and delivery contracts for performance provided by legal entities which are member of the EREMA Group of Companies (in the following also referred to as "EREMA"), if no, or no divergent contractual regulation has been agreed upon regarding the same content. Contractual agreements especially made contrary to these terms shall prevail.

## 1. Preamble

- 1.1 These general terms of delivery shall apply as supplementary stipulations to the contractual covenants, also if neither disclosed to the contract partner in paper form nor signed by the Parties. The Buyer is accepting this by signing the purchase contract. These terms are attached to every offer emitted by EREMA and to every contract of sales and delivery. All contract documents with all sales projects are expressly referring to these terms.
- 1.2 The below provisions on the delivery of goods shall also apply mutatis mutandis to performances.
- 1.3 The Terms of Assembly of the Austrian Association for the Machine-Building and Steel Construction Industry shall additionally apply to assembly projects. In the exceptional case of an assembly project or an erection of the plant at sites of the Buyer, it has to be expressly referred to this fact in the contract. In general EREMA is selling plants to be delivered in relevant components, ready for operation. It remains the obligation of the contract partner of EREMA to take care of local safety regulations (for instance regarding hand rails and barriers), which are not valid for the entire territory of the European Union.

## 2. Making of a Contract

- 2.1 A contract shall be deemed to have been made after the contract of sale and delivery, or the so called order confirmation has been signed by both Parties, or if the Seller has received the agreed down payment, and there is no reasonable or legitimate doubt of the Parties' will to conclude the contract in the latest version, as communicated by EREMA to the Buyer. Older declarations do, in case of doubt, not become part of the contract, if they are not part of the final contract document, which is signed by the Parties.
- 2.2 Seller shall confirm in writing any modifications of - and amendments to a contract in order to make these valid. Seller shall be bound by Buyer's conditions of purchase only if Seller has accepted them separately. Terms of purchase, which are handed in later after conclusion of the contract shall not cause any changing of the contract, as long as these terms of purchase are not expressly confirmed and accepted by the management of EREMA. Any acknowledgement of purchase terms by implied intent shall be herewith expressly excluded.
- 2.3 In the event that import and/or export licenses or foreign-currency permits or similar authorizations are required for the performance of a contract, the party responsible for obtaining such documents shall make every reasonable effort in order to obtain the necessary licenses or permits in due time.
- 2.4 The authorized persons legally representing EREMA are listed in the so called "Firmenbuch". In general one managing director can represent EREMA together with a holder of a special statutory authority, a so called "Prokurist", or EREMA can be represented by two managing directors.  
It is possible that for special cases, or in general, other persons will be equipped with commercial power of attorney.

## 3. Drawings and Documents

- 3.1 Technical and general information pointed out in advertisements, for example brochures, leaflets, catalogues and so on, shall only be definitive and can only be a subject of interpretation of the contract, when this information is part of the expression of will, underlying the contract, agreed in written order, acceptance or order confirmation, and when the contract is based on this information. Statements of third parties are insignificant at all. The validity of § 922 (2) ABGB (Austrian Code Civil) shall be limited in so far.
- 3.2 Drawings, design drafts, cost estimates and other technical documents, which may also be part of the cost estimate, as well as samples, catalogues, brochures, pictures and alike shall always remain the intellectual property of Seller. Any use, copying, reproduction, dissemination and transfer to third parties, and any publication and presentation thereof may only be effected with the express approval of the owner.

## 4. Packaging

- 4.1 Unless other arrangements have been made
  - a) prices are understood without packaging;
  - b) the goods are packaged according to normal trade practice in order to avoid, under normal transport conditions, any damage to the goods on the way to their agreed destination. The goods are packaged at Buyer's expense, and the packaging material will only be taken back if so agreed by the Parties.

## 5. Passage of Risk

- 5.1 Unless otherwise agreed, the goods shall be deemed to have been sold "ex works" (EXW) (ready for collection).
- 5.1a If contrary to 5.1 in the individual case was specially agreed, that Seller will deliver to another place of destination and bear the risk of decline, destruction or accidental damage of the delivered goods during transport, this promise is deemed to be limited up to a maximum of the amount of money, actually paid by the insurance company to Seller. The Buyer will grant reasonable respite till the Seller has received payment from the insurer.

- 5.2 Furthermore, the INCOTERMS 2000 shall apply, after 15<sup>th</sup> of April 2012 the INCOTERMS 2010 shall apply, if not contrary to the contract.

## 6. Period of Delivery

- 6.1 In the absence of any other agreement, the period of delivery shall begin at the latest of the following dates:
  - a) the date the contract or order confirmation has been signed by both Parties;
  - b) the date on which Buyer has complied with all technical, commercial and financial preconditions for which Buyer is responsible under the contract;
  - c) the date on which Seller has received a payment on account that is due prior to the delivery of the goods, and/or a payment guarantee has been issued or otherwise provided according to the contract.
- 6.2 Seller shall have the right to make partial or advance deliveries.
- 6.3 If a delivery is delayed on account of a circumstance on Sellers part that constitutes a reason for relief according to Article 14 (force majeure), a reasonable extension of the period of delivery shall be granted.
- 6.4 If Seller has caused a delay in delivery, Buyer may either demand the performance of the contract or withdraw from the contract, granting a reasonable respite, if there are no other express agreements made for delay in delivery.
- 6.5 If the respite according to Article 6.4 is not used, due to Sellers negligence, Buyer may withdraw from the contract by means of a written notice. Moreover, in the event that the delay in delivery is due to a gross negligence on Sellers part, Buyer shall be entitled to a refund of any justified expenses that Buyer has had to incur up to the dissolution of the contract and which cannot be used for any further purpose, also referring to 11a.
- 6.6 If Buyer does not accept the goods supplied under the contract in the contractually agreed place or at the contractually agreed time, and if the delay is not due to any action or omission on Sellers part, Seller may either demand the performance of the contract or withdraw from the contract, granting a respite. When the goods are ready for delivery, but Buyer refrains from taking them over, Seller may store the goods at Buyers cost and risk. Seller shall also be entitled to claim a refund of any justified expenses that Seller had to incur in connection with performing the contract and that are not covered by the payments received.
- 6.7 Any other claims for delay than those listed in Article 6 shall be precluded.

## 7. Acceptance Test

- 7.1 If not expressly agreed in a different way, an acceptance test of the goods will take place before ex works delivery. The Buyer will be expressly invited to join this test. Furthermore, after start up, a performance test will take place at the sites, where the machine shall be in operation. In this connection also the plant -operators will be trained by an EREMA start up technician.

Did a Lessor become Buyer and by that direct contract partner of EREMA, and is the customer Lessee, holder and user of goods, so the Lessee is obliged, following special legal regulations applicable for the leasing business in most European states, to sign an acceptance protocol, in order to let the leasing contract actually take its course, and by that to be present at the acceptance test at sites of EREMA. Would the Lessee unlawfully refuse to sign the acceptance protocol, he became responsible for the actual damage the Seller suffered therefrom.

If the goods are proved to be contrary to the contract during the acceptance test, Seller shall remedy any defect immediately and produce the contractual condition of the delivery item. Buyer may ask to repeat the test only in case of a relevant defect.

Following the acceptance test at sites of EREMA a process technical acceptance protocol, a so called "Protokoll Verfahrenstechnik" will be made. Following the start up and the performance test a so called "Protokoll der Übergabe und Übernahme / Report of Hand over and Acceptance" has to be signed. If it has been demonstrated in the procedure mentioned above, that the goods have been manufactured according to the contract and operate properly, Parties shall confirm this in written. If Buyer or Buyer's authorized representative is not present during the start up, in spite of having been informed thereof in due time by the Seller, only the Seller shall sign the Report of Hand over and Acceptance. In any event the Seller shall provide the Buyer with a copy of the said Report, which correctness the Buyer may not contest, if he or his authorized representatives were unable to sign it because of not being present.

Unless otherwise agreed, Seller shall bear the costs for the acceptance test at EREMA. Buyer shall bear the costs for the start up at sites of operation. Buyer shall, however, bear any costs incurred by Buyer or Buyer's representatives in connection with the acceptance test, such as for example travel expenses, costs for food and lodging or similar expenses.

## 8. Prices

- 8.1 Unless otherwise agreed, all prices shall be ex works of Seller, unpacked, but including the loading.
- 8.2 The prices are generally understood fixed, in EURO, net without turn over tax. Customs duties, taxes, charges and other possible costs are not included in the prices. The start up costs or the costs for rigging and positioning of the plant are only insofar included, as it is

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expressly referred to these performances in the contract / order confirmation, mentioning the time span required. Price adaptations by one Party only shall be generally excluded, except the case an inflation based loss of buying power of money of at least 10% would occur till the purchase price or a part thereof becomes due. The calculation shall be made referring to the so called "Verbraucherpreisindex" published in Austria (or to the officially following index). Calculation base shall be the index figure published for the month of contract conclusion. Is the index figure, published for the month, when the (partial-)payment becomes due, not at least 10% higher than the calculation base, index variations would remain without any effect on agreed prices. The same shall apply for price reductions in an analogue way.

## 9. Payment

- 9.1 The payments shall be made keeping up with the agreed payment terms without deduction, in absence of contrary payment terms 40% of the total contract value become due immediately after placing the order and 60% of the contract value 4 weeks before ex works delivery. Irrespective of the foregoing, if no inner- European delivery is agreed upon and no other reason for exemption from the value-added tax applies, the value added tax mentioned in the invoice shall be paid together with the purchase price.
- 9.2 Buyer shall not have the right to withhold payments due to warranty claims or any other counter-claims, which Seller has not accepted.
- 9.3 If Buyer defaults on one of the agreed payments or any other performance, Seller may either insist on the performance of the contract and
  - a) postpone compliance with Seller's own obligations until Buyer has paid the arrears in payment or provided any other performance,
  - b) use a reasonable extension of the period of delivery,
  - c) call for the payment of the full remaining purchase price,
  - d) charge interest on arrears, as of the due date, in the amount of 7.5% above the respective base rate of the European Central Bank, unless Buyer can claim a reason for relief under Article 14 (see Directive 2000/35/EC of 29 June 2000 on combating late payment in commercial transactions), or announce the withdrawal from the contract, granting reasonable respite.
- 9.4 If Buyer has not made the payment due or provided any other performance within the respite according to 9.3, Seller may withdraw from the contract in part or in total, also if the period of despite was only actually granted. Buyer is in this case obliged to compensate the damage, which Seller actually was suffering by trusting in the validity of the contract, see also 11a.

## 10. Reservation of Title and Ownership

- 10.1 The Seller herewith reserves title and ownership to the sold goods until the Buyer has fully paid the purchase price. Seller is entitled to label its title and ownership on the goods. Buyer shall comply with the required local formal regulations to safeguard the reservation of ownership. In case of an attachment or seizure or any other recourse, Buyer shall be obliged to assert Seller's ownership and to inform the latter without delay.

## 11. Implied Warranty

- 11.1 The Seller is obliged, to supply the Buyer with a delivery and in general with performance, which is suitable for the contractually agreed target. Is Seller in default of its performance, the Buyer has the rights of Implied Warranty following §§922 ff ABGB, especially agreed as described hereafter:
- 11.2 In general EREMA grants Implied Warranty for 12 months from start up of the plant, when the plant is working in one-shift operation, but not longer than 18 months from ex works delivery. If a defect, not depending on its relevance, applies at the time of physical hand over of goods, or, if it does come up within the term of Implied Warranty, which defect in this case has to be at least already indicated at the time of physical hand over of goods, the Buyer has the right, within the term of Implied Warranty, to claim for remedy of this defect. The presumption of §924 ABGB shall be expressly excluded, which means the burden of proof, that the scope of supply had been delivered defective, has to be borne by the Buyer, also if the claim was brought up within the first 6 months after hand over of goods.
- 11.3 Rights of Implied Warranty will lapse, if the plant will be started up before the start up was completed by an EREMA- Technician or another, by EREMA authorized person, as well as, if not contractual input material has been processed. The Buyer has to notify the defect to the Seller in written, in accordance with a smooth remedy process kept in mind, within the legally stated or within the contractually agreed term, which notification has to explain the single defect technically in a way, depending on the particular case, that the service department of the Seller is capable to carry out the remedy work required.

Implied Warranty is referring to the scope of supply itself. Attainable quality of end products (for example granulates) and output to be achieved depend on the input material and the frame- conditions of the recycling process at the sites of User. The quality of samples, as made in a testrun, as well as the promised output refer to the contractually agreed input material only, and can be compulsory promised only for this.

The Seller shall, after having been informed of defects in the mentioned way, if the defects have to be remedied according to the provisions of the present article, at his choice either a) rework the defective goods on site, or b) have the defective goods or the defective parts shipped back for reworking, or c) replace the defective parts, or d) replace the defective goods.

Lessening the purchase price or termination of contract shall be expressly excluded, as long as fulfilling the contract is still possible and reasonable. Otherwise lessening the price shall come first instead of using the conversion right, which goes last.

- 11.4 If Seller asks for the defective goods or parts to be returned for the purpose of reworking, replacement or investigation, Buyer shall bear the costs and the risk of the transport. The transportation of the exchanged or repaired parts to the Buyer shall be at Sellers costs (except customs duties and national administrative expenses) and risk. These parts will be invoiced first. As soon as the service department confirmed the existing of a warranty claim, a credit note will be issued for this invoice and the costs for sending the defective parts to EREMA will be reimbursed.

- 11.5 The defective goods or parts, which are replaced according to the present article, shall be at Sellers' disposal.
- 11.6 Costs for repair work, if a defect was not remedied by the Seller, are only borne by the same, if he had in advance agreed to that in written.
- 11.7 Seller's warranty obligation shall not apply to defects due to a) processing of non contractual input material, b) improper operation or service not in accordance with the regulations as stated in the documents, like the owners manual, or which have been communicated by the EREMA start up- or service personnel, c) inadequate installation on the part of the Buyer or Buyer's representatives, inadequate maintenance, inadequate repairs or modifications undertaken by other persons than Seller or Sellers representative without the written agreement of Seller, or due to defects caused by normal wear and tear. A certain life time for parts, in direct contact with the material to be processed, can not be promised, because the lifetime is predominantly depending on the kind of input material, but a certain quality, for example certain hardness of parts can be promised.
- 11.8 If the Seller produces items on the basis of Buyer's design data, drawings or models, Seller shall not be responsible for the accuracy of the design, but he is owing that the workmanship complies with Buyer's instructions. Should repair work or reworking or modifying old as well as third-party goods be agreed, or when Seller was delivering second-hand goods, implied warranty therefore shall be herewith expressly excluded.

## 11a Damage Compensation

### Limitation of Liability for Damage Compensation Claims:

a) Both Parties mutually agree to exclude responsibility for any damage compensation claims, as far as allowed by law, in cases of slight negligence. The second sentence of §1298 ABGB, shall be expressly excluded. Gross negligence has to be proved by the Party having suffered the damage. All claims for damage compensation fall under the statute of limitations six months after recognizing the damage became possible.

b) The amount which eventually has to be paid by one Party for compensation of damages to the other one, also including consequential damages, is limited to 50 % of the purchase price.

c) EREMA is not liable for loss of profit.

## 12. Product Liability

- 12.1 It shall herewith be expressly agreed, that EREMA is holding an insurance policy for product liability. It is expressly agreed that Seller shall not be liable to Buyer for damage compensation exceeding the amount, which will be paid in each single case by the insurer, for the event of personal injuries or death and/ or for damage to goods which are not part of the scope of supply, unless the circumstances of a specific case reveal, that Seller acted with gross misconduct, and this regulation is not contrary to any imperative or preematory provision of law.

The reversal of the burden of proof according to § 1298 ABGB (Austrian Code Civil) shall be expressly excluded. This means gross negligence of the damaging party has to be proved by the party which was suffering the damage.

- 12.2 The purchased object provides only that level of safety that may be expected on the basis of the registration provisions, the operating instructions, Seller's rules on the handling of the purchased object - especially with regard to any possible inspections - and other instructions given.

## 13. Consequential Damage

- 13.1 If not contrary to any other provision in these present terms, Sellers liability vis-a-vis Buyer shall be precluded for any standstill in production, loss of profit, loss of use, loss of contract or any other economic or indirect consequential damage.

**13a Error:** It shall be expressly precluded to void the contract under the ground of error.

## 14. Reasons for Relief

14. The parties shall be released in part or in total from the timely performance of the contract if they are prevented by events of force majeure. Events of force majeure shall solely be deemed such events Parties are unable to foresee and to avoid and which are not caused in their own sphere. However, strike and industrial dispute shall be considered being events of force majeure. A Party affected by an event of force majeure can only claim the existence of force majeure, if Party informs the other Party without delay, at the latest within 20 working days, by sending by registered mail a statement of the respective government authority or the chamber of commerce of the delivery country, confirming the existence of force majeure. In the event of force majeure, the Parties shall take every effort to remove, or to mitigate respectively, the difficulties and the anticipated damage, as well as to keep the other Party continuously informed thereof; otherwise they shall be liable to pay damages to the other Party. Deadlines or dates that cannot be observed on account of events of force majeure shall be extended by the duration of such events of force majeure, as a maximum, or, if agreed upon, by a period to be determined by mutual consent. If a circumstance of force majeure is hindering performance for more than eight weeks, Buyer and Seller shall seek a solution for handling the technicalities of its effects by means of negotiations. If no solution can be reached by mutual consent, the Party, which had been ready before to fulfill the contract, may withdraw from the same.

## 15. Data Protection

- 15.1 Seller shall be entitled to store internally, communicate and to process data of Buyer, which is relevant for the project and, if necessary for the execution of the order, also to disclose it to the production (therefore also to subsidiaries), and to delete it again.

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- 15.2 Parties herewith promise each other to treat all proprietary or confidential information confidential, which has been disclosed to each other during the business relation, if it is consisting of technical data or business- or trade secrets and if disclosed to authorized recipients of confidential information, say to persons involved in the project. Business relevant content may only be communicated to EREMA by e- mail, fax or by Post. Declarations communicated via social media, e.g. face book, are not deemed delivered to EREMA.

## **16. Jurisdiction Applicable Law, Place of Performance**

- 16.1 Exclusive place of jurisdiction for all disputes arising out of a contract shall be the ordinary Austrian court with relevant material competences for Sellers principal place of business.  
The contract shall be governed by Austrian material law under exclusion of its conflict of law rules.
- 16.2 The place of fulfilment regarding delivery and payment is the Seller's location, even if physical handover of goods takes place at a different location, agreed in the contract.