

## **Delivery and Payment Terms Erba Wärmetechnik GmbH**

(Version 01.09.2024)

### **A) General**

The following delivery and payment terms apply exclusively to the delivery of all our goods, even where contract law is applicable. These General Terms and Conditions are always available on our website [www.erba-waermetechnik.de](http://www.erba-waermetechnik.de). They are considered accepted upon order placement or, in the case of business transactions, upon acceptance of the delivery and are binding for ongoing business relationships with entrepreneurs, even without reference in individual cases. Any differing purchasing conditions of the buyer are only binding for us if expressly confirmed by us in writing. Oral agreements are binding only if confirmed in writing by both parties.

### **B) Offer and Order**

1. Our offers are always non-binding until confirmed in writing.
2. The information, drawings, illustrations, and performance descriptions contained in catalogs, price lists, or offer-related documents are industry-standard approximations unless expressly stated as binding in the order confirmation. We expressly reserve ownership and copyright for all documents provided by us, particularly drawings, calculations, and illustrations attached to the offer. Prior written consent from us is required before passing them on to third parties or using them by third parties.
3. Orders placed with us must be confirmed in writing or accepted through the delivery of goods.
4. Price changes are only permitted if more than 4 months have passed between the contract conclusion and the agreed delivery date. In this case, the price valid on the delivery date applies. If delivery is made within 4 months, the price valid on the day of the contract conclusion applies. In case of delivery periods up to 6 months, tariff increases and/or material price changes of up to 4% are allowed, and for longer delivery periods, increases of up to an additional 4% per half-year are permitted.
5. We reserve the right to withdraw from the contract without compensation within 4 weeks after our written order confirmation under the following conditions: If we ourselves are not supplied despite placing matching orders with reliable suppliers, we are released from our obligation to perform and may withdraw from the contract. We are obligated to inform the buyer immediately about the unavailability of the ordered service and will promptly refund any consideration already provided by the buyer.

### **C) Delivery Time and Shipping**

1. Unless explicitly agreed otherwise, the delivery dates and times specified by us are non-binding. The delivery period starts with the dispatch of our order acceptance, but not before receipt of documents to be provided by the buyer and receipt of any agreed advance payment. Our liability is limited as specified below.
2. In case of delays due to circumstances beyond our control, such as force majeure or delays during shipment by the company we have engaged, the delivery period is extended accordingly.
3. If the buyer is in default of acceptance or violates other cooperation obligations, we are entitled to claim compensation for any damages, including any additional expenses. In such cases, the risk of accidental loss or accidental deterioration of the goods passes to the buyer at the time of default of acceptance.
4. We are liable under the statutory provisions if the underlying contract is a fixed-date transaction as defined by § 323(2)(2) BGB or § 376 HGB. We are also liable under statutory provisions if the buyer is entitled to claim that their interest in fulfilling the contract has ceased due to a delay in delivery for which we are responsible.
5. We are further liable under statutory provisions if the delay in delivery is due to an intentional or grossly negligent breach of contract for which we are responsible, with the fault of our representatives or agents being attributable to us. If the delay in delivery is not due to an intentional breach of contract for which we are responsible, our liability for damages is limited to foreseeable damages typical for this type of contract.
6. We are also liable under statutory provisions if the delay in delivery is due to the negligent breach of a significant contractual obligation, in which case our liability for damages is limited to foreseeable damages typical for this type of contract.
7. For orders placed on a call-off basis, the buyer is obligated to accept the goods no later than three months after the order confirmation unless otherwise expressly agreed in writing. After this period, we are entitled, after prior notice, to deliver the total or remaining stock of ordered goods in our possession. If the agreed acceptance period of three months or another acceptance period is exceeded, we are entitled, without prejudice to our other rights, to charge the storage costs incurred.
8. If the buyer requests expedited shipping, the additional costs shall be borne by the buyer.
9. The cost of any handling fees at the destination shall be borne by the buyer.

### **D) Payment & Factoring**

1. Our prices, unless otherwise specified, are net prices without any deductions for business customers.

2. The statutory VAT is not included in our prices; it will be listed separately in the invoice at the rate in effect on the invoice date. Gross prices are applicable to consumers as stated in the order confirmation.

3. Any discounts must be agreed upon in writing. If a discount is granted to the buyer in the contract, the buyer is entitled to deduct the discount from the entire contract amount if all payment obligations, including any partial payments, are met within the discount period; the decisive factor is the time of credit to our account.

4. If the discount period is exceeded even for a partial payment, the buyer loses the right to claim the discount altogether; in particular, the buyer has no right to claim a proportional discount for timely partial payments.

5. Special packaging requests will be charged at cost. The applicable VAT will be added to the cost.

6. We are entitled to deliver cash on delivery.

7. Our right to claim damages for late payment remains unaffected.

8. All payments are to be made exclusively to VR Factoring GmbH, Hauptstraße 131-137, 65760 Eschborn, to whom we have assigned our current and future claims from our business relationship. Our retained ownership has also been transferred to VR Factoring GmbH.

To fulfill our factoring contract (assignment of claims and transfer of debtor management), we will forward the following data to the financial services institution VR Factoring:

- Names and addresses of our buyers
- Data of our claims against our debtors (particularly gross amount and due date)
- Possibly names and contact details of our debtors' contacts (telephone number, email address) for coordinating debtor accounting

The VR Factoring will forward the company data of the debtors to credit agencies and trade credit insurers, as well as to processors (IT data processing, printing services, etc.). Further details on data processing can be found in the "Data Protection Information" of VR Factoring GmbH, which you can view and download online at [<http://www.vr-factoring.de/datenschutz>] (<http://www.vr-factoring.de/datenschutz>).

For businesses, the buyer's right to offset is excluded unless the counterclaims are undisputed or legally established. The assertion of a right of retention by the buyer, provided that they are a business, is excluded unless it is based on the same contractual relationship, or the counterclaims are undisputed or legally established.

9. If due invoices, including late payment interest, are not fully paid, we are not obliged to make any further deliveries under any contract. If the buyer is in default with a payment or if unfavorable information about their financial situation becomes known, we may demand immediate payment for all unpaid deliveries and advance payment for new deliveries.

10. In cases of warranty, a right of retention on the unpaid purchase price exists insofar as the value of the service is reduced due to the defect.

11. To assert rights from the retention of title, withdrawal from the contract is not required unless the buyer is a consumer.

### **E) Retention of Title**

1. All goods delivered by us remain our property until all invoices and other claims have been fully paid, and in the case of checks and bills of exchange, until they have been cleared.

2. The buyer is entitled to resell the goods subject to retention of title in the ordinary course of business; however, they are not allowed to pledge the goods or transfer ownership for security purposes. Claims arising from the resale or other legal grounds (insurance, unlawful act) concerning the goods subject to retention of title (including all balance claims from current accounts) are hereby assigned by the buyer to us for security purposes. We hereby accept this assignment. Despite the assignment and our right of collection, the buyer remains entitled to collect the claim as long as they meet their obligations to us and are not insolvent. Upon our request, the buyer must provide the necessary information for collection of the assigned claims and inform the debtors of the assignment.

3. Any processing or alteration of the goods subject to retention of title by the buyer is carried out for us without any obligations arising for us as a result. If the goods subject to retention of title are processed, combined, or mixed with other goods that do not belong to us, we acquire co-ownership of the new product in proportion to the value of the goods subject to retention of title to the other processed, combined, or mixed goods at the time of processing, combination, or mixing. If the buyer acquires sole ownership of the new product, the contractual parties agree that the buyer grants us co-ownership of the new product in proportion to the value of the processed, combined, or mixed goods subject to retention of title. The buyer will store the co-owned product free of charge for us.

4. We are obliged to release the securities we are entitled to, according to the above provisions, at our discretion, upon the buyer's request, insofar as the value of the securities exceeds the claims to be secured by more than 10%.

5. The buyer must immediately notify us of any third-party enforcement measures on the goods subject to retention of title or the assigned claims by providing the necessary documents for intervention.

6. Samples, drawings, and tools remain our property even if the buyer covers the costs entirely or partially.

7. If goods are returned by the buyer, we will credit them at the value they are in at the time of return. The costs for the return shipment shall also be borne by the buyer.

### **F) Transfer of Risk – Packaging Costs – Intellectual Property Rights**

1. Unless otherwise stated in the order confirmation, delivery “ex works” is agreed for businesses.
2. Transport and all other packaging in accordance with the Packaging Ordinance will not be taken back, except for pallets. The buyer is obligated to dispose of the packaging at their own expense.
3. When manufacturing according to the buyer's specifications, the buyer is fully responsible for ensuring that no intellectual property rights or other third-party rights are violated. In the event of any infringement of third-party rights, the buyer will indemnify us against any claims for damages and costs of any kind.

### **G) Warranty – Damages**

1. The buyer's warranty rights, if they are a business, require that they have properly fulfilled their inspection and notification obligations under § 377 HGB. Further processing or installation of the delivered goods constitutes a waiver of the defect notification, provided the defect was identifiable. If the goods are installed in a system, the buyer is obligated to grant us access to the construction documents as far as they are related to our delivery item. Refusal to grant access excludes the buyer's warranty claims.
2. In the case of returns, a warranty inspection of a compressor or the entire refrigeration system is only possible if the pipelines are sealed (soldered) so that oil cannot leak out. Furthermore, the entire electrical system must be connected, and all other potential attachment parts must be present. The type plate must be originally attached to the compressor.
3. For businesses, the limitation period for warranty claims is 12 months from handover. The limitation period in the case of recourse claims under §§ 478, 479 BGB remains unaffected.
4. If a defect in the purchased item exists, we are entitled, at our discretion, to supplementary performance in the form of defect rectification or delivery of a new defect-free item.
5. If the supplementary performance fails, the buyer is entitled, at their discretion, to demand a reduction in price or rescission of the contract. The right to rescind the contract is excluded if our services qualify as construction services or other work services that do not fall under § 651 BGB.
6. We are liable under statutory provisions if the buyer asserts claims for damages based on intent or gross negligence, including intent or gross negligence of our representatives or agents. If we are not accused of an intentional breach of contract, our liability for damages is limited to foreseeable damages typical of the contract.
7. We are liable under statutory provisions if we negligently breach a significant contractual obligation. In this case, our liability for damages is limited to foreseeable damages typical of the contract.
8. If the buyer has a claim for damages in place of performance, our liability for damages is also limited to foreseeable damages typical of the contract as specified in paragraph (5).

9. Liability for culpable injury to life, body, or health remains unaffected; this also applies to mandatory liability under the Product Liability Act.

10. Warranty claims for significant third-party products must first be asserted based on assigned rights against our suppliers. Only after such claims have been unsuccessfully pursued do we assume liability for any unenforceable claims and incurred legal costs.

11. The above provisions apply to pre-contractual breaches of duty accordingly.

12. Our liability also ceases in cases of minor defects that do not reduce the value or suitability of the item for contractually agreed use, and for delivery parts that, due to their nature or the type of use, are subject to premature wear. Minor defects also include insignificant deviations from specifications.

13. Liability is also excluded for defects caused by incorrect or improper or unqualified assembly or commissioning by the customer or third parties, as well as defects caused by unsuitable or improper use, incorrect operation, natural wear and tear, unsuitable operating materials, etc. Changes in execution may limit or completely void the validity of quality and test marks.

Note: We strongly recommend that installation, commissioning, or repair always be carried out by a certified specialist, a qualified person, or a certified specialist company.

#### **H) Total Liability**

1. Further liability for damages beyond what is specified in section G is excluded for businesses, regardless of the legal nature of the asserted claim. This applies particularly to claims for damages due to fault at the conclusion of the contract, other breaches of duty, or tortious claims for property damage according to § 823 BGB.

2. The limitation in paragraph (1) also applies if the buyer demands compensation for futile expenses instead of a claim for damages in place of performance.

3. Insofar as our liability for damages is excluded or limited, this also applies concerning the personal liability of our employees, workers, staff, representatives, and agents.

#### **I) Repairs**

For repaired and replaced parts, we provide a warranty in accordance with our above provisions.

#### **J) Right of Withdrawal**

Consumers have a fourteen-day right of withdrawal.

**K) Final Provisions**

1. The place of performance for all obligations arising from the contract is our place of business unless otherwise stated in the order confirmation.
2. The court of jurisdiction for both parties is D-Böblingen, provided the customer is a business.
3. The law of the Federal Republic of Germany applies, with the exclusion of the UN Sales Law.