



# ER-WE-PA GMBH TERMS AND CONDITIONS

## Status March 2023

**1. GENERAL.** ER-WE-PA GmbH is hereinafter referred to as "Seller". Items and related services ordered from Seller in whatever form or quantity are referred to as "Equipment". The expression "Buyer" means the person, firm, company or other entity to which Seller undertakes to supply the Equipment herein. All sales by Seller are subject to all of the following Terms and Conditions unless otherwise agreed in writing by an authorized representative of Seller. Any offer, acceptance, order, confirmation or other document from Buyer that contains terms and conditions in addition to or different than those set forth herein are objected to and shall not be binding upon Seller unless acceptance thereof is made in writing by an authorized representative of Seller. Failure of Seller to object to provisions contained in any purchase order or other communication from Buyer shall not be construed as a waiver of these conditions nor an acceptance of any such provisions. Seller reserves the right to correct clerical or stenographic errors at any time. The agreement between Buyer and Seller exclusively includes these Terms and Conditions and the commercial terms and technical specifications attached hereto in Seller's quotation ("Agreement").

**2. DELAYS.** Unless otherwise specifically agreed by both parties in writing, deliveries shall be FCA Seller's facility or Seller's supplier's facility (Incoterms 2020). While Seller will use commercially reasonable efforts to ship and/or deliver Equipment or complete services by the dates specified, quoted or acknowledged by Seller, all such dates are approximate and not guaranteed. If Buyer is, however, unable to receive delivery of the Equipment or delays its pre-delivery testing, delivery or installation for more than 30 days after the date specified, quoted or acknowledged by Seller, Seller will upon written notice to Buyer put the Equipment into storage at Buyer's risk and expense and the Equipment will thereupon be deemed delivered and any remaining balance of the purchase price will be immediately due and payable. Seller may present a trucking bill of lading/CMR waybill for payment under any Buyer issued letter of credit if Equipment is placed into storage.

In the event of delays in the issuance of a Buyer's letter of credit, delays in Buyer's supply of any technical details required for engineering of Equipment, or any delays caused by either party in any pre or post-delivery activities, including acceptance testing, the shipment and/or delivery date and the letter of credit validity shall be extended. Seller shall advise Buyer of the revised date(s).

Neither party will be liable for delayed delivery, non-delivery, or any other failure to perform hereunder that becomes impractical as result of a failure of a presupposed condition or an extraordinary event or occurrence beyond its control and without its fault or negligence ("Force Majeure Event"). A Force Majeure Event includes but shall not be limited to epidemics, pandemics, mobilizations, war, revolution, terrorism, piracy, serious breakdowns in manufacturing, accidents, labor conflicts, natural catastrophes, interruption of data transfer, lack of power, unavailability of or delay in transportation, delays in or non-delivery by subcontractors, vendors or suppliers, official actions or omissions by any state authorities or public bodies, trade embargos or export control and sanctions regulations.

**3. WARRANTY.** Seller warrants Equipment manufactured by it will be free from defects in workmanship and material under normal use and service. Equipment manufactured or supplied by others is sold exclusively under such warranty as the manufacturer may give to Seller and to the extent enforceable by Seller. Seller does not warrant the amount or quality of production unless expressly stated in this Agreement. Seller warrants that when delivered its Equipment will be designed and manufactured to perform the mechanical functions expressly stated in this Agreement provided the Equipment is maintained and operated under proper conditions by competent trained personnel using such raw materials as may be specified. If any part or component of the Equipment is found and reported during any lab trial, inspection, pre-delivery testing, installation, commissioning, acceptance testing or thereafter within one year from date of delivery (or such earlier date if Buyer refuses to accept or delays delivery) to have been defective prior to or when delivered (any shortcoming which prevents compliance with design or acceptance criteria contained in this Agreement being deemed a defect) and provided immediate notification in writing is given to Seller, Seller will, at its discretion, either modify, repair or replace such component or part (defects caused by normal wear and tear items, such as screws, barrels, filters, rupture discs, die insulation, belts, knives and roll coverings are excluded from warranty replacement). During repair, risk of loss will remain with Buyer. Seller's warranty does not cover any labor charges for the replacement of parts, adjustment, repairs, or any other work done by parties other than Seller without Seller's prior written approval. Replacement of parts manufactured or supplied by others is subject to that manufacturer's or supplier's consent and to Buyer's returning the replaced part DAP Seller's plant (Incoterms 2020). No parts or components may be returned without Seller's prior written consent. THE FOREGOING WARRANTY EXTENDS TO BUYER ONLY AND NOT TO BUYER'S CUSTOMERS AND IS EXCLUSIVE AND IS IN LIEU OF ALL OTHER WARRANTIES (WHETHER WRITTEN, ORAL OR IMPLIED) INCLUDING THE WARRANTY OF MERCHANTABILITY AND WARRANTY OF FITNESS FOR A PARTICULAR PURPOSE IN OTHER RESPECTS THAN EXPRESSLY SET FORTH IN THIS AGREEMENT. Remedies of Buyer set forth herein are exclusive. Buyer's sole remedy and Seller's sole liability with respect to the performance or breach of this Agreement in connection with the design, manufacture, sale, delivery, installation, commissioning, acceptance trial or repair of the Equipment purchased hereunder, or the technical direction covered by or furnished under this Agreement, is to make within the time period set forth above such modifications as may be necessary to achieve any expressly promised performance contained in this Agreement and to modify, repair or replace defects that have been identified by Buyer. If the Equipment cannot be modified, repaired or replaced as provided above to meet the warranty obligations stated above, including compliance with any acceptance criteria contained in this Agreement, Buyer's sole remedy and Seller's sole liability shall be to mutually agree to a reduced price reflecting the difference between the value of the Equipment delivered and the value the Equipment would have had if it had been as warranted.

Buyer will reimburse Seller for the travel expenses and time of any service technician or engineer who travels to Buyer's plant at Buyer's request to troubleshoot problems and who identifies improper maintenance or improper operation as the sole cause(s).

Any modification or repair to Equipment without Seller's prior written approval, improper use of Equipment, whether intentional or unintentional, operation beyond capacity, failure to report to Seller within the warranty period, substitution or addition of parts not approved by Seller, failure or damage due to misapplication, lack of proper maintenance, abuse, improper installation, or abnormal



conditions of temperature, moisture, or corrosive matter, or alteration or repair by others in such manner which in Seller's judgment affects the Equipment materially and adversely shall void the foregoing warranty. Buyer shall allow the Seller prompt access to the Equipment if field repairs, modifications or replacements are required and will supply a modern quality line for the Equipment if requested by the Seller. Should the lack of availability of such a line necessitate a field trip that would otherwise not be required, the Buyer will be charged for travel time and expenses.

**4. EXCLUSIVE REMEDIES.** SUBJECT TO MANDATORY LEGAL PROVISIONS, SELLER'S LIABILITIES AND BUYER'S REMEDIES ARE LIMITED TO THOSE CONTAINED IN THIS AGREEMENT. SELLER SHALL NOT BE SUBJECT TO ANY OTHER OBLIGATIONS OR LIABILITIES ARISING OUT OF OR RELATING TO THIS AGREEMENT, WHETHER BASED ON BREACH OF CONTRACT, BREACH OF WARRANTY, TORT OR ANY OTHER THEORY OF LAW OR EQUITY. SELLER SHALL NOT BE LIABLE FOR ANY SPECIAL, INDIRECT, INCIDENTAL, PUNITIVE, MULTIPLE, OR CONSEQUENTIAL LOSS, DAMAGE, EXPENSE OR INJURY OF ANY KIND WHATSOEVER ARISING OUT OF OR RELATING TO THIS AGREEMENT, INCLUDING BUT NOT LIMITED TO LOSS OF PROFITS OR REVENUE, COST OF CAPITAL, LOSS OF PRODUCTION, OPPORTUNITY, FINANCING, GOOD WILL, USE, BUSINESS REPUTATION, COST OF SUBSTITUTE FACILITIES OR SERVICES, DOWNTIME COSTS, DELAYS, DEFECTIVE PRODUCT LOSSES, COST OF TESTING MATERIALS, LABOR COSTS, DEPRECIATION COSTS, INTEREST COSTS, CLAIMS OF BUYER'S CUSTOMERS OR OTHER THIRD PARTIES, HOWEVER ARISING. THESE LIMITATIONS OF LIABILITY WILL APPLY WHETHER OR NOT SELLER HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES AND NOTWITHSTANDING ANY FAILURE OF ESSENTIAL PURPOSE OF ANY LIMITED REMEDY(IES).

**5. ENTIRE AGREEMENT.** This Agreement contains the entire agreement between Buyer and Seller and supersedes and cancels all prior agreements, negotiations, drafts, representations and communications, whether oral or written, with respect to or in connection with the subject matter of this Agreement. This Agreement can be modified or rescinded only by a writing signed by both parties. The parties acknowledge that they have entered in this Agreement in reliance upon their own independent investigation and analysis and neither has been induced to enter into this Agreement by virtue of, and is not relying upon, any representations or warranties not set forth in this Agreement. No waiver of any provisions of this Agreement shall be binding unless in writing signed by an authorized representative of the party against whom the waiver is asserted and unless expressly made generally applicable shall only apply to the specific case for which the waiver is given. Failure of either party to insist upon strict performance of this Agreement shall not be construed as a waiver of any terms or conditions thereof.

**6. CHANGES.** Changes to the specifications or Equipment description shall be valid only if in writing signed by authorized representatives of Buyer and Seller. Such changes must provide for any modification in the price or in time of delivery. Minor variations by Seller in the details of design or construction of the Equipment shall not give rise to any claim of defect or default, and the Seller reserves the right to make such minor changes in details of design and construction as shall in its judgment constitute an improvement over those set forth and described.

**7. INTELLECTUAL PROPERTY.** Seller warrants that none of the Equipment infringes any German patent trademark or copyright provided that Buyer will (a) forthwith upon receipt forward to Seller any communication charging infringement, (b) forthwith forward to Seller all process, pleadings and other papers served in any action charging infringement, (c) give Seller the sole right to defend any such actions at Seller's expense, and (d) give Seller the option at any time up to or after judgment at Seller's expense to minimize Buyer's damage or liability (i) by altering the Equipment to make it non-infringing, (ii) by exchanging a non-infringing part which will fulfill substantially the same function for the infringing part which in that case becomes the Seller's property, (iii) by obtaining a license permitting Buyer's use of any infringing part, or (iv) by repurchasing the infringing Equipment at Buyer straight line depreciated cost. Seller's maximum liability under this warranty shall be (a) to indemnify Buyer for any money judgment recovered against Buyer in a court of competent jurisdiction plus Buyer's reasonable counsel fees if Seller does not undertake the defense and (b) to repurchase at Buyer's straight line depreciated cost any part held by such a court to be infringing which Buyer cannot use by reason of adverse judgment, all liability of Seller's part hereunder subject to due performance by Buyer of the above conditions and the limitations of paragraph 4 hereof. No warranty is made as to process or product patents unless expressly stated or as to infringement resulting from compliance with specifications supplied by Buyer or from any combination of Equipment with other equipment not supplied by Seller. As to any Equipment furnished by Seller to Buyer, manufactured in accordance with specifications supplied by Buyer, Buyer shall indemnify Seller against all claims, demands and suits brought against Seller for any patent, trademark or copyright infringement.

**8. PAYMENTS.** Credit terms are as set forth in Seller's quotation. All delinquent sums due and owing to Seller shall bear interest at the rate of one and one-half percent (1 1/2%) per month.

**9. TERMINATION.** Except as provided in Section 6 hereof, this Agreement is not subject to termination or change unless requested by Buyer and accepted in writing by Seller. In the event of any such termination, Buyer shall pay to Seller within 30 days of such termination, the reasonable costs and all other expenses incurred by Seller prior to receipt of the request for termination (including but not limited to engineering, manufacturing expenses and all commitments to its suppliers, subcontractors, and others), plus a reasonable percentage of the total of the foregoing for Seller's overhead and profit.

**10. EVENTS OF DEFAULT.** Seller reserves the right to suspend its performance, to advise Buyer of the revised shipment and/or delivery dates or any increases in price, to stop delivery of Equipment in transit, to withhold shipments in whole or in part or to suspend its warranty obligations if Buyer fails to make any payment to Seller when due, delays its issuance of letters of credit, delays Seller's receipt of required technical information or otherwise delays or fails to perform its obligations hereunder. Buyer shall be deemed to be in default and delivered goods shall be deemed accepted and Seller shall be entitled to recover any unpaid balance of the purchase price together with any incidental damages upon the occurrence of any of the following events, or of any other comparable event (i) Buyer ceases or suspends operation of its manufacturing plant, (ii) Buyer delays the commencement or continuation of, or refuses to allow Seller to complete, any acceptance testing and the Buyer refuses to agree to a testing start date within 30 days of such delay or refusal, (iii) Buyer fails to make any payment when due, (iv) insolvency of Buyer, (v) Buyer's filing of a voluntary petition in bankruptcy, (vi) the filing of any involuntary petition to have Buyer declared bankrupt provided it is not vacated within 30 days from

the date of filing, (viii) the appointment of a receiver or trustee for Buyer provided such appointment is not vacated within 30 days from the date of such appointment, (viii) the execution by Buyer of an assignment for benefit of creditors.

**11. CHOICE OF LAW.** This Agreement, including its formation, performance, termination or enforcement, and the parties relationship in connection therewith, together with any related claims whether sounding in contract, tort or otherwise, shall be construed, governed and enforced in all respects in accordance with the laws of the Court of Arbitration of the International Chamber of Commerce (Paris). The arbitration court is constituted by one arbitrator appointed in accordance with the regulation of the Court of Arbitration. The venue of the arbitration shall be Zurich, Switzerland and proceedings shall be conducted in the English language. The Agreement and its construction are subject to Swiss material law with the exclusion of the Private International Law Statute. The parties exclude the application of the 1980 United Nations Convention on Contracts for the International Sale of Goods if it would otherwise be applicable. The Arbitration award shall be accepted by both parties as final and binding and both parties shall act accordingly. The award may be entered in any court of competent jurisdiction. Based on §192, the parties, as far as legally admissible, refrain thereby from any possibility of appealing for revision of the decisions. In particular, based on §192, section 1 IPRG (Private International Law Statute) the parties shall refrain from appealing against the Arbitration award for reasons provided for in §190 section 2 of IPRG (Private International Law Statute). The costs of arbitration shall be borne in the manner to be decided by the Arbitration.

**12. LIMITATIONS.** The parties hereto covenant and agree that if either acquires any right or rights to bring any action, suit or proceeding against the other for or as a result of any breach of this Agreement, except for non-payment of the purchase price, the party acquiring such right or rights shall be conclusively deemed to have waived and relinquished the same unless such action, suit or proceeding is commenced within one year after such right or rights arose.

**13. CONFIDENTIAL INFORMATION.** Any and all specifications, quotations, agreements, contracts, information, samples and other materials of whatever description, blueprints, drawings, diagrams or price lists, whether disclosed verbally or in written, graphic, photographic, electronic, recorded, prototype or sample form, that relate to the design, manufacture, sale or production of Equipment or accompanying any quotation are confidential and proprietary and shall remain the property of Seller and subject to recall at any time, and shall not be disclosed to others nor used for the design or manufacture of any equipment. If the Equipment purchased by Buyer includes any software and/or firmware, it is acknowledged that such software and/or firmware, together with all documentation provided by Seller in connection therewith, are proprietary to the Seller, and that the license to use such software and/or firmware is personal to the Buyer. Therefore, Buyer agrees (a) not to reproduce, distribute or disclose to others such software and/or firmware and to maintain same in confidence, (b) to use same only in connection with Buyer's business and not to allow third parties to use it without Seller's prior written consent, and (c) not to make any modifications to the software and/or firmware for any reason whatsoever. Buyer will not allow the design of the Equipment or the Equipment itself or any part of it to be copied, reverse engineered, or otherwise made available to a third party, including any of Seller's competitors.

**14. ASSIGNMENT.** This Agreement is not assignable by Buyer, except with the written consent of the Seller.

**15. RETENTION OF TITLE.** Equipment or parts of the Equipment remain the property of Seller until receipt of the Price. Buyer authorizes Seller to make the requisite entry into the property registration register at any time at Buyer's cost. If third parties take measures to enable seizure of or get otherwise access to the Equipment or parts thereof, the Seller will inform such third parties immediately of the Seller's ownership and notify Seller hereof to allow it enforcement of its property rights. It is expressly prohibited to the Buyer to resell, to pledge, to transfer ownership to the Equipment or parts thereof by way of security to third parties or to constitute otherwise a right to it in favour of third parties without the Seller's prior written consent, unless 100 % of the Price are received by Seller at his bank in Germany. Risk in the Equipment shall pass to Buyer when the Equipment is delivered FCA Erkrath, according to Incoterms 2020. Seller shall also have the right to register its title in the public register or file a purchase money or other security interest at the domicile of Buyer and where the Equipment is located. Until Buyer's obligations under the Agreement have been satisfied, Buyer will at all times mark the Equipment as the property of ER-WE-PA GmbH. Buyer agrees that Seller will have the right to file this Agreement or any other document required by applicable law to evidence or protect its title in the Equipment. At Seller's request Buyer will join with Seller in executing any such documents. Buyer also agrees that Seller will have the right to invoice Buyer and Buyer will pay all fees, taxes and assessments associated with registering Seller's title or securing a security interest. Until Buyer's obligations under the Agreement have been satisfied, the Seller shall be entitled to insure the Equipment at the Buyer's expense against theft, breakage, fire, water and other damage, unless the Buyer can provide proof that it has secured such insurance coverage. Until Buyer's obligations under the Agreement have been satisfied, the Buyer may neither sell nor pledge the Equipment, nor assign it as security. In the event of a breach of contract on the part of the Buyer, particularly default of payment, the Seller shall be entitled to recover possession of the Equipment after prior warning, and the Buyer shall be obligated to surrender it. An insolvency petition against the Buyer shall entitle the Seller to terminate the Agreement and to demand the immediate return of the Equipment.

**16. STANDARDS AND SAFETY.** The Equipment shall comply with the standards, regulations and laws at the place of business of the Seller. Buyer shall provide Seller with any local standards, regulations and laws applicable to the Equipment and to the health and safety of personnel at the place of intended installation. Seller will advise Buyer of any change in price relating to compliance with such standards, regulations and local laws. Buyer will employ and maintain any safety guards, controls, warning signs and other safety devices and features, and provide all warnings and instructions, which may reasonably be required for the safety of persons according to the location and use of the Equipment by the Buyer. Buyer shall use and require its employees to use safe operating procedures in operating the Equipment and shall comply with all laws and regulations of any and all governmental bodies or agencies having jurisdiction, including the locally relevant Occupational Safety and Health Act and regulations promulgated pursuant thereto and all amendments thereto with respect to the installation and use of the Equipment. Buyer will not alter or misuse the Equipment in any manner which may constitute a danger to persons. Buyer shall indemnify and hold harmless Seller from and against all claims, damages, losses and expenses including attorney's fees arising out of or resulting from its failure to comply with its obligations set forth in this paragraph, regardless of whether plaintiff or any other party alleges that Buyer acted negligently. In addition to contractual indemnification, Seller shall be entitled to seek contribution from Buyer in any action or proceeding brought against Seller and Buyer consents to being named as a third-party defendant and to the jurisdiction of the court in which the action or proceeding is pending.



**17. EXPORT CONTROL.** The Buyer shall not re-export or transfer any Equipment, or authorize or permit any third party to re-export or transfer any Equipment, to a country that is subject to an applicable trade sanction or embargo or to any customer or end-user that is subject to sanctions or other export prohibitions or restrictions under any applicable export regulations. Buyer agrees to indemnify Seller against any liability caused by Buyer's failure to comply with the foregoing.

**18. TAXES.** Unless otherwise specified, the Seller's prices do not include any federal, state, or local or foreign tax, duty or tariff of any kind that may be applicable to the sale, purchase use, shipment, delivery, import, export or any other disposition of the Equipment.

**19. CODE OF CONDUCT AND ETHICS.** Davis-Standard, LLC and its affiliates conduct business in an ethical, safe and socially responsible manner, in compliance with applicable laws and regulations. Our Code of Ethics and Conduct found at <https://davis-standard.com/about-us/code-of-ethics-conduct/> sets forth legal and ethical guidelines that support our endeavors to operate and transact business with the highest level of integrity. Buyer agrees to comply with this Code of Ethics and Conduct while engaging in business transactions with Er-We-Pa GmbH.

**20. PRICES.** Seller reserves the right to adjust pricing if Buyer's purchase order is received more than ten days after Seller's quotation and also if Buyer's deposit is late. Seller also reserves the right to adjust pricing after receipt of Buyer's purchase order during manufacturing and assembly and, when applicable, during installation for all products and services based on changes in market pricing conditions (e.g. raw material, utility costs, miscellaneous parts, or other external cost impacts etc.). Seller will provide support documentation for any changes upon request.