



Version overview

| Version | Date     | Author | Remark                  |
|---------|----------|--------|-------------------------|
| 1.0     | 12.01.24 | MSC    | First edition           |
| 1.1     | 17.01.24 | AWA/MS | Updating & finalization |



General Terms and Conditions of ErvoCom  
ErvoCom AG  
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## 1. Preamble

ErvoCom supplies components and systems to the international rail vehicle market, train manufacturers and operators, as well as solutions for system-critical and safety-relevant radio and communication systems. Legal regulations, standards and end customer requirements place high industry-specific demands on the supply chain. ErvoCom works with partners and subcontractors who meet these high standards of quality, ethics and sustainability. Our certified quality management guarantees the customer the highest quality of products and services.

## 2. Validity

- 2.1 These General Terms and Conditions (GTC) of ErvoCom AG, its subsidiaries and TrainRadioCom, hereinafter collectively referred to as "ErvoCom", apply to all transactions between ErvoCom and its customers. By concluding a contract with ErvoCom, the customer acknowledges these GTC and expressly waives the right to assert any general terms and conditions of its own. Such terms and conditions shall only be valid if ErvoCom has recognized them in writing. Amendments and supplements to these GTC and ancillary agreements shall only be effective if they are expressly agreed in writing. They shall also apply to all future transactions with the customer, even if they have not been expressly agreed again.
- 2.2 These General Terms and Conditions apply to all areas which have not been mutually agreed otherwise in writing in individual contracts.
- 2.3 Missing or unregulated contractual components from other contracts accepted by ErvoCom shall be automatically supplemented by the "General Terms and Conditions of ErvoCom" and the provisions of the GTC shall be legally binding in second order of precedence.
- 2.4 These GTC were updated in March 2024 and apply to all transactions concluded from March 31, 2024.

## 3. Conclusion of contract

- 3.1 The contract shall be deemed to have been concluded when ErvoCom has confirmed acceptance in writing following receipt of an order. Verbal agreements shall only be valid if they have been confirmed in writing.
- 3.2 The contractual product characteristics are defined in accordance with the data sheet or other descriptions provided by ErvoCom in accordance with the offer.
- 3.3 All agreements and legally relevant declarations of the contracting parties must be in writing in order to be valid. Transmissions by electronic media shall be deemed equivalent to the written form.
- 3.4 Should any provision of these terms and conditions prove to be wholly or partially invalid, the contracting parties shall replace this provision with a new agreement that comes as close as possible to its legal and economic effect.

## 4. Software

All rights and obligations in connection with software licenses are regulated in Appendix 1 (Software License Agreement).

## 5. Technical documents and documentation

- 5.1 Technical documents such as data sheets, drawings, descriptions, illustrations and the like, as well as any weight specifications that are not expressly designated as binding, are only approximate. ErvoCom reserves the right to make any changes that appear necessary at any time. All documentation must be treated confidentially.
- 5.2 Unless otherwise contractually agreed, all technical documentation remains the intellectual property of ErvoCom and may be used for maintenance and operation. Furthermore, they may not be copied or reproduced, nor brought to the attention of third parties in any way, nor used to produce a work or components.



- 5.3 Deviations in the documentation, namely in descriptions and illustrations, are permissible provided the documents fulfill their purpose. ErvoCom reserves unrestricted ownership rights and copyright exploitation rights to quotations, cost estimates, drawings, technical information, data, descriptions and other documents. The customer shall not be entitled to reproduce, copy, make available to third parties or otherwise pass on the aforementioned documents without the express written consent of ErvoCom, or to use these documents or the resulting information in a manner that is contrary to the interests of ErvoCom; in particular, they may not be used to obtain competing offers.
- 5.4 All documents relating to quotations that do not result in an order must be deleted or returned to ErvoCom.

## **6. Prices**

- 6.1 Unless otherwise agreed in writing, ErvoCom's prices shall be the prices stated in the order confirmation. Deliveries of goods shall be FCA from the respective Swiss storage location, INCOTERMS 2020.
- 6.2 All ancillary costs, such as the costs for packaging, freight, insurance, export, transit, import and other permits as well as certifications shall be borne by the customer. The customer shall also bear all types of taxes, duties, fees and customs duties.
- 6.3 If the costs for packaging, freight, insurance and other ancillary costs are included in the offer or delivery price or shown separately in the offer or order confirmation, ErvoCom reserves the right to adjust the rates accordingly in the event of changes to the tariffs.
- 6.4 If the circumstances on which pricing is based change between the time of the offer and the agreed delivery date, ErvoCom shall be entitled to adjust prices and conditions to the changed circumstances. This applies in particular to currency parities or state/official taxes and duties, as well as fees, customs duties, unusual inflation, etc.
- 6.5 Maintenance and support beyond the warranty rights are generally not part of the pricing, but can be agreed separately.

## **7. Terms of payment**

- 7.1 Unless otherwise agreed, invoices must be paid by the customer within 30 days of the invoice date without any deductions, such as discounts, expenses, taxes and fees, in accordance with the conditions contained in the order confirmation. The payment obligation is fulfilled when the entire amount due has been credited to one of the accounts listed in the invoice in Swiss francs or the amount invoiced, if applicable, in € or \$ and is freely available to ErvoCom. Offsetting against counterclaims is not permitted. ErvoCom reserves the right to invoice deliveries with the obligation to pay in advance and to withhold them until payment has been made, if the payment terms of previous invoices for the same order have not been met.
- 7.2 The payment deadlines must also be complied with if transportation, delivery, assembly, commissioning or acceptance of the delivery are delayed or made impossible for reasons for which ErvoCom is not responsible. It is not permitted to reduce or withhold payments due to complaints or counterclaims of the customer not recognized by ErvoCom. Payments shall also be made if insignificant parts are missing, but this does not make it impossible to use the delivery, or if reworking of the delivery proves necessary.
- 7.3 If the customer does not meet the agreed payment deadlines, he must pay interest on arrears from the due date without special reminder, which is based on the usual interest rates at the customer's domicile, but is at least 4 percent above the respective discount rate of the Swiss National Bank, unless a higher interest rate has been agreed. The payment of interest on arrears shall not cancel or reduce the obligation to pay in accordance with the contract.

## **8. Retention of title**

- 8.1 The delivered material shall remain the property of ErvoCom until payment has been made in full. The customer is obliged to take all necessary measures to protect ErvoCom's property until payment has been made in full.
- 8.2 Upon acceptance of the delivery by the customer, ErvoCom shall be authorized to enter the reservation of title. However, the retention of title shall also arise without entry in the corresponding register.
- 8.3 The delivery services subject to retention of title may not be pledged to third parties or assigned as security before full payment of the current and future claims arising from the existing delivery



service relationship. The Client must inform the Contractor immediately in writing if an application for the opening of insolvency proceedings is filed or if third parties have access (e.g. seizures) to the delivery services belonging to the Contractor.

## **9. Delivery time**

- 9.1 The delivery period shall commence as soon as the contract has been concluded, all official formalities, such as import and payment permits, have been obtained, the payments to be made at the time of ordering and any securities have been provided, and the essential technical points have been clarified. The deadline shall be deemed to have been met if the delivery has been completed at the factory by the time it expires.
- 9.2 The delivery period shall be extended accordingly:
- a) if we do not receive the information we require for the execution of the order in good time or if the customer subsequently changes it and thus causes a delay in delivery;
  - b) if obstacles occur which we cannot avert despite exercising all due care, such as epidemics, mobilization, war, riots, strikes, lockouts and lockouts, significant operational disruptions, accidents, industrial disputes, delayed or faulty delivery of the necessary raw materials, semi-finished or finished products, rejection of important workpieces, official or other measures of any kind, transport obstacles, natural disasters;
  - c) if the customer is in arrears with the work to be carried out by him or is in default with the fulfillment of his contractual obligations, in particular if he does not comply with the terms of payment.
- 9.3 In the event of late delivery, the customer shall not be entitled to compensation, liquidated damages or withdrawal from the contract.

## **10. Transfer of benefit and risk**

Benefit and risk shall generally pass to the customer upon dispatch of the delivery ex warehouse. Exceptions to this, such as delivery in accordance with DAP (Incoterms), must be explicitly agreed in writing. If dispatch is delayed or made impossible for reasons for which ErvoCom is not responsible, the delivery shall be stored at the customer's expense and risk.

## **11. Testing and acceptance**

- 11.1 Delivery before dispatch is carried out by ErvoCom at its own expense within the scope of the relevant testing regulations. Any further testing requirements must be specifically agreed upon when the contract is concluded and will be borne by the purchaser.
- 11.2 The purchaser must inspect the delivery within ten working days and immediately report in writing any defects for which ErvoCom is responsible due to the contractual obligations. If he fails to do this, the delivery is deemed to have been approved.
- 11.3 If the delivery proves to be non-conforming in one of the above-mentioned tests, the purchaser must immediately give ErvoCom the opportunity to remedy the defects.
- 11.4 Unless a special acceptance procedure has been agreed, the customer must inspect ErvoCom's deliveries and services himself and report any defects in writing.
- 11.5 If the customer does not fulfill his obligation to cooperate with any agreed acceptance or acceptance test, this will not be at the expense of ErvoCom. Acceptance in the event of a lack of cooperation is deemed to have been granted no later than one month after the original acceptance date.
- 11.6 If defects become apparent later within the warranty period that could not have been discovered even through careful inspection, the purchaser must immediately notify ErvoCom in writing. Otherwise, the delivery or service is deemed to have been approved even with regard to these defects.
- 11.7 Further rights of the purchaser due to defective delivery, in particular to compensation, flat-rate compensation and withdrawal from the contract, are excluded.

## **12. Transportation and insurance**

- 12.1 ErvoCom must be notified in good time of any special requests regarding shipping and insurance. Shipment shall be at the expense and risk of the customer. Complaints in connection with transportation must be addressed by the customer to the last carrier immediately upon receipt of the delivery or the freight documents.



12.2 Unless otherwise agreed, the customer shall be responsible for taking out insurance against damage of any kind.

### 13. Export and regulations at destination

The customer is responsible for the statutory, official and any other regulations. If special documentation, approvals and the like are required for the use of the products, the customer shall be responsible for these.

### 14. Warranty

- 14.1 ErvoCom warrants that its deliveries and services fulfill the contractually agreed characteristics (3.2) and are free of defects.
- 14.2 During the warranty period, ErvoCom undertakes, at the written request of the customer, to repair or replace within a reasonable period of time all parts of its delivery that are demonstrably defective or unusable as a result of poor materials, faulty design or poor workmanship.
- 14.3 In the event of a warranty claim, ErvoCom shall repair or replace the defective parts. The customer shall bear the costs of installation and removal as well as the shipping costs of the return shipment. If the defective parts are not sent to ErvoCom for reasons for which ErvoCom is not responsible, all resulting additional costs (e.g. repair at the customer's location) shall be borne by the customer.
- 14.4 Further rights of the customer due to defective delivery, in particular to compensation for damages, lump-sum compensation and withdrawal from the contract, are excluded.
- 14.5 Unless otherwise agreed in writing, the warranty period shall be twelve (12) months and shall commence on the date of delivery or provision.
- 14.6 The warranty period for replaced parts does not begin anew and ends no later than twelve (12) months after the original delivery.
- 14.7 Excluded from the warranty are damages due to natural wear and tear, inadequate maintenance, disregard of operating instructions, incorrect operation, excessive stress, unsuitable operating materials, chemical or electrolytic influences, sandy, incrusting or contaminated water, corrosion, erosion, cavitation and the like, inadequate foundation, construction and assembly work not carried out by ErvoCom and due to other unjustifiable reasons.
- 14.8 The warranty shall lapse if the customer or third parties make changes or repairs to the delivery without the written consent of ErvoCom, or if the customer does not immediately take suitable measures to ensure that the damage does not increase in order to rectify the defect.
- 14.9 The provisions of the *ErvoCom Software License Agreement* (Appendix) shall apply to the rectification of defects in the event of faulty software.
- 14.10 If the customer does not assert certain claims under the warranty in writing by the end of the warranty period, ErvoCom shall be released from its obligations under the warranty.

### 15. Resale

- 15.1 Unless otherwise agreed by the parties or due to the nature of the transaction, the customer may resell the products modified or unchanged. The confidentiality agreements of these GTC and any further agreements (NDA) shall apply to any resale. The disclosure of information and documentation subject to confidentiality is prohibited. Additional requirements may apply to the sale of software usage rights, see Software License Agreement (Appendix 1)
- 15.2 If the customer resells the products, he must ensure that all obligations arising from confidentiality and from any authorization reservations for import and export or are transferred to the respective buyers.

### 16. reproduction / product piracy

- 16.1 The reproduction, re-engineering, further development or transfer to third parties for the purpose of one of these variants is prohibited for all ErvoCom products, both software and hardware.
- 16.2 In the event of infringement, all claims, warranty and liability rights of the customer shall lapse. All claims and rights of ErvoCom shall remain unaffected.
- 16.3 ErvoCom has achieved its market leadership in the field of Intelligent Transport, Critical Communication si such as Emergency and Security through a high level of expenditure on research, development and product design. A contractually agreed penalty of CHF 1,000,000



shall therefore be payable for each case of misuse of your intellectual property (irrespective of registration as a patent, trademark or utility model) within the scope specified under 16.1.

### **17. confidentiality obligations / data protection**

- 17.1 For the duration of this agreement and after its termination, the customer undertakes to treat all data and information of ErvoCom which it has received in fulfillment of the contract as confidential, not to pass it on to third parties and not to use it for purposes other than the fulfillment of the contract. It is not necessary to mark documents as confidential for this purpose. The confidentiality obligation does not apply to information that is demonstrably public knowledge or becomes public knowledge without any action on the part of the recipient of the information.
- 17.2 Any further statutory or contractual confidentiality or data protection provisions shall take precedence.
- 17.3 The breach of confidentiality obligations shall give rise to a claim for damages: If the Customer, one of its employees or a third party engaged by it breaches the confidentiality obligation, it shall owe the other party a contractual penalty of 50% of the order value for each case of breach, subject to a minimum of CHF 5,000. Payment of the contractual penalty shall not release the customer or the named persons from compliance with the confidentiality obligations. The assertion of the real enforcement of the confidentiality obligations as well as the assertion of any damages in excess of the contractual penalty are expressly reserved.

### **18. Further liability**

- 18.1 ErvoCom undertakes to carry out the delivery in accordance with the contract and to fulfill the warranty obligation.
- 18.2 Claims of the customer other than those expressly stated in these terms and conditions of delivery, irrespective of the legal grounds on which they are based, in particular all claims for damages, reduction in price, rescission of the contract or withdrawal from the contract not expressly stated, are excluded. Under no circumstances shall the customer be entitled to claim compensation for damages that have not occurred to the delivery item itself, such as loss of production, loss of use, loss of orders, loss of profit or other direct or indirect damages. This exclusion of liability shall not apply in cases of gross negligence or unlawful intent or insofar as it is contrary to mandatory law.

### **19. Choice of law and place of jurisdiction**

- 19.1 Swiss law applies exclusively, excluding the United Nations Convention on Contracts for the International Sale of Goods (CISG) and the allocation regulations of private international law.
- 19.2 The exclusive place of jurisdiction for all disputes between the parties is Wollerau SZ. The language of negotiations is German.
- 19.3 These terms and conditions are originally drawn up in German. This English version is included as a translation aid. In case of doubt, the German version prevails.