



General Terms & Conditions

Sales and Delivery

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February 2020

1. GENERAL TERMS AND CONDITIONS OF SALES

- 1.1 These General Terms and Conditions of Sale and Delivery shall constitute an integral part of all of Ermax A/S (in the following "Ermax") quotations, sales and deliveries. Deviations from these Terms and Conditions shall only be valid on a case-by-case basis provided mutually confirmed in writing.
- 1.2 In the case Ermax and the customer under a separate agreement (the Development Agreement) and according to specific technical specifications (the "Technical Specifications") have jointly developed certain products (the "Products") for the Customer.
- 1.3 All national and international sales of Products by any Ermax are done according to the General Terms and Conditions of Sales in this document, unless otherwise explicitly agreed upon in writing by Ermax. Deviations from these Terms and Conditions shall only be valid on a case-by-case basis provided they are mutually confirmed in writing. Ermax hereby already in advance contests any Customer terms and conditions of business, delivery or purchase. Such terms shall only apply if Ermax has recognised applicability of the same in writing.
- 1.4 Should this agreement become translated into other languages the English version will prevail.

2. SUPPLY OF PRODUCTS – ORDERS AND DELIVERY SCHEDULES

- 2.1 Ermax is obliged to supply Products to Customer as per order confirmations. Once an order has been confirmed by Ermax, the quantities or prices of Products ordered cannot be changed unless a written confirmation from Ermax is given.
- 2.2 If a Delivery Schedule has been entered into, the quantities of Products may only be changed if this is agreed upon in the Delivery Schedule. The Customer shall be bound by its order for a period of four weeks as of receipt of the same by Ermax. If Ermax issues an order confirmation (OC) for such order, the order shall be effective upon receipt of the OC and deemed concluded and binding on both parties. The Customer shall immediately examine OC's with respect to correctness of their contents. Any deviations from the order shall be notified in writing without delay, at the latest, however, within 2 (two) working days; otherwise the delivery and the services described in the OC shall be automatically considered approved by the party.

3. PRICES AND TERMS OF PAYMENT

- 3.1 The price for the Products shall be as agreed upon in the Price Agreement. The currency and the price validity period can be seen in the Price Agreement.
- 3.2 Cost estimates are not binding and subject to change.
- 3.3 The Customer shall be responsible for paying all taxes, duties, fees or other charges of any nature, and quoted prices are exclusive VAT and other applicable taxes.
- 3.4 Unless otherwise stipulated in the Price Agreement, prices are exclusive of packaging material, which will be invoiced separately.
- 3.5 In case of price changes in raw material, wages, rates of exchange, taxes or duties, Ermax reserves the right to change prices with 4 (four) weeks' notice.
- 3.6 Unless a different date of payment has been agreed, all deliveries and services shall be due for payment within 30 days net without deduction, in each case as of the date of the invoice.
- 3.7 Payments shall always be in the currency stated on the invoice.

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- 3.8 Payment must take place to the announced bank account of Ermax, the Customer shall issue the transfer order in such good time that the amount owed is credited to the account specified by us by the due date. No cash payments are accepted.
- 3.9 In the event of a breach of credit terms Ermax reserves the right to:
 - 3.9.1 charge an interest up to the maximum allowable by law in the relevant jurisdiction. Basis of the calculation is the invoice amount added any accumulated interest and calculated from the date of invoice, and/or
 - 3.9.2 charge a reminder fee up to the maximum allowable by law in the relevant jurisdiction, and/or
 - 3.9.3 recover all court costs and attorney fees incurred by Ermax in collection of the debt, and/or
 - 3.9.4 withhold all other deliveries and/or part deliveries ordered but not effected at the time in question until the Customer has paid all outstanding amounts including interest and costs, and/or
 - 3.9.5 cancel any orders not affected, but still outstanding.
- 3.10 The Customer shall not be entitled to set off against any invoices any claims, which the Customer may have against ERMAX.

4. PACKAGING

- 4.1 Packaging is not included in the pricing and will be according to Ermax standards, unless otherwise agreed to in writing with the Customer.

5. Delivery

- 5.1 Products are delivered Ex-Works, cf. Incoterms 2010 unless otherwise agreed in writing. The practical assistance from Ermax by means of organizing the transport does not oblige Ermax for any insurance of the shipment neither any other responsibility linked hereto.
- 5.2 The time of delivery is separately agreed upon for each individual order and shall be stated by Ermax on the order confirmation or be obvious from the Delivery Schedule.
- 5.3 Ermax reserves the right to alter the delivery dates, where such alteration is based on circumstances, which Ermax could not reasonably have foreseen. In such case Ermax is obliged to inform the customer, without any reasonable delay, of the reason for the alteration and of the new estimated date of delivery. Partial shipments may be affected.
- 5.4 As a matter of principle Ermax shall be entitled to make partial or advance delivery and to issue partial invoices thereon.

6. CLAIMS AND LIMITATION OF LIABILITY

- 6.1 The Customer is obliged to examine and sign for the Products upon receipt. Claims for non-delivery or differences must be made immediately to Ermax upon receipt of shipment.
- 6.2 In case of lack of conformity of the Products the Customer must give notice to Ermax immediately after the defect has been discovered.

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- 6.3 Ermax warrants that the Products shall conform to the Technical Specifications agreed upon between the parties, and shall be free from defects in title, materials, workmanship and manufacture. Such warranty is valid for a period of maximum 12 months from the mounting of the Product into another product/vehicle, not exceeding a period of 18 months from Ermax invoice. Such warranty is exclusive and is in lieu of all other guarantees whether written, oral, implied or statutory. As permissible by law, the Customer acknowledges that no warranty of merchantability or fitness for a particular purpose shall apply.
- 6.4 In any event claims of any kind may only be raised if the defective parts are presented by means of the Ermax Claim Formular. Where products are returned and on inspection are found not to be defective, Ermax may charge for conducted inspection and handling.
- 6.5 If Ermax has been duly informed and if the Products were defective at delivery and if Ermax is therefore liable, Ermax shall in its own discretion have the right to elect - without any further liability, including but not limited to payment of damages or reduction of purchase price - to repair or renew defective parts or to replace the delivered Products with a new delivery. Ermax does not cover the costs, if the Customer purchases a replacement item from an alternative source.
- 6.6 Ermax is not liable for any defect due to misuse, alteration or modification, misfitting or any defect occurred after delivery. The Customer shall prove that the relevant maintenance and operating procedures have been complied with.
- 6.7 Ermax shall decide on whether a replacement or an improvement (repair) will be carried out. Any repair work must be done in work shops authorised by Ermax; otherwise any warranty claims and other claims shall expire in general. The cost of labour incurred if a decision is made in favour of a repair by an authorised workshop shall be reimbursed to the extent that it is absolutely necessary but in no case to an amount exceeding what is usually paid according to the price list supplied. If repair or replacement, cf. 6.5 above, implies that the Product will have to be dismantled, the Customer shall perform the dismantling and the mounting of the repaired or replaced Product at its own cost.
- 6.8 No claims can be made if our components are combined with unauthorized parts from third parties or incorrect installation has been made in relation to the valid installation instructions from Ermax at any time which are available at www.ermak.dk.
- 6.9 Ermax can not be liable for, and therefore expressly disclaims, any remedy, damages or compensation for trading loss, operating loss, loss of profits and similar financial consequential losses or indirect losses, including claims from third parties. Consequently, CISG Art. 74, cf. Art. 45 is deviated from.
- 6.10 To the fullest extent permitted by law, the Customer agrees to limit Ermax' liability for any and all claims, losses, costs and damages of any nature whatsoever, so that the total aggregate liability of Ermax shall not exceed the total purchase sum paid by the Customer for the relevant Products.
- 6.11 Any claim must be put forward to Ermax in writing. Any verbal claims will be considered as notifications only without obligation for action.

7. PRODUCT REQUIREMENTS, INTERNATIONAL MARKINGS AND SYMBOLS

- 7.1 Where any public authority imposes requirements on the Product, the Customer shall immediately inform Ermax of these requirements. Application for any authorities for registration numbers for the Product and any other matters shall be the Customer's sole responsibility and liability. Any additional costs in connection with the production and delivery of the Products as well as any other matters concerning the fulfillment of public requirements and provisions shall be payable by the Customer.

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7.2 It is the sole responsibility and liability of the Customer to ensure that all markings and symbols on the Product comply with any laws and regulations in the Customer's jurisdiction.

8. PRODUCT LIABILITY

8.1 Ermax shall be liable for any damage due to product liability according to the general rules of Danish law which is based on EU Directive 85/374.

8.2 Notwithstanding 8.1 the following specific limitations shall apply:

8.2.1 Ermax shall not be liable for any damage to property caused by the Product after it has been delivered and whilst it is in the possession of the Customer. Nor shall Ermax be liable for any damage to products manufactured by the Customer, or to products of which the Products form part.

8.2.2 If Ermax incurs liability towards any third party for such damage to property as described in 8.2.1, the Customer shall indemnify, defend and hold Ermax harmless.

8.2.3 Ermax shall not be liable for, and therefore expressly disclaims, any remedy, damages or compensation for trading loss, operating loss, loss of profits and similar financial consequential losses or indirect losses, including claims from third parties.

8.3 The limitations in 8.2 shall not apply where Ermax has been guilty of gross negligence.

8.4 Ermax shall enter into and maintain adequate product liability insurance.

8.5 Ermax reserves the right to the retention of the goods, until the full amount invoiced has been paid.

8.6 Intact goods (non-used, stock) can only be returned by prior agreement in whole packaging units and intact original packaging and no later than 1 (one) year after documented invoice date stating the invoice number. Non-standard or customer-made goods cannot be returned. All return costs are paid for by the customer and at the risk of the customer. By return 25% of the net amount invoiced will be deducted for covering costs, unless otherwise stated in the return agreement.

9. ELECTRONIC DATA INTERCHANGE (EDI) COMMUNICATION

9.1 When and to the extent EDI is implemented, the parties will apply to an agreed EDI agreement.

10. FORCE MAJEURE

10.1 Ermax cannot be held liable for shortages, lack or delays in delivery caused by war, riots, civil unrest, governmental intervention or intervention by another public authority, fire, machine damage, strike, lockout, export and/or import restrictions, shortage of labor, fuel or any other reason out of the control of Ermax and which causes delay or prevents production or delivery of the Products ordered.

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11. GENERAL

11.1 Should any of the provisions of these General Terms and Conditions of Sales become invalid, this shall not affect the validity of the remaining provisions. Instead of the provision that is or has become null, void or illegal, a valid provision shall be deemed as agreed* upon which comes closest to what the parties originally intended.

12. APPLICABLE LAW AND VENUE

12.1 These General Terms and Conditions of Sales shall be interpreted in accordance with and governed by CISG. Any and all disputes relating to or arising in connection with these General Terms and Conditions for Sales which cannot be resolved in accordance with CISG shall be resolved in accordance with Danish law. The parties consent to the exclusive jurisdiction and venue in the Maritime and Commercial Court in the city of Copenhagen.

February 2020 • Kolding, Denmark

Die Marken der BPW Gruppe:



ERMAX®



HESTAL®



 **ERMAX**®
“Light Made Heavy Duty”

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