

§ 1 – General part

Article 1 - Definitions

ERT

Elastomer Research Testing BV located in Deventer-NL.

General Conditions

The General Conditions of Delivery of ERT as registered at the Chamber of Commerce Oost Nederland in Enschede. These General Conditions can also be requested from ERT.

Services

The services to be carried out by ERT for the Contracting Party as further described in paragraph 2 of these General Conditions.

Contracting Party

The contracting party of ERT.

Assignment

The specific agreement for the delivery of Items/Services to which the rules, as described in these General Conditions, apply.

Article 2 - Applicability

- 2.1 These General Conditions are applicable to all offers done by ERT and all the closed agreements by the Contracting Party for the delivery of Items and/or Services by ERT.
- 2.2 General conditions of the Contracting Party are explicitly denied and will not be applicable to the agreements between ERT and the Contracting party.

Article 3 - Offers

- 3.1 Offers made by ERT are without obligations and are valid for 30 days unless otherwise stated.
- 3.2 ERT shall be able to trust the correctness and completeness of all information, drawings and other specifications that are supplied by the Contracting Party in order to come to an offer. ERT will base the offer on this, possible errors or omissions in information supplied by the Contracting Party will be for the account of the Contracting Party.
- 3.3 In case materials need to be purchased by ERT concerning the Assignment then the costs will be charged to Contracting Party against the cost price with an uplift of 10%.

Article 4 – Realisation of the agreement.

The agreement of the Assignment is realised at the moment that either ERT has confirmed the order of the Contracting Party or the Contracting Party has accepted the offer of ERT without changes.

Article 5 – Reimbursement and prices

- 5.1 The charged reimbursement to the Contracting Party by ERT for delivered Services is calculated according to the number of hours worked multiplied by the hourly tariff agreed between the parties, unless the parties have made other arrangements concerning this.
- 5.2 All tariffs and prices are excluding tax (VAT) and excluding additional costs such as costs for dispatch and transport, insurance, travel and accommodation costs.
- 5.3. ERT is authorised to charge an increase in tariff-determining factors to the Contracting Party. Only in the event that an increase in price occurs within a period of three months after the realisation of the Assignment it gives the Contracting Party justification to end the agreement.

Article 6 – Delivery time and delivery place

- 6.1. Delivery times will be determined by ERT to the best of its knowledge, however they will be approximate; the indicated times will never be valid as fatal time.
- 6.2. ERT is not responsible for damage that occurs due to a late delivery unless the damage was due to a deliberate act or gross negligence on the side of ERT.
- 6.3 The delivery time is valid from the moment that ERT has all information, drawings and other information in its possession, necessary to carry out the Assignment, and agreement on all details of the agreement has been reached.
- 6.4 The delivery time will be extended with the time during which the Contracting Party has failed to deliver the necessary information or has failed to pay any outstanding amount regarding the Assignment in case it was agreed that the payment would take place in instalments and these instalments are due.

Article 7 – Designs, materials and samples

- 7.1 The Contracting party is responsible for the drawings made by or on behalf of it and for the functional suitability of the materials prescribed by or on behalf of it.
- 7.2 The Contracting party will guard ERT against any claims by third parties regarding the use of the supplied drawings, calculations, samples, and models etc. by or on behalf of Contracting Party
- 7.3 Where the Assignment is [also] related to the research of samples it is stated that, unless otherwise agreed in writing, the selection, representation, indication of codes, brand or product names and the availability [including transport] to ERT of the samples for research is carried out under the responsibility and for the risk of the Contracting Party.

Article 8 – Intellectual property

- 8.1 ERT reserves the rights of intellectual property of the offers made by it, supplied designs, [technical] drawings and descriptions, indications of measures, calculations, system designs, ways of working, reports and other items, regardless of any costs thereof being charged to the Contracting Party.
- 8.2 It is forbidden for the Contracting Party to copy, publish or exploit any data or items mentioned in this article without the explicit permission of ERT in advance. The Contracting Party will receive a penalty of € 25.000,- when this provision is violated next to the legal compensation that can be claimed by ERT.
- 8.3. It is not allowed for the Contracting Party to change or delete any indication regarding copyrights, brands, trade names or other rights of intellectual property, including the indications concerning the confidential nature and the secrecy of the information supplied to it and Items as meant in this article.

Article 9 – Rights on results

- 9.1 The Contracting Party has within the framework of the Assignment the complete and free right of use of the results of the Assignment, as supplied by ERT to Contracting Party, unless it concerns confidential information as mentioned in these General Conditions of Delivery.
- 9.2 ERT has the right to use the results as meant in this article for third parties or to allow third parties to use them, unless the parties have agreed otherwise.
- 9.3. In the event that the Contracting Party obtains a patent based on the results of the Assignment it will grant ERT a free non-transferable license for the concerned invention.

Article 10 – Liability and Force Majeure

- 10.1 During the activities ERT will strive to carry out the activities to the best of its ability, taking all the care that can be expected from ERT.
- 10.2 ERT is liable for damage that is caused to the Contracting Party and whose damage is directly and exclusively the result of a deficiency that is imputed to ERT. The damage to be compensated, however, is always limited to the amount that the Contracting Party owes to ERT regarding the concerned Assignment, however, to a maximum of € 100,000,-.
- 10.3. ERT is not liable for damage that the Contracting Party suffers due to wrong or incomplete information and/or materials supplied by the Contracting Party.
- 10.4 ERT is not bound to compensate the damage mentioned in this article in the case of Force Majeure on the side of ERT. Force Majeure means every situation, independent of the will of ERT, through which the fulfilment of a part or all of the obligations of ERT to the Contracting Party is being prevented, delayed or made uneconomical or through which the fulfilment of these obligations cannot reasonably be expected from ERT.
- 10.5 In the event that ERT cannot fulfil its obligations to the Contracting Party due to force majeure, then the obligations will be suspended for the duration of the situation; ERT will notify the Contracting Party as soon as possible of a situation of force majeure.
- 10.6 Company damage, such as, but not exclusively lost profit, stagnation damage and damage caused by a deliberate act or carelessness of assisting persons, is not eligible for compensation. This also counts for damage of the Contracting Party, caused by or during the execution of ERT's activities resulting from the agreement, to Items which are being worked on or to Items that are located in the vicinity of the location where the activities are being carried out.
- 10.7 The Contracting party shall protect ERT from all claims by third parties for whatever cause, regarding compensation of damage etc. which is related to the Services or Items delivered or still to be delivered or comes forth from the use of delivered Services and Items, except in case of intent or equally gross negligence of ERT.
- 10.8 ERT is only liable for shortcomings of [a] by ERT contracted third part(y) (ies) if and as far as the resulting damage can be recouped from that third part(y)(ies). ERT is authorised to accept possible liability limiting conditions of third part(y)(ies).

Article 11 – Complaints

- 11.1. If the Contracting Party wishes to call upon a lack of delivered performance, it has to send a written complaint, including the grounds on which the complaint is based, to ERT within fourteen days after the deficiency has or should reasonably have been discovered.
- 11.2 After the aforementioned period the possibility to call upon a lack of delivered performance will expire and the performance will be regarded as accepted.
- 11.3 Complaints, such as meant in this article will not suspend the obligation of Contracting Party to pay.

Article 12 – Secrecy

- 12.1 The Contracting Party and ERT guarantee each other that they will keep all information of a confidential nature that they have received from the other party, secret, unless there is a matter of legal obligation to publication.
- 12.2 Information will in any case be regarded as confidential if this is indicated as such by either one of the parties, unless that indication concerns information that is generally known. With keeping secret is in any case meant not to directly or indirectly publish, disclose or otherwise making publicly available any confidential information.

Article 13 – Payment

- 13.1. Payment will be effected to a bank account which has been appointed by ERT within 14 days of the invoice date.
- 13.2. The right of the Contracting Party to deduct its claims to ERT is excluded, unless there is a matter of bankruptcy of ERT.
- 13.3. ERT is authorised to demand immediately and without proof of default the full requisition for payment or with immediate effect and without judicial interference by means of a written declaration for that purpose to dissolve the agreement if:
- The agreed payment deadline was exceeded;
 - The Contracting Party fails to fulfil an obligation from the agreement to supply an assurance of payment to be defined by ERT;
 - The Contracting Party is bankrupt or has filed a request for it;
 - Contracting party has obtained a suspension of payment or has filed a request for that;

- An important part of the assets of Contracting Party is executorially confiscated or a conservating confiscation thereof is not lifted within two months;
- The Contracting Party is fully or partly being liquidated or dissolved or in case ERT ceases or transfers its activities.

- 13.4. The Contracting Party owes ERT interest over the capital sum in case payment was not done within the agreed timescale. The interest rate will be the legal interest rate increased by 2% per year. When calculating the interest a part of the month will be counted as a full month.
- 13.5 Besides interest the Contracting Party also owes 15% extra-judicial collection costs over the capital sum with a minimum of € 100,- as well as all judicial costs.

Article 14 – Reservation of ownership

The ownership of Items will only be transferred to the Contracting Party after it has completely settled all that which it is indebted to ERT concerning delivered or to be delivered Items, including the capital sum, possible interest, costs, as well as all activities and Services carried out under the Assignment.

§ 2 - Services: Advice, consultancy, audits, training and education

This section contains specific regulations for the advice and consultancy services, audits, trainings and educations to be carried out by ERT. This section has priority over the above-mentioned regulations of the General Conditions of Delivery, as far as it is conflicting with them, concerning the aforementioned Services.

Article 15 – Execution of advice, consultancy and audits services

- 15.1 ERT will strive to carry out its activities to the best of its ability when executing the advice and consultancy services, audits, trainings and educations and take the care that can be expected from ERT.

- 15.2 ERT determines in what way and by which employee(s) the advice and consultancy services, audits, trainings and educations will be carried out. ERT will take the demands of the Contracting Party as much as possible into account.
- 15.3 The employee(s) supplied by ERT will adhere to the house rules of the Contracting Party.
- 15.4 All our testreports will be supplied in the form of a PDF-document by E-mail.

§ 3 – Final Clauses

Article 16 – Proof

Regarding the financial extent of the mutual obligations resulting from the closed agreements with ERT – except for counter proof by all means – the administrative data of ERT is decisive.

Article 17 – Compliance

The Contracting Party (a) represents and warrants that it is not subject to any trade sanctions imposed by the US, EU, and/or UN, and (b) shall comply with (and not engage any activity, practice or conduct which would constitute an offence under) all applicable laws, statutes, regulations, and codes, including those relating to (i) trade restrictions and/or export controls (including trade sanctions imposed by the US, EU and/or UN) in respect of the Items and/or Services provided to it by ERT, and (ii) anti-bribery and anti-corruption, and provide evidence of compliance with the foregoing as ERT may reasonably request from time to time.

Article 18 – Applicable law

All offers, closed agreements made by ERT and their resulting commitments are exclusively subject to Dutch law.

Article 19 – Disputes

Only the civil judge in Zutphen is authorised to take notice of disputes, unless this is in violation of the enforced law. ERT can divert from this authorisation rule and can apply the legal authority rules.

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