

## General Terms and Conditions of Purchasing TRINAC GmbH (Status: April 01, 2017)

### 1. Scope of Application

- 1.1 The present contractual terms shall apply to business people, legal entities under public law and to public assets under Section 310(1) German Civil Code. The following Terms and Conditions of Purchasing do not apply to consumers.
- 1.2 The following General Terms and Conditions of Purchasing shall govern all TRINAC orders and contracts. These Terms and Conditions shall be considered recognized as decisive and binding without any express declaration on the total duration of the business relationship.
- 1.3 The Supplier's own Terms & Conditions shall not be binding on TRINAC except where TRINAC has expressly agreed to such terms.

### 2. Offer, Conclusion of Contract Product Description

- 2.1 Only orders issued in writing shall be binding on TRINAC. The written form can be ensured by fax; it cannot be replaced by electronic forms, in particular emails.
- 2.2 Verbal agreements and subsidiary agreements shall only be binding after written confirmation from TRINAC. The same shall apply to changes and additions to orders.
- 2.3 Supplier shall inform TRINAC immediately in writing of changes and additions to the scope of delivery/service which turn out to be necessary. These shall require the written approval/consent of TRINAC.
- 2.4 Supplier shall be obligated to check whether the materials/mixtures/products that it uses are covered by the EU chemicals regulation REACH (hereinafter referred to as "REACH") and must ensure that these comply with the requirements of REACH with their next client. Supplier shall be obligated to confirm the conformity of the material/mixtures/products that it uses with REACH and to provide all information necessary in this respect regarding safe handling. If the materials are hazardous materials, the safety data sheets are to be handed over to TRINAC immediately, at the latest at the time of delivery, in accordance with the applicable hazardous material regulations, as well as the usage instructions.

### 3. Delivery and Shipping

- 3.1 Unless agreed otherwise, deliveries must be delivered free shipping address. This is the place of performance.
- 3.2 A delivery note must be attached to each delivery and must include the TRINAC order and project number/cost center as well as the description of the type and quantity of the content of the delivery.
- 3.3 Transportation packaging and means must be removed by Supplier immediately after delivery. If Supplier fails to comply with this obligation, TRINAC shall be entitled to have these removed stating the Interseroh number at the expense of Supplier.
- 3.4 In case of devices, technical description and operating instructions in German must be included free of charge. In case of software products, the delivery obligation shall only be fulfilled when the complete technical system (user) documentation has been handed over. Programs that have been specially created for TRINAC shall be delivered including the source format.

### 4. Delivery Terms/Delivery Deadlines

- 4.1 The delivery term or deadline stated in the order is binding. The decisive date with regard to compliance with the delivery deadline or delivery term is the time when the goods are received without defects at the place of performance or if the law on work contracts applies—the acceptance of the delivery service.

4.2 If any circumstances of Supplier prevent compliance with the agreed delivery deadline, it must inform TRINAC of this immediately after becoming aware of it, stating the reasons and the expected effects. This notification shall not release Supplier from its delivery obligations.

4.3 Early delivery, deliveries outside of the goods acceptance periods stated TRINAC as well as partial and multiple deliveries shall require prior approval.

4.4 Partial or multiple deliveries that have been approved shall be free of cost to TRINAC. Additional costs resulting from partial delivery shipments that have been agreed shall be included in the agreed payment, unless otherwise agreed.

### 5. Transfer of Risk, Acceptance, Rights of Ownership

5.1 In case of delivery with setup or assembly and in case of services, the risk shall be transferred at the time of acceptance, in case of delivery without setup or assembly, the risk shall be transferred at the time of receipt by TRINAC at the stated delivery address.

5.2 Ownership of the delivered goods shall be transferred to TRINAC upon payment. The possibility of any extended or expanded right retention of ownership is excluded.

### 6. Prices

6.1 The prices stated in the order are fixed prices. The price includes the cost of freight, packaging, and material testing procedures. Claims based on additional deliveries and/or services can only be made after advance written agreement and commissioning of the additional deliveries and/or services between contractual parties. Otherwise, the possibility of additional claims above the prices stated in the order is excluded.

6.2 With regard to presentations and/or the drafting of offers, no compensation shall be paid unless otherwise agreed in advance in writing.

### 7. Invoicing, Terms and Conditions of Payment

7.1 Invoices must include the order and project number/cost center and must be sent immediately after the shipping of the goods. Value added tax must be shown separately at the statutory rate.

7.2 Payments shall be made on condition of proper delivery and correct pricing and calculation.

7.3 After the handover of the delivery and the receipt of all contractually required documentation and the auditable invoice, TRINAC shall make a payment within 30 days of receipt of the invoice, unless otherwise agreed. In case of return of the invoice for reasons that are not the fault of TRINAC, any payment deadlines shall not begin before the receipt of the invoice corrective by Supplier.

7.4 After acceptance of a work service, in addition to receipt of all contractually required documentation, the statements under Article 7.3 shall apply accordingly.

7.5 In case of payment by bank transfer or check, the payment obligation shall be considered to have been fulfilled in a timely manner where TRINAC has submitted the bank transfer order or has sent the check to Supplier.

7.6 Payments and use/commissioning do not represent a recognition of the deliveries and services as being in accordance with the contract.

### 8. Offsetting, Assignment and Rights of Retention

8.1 Supplier states that it agrees that TRINAC can in any case offset its receivables against receivables of Supplier, irrespective of the legal grounds for this, even if the mutual receivables are due at different times. If the receivables are due at different times, the receivables of

TRINAC shall be offset in this respect at the latest at the time when the liabilities of Supplier are due and as of the value date of the invoice.

- 8.2 Supplier states that it agrees that TRINAC may offset its undisputed or legally determined receivables against all receivables of Supplier to TRINAC or a member of the HOCHTIEF group of companies is entitled against Supplier or against the company that belongs to the same group of companies as Supplier.
- 8.3 In case of the presence of a defect covered by a guarantee, TRINAC shall be entitled to return the payment until proper fulfillment in full. In case of guarantee rights under contract of work, the right retention is restricted in accordance with the law to twice the level of the costs for the rectification of the defect.
- 8.4 Supplier can only offset against undisputed or legally determined receivables.
- 8.5 Assignments Are receivables TRINAC and other transfers of rights and obligations on part of Supplier outside the scope of Section 354 a German Commercial Code are excluded. Any exceptions must be in writing in order to be effective.

## **9. Guarantee**

- 9.1 Claims relating to defects are based strictly on the statutory provisions unless provided otherwise in the following.
- 9.2 Supplier must provide TRINAC with goods that are free of material and legal defects. It guarantees that all deliveries and services that it performs compliant with the state of technology, the applicable legal provisions, and the guidelines and regulations of authorities, industry and professional associations at the time of the performance of the delivery/service and that it is not aware of any upcoming changes. This shall apply in particular with regard to environmental regulations applicable within the EU, in the Federal Republic of Germany, and at the headquarters of Supplier. Supplier must inform TRINAC of any upcoming changes of which it is aware.
- 9.3 If the delivery includes a defect, TRINAC shall have the option of requesting that Supplier rectify the defect or provide a replacement. In such event, Supplier shall be obligated to pay all expenses that are necessary for the rectification of the defect or for the replacement delivery. The right to compensation for damages, in particular for compensation for damages instead of the service, is expressly reserved.
- 9.4 The guarantee period shall total 36 months starting from the transfer of risk, unless a longer guarantee period applies as a result of a statutory or a separate contractual provision. The guarantee period shall be tolled for a period that begins at the sending of a notification of a defect by TRINAC and ends with the receipt of the defect-free delivery or service by TRINAC. With regard to a repaired or replaced or repeated part of the delivery or service, the period stated in sentence 1 shall begin to run again at the time of the receipt of the defect free delivery or service.
- 9.5 Supplier shall release TRINAC upon first request from all claims that are made by third parties against TRINAC – irrespective of the legal grounds – resulting from material or legal defects or from other defects in a product provided by Supplier and shall refund the necessary costs of legal proceedings in this respect.
- 9.6 Supplier assigns all guarantee claims against its sub Suppliers to TRINAC. The assignment is accepted by TRINAC. Supplier shall be obligated to realize the guarantee rights for TRINAC until revocation by TRINAC.
- 9.7 TRINAC reserves the right to check the goods immediately after receipt for obvious and visible defects and only to approve it after that. In case of any complaint, Supplier can be charged the costs of the

inspection. In case of any kind of defect, the complaint period shall last for 14 days after it is recognized. During the guarantee period, Supplier shall waive the defense of delayed notification with regard to concealed defects.

- 9.8 Supplier assumes the inspection obligations for TRINAC and therefore waives the defenses under Section 377 German Commercial Code.

## **10. Liability**

- 10.1 Supplier shall be liable within the statutory provisions. As part of contracts for work, originals of certificates that the minimum wage has been received for the employees must be attached to the relevant invoices for proof of the minimum wage to be paid, if the proof of payment of the contractor is not performed in another manner.
- 10.2 If a claim is made by TRINAC by a third party resulting from product liability or in accordance with other legal provisions as well as for a material or legal defect or another error by Supplier or any other defect in a product delivered by Supplier, Supplier shall be obligated to release TRINAC from such claims in full upon first request, insofar as and if it is directly liable within the external relationship with third parties. If TRINAC performs a product recall as a result of an event of this kind, Supplier shall be issued an invoice for expenses and costs; the latter shall be obligated to release TRINAC from this upon first request, insofar as it is liable in accordance with Sections 830, 840, 426 German Civil Code. This shall apply, in particular, to any recalls within the product safety act.
- 10.3 Supplier guarantees that appropriate product liability insurance. TRINAC shall be entitled to request from Supplier confirmation of coverage from its insurer.

## **11. Third Party Intellectual Property Rights**

Supplier warrants and represents that the use of the purchased or delivered goods is not contrary to third party rights and that in particular, no third-party rights shall be infringed. If a claim is made against TRINAC as a result of a possible breach of third party rights, for example copyright, patent, or other intellectual property rights, Supplier shall release TRINAC from this and from any associated payment.

## **12. Use of Material Provided, Ownership Rights**

- 12.1 Diagrams drafts, samples, manufacturing specifications, internal company data, tools, installations, etc., which TRINAC has provided to Supplier for the submission of an offer for the performance of an order, shall remain the property of TRINAC. They may not be used, duplicated, all made available to third parties for any other purpose without written approval and must be stored with the care of a prudent businessperson. After the processing of the order, they must be returned TRINAC including any copies that have been made without any request having to be made, or they may be destroyed by Supplier, after written approval has been obtained.
- 12.2 If Supplier processes or reshapes material that has been provided with, this activity shall be performed for TRINAC. TRINAC shall immediately become the owner of the new items created in this process. If the material provided accounts for only a part of the new items, TRINAC shall have joint ownership of the new items based on a proportion that corresponds to the proportion of material provided contained in the new items.

## **13. Data Protection**

- 13.1 Supplier shall be obligated to keep confidential all diagrams, images, calculations, and other documentation and information received in connection with the order. It may only make these accessible to third parties with written approval from TRINAC unless

Supplier is obligated to do so on the basis of the law or official regulations. The confidentiality obligation shall also include personal information. The confidentiality obligation shall survive the contract; it shall lapse if and insofar as the manufacturing knowledge contained in the diagrams, images, calculations, and other documentation becomes generally known. Supplier must ensure that its sub-Suppliers enter into a corresponding confidentiality obligation.

- 13.2 The conclusion of the contract must be treated as confidential. Reference may only be made in Supplier's advertising materials to the business transaction with TRINAC only after written approval. TRINAC and Supplier shall each be obligated to treat as a trade secret all details that are not obvious commercial or technical details of which it becomes aware as a result of the business relationship. Supplier must ensure that its sub-suppliers enter into a corresponding obligation.

#### **14. Code of Conduct - Restriction of Competition**

- 14.1 Supplier guarantees and enters into an obligation regarding compliance with the Code of Conduct for Contractual Partners of HOCHTIEF Aktiengesellschaft in the performance of its deliveries and services. In particular, Supplier guarantees and enters into an obligation expressly regarding compliance with the anticorruption and anti-trust and competition regulations included in the Code of Conduct. Supplier's employees and sub-Suppliers must be obligated to comply with the Code of Conduct (in so far as subcontracting by Supplier has been provided for or agreed upon in this contract. The Code of Conduct can be viewed on [www.trinac.de](http://www.trinac.de).

- 14.2 If Supplier breaches provisions of the Code of Conduct and this does not rectify the breach after being requested to do so by TRINAC within an appropriate period of time, TRINAC shall be entitled to terminate the contract immediately on important grounds or to withdraw from the contract.

- 14.3 In case of a breach of applicable anticorruption and antitrust and competition regulations or in case of other serious breaches of obligations under the Code of Conduct, TRINAC shall be entitled to terminate the contract on important grounds or to withdraw from the contract without setting any grace period.

If Supplier or a person commissioned by Supplier or acting on behalf of Supplier is proven to have entered into an agreement that represents a restriction of competition, Supplier must pay as compensation for damages 10% of the contractual net purchasing amount incurred with regard to the product affected by the agreement during the anti-trust period. This shall not apply if Supplier is not responsible for the impermissible restriction of competition. TRINAC shall be free to provide proof that higher damage actually was incurred. Supplier shall be free to provide proof that No damage all lower damages occurred.

#### **15. Severability Clause**

- 15.1 Where these Terms and Conditions of Purchasing do not contain a provision, the statutory provisions shall apply, unless the contractual parties have explicitly agreed otherwise in writing.

- 15.2 Should one or several provisions of these Terms and Conditions of Purchasing be ineffective or unenforceable, the effectiveness of the remaining provisions shall remain unaffected. The ineffective/unenforceable provision shall be deemed replaced by such effective provision that most closely resembles the economic intent by the parties. The same shall apply in the event of gaps, if any.

#### **16. Contract Language**

The language of negotiation and of the contract is German. This also means that the processing of the

contract verbally and in writing shall be performed in German.

#### **17. Applicable Law**

The laws of the Federal Republic of Germany shall apply in exclusion of the United Nations Convention of the International Sale of Goods and the conflict of laws provisions of private international law.

#### **18. Legal Venue**

Unless opposed by mandatory statutory provisions, legal venue for any and all claims under the respective contract is, at TRINAC's option, Essen, Germany.