

## General Terms and Conditions of Sale 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.
- 1.2 The following General Terms and Conditions of Sale shall be decisive with regard to all of Seller's 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 Buyer's own Terms & Conditions shall not be binding on Seller except where Seller has expressly agreed to such terms.
- 1.4 If, in connection with the purchase, assembly services are also performed by Seller, the General Terms and Conditions of Assembly will apply in this respect in addition to the General Terms and Conditions of Sale, in addition to the regulations for the preparation of construction sites.

### 2. Offer, Technical Changes and Conclusion of Contract

- 2.1 Unless otherwise agreed, offers made by Seller will be non-binding.
- 2.2 Additions, modifications, or other subsidiary contractual agreements must take place in writing. This excludes the option of verbal subsidiary agreements. The written form can be ensured by fax; it cannot be replaced by electronic forms, in particular emails.
- 2.3 Diagrams of Seller's products in brochures, advertisements, on the website, will not be binding. Slight, deviations in mass, weight, and performance information that are usual in the industry and are the result of technical improvements will be permitted.
- 2.4 Guarantees will only be issued by Seller in case of a special agreement. Any agreement of this kind must be in written form in order to be effective. Reference to DIN standards only serves the purpose of describing the item for sale and therefore does not represent any guarantee.
- 2.5 The written confirmation by Seller will be decisive with regard to the scope of the delivery.

### 3. Prices

- 3.1 All stated prices are net and do not include the statutory value added tax that is applicable on the date of invoicing. This will be included in the invoice at the currently applicable rate in accordance with the valid tax regulations.
- 3.2 Prices are net ex stock. In addition to statutory value added tax, packaging, downloading, and shipping costs will be invoiced separately, as well as customs duty, these, and other public contributions will also be invoiced in case of exported deliveries.

### 4. Terms of Payment, Credit Information

- 4.1 Payment of the purchase price will be due immediately upon receipt of the invoice before delivery of the sale item and without any deductions unless otherwise agreed.
- 4.2 Seller will be entitled to perform any outstanding deliveries and services only in exchange for an advance payment or the payment of security if Seller becomes aware after the conclusion of the contract that the payment claim is the risk of the results of a lack of credit worthiness on the part of Buyer.
- 4.3 Bank drafts, checks, or bills of exchange will only be accepted in case of a special agreement and with all collection fees and discount charges taken into account and always only on account of payment.
- 4.4 Interest on arrears will be calculated in accordance with Section 288(2) German Civil Code at a rate of 9% points above the base interest rate.

- 4.5 Buyer authorizes Seller to obtain information regarding its creditworthiness and ability to pay from its credit institutions in all transactions.

- 4.6 In case of delayed payment on the part of Buyer or if Buyer's creditworthiness deteriorates, the will be entitled to request security or to perform services that are still outstanding only in exchange for advance payment or the provision of collateral.

### 5. Offsetting and Right of Retention

Buyer shall only be entitled to retain payments or to offset them against counterclaims only to the extent that its counterclaims are undisputed or have been legally determined; in addition, there will be all right to retention of payment if the counterclaim relates to the same contractual relationship.

### 6. Delivery Time

- 6.1 The delivery time shall be determined by the order confirmation.
- 6.2 Delivery terms will begin at the time when the contract is entered into, but not before the clarification of all technical and commercial details with Buyer. If shipping has been agreed upon, the delivery terms and deadlines well relate to the time of handover to the shipping agent, freight carrier, or other third party commissioned with the transport.
- 6.3 Observance of the obligation to deliver presupposes Buyer's timely and proper fulfillment of his obligation to cooperate.
- 6.4 In case of labor disputes, the occurrence of unforeseen impediments that are outside of the scope of entrance of Seller for which the manufacturing plant is responsible, the delivery deadline or delivery term will be extended by the duration of the delay resulting from these circumstances. This will apply accordingly if the impediments occur during the delivery delay that already exists.
- 6.5 Buyer's claim to compensation for compensation of damages resulting from delayed delivery (Section 280(1), (2) Civil Code in connection with Section 286 Civil Code) shall be limited to a maximum of 5% of the agreed net purchase price in case of slight negligence.
- 6.6 All other claims for compensation for damages on the part of Buyer as a result of delayed delivery or excluded in case of slight negligence. As a result of a delayed delivery in case of slight negligence, Buyer can in particular not request compensation and damages instead of performance (Section 280(1), (3) Civil Code in connection with Section 281(1) Civil code).
- 6.7 Where delivery is delayed owing to circumstances for which Buyer is responsible, Seller is entitled to claim any damages incurred, included any extra costs (e.g. warehouse costs).

### 7. Transfer of Risk and Shipment and Receipt of Purchased Items

- 7.1 With the handover of the goods, the risk of accidental loss and accidental deterioration of the goods shall be transferred to Buyer. Where the goods are dispatched at the request of Buyer, the risk of accidental loss or accidental deterioration of the goods shall be transferred to Buyer at the time of handover to the shipper, carrier or other person or office charged with the transport, irrespective of whether dispatch is from the place of performance and who is responsible for the transportation costs. Where the goods are ready for dispatch and dispatch or acceptance are delayed for reasons beyond Seller's control, the risk shall be transferred to Buyer on receipt of notification of Seller's readiness to dispatch.
- 7.2 Seller will only procure insurance for transport damage that the express request of Buyer and at its expense.

7.3 Seller will not be obliged to select the cheapest shipping type. The possibility of claims for compensation for damages on part of Buyer the result of incorrect shipping or defective packaging will be excluded in case of slight negligence.

## 8. Rights in Case of Defects

8.1 In case of the sale of used purchase items, the possibility of any liability for material defects and therefore any guarantee is excluded. This will not apply in case of gross culpability or injury to life, body, or health. The exclusion of any guarantee will not apply, however, if Seller fraudulently conceals a defect or has assumed a guarantee for a characteristic of the purchase item/

8.2 In case of the sale of new purchase items, the following will apply:

- a.) Claims by Buyer based on material defects in purchase item – irrespective of the legal grounds – will expire 12 months after delivery. This will not apply in case of gross culpability or injury to life, body, or health. The regulated time limit will apply if Seller has fraudulently concealed a defect or assumed a guarantee for a characteristic of the purchase item, or in case of claims under product liability law.
- b.) Claims by Buyer resulting from a defect that already existed at the time of the transfer of risk – insofar as Seller did not drop slowly conceal the material defect and do not assume a guarantee for a characteristic of the purchase item – will be limited to Buyer's choice of subsequent performance in the form of the recognition of the defect or the delivery of a defect-free item. If Buyer's choice of subsequent performance (rectification of the defect or delivery) will be entitled to choose between reducing the purchase price of the purchase item on withdrawing from the contract.
- c.) Seller shall provide no warranty particularly with regard to the following:
  - natural wear and tear.
  - inappropriate or improper use,
  - incorrect assembly, operation or commissioning on the part of Buyer or a third party,
  - incorrect or negligent treatment of the purchased goods, particularly with regard to the given operating instructions,
  - use of inappropriate machinery materials and substitute materials
- d.) Purchaser will be excluded from all claims for material defects if – except in emergency cases – repair, alteration, or replacement of individual parts of the purchase item is performed by a person not explicitly authorized to do so by Seller. Buyer will be responsible for the costs incurred for the measures performed by such a person, which will result in the loss of claims to compensation for damages.
- e.) Buyer must examine the purchase item immediately upon receipt – at the latest within three business days. Buyer must inform Seller immediately in writing of the determination of defects in the purchase item – in case of noticeable defects, however, at the latest within three business days of receipt and in case of defects that are not noticeable, within three business days of the time when they become noticeable; otherwise, the goods will be considered approved.
- f.) The defect liability rights of Buyer are conditional upon Buyer complying properly with its inspection and complaint obligations in accordance with item 8.2.e.) of these general contractual terms and conditions.

## 9. Liability

9.1 Where a guaranteed quality of the purchased goods is absent, Seller shall be liable in accordance with

legislation. This shall not apply where the purpose of such guarantee extended only to contractual conformance and not to the risk of consequential loss.

9.2 Seller shall be liable under legislation where Buyer claims damages based on deliberate action or gross negligence, including the deliberate action or gross negligence of his agents or assistants.

9.3 Seller shall be liable under legislation in the event of culpable breach of major contractual obligations including liability for the gross negligence of non-executive employees and for lesser negligence, the latter case being however limited to losses which are contract typical and may be reasonably anticipated.

9.4 Seller shall be liable under legislation for losses to life, limb or health incurred by negligent breach of obligations on the part of Seller or in the event of deliberate or grossly negligent breach of obligations on the part of an agent or assistant of Seller. Liability for compensation for damages is limited to the typically foreseeable damages that may occur.

9.5 Liability for losses incurred by defects in the purchased goods, insofar as liability shall apply pursuant to the Product Liability Act for personal or material losses with regard to privately used objects, remains unaffected.

9.6 In case of damages to Buyer caused by a defect in the purchase item, rather than damages, Seller will only be liable:

- in case of gross culpability,
- in case of injury to life, body, or health,
- in case of a culpable breach of significant contractual obligations, in a manner that places at risk the fulfillment of the purpose of the contract, with regard to the typical damages that could be foreseen at the time of the conclusion of the contract,
- in cases in which in accordance with product liability law, there is for damage to persons or property regarding privately used items in case of defects in the purchase items,
- in cases where the purchase item is lacking an expressly guaranteed characteristic, if the guarantee had the precise purpose of guaranteeing that damage would not occur to the sold item,
- also in case of fraudulent concealment of defects or the assumption of a guarantee of a characteristic of the purchase item.

## 10. Other Claims for Damages

10.1 Any further liability for loss than that stated in Nos. 3.4 and 5. of these General Conditions of Sale shall be excluded, irrespective of the legal nature of the acknowledged claim. This shall apply in particular to claims arising out of pre-contractual or contractual breach of obligations, delay or impermissible action.

10.2 The mandatory provisions of the German Product Liability Act shall remain unaffected.

## 11. Right of Seller to Withdraw

11.1 Seller shall be entitled to withdraw from the contract either wholly or in part where, in the event that instalment payments have been agreed, Buyer fails to meet two successive instalments or is in arrears with regard to a considerable portion of the respective given instalment, where Buyer requests the opening of bankruptcy proceedings or some similar legal process or such a process is initiated against him or such process is rejected owing to insufficient assets.

11.2 In addition, Seller will have the right to withdraw entirely or in part from the contract if Buyer applies for the initiation of insolvency proceedings or comparable statutory proceedings, or if proceedings of this kind are initiated, or the initiation of such proceedings is rejected as a result of lack of assets.

## **12. Exclusion of Liability in Case of Force Majeure**

- 12.1 Where Seller is prevented from meeting his obligations owing to the occurrence of unforeseen, extraordinary circumstances, which despite all possible care to be expected with regard to the given circumstances, he is unable to prevent, irrespective of whether such circumstances occur in his own works or in the works of his sub-contractors, e.g. business interruption, official intervention, delay in the delivery of important raw materials and construction materials, or difficulties with the supply of energy, the delivery time shall be extended by an appropriate period where delivery is not impossible. Where owing to the aforementioned circumstances, delivery is impossible, Seller shall be released from his obligation to perform.
- 12.2 If the circumstances above make it impossible to perform the service, Seller will be released from performance.
- 12.3 In the case of strike and lock-out too, the delivery time shall be extended by an appropriate period where delivery or performance is not impossible. Where performance is impossible, Seller shall be released from his obligation to perform.
- 12.4 Where in the aforementioned cases the delivery time is extended or Seller is released from his obligation to perform, Buyer's right to claim for losses thus incurred and his right to withdraw shall be set aside.

## **13. Retention of Title**

- 13.1 The goods shall remain the property of Seller (conditional goods) until full settlement of all demands arising out of the business relationship between Seller and Buyer. The cancellation of individual demands from an open account, striking a balance and the acknowledgement thereof shall not affect Seller's right to retention of title. Payment shall be deemed to have been made when Seller has received the equivalent amount.
- 13.2 In the event of actions contrary to the contract, Seller is entitled to recover the conditional goods. The recovery or attachment of the conditional goods by Seller represents a withdrawal from the contract.
- 13.3 Buyer shall be entitled to resell the conditional goods within the scope of a proper business transaction. He is however not permitted to let or mortgage the goods, or transfer or assign them as security. Buyer is obliged in the event of resale of the conditional goods on credit to ensure that Seller's rights are upheld.
- 13.4 Buyer herewith assigns any claims out of the resale of conditional goods to Seller and Seller accepts this assignation. Irrespective of the assignment and Seller's right to collection, Buyer shall be entitled to collect for as long as he meets his obligations to Seller and does not succumb to financial collapse. Buyer shall, at Seller's request, provide Seller with all information necessary for the collection of assigned claims and shall inform his debtors of such assignation.
- 13.5 Where the conditional goods or the advance assignment become subject to attachment by third parties, Buyer shall immediately notify Seller of same in writing, providing all documentation necessary for intervention. Where the third party is not in a position to reimburse legal or out of court costs of an action to Seller pursuant to Section 771 Code of Civil Procedure, Buyer shall be liable for Seller's costs. In the event that the conditional goods are seized, Buyer shall also be obliged to reimburse Seller for any costs incurred through their recovery.
- 13.6 Seller undertakes, at Buyer's request, to release the securities accorded to him under the above terms at his own discretion where their value exceeds the asserted claim by 20% or more.
- 13.7 Buyer shall be obligated to adequately insure the conditional goods at his own expense against theft, destruction and damage.

- 13.8 Buyer shall be obligated to handle the conditional goods with care. Where maintenance and inspection are necessary with regard to the conditional goods, Buyer must have such work undertaken in good time at his own expense.

## **14. Severability Clause**

- 14.1 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.
- 14.2 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.

## **15. 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.

## **16. 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.

## **17. Legal Venue**

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