

## General Terms and Conditions for Delivery of the TRAPO GmbH

(Version: March 2022)

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For use with:

1. A person, who when concluding the contract is acting in a professional capacity on a commercial or self-employed basis (entrepreneur);
2. Legal entities under public law or special funds governed by public law.

### **I. General**

1. All goods and services shall be subject to these General Terms and Conditions of Delivery and to any separate contractual agreements. Any deviating terms and conditions of purchase of the Buyer shall not become part of the contract even when an order is accepted.

If there is no separate agreement, a contract shall be concluded when the Supplier issues his written confirmation of the order.

2. The Supplier reserves the ownership or copyrights to all submitted offers and cost estimates, drawings and the like and to information embodied in a tangible or intangible manner - also in electronic form, they may not be made accessible to third parties. Without explicit approval of the Supplier, the Buyer may not make accessible to third parties information and documents designated as confidential by the Buyer.

### **II. Prices and payment**

1. Unless otherwise agreed, the prices shall be ex works of the Supplier and shall include loading at the works, but without packaging and unloading. Value-added tax shall be added to the prices at the respective statutory rate.
2. Unless otherwise agreed, payments shall be made without any deduction to the Supplier's account, namely:  
1/3 down payment after receipt of the order confirmation,  
1/3 as soon as the Buyer is notified that the main components are ready for dispatch,  
the remainder of 1/3 within one month after transfer or risk.
3. The Buyer has only the right to the retention of payments insofar as his counterclaims are undisputed or have been ascertained as legally binding.
4. The Buyer has only the right to the offset with counterclaims from other legal relationships insofar as they are undisputed or have been ascertained as legally binding.

### **III. Time of delivery, delay in delivery**

1. The delivery time is based on the agreements of the contractual parties. Its compliance by the Supplier is subject to the clarification of all commercial and technical questions between the contractual

parties and that the Buyer has fulfilled all obligations he is responsible for, e.g. provision of the necessary official certificates or approvals or the provision of a down payment. If this is not the case, the delivery time shall be extended accordingly. This shall not apply if the Supplier is responsible for the delay.

2. Compliance with the delivery date shall be subject to the correct and punctual delivery to the Supplier. The Supplier shall notify the Buyer of any forthcoming delay as soon as possible.
3. The delivery period shall be deemed to have been observed if the delivery item has left the Supplier's works or the Supplier has given notification that it is ready for dispatch by the time the delivery period expires. If acceptance is contractually required, the contractually specified acceptance deadline, or alternatively the time at which notification of readiness for acceptance is given, shall be decisive, except in the case where the Buyer justifiably refuses acceptance.
4. If dispatch or acceptance of the delivery item is delayed for reasons for which the Buyer is responsible, the Buyer shall be charged, starting one month after notification of readiness of dispatch respectively acceptance, the costs occurred due to the delay.
5. If the non-compliance with the delivery date is due to force majeure, such as labor disputes or other events that are outside Supplier's control, the delivery period shall be extended appropriately. The Supplier shall inform the Buyer of when such circumstances start and end as soon as possible.
6. The Buyer may rescind the contract without setting a deadline, if the Supplier is finally unable to provide the complete performance before the transfer of risk. The Buyer may also rescind the contract, in case of order the execution of a part of the delivery item becomes impossible and the Buyer has justified interest in rejecting the partial delivery. If this is not the case, the Buyer shall pay the contract price corresponding to the partial delivery. This shall also apply in the event of incapacity of the Supplier. In other respects clause VII.2 shall apply.

If the impossibility or incapacity occurs during the delay in acceptance or the Buyer is solely or mainly responsible for these circumstances, the Buyer shall remain obligated to provide return service.

7. If the Supplier is in delay for reasons he is responsible for and the Buyer thereby incurs a damage, the Buyer shall be entitled to claim for liquidated damages at a rate of 0,5 % for each full week of delay, however, maximal limited to 5 % of the value of such part of the delivery item, which cannot be used in time or in accordance with the contract as a result of the delay.

If the Buyer sets the Supplier - taking into account the legal exceptions - a reasonable period of time to perform his obligations after the due date and the deadline is not met, the Buyer shall be entitled to withdraw from the contract within the framework of the legal provisions. He commits himself at Supplier's request to declare within a reasonable period of time, whether he makes use of his right of withdrawal.

Further claims arising from delay in delivery are exclusively governed by clause VII.2. of these Terms and Conditions.

#### **IV. Transfer of risk, acceptance**

1. Risk shall pass to the Buyer when the delivery item has left the works even in case of partial deliveries or the Supplier is responsible for the provision of other services, e.g. the shipping costs or delivery and installation. As far as acceptance has been agreed, this shall be decisive for the transfer of risk.

Acceptance has to be carried out without delay on the acceptance date, alternatively after notification of the Supplier of the readiness for acceptance. The Buyer may not refuse acceptance in the event of an insignificant defect.

2. If dispatch respectively acceptance is delayed or does not take place for reasons the Supplier is not responsible for, the risk shall pass to the Buyer from the date of notification of readiness for dispatch respectively acceptance. The Supplier commits himself to provide the insurances requested by the Buyer at the expense of the Buyer.
3. Partial deliveries shall be permitted insofar as reasonable for the Buyer.

## **V. Retention of title**

1. The Supplier reserves ownership to the delivery item until receipt of all payments owed - even for any additional ancillary services - due under the supply contract.
2. The Supplier has the right to insure the delivery item against theft, breakage, fire, water and other damages, unless the Buyer has demonstrably taken out the insurance himself.
3. The Buyer may neither sell, pledge nor transfer the delivery item by way of security. In the event of pledges as well as seizures or other rights of disposal by third parties he has to inform the Supplier immediately thereof.
4. If the Buyer acts in breach of contract, in particular if he is in arrears with payment, the Supplier is entitled to take back the delivery item after issuing a reminder and the Buyer is obliged to hand it over.
5. Due to the retention of title, the Supplier may only demand the return of the delivery item, if he has terminated the contract.

## **VI. Claims for defects**

The Supplier shall be liable for material defects and defects of title to the exclusion of further claims - subject to clause VII - as follows:

### Material defects

1. All parts that prove to be defective as a result of circumstances before the transfer of risk shall, at the discretion of the Supplier, be repaired or replaced without defects. Such defects shall be notified to the Supplier in writing as soon as they are discovered. Replaced parts shall become the property of the Supplier.
2. Following agreement with the Supplier, the Buyer shall give the Supplier the required time and opportunity to make all repairs and to provide replacement delivery as the Supplier deems necessary; otherwise the Supplier shall be exempt from any liability for the consequences resulting therefrom.  
  
Only in urgent cases that endanger operational safety respectively to prevent unreasonably high damages, whereby the Supplier has to inform the Buyer without delay, the Buyer shall be entitled to remedy the defect himself or to have the defect remedied by third parties and to demand reimbursement of the necessary expenses from the Supplier.
3. The Supplier shall - provided the complaint proves to be justified - bear the expenses necessary for subsequent performance, provided that this does not place a disproportionate burden on the

Supplier. If the expenses increase due to transport of the delivery item to a different location than the place of fulfilment the extra costs resulting therefrom have to be borne by the Buyer. If a newly produced object is sold, the Supplier shall, within the scope of his statutory obligation, compensate for any costs incurred by the Buyer in the course of pursuing his rights of recourse along the supply chain.

4. Within the framework of the legal provisions, the Buyer shall have the right to withdraw from the contract if the Supplier - taking into account the statutory exceptions - fails to remedy a defect by a reasonable period of time set to him to repair the article or supply a replacement. If the defect is only insignificant, the Buyer shall merely have a right to a reduction of the contract price. The right of reduction of the contract price shall otherwise be excluded.
5. Further claims are exclusively subject to clause VII.2 of these Terms and Conditions.
6. The Supplier shall not be liable for defects including, but not limited to the following cases: inappropriate or improper use, incorrect assembly and commissioning by the Buyer or a third party, normal wear and tear or negligent treatment, improper maintenance, unsuitable means of operation, defective construction works, unsuitable foundation, chemical, electrochemical or electrical influences - provided that the Supplier is not responsible for them.
7. If the Buyer or a third party carries out repairs improperly, the Supplier shall not be liable for the consequences resulting therefrom. The same shall apply to changes of the delivery item that have been made without the prior approval of the Supplier.

#### Defects of title

8. If use of the delivery item results in the infringement of industrial property rights or copyrights in Germany, the Supplier shall in principle and at this own expense obtain the right for the Buyer to continue using it or modify the delivery item in a manner acceptable for the Buyer so that the property right is no longer infringed.

If this is not economically feasible or not possible within a reasonable period of time, the Buyer shall be entitled to rescind the contract. Subject to the aforementioned, the Supplier shall also have the right to rescind the contract.

Moreover, the Supplier shall exempt the Buyer from any claims of the respective owners of the property rights that are undisputed or have been ascertained as legally binding.

9. Subject to clause VII.2, the Supplier's obligations specified in clause VI.8 shall be final in relation to the infringement of property rights or copyrights.

These obligations shall only exist if

- the Buyer informs the Supplier as soon as infringements or property rights or copyrights are claimed,
- the Buyer assists the Supplier to a reasonable extent in defending against the asserted claims respectively enables the Supplier to make the modifications as stated in clause VI.8.,
- the Supplier retains the right to undertake all defensive measures, including out-of-court-settlement,
- the defect of title is not attributable to an instruction of the Buyer and

- the infringement has not been caused by the fact that the Buyer has modified the delivery item on his own or used it in a way not in conformity with the contract.

## **VII. Liability, Limitation of Liability**

1. If the delivery item cannot be used by the Buyer in accordance with the contract as a result of proposals from the Supplier that were wrong or negligently omitted or advice provided before or after conclusion of the contract or as a result of culpable violation of other accessory contractual obligations - in particular the obligation to provide instructions for the use and maintenance of the delivery item - the provisions of clause VI and clause VII.2 shall apply to the exclusion of further claims by the Buyer.
2. The Supplier shall be liable for damages not caused to the delivery item itself, for whatever legal reasons, only
  - a. in case of intent and gross negligence,
  - b. in case of a culpable breach of life, body, health,
  - c. in case of defects the Supplier has fraudulently concealed,
  - d. within the framework of an assured warranty,
  - e. in case of defects of the delivery item as far as liability is provided in accordance with the Product Liability Act for injury to persons and material damages to privately used objects.

In case of a culpable breach of essential contractual obligations the Supplier shall also be liable for slight negligence, however, limited to the contractually typical reasonably foreseeable damage.

Further claims are excluded.

## **VIII. Statue of limitation**

All claims of the Buyer - for any legal reason whatsoever - shall become statue-barred in 12 months; this shall also apply to recourse claims in the supply chain as per § 445 para. 1 BGB (German Civil Code), provided the last contract in this supply chain is not a consumer good purchase. The expiry suspension of § 445 para. 2 BGB (German Civil Code) remains unaffected. Claims for damages as per clause VII. 2 a-c and e are subject to the legal periods. They also apply to defects of a building or for supplied articles, which have been used in accordance with their usual purpose for a building and caused the defectiveness thereof.

## **IX. Use of software**

As far as software is part of the delivery item, the Buyer shall be granted a non-exclusive right to use it and its documentation. It shall be provided for use on the intended delivery item. The use of the software on more than one system is not permitted.

The Buyer may only duplicate, revise, translate or convert it from object code to source code to the legally permissible extent (§§ 69 a. ff. UrhG). The Buyer commits himself not to remove manufacturer's data - in particular copyright notices - or to change them without prior explicit approval of the Supplier.

Any and all other rights in the software and the documentation including copies remain with the Supplier and/or with the software supplier. The assignment of sublicenses is not permissible.

#### **X. Applicable law, place of jurisdiction**

1. For all legal relationships between the Supplier and the Buyer the law of the Federal Republic of Germany, which governs the legal relations between domestic parties, shall apply exclusively.
2. The place of jurisdiction shall be the court having jurisdiction over the Supplier's place of business. However, the Supplier shall also be entitled to sue the Buyer before the court having jurisdiction over the Buyer's place of business.

#### **XI. Assembly**

Insofar as an assembly has to be provided, the General Terms and Conditions for Assembly shall apply in addition.

#### **XII. Supervision of assembly**

Insofar as a supervision of assembly has to be provided, the General Terms and Conditions for the Supervision of Assembly shall apply in addition.