

GENERAL TERMS OF DELIVERY AND PAYMENT

Trox Austria GmbH

I. Conclusion of contract

1. Any and all contracts, including any future ones, on deliveries and other services shall be subject to these General Terms of Delivery and Payment. No terms and conditions communicated by the buyer shall apply even if we do not expressly object to them on their receipt.
2. Our offers are not binding. Any oral agreements and representations given by our staff shall be binding only after our written confirmation.
3. In case of doubt, the interpretation of trade terms shall be subject to Incoterms 1990.

II. Prices

1. Unless otherwise agreed, the prices agreed are fixed prices.
2. If, after the conclusion of the contract, any taxes and other third-party costs included in the agreed price are changed or become payable, we reserve the right to modify our prices accordingly.

III. Terms of payment

1. Unless otherwise agreed in writing, payment terms are within 10 days of the date of invoice, less a 3% discount, or net 30 days from the date of invoice.
2. Payment shall be made in such a way that the amount is at our disposal at the due date. Any costs relating to payment transactions shall be borne by the buyer. The buyer shall be entitled to any right of retention and set-off only insofar as its counterdemands have not been contested or have been recognised by declaratory judgment.
3. In the event that the period allowed for payment is exceeded, we shall charge interest at a rate of 3% above the discount rate of Oesterreichische Nationalbank, unless the buyer proves a smaller loss on our part. In particular, we reserve the right to charge any additional expenses in connection with changes in exchange rates and any hedging of the exchange risk.
4. If the buyer defaults on payment or fails to pay a bill of exchange upon maturity, we shall be entitled to take back the goods, and, if necessary, to access the buyer's business premises and remove the goods. We may furthermore prohibit the resale and the removal of the supplied goods. Taking back the goods may not be deemed a withdrawal from the contract.
5. If we are subsequently informed of any circumstances which result in a substantial deterioration of the buyer's financial position and which jeopardise our claim for payment, we shall be entitled to request immediate payment irrespective of the term of any bills received.
6. In the cases specified in paras. 4 and 5 we may revoke the authorisation to collect claims (Art. V para. 5) and demand prepayment for any outstanding deliveries.
7. The buyer may avert the legal consequences specified in paras. 4 to 6 by providing security in the amount of our endangered claim for payment.

IV. Effecting deliveries, delivery periods and dates

1. Our delivery obligation shall be subject to the reservation that we obtain our supplies correctly and in due time unless such incorrect or late supply is our responsibility.
2. Any statements as to delivery times are approximate. Agreed delivery periods shall commence upon the date of our confirming the order and be valid only if all details relating to the order have been clarified in due time and the buyer has fulfilled all of its obligations in due time, e.g. obtaining all official certifications, issuing letters of credit and guarantees or making advance payments.
3. The observance of delivery periods and dates shall be subject to the date of dispatch ex works or ex warehouse. They are deemed to have been observed once notification has been given as to readiness for shipment even if the goods are not dispatched in due time provided this is not because of any fault on our part.
4. In any event of force majeure we shall be entitled to extend delivery for the time of obstruction plus an adequate starting period. This shall also apply in case such events occur during an existing default. Events of force majeure include measures of monetary policy or other sovereign measures,

strike, lock-out, interruption of operations for which we bear no responsibility (e.g. fire, breakdown of machinery and rollers, shortage of raw materials or energy), obstruction of roads, delays in import/customs clearance as well as any other circumstances substantially impeding deliveries and services or rendering them impossible, without any negligence or fault on our part. It shall be irrelevant in this respect whether such events occur with us or one of our suppliers. If, as a result of any of the above-mentioned events, the performance of the contract becomes unreasonable for either contracting party, such party may terminate the contract. The buyer may exercise any right of rescission due to the buyer on the grounds of impossibility and default only insofar as a continuation of the contract is deemed unreasonable for the buyer. The buyer's claims for damages shall be governed by Article IX of these Terms.

Retention of title

We retain title to all goods delivered (goods subject to retention of title) until settlement of all claims, including without limitation any balances existing at relevant times, due to us under the contractual relationship. This shall also apply to all claims arising in the future or in consequence, e.g. from acceptor's bills, and also if payments are made for the purpose of settlement of specially designated claims. Should the goods subject to retention of title be processed, combined or mixed with other goods by the buyer, we shall be entitled to a co-owner's share in what thus arises, in proportion to the invoice value of the goods subject to retention of title vis-à-vis the invoice value of the other goods used. If our title expires due to the combination or mixing of the goods, the buyer shall immediately transfer its title to the new stock or thing to us, to the extent of the invoice value of the goods subject to retention of title and shall keep and maintain them for us free of charge. Our co-ownership rights are deemed goods subject to retention of title within the meaning of para. 1. The buyer may only resell goods subject to retention of title in the ordinary course of business on its standard terms of business and as long as the buyer is not in default provided that any claims arising from such resale specified in paras. 4 to 6 are transferred to us. The buyer shall not have the right to dispose of the goods subject to retention of title in any other way. The buyer's claims arising from the resale of the goods subject to retention of title shall be assigned to us immediately. They shall serve as security to the same extent as the goods subject to retention of title. Should the goods subject to retention of title be resold by the buyer together with other goods not sold by us, we shall be assigned the claim arising from such resale in proportion to the invoice value of the other goods sold. In the event of a resale of goods in which we hold a co-owner's share according to para. 2, we shall be assigned a portion corresponding to our co-owner's share. The buyer shall be entitled to collect claims arising from resale unless we revoke the authorisation to collect claims in the cases specified in Article III para. 6. At our request, the buyer shall be obliged to inform its suppliers immediately of any assignment to us, unless we inform them ourselves, and to provide us with any information and documents required for such collection. The buyer shall in no event be entitled to further assign any part of the claim. This shall also apply to factoring to which the buyer shall not be entitled on the basis of our authorisation to collect claims. The buyer shall notify us without delay of any seizure or other intervention by third parties. If the value of the securities provided exceeds the secured claims by more than 20% in the aggregate, we are, upon the buyer's request, obliged to release securities to this amount, the choice of which is at our discretion.

VI. Part delivery, continuous delivery

1. We determine the shipment route, the means of shipment as well as the forwarding agent and carrier.
2. Goods that are reported to be ready for dispatch in accordance with the contract must be collected immediately, otherwise we have the right to ship them at the expense and risk of the buyer, at our option, or to store and immediately charge them at our discretion.
3. If, on grounds for which we bear no responsibility, the transport via the scheduled route or to the scheduled place becomes impossible to effect within the period scheduled, we shall be entitled to effect delivery via another route or to another place; the resulting costs shall be borne by the buyer. The buyer shall be given the opportunity to give its opinion beforehand.
4. Upon the delivery of the goods to a forwarding agent or a carrier, but in any case at the latest upon their leaving the warehouse or the works of delivery, risk, including the risk of seizure, is transferred to the buyer in all transactions, even in case of delivery freight prepaid or free of charge to address of buyer.
5. Goods shall be delivered unpacked and without protection against rust. If customary in the trade, the goods will be delivered packed. Based on our experience we shall make arrangements for packaging, protection and/or auxiliary means of transportation at the buyer's expense. We shall only make arrangements for transport insurance upon the buyer's request and at the buyer's expense.
6. We shall have the right to effect reasonable part deliveries. Additional or short deliveries, as customary within the relevant field of business, are permissible.

VII. Notice of defects and warranty

- We warrant against defects and the lack of guaranteed quality in accordance with the following provisions:
1. Any notice of defect of the goods shall be given immediately in writing, 14 days after delivery at the latest. Defects which are not detected within such period shall be notified in writing immediately after detection, and any working and processing be terminated immediately.
 2. In the event of justified and timely notice of defects being given, we shall take back the goods complained of and replace them with faultless goods or repair them. In case of a failure of such repair or replacement delivery, the buyer may terminate the contract or request a reduction of the price.
 3. If the buyer does not immediately give us the opportunity to inspect the defect, in particular if the buyer fails to provide the goods complained of or samples thereof immediately upon request, all warranty claims shall be forfeited.
 4. We make the same warranties for repair and replacement deliveries as for the initial delivery or service.

VIII. Warranty for goods manufactured to customer's specifications

1. We warrant that goods manufactured to customer's specifications are executed as designed and duly processed, that customary materials were used and that such goods function in accordance with our technical documentation. The warranty period shall be subject to any written agreements or, in the absence of such agreements, to statutory provisions.
2. As to electric or pneumatic drives and control systems as well as wearing parts our warranty conforms to VDE (Association for Electrical, Electronic & Information Technologies) and/or VDMA (Association for German Machinery and Plant Manufacturing) guidelines provided that the required intervals of maintenance and confirmation are observed.
3. Our warranty is subject to the conditions that the defects were not caused by improper handling or storage, temperatures did not exceed the -10°C to +50°C range, relative humidity was between 40% and 70% and no other destructive influences existed. Furthermore, our storage and maintenance as well as installation and operating instructions must be observed; the required measures must be carried out in workmanlike fashion.

IX. Damages

1. Unless otherwise provided for herein, we shall be liable to pay damages for failure to meet contractual and non-contractual obligations, in particular for impossibility, default, negligence upon the formation of the contract and tort, only in cases of intent or gross negligence.
 2. The above limitation of liability shall not affect our liability vis-à-vis the party having suffered a loss under the "Produkthaftungsgesetz" (Product Liability Act) for the absence of warranted characteristics of the goods, liability for a culpable violation of contractual obligations on the part of our executives as well as a culpable violation of substantial contractual obligations on the part of one of our "Erfüllungsgehilfen" (translator's note: employees in performance of their obligations; sec. 1313 a of the Austrian General Civil Code ["ABGB"]); in the last two cases, however, liability is restricted to the damage typically foreseeable upon conclusion of the contract.
- X. Place of performance, jurisdiction and applicable law**
1. Unless otherwise provided for, the place of performance for delivery shall be the respective place of departure of the goods, and the place of jurisdiction shall be Vienna, Austria. We shall also be entitled to bring an action against the buyer at its place of jurisdiction.
 2. Any and all legal relationships between us and the buyer shall be governed by Austrian law and - to the extent applicable - the law of the so-called Vienna UN Sales Convention of 1980.