

General Terms & Conditions of TRACTO-TECHNIK GmbH & Co. KG

1. General Conditions

- 1.1 Supply agreements concluded by us are always subject to the following conditions, even if we do not expressly refer to them in the future once a continual business relationship has been established.
- 1.2 Any terms stated by the customer which contradict or deviate from these shall apply only if and when confirmed by us in writing. Our Conditions of Sale and Delivery shall also be valid in the case that we execute the order without reservations when aware of contradictory or deviating conditions of the customer.
- 1.3 Our Conditions of Sale and Delivery shall apply to merchants if the contract belongs to the exercise of a trade and to non-merchants only if permissible by law.
- 1.4 The Conditions shall apply to special models only if no additional arrangements have been made.

2. Offer

- 2.1 Our offers are without engagement. Especially concerning the scope of supply, we shall be obliged only as specified in our written confirmation. Changes and amendments shall only be valid when submitted in writing.
- 2.2 The documents included in the offer, such as illustrations, drawings, indications of weight, dimensions and other specifications are only approximate, unless they have been expressly specified to be binding. We reserve the right of ownership and reservation concerning cost estimates, drawings and other documents; these may not be passed on to third parties.
- 2.3 Any specifications and price details from catalogues or electronic media shall be binding only with our written confirmation.

3. Prices and Payment

- 3.1 Our prices are ex works, excluding shipment, packing and value-added tax.
- 3.2 Invoices shall be payable within 10 days after the date of invoice with the indicated cash discount or within 30 days after the date of invoice net. Repair invoices as well as rental invoices for machines shall be payable within 2 weeks after the date of the invoice without any discount. Without having received any further statement from us (e.g. demand for payment) the customer will default in his payment one day after the due date, unless the invoice has been paid by then.
- 3.3 We shall accept bills of exchange only in fulfillment and subject to their discount ability. The cost of discounting and collection shall be defrayed by the customer
- 3.4 If the customer defaults in his payment of any substantial amount by more than 10 days, all outstanding payments fall due immediately without regard to any discounted bills of exchange. We shall from then on be entitled to supply goods only against advance payment or security.
- 3.5 The customer shall not be entitled to withhold or set off payments because of any cross-claims, including warranty claims, unless the cross-claims are undisputed and have been lawfully established.
- 3.6 In case of an unauthorized cancellation of the contract, 15 % of the gross sales price of the delivery item shall be charged as a lump-sum settlement. We reserve the right in individual cases to give proof of a higher loss actually suffered and recover that amount.

4. Delivery

- 4.1 Delivery periods shall only be approximate. Even if a fixed date has been agreed, we shall be in default only upon receipt of a reminder. Partial deliveries are allowed.
- 4.2 The delivery shall be deemed on schedule if the delivery item has left the plant or notice has been given that the goods are ready for dispatch by the time the delivery period expires.
- 4.3 If we are prevented from lawful delivery by force majeure, the delivery period is appropriately extended. This applies in case of trade disputes and unforeseen circumstances outside of our control, if such circumstances evidently have a considerable influence on the completion or dispatch of the delivery goods. This also applies if these circumstances occur at a subcontractor. We shall neither be liable for the above mentioned circumstances, if these arise while we are already in default. We will inform the customer of the beginning and the end of such circumstances in important cases.
- 4.4 If we are in default for reasons for which we are responsible, the liability to pay damages is excluded in case of ordinary negligence.
- 4.5 If, in the case of late shipment, the customer has allowed an extra 4 weeks (for standard items) or 6 weeks (for special manufacturing) of prolongation with the warning that shipment will be rejected and within this prolongation shipment cannot be effected, the customer is entitled to cancel his order. Any liability claims are limited to contractually typical and reasonably foreseeable loss. The limitations of liability described in the two paragraphs above shall not apply in the case that a fixed business agreement was expressly agreed upon, or if the interest of the customer in the fulfillment of the contract has ceased.
- 4.6 We shall only be obliged to meet the delivery schedule if the customer has met his contractual obligations.

5. Risk transition and acceptance

Delivered items, even if containing minor defects, shall be accepted by the customer without prejudice to the rights laid down in section 7. Delivery EXW.

6. Retention of title

- 6.1 All goods supplied remain our property (title goods) until all debts are paid, particularly outstanding balances owed to us as a result of the business relationships and debts established unilaterally by the liquidator when deciding which debts to liquidate. This also applies to any debts arising or incurred in the future, e.g. as a result of changes in acceptance, and also where payments are issued for special designated debts.
- 6.2 The customer may sell the goods subject to title retention only in the ordinary course of business and reserving the right of property. The customer herewith assigns all claims arising from the resale of such goods to us. No other disposal of the goods subject to title retention - especially pledging and mortgaging of goods - is allowed. We must be informed immediately of any pledging, seizure or any other disposal of the delivery item by third parties.
- 6.3 If the value of our securities exceeds the amount of our claims by more than 20%, we shall be obliged upon request of the customer to release securities as we choose thus far.
- 6.4 If the customer violates the contract, especially by defaulting in payment, we shall be entitled to recover possession after due warning and the customer shall be obliged to comply. If we claim our proprietary rights and/or seize the delivery item, this shall not be deemed a cancellation of the contract unless expressly declared.

7. Warranty of fitness

- 7.1 If faults are found we must receive immediate written notice thereof including a detailed list. This also applies if the complaint relates to the performance of the machines. The notice must be submitted along with the note confirming the delivery of the accompanying documents (instruction manuals etc.) and the technical training conducted by an expert. Substituted parts become our property.
- 7.2 At variance with legal requirements a **time limit of 12 months** from passing of risk applies to the right of the buyer to make valid claims for defects (if the law governing contracts for work and services applies, the risk shall pass upon acceptance of such work and services by the buyer).
- 7.3 Warranty claims are excluded for any irrelevant variance from the agreed quality or for any immaterial impairment of usability.

- 7.4 If we choose to improve an existing item found to be defective, such improvement shall in any case be deemed to have failed after the second unsuccessful attempt only.

- 7.5 Any expenses required for the purpose of subsequent fulfillment shall be borne by the buyer, if these are higher because the delivery item was brought to another place than the buyer's establishment, unless delivery complies with the intended use.

- 7.6 Other claims by the buyer are not permitted. This applies particularly to claims for damages not arising from the contract item.

This exclusion of liability does not however apply to the guarantee in the case of intent, gross negligence on the part of the owner or management employee nor in the case of culpable infringement of material contractual duties. In case of a culpable breach of major contractual duties we shall - except in cases of intent or gross negligence of the owner or senior employees - be liable only for contractually typical and reasonably foreseeable damage.

The exclusion of liability does not apply in the case of personal injury including the danger to life and limb. The exclusion of liability furthermore does not apply in cases where, according to the Product Liability Law, liability is assumed for personal injury and material damage of privately used items because of a defect of the delivery item; nor does it apply in the case that certain characteristics are missing which are expressly assured, if this assurance had the specific purpose to protect the customer against damage not occurring in the delivery item itself. In addition, the exclusion of liability does not apply, if defects have been kept silent about with intent to deceive or if the absences of such defects have been assured by the supplier.

8. Joint liability

- 8.1 If and when our liability for damages has effectively been excluded or restricted according to section 7, this also applies to any claims for non-observance of secondary and pre-contractual obligations, also to claims arising from the producer's liability under § 823 BGB (German Civil Code). We shall not be liable for damage caused by operating mistakes. The operating manual must be complied with. Furthermore, we shall not be liable for any damage arising from the use of non-original parts or accessories, or damage in the event of inappropriate usage, mistakes made during assembly and commissioning, inappropriate operating materials or replacement materials, faulty construction work, unsuitable ground, mechanical, chemical or electrical influences, unless we are responsible for these. Furthermore, we offer training courses/demonstrations, which the purchaser and/or his operating aids are requested to participate in.

- 8.2 Likewise, we shall not be liable for damage due to unauthorized changes to the delivery item performed by the customer or third parties without obtaining prior approval from us or due to the use of unsuitable accessories - for any reason whatsoever.

- 8.3 Retrofitting or modification of our machines - or parts thereof - and of our tools is not authorized, insofar as industrial protection rights (patents, utility models or copyrights) are violated or if the modification is unfair pursuant to § 1 UWG (Unfair Competition Act) (supplementary performance protection). In the case of violation, we can request restraint or damages on the part of the customer for example in the form of license analogy. Independent of this, our exclusion of joint liability shall apply in the event of unauthorized retrofitting or structural modifications.

9. Rights in case of imminent or actual breach of contract by the customer

- 9.1 If the customer defaults completely or partially in payment, if a bill of exchange of the customer is not met or a check not honored, or if facts become known which point to a straitened financial situation of the customer, or if a petition for judicial reorganization proceedings is filed, or if the customer proposes terms of a voluntary arrangement to a creditor, we shall be entitled to request the immediate payment of all non-settled invoices, even if they have not yet fallen due or have been extended, and to request advance payment for all outstanding deliveries, or to cancel the contract concerning a part of or all deliveries without prejudice to the rights to which we are otherwise entitled, without the requirement of any specific period of notice or extension of period in any of these cases. The customer can release himself from the obligation to make such advance payments or our right of cancellation by providing appropriate securities. We shall be entitled to the above rights also in the case that the company of the customer is dissolved, liquidated or if business affairs are wound up, if major parts of the business are transferred or if execution is levied upon the property of the customer.

- 9.2 The customer shall not be entitled to assert claims for damages in case of a cancellation for one of the above reasons.

10. Exclusion of taking back and disposing of waste electrical and electronic equipment

- 10.1 If the delivery item comes within the scope of application of the Electric and Electronic Equipment Act (ElektroG), the ordering party shall assume the obligation to dispose of the equipment upon discontinuance of use in accordance with legal requirements at its own expense and shall release us from the obligation to take the items back and indemnify us against any related claims of third parties. If the ordering party passes the subject-matter of the sale on to any commercial third party, the ordering party shall obligate same to dispose of the piece of equipment upon discontinuance of use in accordance with legal requirements at its own expense and to obligate another purchaser, too, to dispose of the equipment accordingly, if the equipment is passed on a second time. If the ordering party passes the delivery item on and fails to obligate the third party to assume the obligation to dispose of the item and re-obligate another party, the ordering party shall take the delivery item back upon discontinuance of use and dispose of it in accordance with the Electric and Electronic Equipment Act (ElektroG) at its own expense.

- 10.2 Our right to assuming disposal of the equipment and to being released from the obligation of taking it back shall not become statute-barred before the expiry of two years after discontinuance of use of the delivery item with the statutory period of limitation commencing no earlier than the time of receipt of the written notification by the ordering party on the termination of use.

11. Place of performance, place of jurisdiction and applicable law

- 11.1 The place of performance of deliveries and the place of jurisdiction shall be Lennestadt, the domicile of our company; this shall also apply to any claims to bills of exchange and cheques. We shall also have the right to institute legal proceedings at the domicile of the ordering party. Deliveries and services shall exclusively be governed by German law; applicability of the United Nations Convention relating to a Uniform Law on the Formation of Contracts for the International Sale of Goods shall be specifically excluded.

12. Partial invalidity clause

If one or several of the above conditions should be or become invalid this does not affect the validity of the other conditions and the validity of the contract. The parties to the contract undertake to replace the invalid condition with a regulation that corresponds to it as closely as possible in ensuring commercial success.

II. Conditions governing Work and Services Contracts

Separate terms & conditions shall apply to object-related demonstrations.

Conditions of Sale and Delivery as provided in sub-paragraph I with the exception of sub-paragraphs 1.3.6 and 1.6 shall apply accordingly while the time limit of 12 months (as per sub-paragraph 7.2) shall only apply to those contracts for work and services that cover work on mobile objects (repair work in particular) as well as planning and monitoring activities.