

General Terms and Conditions of Sale and Delivery of TRAXIT International GmbH, Prinzenstraße 46-50, 58332 Schwelm (hereinafter TRAXIT GmbH)

1. Scope

1.1 These General Terms and Conditions of Sale and Delivery (hereinafter referred to as General Terms and Conditions) are applicable to persons entering into contracts as part of their business or professional activities in a self-employed capacity (entrepreneur, sec. 14 German Civil Code [German acronym: BGB]).

1.2 These General Terms and Conditions shall apply to all future transactions with the Customer. They shall apply exclusively; general terms and conditions of purchase of the Customer departing herefrom shall not be deemed incorporated into our contract, whether by our acceptance of the order or by the client's objection.

1.3 These General Terms and Conditions shall also apply to transactions entered into by our branch offices or by the sales staff of TRAXIT GmbH, irrespective of whether such transactions are concluded within Germany or abroad.

2. Formation of contract

2.1 Contracts are made solely with entrepreneurs within the meaning of sec. 14 BGB and with persons acting in the scope of their commercial or independent professional activities.

2.2 Our offers are non-binding. The foregoing applies in particular with respect to prices, quantities, delivery periods and delivery options.

2.3 Unless otherwise agreed by the parties, orders shall only become binding on us when we have confirmed them in writing.

2.4 Unless otherwise expressly agreed, call-off orders are limited to a term of 6 months. The Customer undertakes to accept and pay for such orders within this period.

3. Prices

3.1 Our prices are quoted net of the statutory rate of VAT in effect from time to time, which is to be added. Depending on the location of our business and of that of the recipient, the relevant taxes may differ as to amount.

3.2 For purposes of calculating prices, the weights, dimensions or quantities determined at our place of dispatch shall be deemed authoritative.

4. Delivery

4.1 Delivery times are governed by the parties' agreement. Where the buyer wishes to have a specified delivery date, the parties must agree to such specific date. Delivery times are only binding where there is an express written agreement to this effect between the parties.

4.2 The commencement of the delivery period shall be premised on all technical issues having been resolved and the Customer having complied with the obligations incumbent on it, such as the obligation to furnish the necessary certificates or permits of public authorities or to make a down payment. Where this is not the case, the delivery

period shall be deemed extended by a reasonable time.

4.3 Our adherence to delivery periods is subject to our having ourselves received correct and timely deliveries from our sub-suppliers. We will inform the Customer as soon as possible of any delays which may appear likely.

4.4 In the absence of any other agreement between the parties, the delivery period is deemed to have been met if, prior to the expiry of such delivery period, the delivery item has left our place of dispatch or we have given notice of readiness to ship.

4.5 Delivery periods are deemed extended by a reasonable time in cases involving action in respect of labour disputes, in particular strikes and lockouts, as well as upon the occurrence of unforeseeable obstacles lying outside the control of TRAXIT GmbH, where such obstacles are demonstrated to have an impact on the production or delivery of the delivery item. The foregoing applies also wherever such events or circumstances arise in respect of our sub-supplier. We shall notify the buyer without delay of any such events or circumstances. The foregoing provisions apply *mutatis mutandis* in respect of delivery dates. Where, as a result, performance of the contracts becomes unreasonable to one of the parties, that party may withdraw from the contract to such extent.

5. Terms of payment

5.1 Unless otherwise agreed, the purchase price shall be due when the invoice is issued and is payable net within 14 days.

5.2 Deductions of cash discounts are permitted only upon separate written agreement. In the event that such cash discount is granted, the deduction may only be made where no other due invoices are still open and outstanding.

5.3 The Customer shall only have the right of retention with respect to payments or the right to set off counterclaims to the extent the Customer's counterclaims are undisputed or have been adjudicated by *res judicata* court decision.

5.4 Where the Customer exceeds the deadline for payment set by us, we shall be entitled to demand default interest on invoice amounts that are open and outstanding, at a rate of 9 percentage points over the base interest rate of the European Central Bank.

5.5 Where, following the formation of the contract, we become aware of facts (in particular of payment defaults with respect to previous deliveries) which, in our due commercial discretion, would lead us to conclude that our claim for compensation is at risk due to a lack of solvency on the part of the Customer, we shall be entitled to set a reasonable deadline and demand from the Customer, at the Customer's option, cash on delivery (COD) payment or corresponding security and collateral and, in the event the Customer refuses to do so, to withdraw from the contract in which case our invoices for partial deliveries which have already been furnished shall be immediately accelerated and fall due. The Customer's application for the commencement of

insolvency proceedings shall entitle us to withdraw from the contract and to demand the immediate return of the delivery item.

6. Passage of risk / formal acceptance

6.1 Unless otherwise agreed or provided by mandatory provisions of law, the risk of loss and deterioration of the product shall pass to the Customer at such time as the goods are handed over to the first person engaged for shipment. In all other cases, the passage of risk shall be governed by the statutory rules or the mandatory agreements governing the international goods trade. Unless otherwise agreed by the parties, we shall select the route and mode of shipping ourselves in our reasonable discretion. The Customer is responsible for taking out transport insurance.

6.2 Where the dispatch of goods is delayed or fails to occur due to facts or circumstances for which we do not bear responsibility, the risk is deemed to pass to the Customer on the date on which we provide notice of our readiness to ship.

6.3 The customer shall inspect every shipment without delay upon receipt with respect to defects or deficiencies, completeness and deliverable quantities.

Where the buyer ascertains defects or deficiencies, or finds deviations from what the parties have agreed by contract, the buyer shall forward a written complaint in respect thereof without delay to TRAXIT GmbH.

The buyer's attention is expressly drawn to the rules provided in sec. 377 of the German Commercial Code [German acronym: HGB] and to the applicability thereof; they are incorporated into these General Terms and Conditions by reference.

7. Reservation of title

7.1 All goods delivered by us shall remain TRAXIT GmbH's property (retention-of-title goods) until all of our receivables outstanding (including but not limited to receivables on account balances from time to time to which TRAXIT GmbH is entitled in connection with its business relationship with the Customer (reservation of title with respect to outstanding accounts)) have been settled.

The foregoing shall also apply to such receivables as may arise in future and to contingent receivables and shall also apply where payments are made against specially designated receivables. This reservation of title with respect to outstanding accounts shall be deemed to cease with final effect at such time as all receivables outstanding at the time of the payment and covered by this reservation of title with respect to outstanding accounts are settled.

7.2 The buyer may sell the retention-of-title goods only in the ordinary course of its business, subject to the buyer's regular terms and conditions of business, and only so long as the buyer is not in default, provided that the buyer's receivable from such resale is deemed to pass to us pursuant to sec. 3-5. The buyer is not entitled to effect any other dispositions with respect to the retention-of-title goods.

7.3 The buyer is deemed to assign, now and in advance, such receivables as may arise out of a resale of the retention-of-title goods, together with all security and collateral the buyer may acquire in respect of such receivables, to TRAXIT GmbH. The foregoing shall be deemed to constitute security to the same scope and extent as the retention-of-title goods themselves. Where the buyer sells the retention-of-title goods together with other goods not sold to the buyer by us, the buyer's receivable from the resale thereof is deemed assigned to us on a *pro rata* basis, based on the ratio of the invoice value of the retention-of-title goods to the invoice value of the other goods sold.

7.4 The seller is authorised merely to collect receivables from its resale of the retention-of-title goods. This authorisation to effect collections shall be deemed to lapse in the event of our revocation, but in any event at the latest upon the occurrence of payment default, the failure to honour a bill of exchange or the making of an application to commence insolvency proceedings. We shall only make use of our right of revocation where, following formation of contract, it becomes apparent that our claims for payment on the basis of this or other contracts with the buyer are at risk due to the buyer's lack of financial solvency. The buyer shall, upon our request, immediately inform its end-customer of its assignment to us and shall furnish us with such documents we require in order to effect collections. The buyer shall surrender such documents to us upon our first demand.

7.5 The buyer shall notify us without delay of any attachment or other encroachment by a third party. The buyer shall be responsible for any and all costs necessary to achieve setting aside of third-party access/ attachment/ seizure or for shipping the retention-of-title goods back to us unless compensation for such costs is paid by third parties.

8. Delay/default

In cases of delay or default of delivery, the Customer may, after setting a reasonable time corresponding at least to the delivery period which was previously agreed, and after setting a reasonable grace period following such time, withdraw from the contract.

9. Warranty

9.1 To the extent the goods delivered are defective at the time of passage of the risk, at our option we shall be entitled either to remediate the defect or effect delivery of a replacement, taking account of the type of the defect and the interests of the Customer.

9.2 Upon expiry to no avail of the period for remediation provided to us, which may be dispensed with in the cases provided for by law, the Customer may abate the purchase price or, where the defect is not a non-material defect, withdraw from the contract.

9.3 The Customer shall give written notice of substantive defects without delay, within no more than 7 days from discovery thereof, but in any event prior to expiry of the agreed or statutory prescription period. Where the Customer finds defects to be

present, it shall consult with TRAXIT GmbH without delay as to all further action, and in particular, it shall consult with TRAXIT GmbH as to whether the product supplied to the Customer should continue to be used or whether other action (e.g. delivery of a replacement) will be taken.

9.4. Further statutory claims (where not limited hereunder) shall remain unaffected by the foregoing provisions.

10. Compensatory damages

10.1 TRAXIT GmbH hereby disclaims liability for compensatory damage claims by the Customer, irrespective of the legal basis of such claims, in particular claims for breaches of the contract of obligation or in tort. The foregoing shall not apply to the extent mandatory liability applies, e.g. under the Product Liability Act, and in cases of intentional acts, gross negligence and in cases involving injury to life, limb and health or breaches of material contract obligations.

10.2 In the event of a breach of contract obligations by us or our vicarious agents, we shall only be liable for intentional acts and gross negligence. In addition, compensatory damages shall be limited to such damages as are typical for the contract and foreseeable.

11. Prescription

11.1 All claims of the Customer, on any legal basis whatsoever, shall be deemed prescribed one year from the date of delivery of the product. The sole exception to the foregoing are warranty claims in respect of express 'use by' dates or periods by which the product must be used as expressly indicated on our products. In such cases, our warranty shall extend until expiry of the date printed on the product. Where no delivery thereof to the Customer has occurred, prescription shall commence at the conclusion of the year in which the claim arose.

11.2 Claims for defects shall be deemed prescribed one year from the date of passage of the risk or acceptance of the goods; the earlier date shall apply in each case as to the beginning of the warranty periods for defects.

11.3 Shorter statutory prescription periods shall be deemed to take precedence. Mandatory longer statutory periods shall remain unaffected hereby.

12. Place of performance

Unless otherwise provided in our confirmation of order, the place of performance for delivery and payment is Schwelm, North Rhine-Westphalia (Nordrhein-Westfalen), Germany.

13. General provisions

13.1 We reserve our proprietary rights and copyright with respect to images, drawings, calculations and other documents (including in electronic form); in the absence of prior agreement with us (and, in the case of documents designated by us as confidential, in the absence of our written consent), they may not be disclosed to third parties.

13.2 In addition, we hereby alert the Customer to deviations which are common in the business sector and which are due to material-related tolerances.

The Customer is deemed to consent to such deviations.

14. Jurisdiction and venue

Jurisdiction and venue shall, at our option, be vested either in the courts of Hagen or in the courts at the registered office/residence of the Customer.

At our option, we shall be likewise authorised to file actions in the local court even where the amount in dispute exceeds the local court's subject-matter jurisdiction.

15. Choice of law

The parties' contract relations are governed exclusively by German law.

It is hereby expressly agreed that the law governing the international sale of goods, in particular the United Nations Convention on Contracts for the International Sale of Goods (CISG), shall explicitly not apply.

16. Binding effect of contract

This contract shall remain binding even in the event of legal invalidity of individual clauses or sections thereof. Any gap arising as a result of a lapse of the invalid provision shall be filled by the provisions of law, in line with the meaning of this contract.

17. Languages/translations

Solely the German version of the foregoing General Terms and Conditions of Sale and Delivery shall be deemed legally binding. Where translations are provided, such translations are provided solely as information without any legally binding effect.

Where, in connection with a translation or application of a translation of the foregoing General Terms and Conditions of Sale and Delivery, different potential interpretations arise, the German version and the associated interpretation thereof under German law shall govern exclusively.

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