

TERMS AND CONDITIONS OF SALE, DELIVERY AND PAYMENT OF TRIA INTERNATIONAL GMBH, STADTWEIDE 17, D-46446 EMMERICH

1. ACCEPTANCE OF THE TERMS OF SALE

Orders require our written confirmation to be accepted. For all business with buyers these terms and conditions apply exclusively. The buyers' terms and conditions do not apply. Deviating agreements require our written confirmation to be effective. For keeping the written form, the transmission by email is sufficient.

2. PRICE AND PAYMENT CONDITIONS

All offers are always subject to change and non-binding, unless otherwise agreed in writing. The prices valid on the day the contract is concluded shall apply. The prices are stated in EUR plus statutory value added tax, customs duties, fees, and other charges incurred in connection with the execution of the purchase contract, unless otherwise stated. They apply FCA free carrier, including shipping packaging. The packaging will not be taken back. In the event of a general price increase for the type of goods ordered between ordering and execution of the deliveries, the price - even an agreed fixed price - shall increase accordingly if our service is not to be provided within 4 months after conclusion of the contract.

Discounts and deductions that have not been expressly agreed upon are not recognised. The buyer is only entitled to assert rights of retention on the basis of counterclaims from the same contractual relationship. A set-off with counterclaims is only permissible if these have been legally established or recognized. This also applies to claims from previous deliveries, even if bills of exchange are given for them. A payment shall only be deemed to have been made when we can dispose of the amount. From the time of default in payment, interest will be charged at a rate of 8 percentage points above the respective base interest rate of the European Central Bank plus further reminder costs.

If, after conclusion of the contract, it becomes apparent that our claim to the purchase price is jeopardized by the Buyer's lack of ability to pay (e.g. due to an application for the opening of insolvency proceedings), we shall be entitled to refuse performance in accordance with the statutory provisions and - if necessary after setting a deadline - to withdraw from the contract (§ 321 BGB). In the case of contracts for the manufacture of unacceptable goods (custom-made products), we may declare our withdrawal immediately; the statutory provisions on the dispensability of setting a deadline remain unaffected.

3. TRANSFER OF RISK, DELAY IN ACCEPTANCE AND STORAGE

Deliveries shall be made FCA to the place of loading named by us (place of performance). With the handing over of the goods to a forwarding agent or carrier, the risk - even in case of delivery free place of destination - is transferred to the buyer. If the shipment or handover is delayed due to a circumstance the cause of which lies with the buyer, the risk shall pass to the buyer from the day on which the delivery item is ready for shipment and we have notified the buyer of this. In the event of a delay in acceptance, we are entitled to store the goods in a commercial warehouse at the risk and for the account of the buyer. If temporary storage of finished goods at our premises has been expressly agreed upon, we cannot be held liable for damages that occur despite the observance of reasonable care. We are also not obliged to insure stored goods. The storage is generally limited to 3 months.

4. DELIVERY TIME

Delivery dates are only binding if they are expressly agreed upon as binding. If shipment has been agreed, delivery periods and dates refer to the time of handover to the forwarding agent, carrier or other third party commissioned with the transport.

5. LIABILITY AND DEFECTS

The buyer must check the consignment for defects immediately and, in the case of obvious defects, must give notice of defects in writing within one week. The time of delivery and the day of receipt of the complaint are decisive for the calculation of the term. Defects which cannot be discovered within this period even with careful examination must be notified in writing immediately after discovery of the defects. If the buyer fails to carry out the proper inspection and/or to report defects, our liability for the unreported defect is excluded, even if the buyer can invoke an excuse for his failure. At our request, the delivery item complained about must be returned to us carriage paid. In the event of a justified notice of defect, we shall reimburse the buyer for the costs of the most favourable shipping route; this shall not apply if the costs increase because the delivery item is located at a place other than the place of intended use. In the case of defects notified in due time, we shall be entitled to determine whether a subsequent improvement or subsequent delivery shall be made. If the supplementary performance fails, the buyer is entitled to assert his further legal rights.

The warranty shall not apply if the buyer modifies the delivery item or has it modified by a third party without our consent and the elimination of the defect is thereby rendered impossible or unreasonably difficult. In any case, the buyer must bear the additional costs of the removal of defects resulting from the modification.

Claims for damages and reimbursement of expenses by the buyer, regardless of the legal basis, are excluded. Claims for compensation for consequential damages are also excluded. This shall not apply in cases of mandatory liability, e.g. under the Product Liability Act, in cases of intent and gross negligence, due to injury to life, body or health, or due to breach of essential contractual obligations. However, claims for damages due to the violation of essential contractual obligations are limited to the foreseeable damage typical for this type of contract, unless intent or gross negligence is involved or liability is assumed due to injury to life, body or health. Indirect damages and consequential damages resulting from defects of the delivery item are furthermore only eligible for compensation if such damages are typically to be expected when the delivery item is used as intended. A change in the burden of proof to the disadvantage of the buyer is not associated with the above provisions. The period of limitation for claims for material defects and claims for damages directed against us is one year from delivery. In the case of claims for damages under the Product Liability Act, the statutory limitation provisions shall apply.

6. TITLE RETENTION

The goods delivered by us remain our property (reserved goods) until all current claims against the buyer arising from the business relationship have been settled in full. Processing or transformation is always carried out for us as manufacturer, but without obligation for us. The buyer is entitled to process and sell the reserved goods in the ordinary course of business as long as he is not in default. Pledging or chattel mortgage as well as any other disposal of goods subject to retention of title is not permitted. Any claims arising from resale or any other legal ground (insurance, tort) with regard to the goods subject to retention of title (including all balance claims from the current account) shall be assigned to us by the buyer in full by way of security already now. The buyer is revocably authorized to collect the claims assigned to us for our account in his own name. If the value of the claims assigned to us in advance by way of security exceeds our claims by more than 110%, we shall release the claims assigned by way of security on request and at our discretion. The buyer shall store the goods subject to retention of title properly and insure them properly. If the buyer is in default with the fulfilment of his payment obligations to us, if he stops his payments or if insolvency proceedings are opened over his assets - or if the opening of insolvency proceedings is rejected due to lack of assets - the entire remaining debt becomes due, even if bills of exchange with a later due date are running. In this case, the customer must provide us on request with a list of all goods still in his possession which are our property and a list of the claims assigned to us with the name and address of the debtor and the amount of the claim.

In the event of access by third parties to the reserved goods, the buyer must point out our ownership and inform us immediately. If the buyer acts in breach of contract - in particular default of payment - we are entitled to withdraw from the contract or/and to demand the return of the goods on the basis of our reservation of title after the unsuccessful expiry of a set period of grace. The demand for return of the goods does not at the same time include withdrawal from the contract. After a possible rescission, we are entitled, after prior notice, to enter the buyer's premises, to collect the delivered goods and to use them in the best possible way by selling them on the open purchase price claim - less any costs incurred.

7. DEFAULT OF DELIVERY

If we exceed a delivery date, the customer must set a reasonable grace period of at least 21 days for delivery. If the service owed by us is provided within the grace period, no further claims shall exist.

Should events of force majeure or other unavoidable events at our or our suppliers' premises, as well as all circumstances for which we are not responsible and which make it impossible or delay the execution of accepted orders, delay or hinder the fulfilment of our contractual obligations as suppliers in whole or in part, the delivery period shall be extended accordingly or we shall be entitled to withdraw from the contract. If such disruptions lead to a delay in performance of 4 months, the buyer can withdraw from the contract. Claims for damages of any kind cannot be asserted against us in this case, this does not apply to damages caused by delay.

8. FINAL PROVISIONS

Place of performance for delivery and payment is D-46446 Emmerich. The place of jurisdiction for any disputes, including those concerning cheques and bills of exchange, is D-47533 Kleve. German law applies exclusively to all legal relations between us and the buyer. Insofar as the United Nations Convention on the International Sale of Goods (CISG) is applicable, this shall apply with the proviso that claims for damages and reimbursement of expenses against us due to the defectiveness of the purchased goods or due to other deficiencies in performance shall only exist in the event of fault on the part of our legal representatives or vicarious agents and only within the limits of section 5.

Translated from German. In case of any disputes the German version shall apply.

Stand: August 2020