



Trenn- und  
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## GENERAL TERMS AND CONDITIONS OF SALE AND SUPPLY

(as at 02/2012)

**TRENNSO-TECHNIK**

**Trenn- und Sortiertechnik GmbH,**

**D-89264 Weissenhorn**

### § 1

#### Scope

1. The following terms and conditions apply exclusively to all offers made by us and all contracts concluded with us for goods delivered and services provided.
2. Conditions of purchase or other terms and conditions of the Buyer shall apply only if we confirm them in writing.

### § 2

#### Conclusion of Contract

1. All our offers, especially those in catalogues, sales documents or on the Internet are non-binding. They are to be regarded in law as an invitation to submit offers.
2. Orders are accepted if they are confirmed by us in writing or are executed immediately upon receipt of order.
3. In case of doubt the content of the contract will confirm to our order confirmation, if there are none, by our delivery note.
4. Size, weight and performance data, diagrams and drawings are approximate, unless defined by us as specifically and binding.

- 5. We retain the unrestricted right of exploitation of ownership and copyright on cost estimates, engineering drawings and other documents; they may be made available to third parties only with our consent and shall be returned immediately upon failure to conclude an agreement.
- 6. We reserve the right to make construction or design modifications during the delivery period, provided that they represent minor changes to performance and these are acceptable for the Buyer.
- 7. Additional agreements - even with our representatives, field employees or other agents - require our express written confirmation.

### § 3

#### Delivery

- 1. Delivery periods begin only after all performance details have been completely clarified. To be able to adhere to the delivery deadlines the Buyer needs to fulfil his contractual obligations, in particular any agreed advance payment and the timely provision of required documents.
- 2. In the event of delays in delivery due to force majeure or events where we are not at fault and that significantly impede or occasionally make delivery impossible - including strikes, lockouts, official orders, transport disruptions, etc. - even if they occur at our suppliers or subcontractors, the agreed deadline shall be extended by a reasonable period.

If service is impeded for a period of more than 3 months, both contracting parties are entitled to withdraw wholly or partially from the contract. Claims for damages shall be excluded.

The same applies if we are not supplied or not supplied in time by our suppliers without any culpability on our part.



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3. We shall endeavour to comply with agreed delivery periods. Where we culpably fail to meet agreed delivery deadlines, the Buyer shall be obliged to set us a reasonable period of grace.

After expiration of this grace period, the Buyer may withdraw from the contract. For the assertion of delay claims or claims resulting from non-performance § 7 shall apply accordingly.

- 4. If shipping is delayed for reasons for which the Buyer is responsible, a storage fee amounting to 0.5% of the total invoice amount can be charged for each month or part thereof, up to a maximum, however, of 5% of the invoice amount.

The assertion of any further loss shall not be excluded hereby. The Buyer shall remain entitled to prove that no damages or significantly lower damages were incurred.

- 5. If the Buyer culpably refuses the performance of the contract, we shall be entitled to claim damages in the amount of 20% of the invoiced amount excluding VAT.

The assertion of any further loss shall not be excluded hereby. The Buyer shall remain entitled to prove that no damages or significantly lower damages were incurred.

## § 4

### Prices, Terms of Payment

- 1. All prices are net ex work, including loading plus VAT at the applicable statutory amount.
- 2. All duties, taxes and similar charges resulting from our goods and services incurred in the country of the Buyer shall be borne by the Buyer.

3. If between the conclusion of the contract and the beginning of its execution there is a gap of more than 4 months, we reserve the right to increase our prices, if subsequent to conclusion of the contract there are cost increases, especially increases in material and commodity prices, personnel, production and transportation costs. We shall provide the Buyer with evidence of this upon request.
4. The Buyer may only set-off undisputed or legally well-founded claims against us.
5. The assertion of a right of retention due to disputed or not legally established counter-claims is excluded, where such claims are not based on the same contractual relationship.
6. Payments may only be made to us. Claims against us may not be assigned.

## § 5

### Transportation, Transfer of risk, Acceptance

1. In the case of delivery of goods, the risk passes to the Buyer, even if free delivery has been agreed to, as soon as the goods leave our premises or the Buyer is in default of acceptance.

This also applies to part deliveries. Should shipping be delayed for reasons for which the Buyer is responsible, the risk shall pass to the Buyer upon notification of the delivery being ready for dispatch.

The same applies if the goods are delivered ex works by a third party commissioned by us.

2. Any possible transport damage must be reported to the carrier by the recipient immediately prior to payment of freight and before acceptance of the goods.

The recipient should notify the carrier of damages or shortages in the quantity of goods, which are not apparent during acceptance, within 1 week after delivery.

3. If acceptance of work performance is delayed for reasons for which the Buyer is responsible, acceptance shall be deemed to have taken place, when one of the deadlines set by us for the Buyer for performance of acceptance has expired without result, and we have at the same time pointed out to the Buyer the importance of the expiration of the deadline no later than 3 months after delivery.

## § 6

### Defect Complaints, Liability for Defects

1. Quality descriptions e.g. regarding dimensions or weight and other technical specifications are deemed only as quality descriptions and do not constitute a warranty.

It is the responsibility of the Buyer himself to examine, whether the goods are suitable for his purposes.

2. The goods delivered by us must be examined carefully immediately upon receipt by the Buyer as to quantity, defects and quality. They shall be deemed approved if recognizable defects or defects that become apparent later, are not reported to us immediately in writing and no later than 1 week after receipt of goods. This does not apply if an acceptance has been expressly agreed to.

If the Buyer establishes a defect in the goods, he shall not be authorized to dispose of the goods, i.e. he may not split, resell or further process the goods.

- 3. In case of defects in the goods delivered or the work performance, we can provide the remedy of our choice through the removal of the defect or by delivering a defect-free item.

In this case we can request- at our discretion - that the defective goods are returned to us to be reworked or exchanged and subsequently returned to the Buyer at our cost, or for the Buyer to hold the defective goods, and for the reworking or replacement to be carried out on his premises by us or by one of our agents. The Buyer shall be entitled to the latter option, if it is unreasonable to expect delivery to us. The costs necessary for the purpose of subsequent performance (in particular transport, travel, labour and material costs) shall be borne by us. This does not apply in the case of increased costs arising from the fact that the goods have been transported after delivery to a location other than the residence or place of business of the Buyer, unless the movement corresponded to the intended use of the product.

- 4. In the case of failure, i.e. impossibility, final and serious refusal, unreasonable delay or unsuccessful attempt at remedy, the Buyer has the right to reduce the purchase price or to withdraw from the contract. Withdrawal is excluded if the subject of the liability for defects is a construction service.
- 5. If a defect is caused by our negligence or negligence attributable to us, the Buyer can claim damages or reimbursement for expenses in accordance with the provisions of § 7.
- 6. The limitation period for defect claims is 12 months. In the event of a defect in the cases of § 438 paragraph 1 No. 2 German Civil Code (hereinafter "BGB") (buildings and building materials) or § 634a 1 No. 2 BGB (Buildings and planning or monitoring services for buildings), the limitation period is five years. If the claim for defects is based on culpability, the statute of limitations applies in accordance with § 7 item 4.

7. Claims for defects in respect of delivery of used goods agreed with the Buyer in individual cases are excluded.

## § 7

### General Liability

1. In the event of a breach of obligation, we are liable for compensatory damages and reimbursement of expenditure - subject to any other contractual or statutory conditions for liability - only in case of intent or gross negligence. This does not apply if the breach of obligation concerns a fundamental contractual obligation (contractual obligation the breach of which may endanger the fulfilment of the contractual purpose and on which the Contracting Parties may reasonably expect to be able to rely) or guarantee or relates to a liability for damages arising from injury to life body or health, unless we assume liability according to the Product Liability Act.
2. In the event of liability for negligent breach of essential contractual obligation, the liability shall be limited to that damage which was typically foreseeable at the conclusion of the contract.
3. The aforesaid non-liability and liability limitations also apply to the same extent for our corporate entities, statutory representatives, employees or other auxiliary persons.
4. This period of limitation for all damage claims - or for compensation claims against us, regardless of their legal basis, is 12 months, so far as we are not liable for intent or gross negligence or any injury of life, personal injury or injury to health or under the Product Liability Act.

## § 8

### Retention of Title

1. The following agreed reservation of ownership serves as security for all and any demands against the Buyer, arising from the existing contractual relationship with the Buyer. (Including net claims from a current account relationship).
2. The delivered goods remain our property until full payment of all secured claims.
3. If the Buyer defaults on a payment, we are entitled without prior rescission of the contract on our part, to demand return of the reserved title goods.
4. The Buyer shall store the goods subject to reservation of title for us at no charge.
5. The Buyer is authorized to resell and/or process the goods subject to reservation of title during the ordinary course of business. However, he assigns to us all claims up to the value of the goods subject to reservation of title with all ancillary rights and authorizes us to collect these receivables. We herewith accept the assignment.
6. The processing or conversion of goods subject to reservation of title is considered as having been undertaken by ourselves. We are considered the manufacturer within the meaning of § 950 BGB.
7. The value of the goods subject to reservation of title shall be the invoice amount. If the goods to be resold are under joint ownership of the Buyer, the assignment of the receivables encompasses the amount that corresponds to the Buyer's portion of the joint ownership.
8. Where the goods subject to reservation of title are processed with goods not belonging to us, we shall acquire co- ownership in the ratio of the value of the goods we delivered to the total value of the new product at the time of processing.

If the goods subject to reservation of title are joined, commingled or mixed with goods not belonging to us, as stipulated in §§ 947, 948 BGB, we shall become co-owners according to the statutory provisions.

If by combining, mingling or mixing the Buyer acquires the sole ownership, he assigns to us here and now co-ownership in the proportion of the value of the goods subject to reservation of title to the other goods at the time of such combining, mingling or mixing.

- - 9. If the goods subject to reservation of title are installed as an essential part in a plot of land, ship structure or aircraft of the Buyer, the Buyer hereby assigns to us the claims arising from the commercial sale of the property or from real property rights, the ship, the ship or aircraft structure receivable in the amount of the value of the goods subject to reservation of title.
  - - 10. The Buyer is not entitled to put in pawn the goods subject to reservation of title or to place these goods in escrow.
    - 11. The Buyer shall be entitled until further notice to collect the assigned receivables. So long as the Buyer meets his payment obligations towards us, we shall make no use of our authorization to collect. Upon request, the Buyer must communicate to us the names of the debtors of the claims assigned to us, and to inform the latter of the aforementioned assignment accordingly, without prejudice to our right to report the assignment to the debtors themselves.
    - - 12. In cases of payment default, termination of payment, application for an insolvency proceeding against the assets of the Buyer or denial of such an application, the Buyer's right to sell the goods delivered under reservation of title, and to process, mix, blend, or connect such goods with others or to otherwise utilize them expires.

- 13. In case of seizure or other interventions by third parties, the Buyer must immediately notify us in writing so that we can claim according to § 771 German Code of Civil Procedure (hereinafter "ZPO"). If the third party is not able to reimburse us for the judicial and extrajudicial costs of a claim under § 771 ZPO, the Buyer is liable for any resultant loss.
- 14. We agree to release the securities to which we are entitled at the Buyer's request, so far as their estimated value exceeds the amount of the secured claims by more than 50%.

### § 9 Software Use

- 1. If software is included in the scope of delivery, the Buyer shall be granted a non-exclusive and non-transferable right to use the software delivered including its documentation. It shall be transferred exclusively for use on the delivery item intended for this purpose. Any utilization of the software on more than one system is not permitted.
- 2. The Buyer may only reproduce, edit and translate the software to the legal admissible extent (Sections 69a of the German Copyright Law) or convert it from the object code into the source code. The Buyer agrees not to remove or alter any printed manufacturer specifications - in particular copyright information - without our prior express consent.
- 3. All other rights to the software and the documentation, including copies, remain vested in us. The granting of sub-licences shall not be admissible.



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## § 10 Final Provisions

1. The exclusive place of jurisdiction for all legal disputes with business people, legal entities and special funds under public law shall be the Court in whose district we have our registered office.

However, we are also entitled to bring an action at the location where the Buyer is based, or before other courts having jurisdiction by reason of German or foreign law. Mandatory statutory provisions concerning exclusive competent courts remain unaffected by this provision.

- 2. The legal relations with the Buyer are governed by German law, with the exclusion of the United Nations Convention on Contracts for the International Sale of Goods (CISG).
- 3. If one or more conditions are in whole or in part invalid, the validity of the remaining provisions shall not be affected. Insofar as a valid, appropriate section is contained in the invalid clauses, this section shall remain in force.