

## **Sec. 1 Scope, application**

Our "General Terms of Delivery and Trade" apply to all purchase contracts and to contracts having as their purpose the delivery of goods which are to be manufactured or produced.

1. Trokamed GmbH is referred to hereinafter as Seller.
2. Our General Terms of Delivery and Trade apply exclusively. We do not recognize contrary or deviating terms of the Contracting Party which are not contained in our General Terms of Purchasing and Trade unless we have expressly consented to their application in writing. Our General Terms of Delivery and Trade apply even if we render our performance without reservation although we are cognizant of contrary or deviating terms of the Contracting Party which are not contained in our General Terms of Delivery and Purchasing.
3. All covenants which are made between us and the contracting party for the purpose of performing this contract are to be committed to writing in this contract. This applies expressly to orders that are only binding if they are placed or confirmed by us in writing (e.g. by fax).
4. Our General Terms of Delivery and Trade apply only with respect to contractors within the meaning of Section 14 of the German Civil Code (*Bürgerliches Gesetzbuch*–BGB).
5. Our General Terms of Delivery and Trade also apply to all future transactions with the Contracting Party even if they are not expressly agreed to again.
6. These General Terms of Delivery and Trade also apply to transactions between us and contracting parties who maintain their registered office outside the Federal Republic of Germany.

## **Sec. 2 Proposal, contract formation, schedule of duties, specifications**

1. Contract formation between Seller and Buyer occurs exclusively through the Seller's order confirmation in writing or text form. The order confirmation contains the delivery commitment and exclusively determines the characteristics of the products to be supplied under the contract. Side agreements and subsequent amendments must be in written or text form.
2. For products which the Seller manufactures on behalf of the Buyer in accordance with the Buyer's sketches, plans or samples, the Seller has no obligation to review sketches, plans or samples for their suitability and use. The product characteristics shall be defined by the specifications given by the Buyer. The Buyer is responsible for verification of the fitness and safety for its purposes. Where necessary, the Buyer shall be responsible for providing adequate operating instructions.

## **Sec. 3 Prices and payment terms**

1. All prices of the Seller are calculated in euro if no other currency is expressly identified in the order confirmation.
2. Unless otherwise agreed in the written order confirmation of the Seller, prices are Ex Works Seller exclusive of packaging costs. Statutory value-added tax is added to the prices in the respective statutory amount, which shall be shown separately on the invoices of the Seller.
3. If no price is specified in the order confirmation, the prevailing list prices of the Seller on the date of order completion apply, plus the respective statutory value-added tax.
4. Unless otherwise agreed, invoices of the Seller are payable without deduction within 30 days of invoicing.
5. Despite deviating terms of the Buyer, the Seller is entitled to credit payments against the Buyer's older debts first and shall inform the Buyer concerning the nature of the crediting that has taken place. If costs and interest have already accrued, the Seller is entitled to credit the payment first against the costs, then against interest and finally against the principal obligation. A payment is only considered to have been completed when the Seller has ready access to the funds. In the case of checks, payment is not considered to have been completed until the check is honored.
6. Unless a different time for payment is contained in the order confirmations, default occurs when a payment reminder remains unsatisfied, but no later than pursuant to Section 286, subsection 3 BGB. Interest in the event of default shall be charged by the Seller in the statutory amount pursuant to Section 288 BGB.
7. The Buyer may only offset demands of the Seller or exercise a right of retention with undisputed or legally established claims. Seller and Buyer agree that offset or retention with disputed claims between them is excluded.
8. The minimum purchase is 50.00 euro. For smaller purchases, we apply a small order surcharge of 20.00 euro.

## **Sec. 4 Delivery deadlines and dates, passage of risk**

1. Unless they are expressly agreed to be binding, delivery deadlines and dates are always nonbinding, even if agreed to in writing.
2. If the Seller is prevented from meeting delivery deadlines and dates and from satisfying its obligation through circumstances beyond its control (e.g. interruptions of operations, delays from its suppliers, obstructed supply of raw and auxiliary materials, through measures taken by authorities, embargoes, strike, lockouts, force majeure or natural hazards on the part of the Seller or suppliers, the lapse of delivery deadlines and dates is tolled until the obstruction disappears. These are extended by the length of time of the obstruction, as well as a reasonable startup time. If a delivery becomes impossible for the foregoing reasons, the Seller and Buyer are mutually released from the existing obligations of the order.
3. Delays do not entitle the Buyer to rescind the agreement or to return the goods absent contrary compulsory statutory regulations.
4. Damages claims for the default of the Seller are limited to 20% of the value of the deliverable. This does not apply to default in delivery caused intentionally or through gross negligence. The Seller is authorized to make partial deliveries unless the contrary is expressly agreed. The return of specially manufactured goods is excluded, as well as the withdrawal of an order for specially manufactured goods.
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6. Risk passes to the Buyer as soon as the article has been prepared for shipment or has left the warehouse of the Seller for the purpose of shipment. If shipment is impossible without fault of the Seller, risk passes at the time of notification of readiness for shipment.

## **Sec. 5 Retention of title**

1. Until all receivables which the Seller for any legal reason now has or in the future will have against the Buyer (including all current account balance claims) have been paid, the following security interests are granted to the Seller. Upon request, it shall release secured assets of its choosing if their value sustainably exceeds the receivables by more than 20%.
2. The goods remain the property of the Seller. Processing or alteration always occurs for benefit of the Seller as manufacturer but without obligating it. If the (joint) ownership of the Seller is extinguished through combination, it is forthwith agreed that the (joint) ownership of the Buyer in the combined article passes to the Seller pro rata in relation to value (invoice value). The Buyer shall hold the (joint) property of the Seller in safe custody without charge. Goods which are the (joint) property of the Seller are referred to in the following as the "Retained Goods."
3. The Buyer is authorized to process and sell the Retained Goods in the ordinary course of business as long as it is not in default. Pledges or transfers by way of security are not permitted. The Buyer forthwith assigns to the Seller by way of security, to the full extent, all receivables (including all current account balances) arising from resale or other legal reason with respect to the Retained Goods. The Seller revocably authorizes it to collect the receivables assigned to the Seller for its own account in its own name. This collection authorization may be revoked if the Buyer fails to properly meet its payment obligations.
4. In the event of third party seizures of the Retained Goods, particularly through attachment, the Buyer shall make the third party aware of the property of the Seller and immediately inform the Seller so that it can assert its title.
5. In the event of late payment, the Seller is entitled to recover the Retained Goods or, if necessary, to demand assignment of the Buyer's rights to recover the goods from third parties. The recovery and the attachment of the Retained Goods by the Seller do not effect rescission of the agreement.
6. If, in the case of cross-border delivery into a foreign country, the foregoing provision on retention of title is not effective under the law of the export country designated for the delivery or if, to be effective, it requires supplementation and/or registration with government authorities, the Buyer is obligated and the Seller authorized to enter into a security agreement under the law of the export country and to undertake the required registration. The Buyer is obligated to cooperate with the Seller in submitting the declarations and actions for creating an effective security agreement for the products delivered by the Seller. If the Buyer falls into arrears in making payments to the Seller, the Seller is authorized without effecting rescission of the contract to personally take possession of the delivered products and to store them separately or away from the Buyer's premises.

## **Sec. 6 Defaults in performance, breaches of duty, defects, liability**

1. The liability of the Seller is limited to gross negligence and intentional acts. This does not apply to injury to life, limb or health. For negligent breaches of primary contractual duties, so-called cardinal duties, the Seller is liable only insofar as the damages are foreseeable and typically associated with the contract unless the customer alerted it to the risk of the occurrence of an unusual loss. The Seller otherwise has no liability for breaches of nonessential contractual obligations through simple negligence.
2. The Buyer is responsible for promptly checking the products delivered by the Seller for flaws, defects, quantity and quality and to immediately report to the Seller any flaws, defects and deviations in quantity or quality from the order confirmation in such a manner that the Seller is able to identify the flaws, defects or deviations in quantity or quality to satisfy its obligation to cure.
3. For breach of the delivery commitments and the product specifications of goods delivered by the Seller, the Seller shall have a right with respect to the Buyer to cure within a reasonable time. This right may be satisfied through replacement or repair and is limited to two repair attempts.
4. The customer's claims for breach of our delivery commitment, failure to meet the specifications, material defects and defects of title lapse after the expiration of a period of one year.
5. The Buyer is responsible for maintaining the products delivered by the Seller and protecting them from unsuitable environmental influences (e.g. chemical reactions). A breach by the Seller is excluded for wear and tear under normal use, particularly in the case of instruments made of synthetic material that are sterilized with steam or in chemical baths. The Seller expressly refers to the risk of wear and tear for the above-mentioned instruments.
6. When the Buyer exports the products supplied by the Seller or processes or uses components, the Seller is not responsible for the exportability of the products, freedom from government approvals and the freedom to import into the Buyer's respective export country.

## **Sec. 7 Defects of title, liability**

1. The Seller is liable pursuant to above article Section 6 for defects of title in the products it supplies to the Buyer. The Buyer is obligated to immediately inform the Seller of defects of title which arise (e.g. trademark, patent or copyright infringements) and, if requested, to cooperate at the cost of the Seller in the legal defense chosen by the Seller.
2. If the Seller manufactures the respective product in accordance with the guidelines, sketches, plans, drawings and samples of the Buyer, the Buyer is liable for defects of title with respect to the Seller. The Buyer is obligated in such case to indemnify and hold the Seller harmless from all recourse by third parties arising from liability, damages and costs of any kind. The legal defense is the responsibility of the Buyer in such case.

## **Sec. 8 Design modifications**

The Seller reserves the right to make relevant design modifications at any time; however, it is not obligated to also make such modifications to products already delivered.

## **Sec. 9 Data Protection**

The Seller is authorized to store data of the Buyer which it obtains from the business relationship with the Buyer and to process it in the contracted manner to the extent the Buyer has power of disposal over such data.

## **Sec. 10 Warranty statements**

1. **The making of a warranty statement by the Seller requires a special, separate writing and must be made separately from the order confirmation.**
2. **A warranty statement is only effective if it is personally signed by a managing director of the Seller with sole power of representation or a managing director with joint power of representation with another managing director or holder of procuration.**
3. **The schedule of duties, specifications and descriptions of deliverables in the order confirmation contain no warranty statements. The acceptance of implied warranties and warranty statements is excluded between the Seller and the Buyer.**

## **Sec. 11 Place of performance, judicial venue**

1. If the Buyer is a merchant in terms of the German Commercial Code, a legal entity under public law or a fund under public law, the judicial venue for all rights and duties of the parties arising from transactions of any kind–

including those arising from exchange and check disputes—is 78187 Geisingen, Germany. The same applies when the Supplier has no general domestic judicial venue or when the Supplier's registered office or usual place of residence is relocated out of the country after the agreement has been concluded or when the Supplier's usual place of residence is unknown at the time legal proceedings are commenced. However, the Seller is also entitled to institute proceedings against the Supplier at the latter's general judicial venue.

2. For the General Terms of Delivery and Trade and all legal relations between the contracting parties, the law of the Federal Republic of Germany applies with the exclusion of the UN Convention on Contracts for the International Sale of Goods.

## **Sec. 12 Severability Clause:**

Should one or more provisions of our General Terms of Delivery and Trade be invalid, this shall not affect the validity of the remaining provisions. The invalidity of one or more provisions of our General Terms of Delivery and Trade shall not as a consequence void the General Terms of Delivery and Trade as a whole. The parties commit to agree to a valid provision which comes as close as possible to the invalid provision.