

# DELIVERY AND PAYMENT TERMS TROX GMBH

(Status: February 2011)

## I. General

1. All deliveries and services shall be based on these conditions as well as any separate contractual agreements. Deviating purchase conditions of the Purchaser shall not be included in the contract, even upon acceptance of the order. Received purchase conditions are not accepted, even if the supplier does not explicitly reject.

In the absence of a separate agreement, a contract shall only be realized with written order confirmation from the Supplier.

2. The Supplier reserves the right to title and copyright of samples, cost estimates, drawings or similar information in physical or non-physical form, including electronic form. These may not be made available to third parties. The Supplier must have the Purchaser's permission to make available to third parties information and documents that have been designated as confidential by the Purchaser.

3. All the details provided by the Supplier about the item sold in the catalogue or during the contractual negotiations are characteristic descriptions, not warranties in the legal sense. Unless expressly stated or referred to otherwise in the sales contract, the Supplier has not issued any warranties.

4. In case of doubt, the interpretation of trade clauses shall be governed by Incoterms 2010.

5. Offers are fundamentally subject to change. Details on delivery times are only approximate. The delivery date shall be the day of shipping ex works.

## 6. Data protection notice:

Please note that we shall utilise and distribute your personal data solely for business purposes with the aid of electronic data processing in accordance with the provisions of the Federal Data Protection Act. In this context, certain data (name, address, billing details and payments by the customer that were not on time) may be given to financial credit agencies and commercial credit insurance companies.

## II. Price and payment

1. Unless otherwise agreed, the prices shall apply ex works, including loading in the works, but excluding packaging and unloading. Prices for individual items of an offer are only valid upon if a full order is placed for this offer. The prices confirmed in our order confirmation shall apply only if the agreed upon order quantity is accepted. The applicable sales tax must be added. If after the contract has been concluded there is a change in the taxes or other outside costs included in the agreed price or if new ones emerge, the Supplier shall be entitled to alter the price correspondingly. On request, the Supplier shall provide evidence of this cost increase.

2. Unless otherwise agreed, payment must be made without any deduction to the Supplier's account, in the form of net cash within 30 days from the date of invoice. Payment must be made in such a way that the amount in full is at the Supplier's disposal on the due date. The costs of the payment transaction shall be borne by the Purchaser.
3. The Purchaser may only withhold payments or offset payments against counterclaims if such counterclaims are determined to be undisputed or legally binding.
4. The Purchaser shall be in default when a reminder is sent after the due date, but at the latest 30 days after the due date and receipt of an invoice or an equivalent demand for payment from the Supplier. If the Purchaser is in default, the Supplier may charge interest equivalent to the rate charged by banks for overdrafts as from the due date, with a minimum rate of eight per cent above the prime lending rate of the European Central Bank, unless the Purchaser provides evidence that the Supplier's loss is lower. The Supplier reserves the right to charge for further loss or damage, particularly additional expenses in connection with exchange rate fluctuations and exchange hedging.
5. All claims by the Supplier shall become due for payment immediately, irrespective of the term of any discounted and irrevocably credited bills, if the conditions of payment are not observed or if the Supplier learns of circumstances that are likely to reduce the Purchaser's creditworthiness. In this case, the Supplier may carry out outstanding deliveries, but only against payment in advance.
6. If the Purchaser defaults on his payments, the Supplier may additionally withdraw from the contract and also demand damages. Moreover, the Supplier is entitled to demand that the Purchaser refrains from selling and installing goods delivered, and can request their return or transfer of indirect ownership of the goods delivered at the Purchaser's expense. The Purchaser hereby authorises the Supplier to enter his premises in the above-mentioned cases, and to remove the goods delivered; their removal shall not be construed as a withdrawal from the contract.
7. The Purchaser can avoid the legal consequences specified in Par. 4 to 6 above by providing security to the amount of the Supplier's payment claim which was put at risk.

### III. Delivery time, delivery delay

1. The delivery time is agreed upon by the contractual parties. Meeting the delivery time is conditional upon clarification of all commercial and technical questions by the contractual parties and the Purchaser having fulfilled all his obligations, such as for example submission of all the official documents required or the receipt of an advance payment. If this is not the case, the delivery period will be extended as appropriate. This does not apply as long as the Supplier is responsible for the delay. If the order is subsequently altered by the Purchaser, the Supplier shall be entitled to extend the delivery time.
2. Compliance with the delivery deadline shall be subject to the proviso of correct and punctual deliveries to the Supplier himself. The Supplier shall notify the Purchaser as soon as possible of any imminent delays.
3. The delivery time shall be construed as met when the goods have been dispatched from the supplier's works by the specified date. If acceptance of goods has to be performed, then (except when refusal of acceptance is justified) the date of acceptance shall be definitive, or alternatively notification of acceptance readiness.

4. If the dispatch or the acceptance of the delivery item is delayed for reasons within the Purchaser's responsibility, then he shall be invoiced the costs incurred by the delay, beginning one month after notification of readiness for dispatch or acceptance.

5. If the delivery is delayed by force majeure, industrial disputes or other such circumstances beyond the Supplier's control, the delivery time shall be extended commensurate to the circumstances. The Supplier shall inform the Purchaser as soon as possible of the beginning and ending of such circumstances.

6. The Purchaser may withdraw from the contract without giving notice if it is ultimately impossible for the Supplier to deliver the goods before passage of risk. The Purchaser may also withdraw from the contract if part of an order cannot be delivered and he has a justified interest in refusing the partial delivery. If this is not the case, the purchaser must pay the applicable contractual cost of the partial delivery. The same shall apply in the event of incapacity. Otherwise Section VII. 2 shall apply.

If impossibility or incapacity occurs during the delay of acceptance, or if the Purchaser is solely or for the most part responsible for these circumstances, he shall be held liable for payment.

7. If the Supplier defaults, and if the Purchaser suffers loss or damage thereby, he shall be entitled to demand a lump-sum compensation for such default. This shall amount to 0.5 % for each full week of delay, but up to a maximum of 5 % of the value of that part of the overall delivery which as a result of the delay could not be utilized on time or in accordance with the contract.

If the supplier defaults, the customer has to set a reasonable extension time of 10 days. Incurred by the Buyer as delivery delay and the expiration of the grace period beyond one be detected from his injury, the Purchaser may assign this to claim compensation from the supplier, unless the supplier agrees to the customer to compensate for that damage a lump sum compensation to pay.

If the Purchaser (taking the statutory exceptions into consideration) sets the Supplier a reasonable deadline after the due date to perform the work, and this deadline is not met, the Purchaser may withdraw from the contract in accordance with statutory requirements.

Further claims due to delay in delivery are exclusively determined by Section VII. 2 of these conditions.

8. If the Purchaser annuls his order or if he declines to accept the delivery for reasons lying within his own responsibility, the Supplier shall be entitled, in place of his claim to fulfillment of the contract, without any further evidence being required, to demand cancellation costs amounting to ten per cent of the order value instead of damages. In addition to the cancellation costs, the Purchaser must, at the Supplier's request, pay for the delivery item equipment manufactured specially for him, which in this case will be made available to him on request.

#### IV. Passage of risk, acceptance

1. Unless otherwise agreed, the Supplier shall decide on the method and route of dispatch, plus the forwarding agent and carrier. If the Purchaser demands a method of transport other than that selected by the Supplier (means of transport, transport route), the Purchaser shall be liable for the corresponding additional costs. This includes heavy goods vehicles with lifting platform, delivery with urban vehicles and time-sensitive deliveries. Goods shall be shipped in heavy goods vehicles (irrespective

of the delivery conditions) and delivered to the place of unloading/curb. The place of unloading must be accessible for all commercial heavy goods vehicles on a street fit for traffic in all weather conditions. Islands are not included in the terms of freight and delivery.

2. The risk shall pass to the Purchaser when the delivery has left the Supplier's works, even if it is only a partial delivery by the Supplier of the Supplier has been contracted to provide other services, e.g. delivery costs or delivery and installation. If acceptance of goods must take place, this is the point when risk passes. It must be carried out immediately at the time of acceptance, or alternatively after the Supplier's notification of readiness of acceptance. The Purchaser may not refuse acceptance if a minor defect is found.

3. Should the dispatch or acceptance be delayed due to circumstances beyond the Supplier's control, the risk shall pass to the Purchaser from the day of notification of dispatch or acceptance readiness. The Supplier is obligated to take out the required insurance at the Purchaser's expense.

4. If, without culpability on the part of the Supplier, transportation is impossible on the intended route or to the intended place in the intended time, the Supplier shall be entitled to carry out the delivery using an alternative route or to a different place; the additional costs incurred as a result of this shall be borne by the Purchaser. The Purchaser shall be given an opportunity to give his opinion beforehand.

5. Partial deliveries shall be permissible, insofar as these are acceptable for the Purchaser. Shipments of greater or lesser quantities than the agreed amount shall be permissible to the extent that is customary in the industry.

6. In the event of damage during transport, the Purchaser must immediately arrange for the damage to be assessed by the responsible agencies.

7. Deliveries must be accepted by the Purchaser, even if they exhibit minor defects, without prejudice to his rights under Section VI of these conditions.

8. The goods are supplied without packaging and are not protected against rust. If and insofar as this is customary in the trade, the Supplier will deliver the goods in a packed condition. The Supplier will provide packaging, protection and/or transportation aids on the basis of his own experience and at the Purchaser's expense. Transportation packaging and all other packaging as covered by the German Packing Ordinance will not be taken back by the Supplier.

## V. Retention of title

1. The Supplier shall retain title to the delivery item until all payments specified in the delivery contract have been received.

2. The Supplier shall be entitled to insure the delivery item at the Purchaser's expense against theft, breakage, fire, water and other damage, unless the Purchaser can provide proof that he has taken out such insurance cover himself.

3. The Purchaser may neither sell nor pledge the delivery item, nor assign it as security. In the event of attachments, confiscations or other dispositions by third parties, he must notify the Supplier thereof immediately.

4. In the event of a breach of contract on the part of the Purchaser, particularly default of payment, the Supplier shall be entitled to take back the delivery item after prior warning has been given, and the Purchaser shall be obligated to surrender it.
  5. Due to the retention of title, the Supplier can demand surrender of the delivery item only if he has withdrawn from the contract.
  6. The Purchaser shall be obligated to notify the Supplier immediately of all execution measures against an item covered by retention of title, and to send the Supplier copies of garnishee orders and bailiff's returns. In addition, he must make every effort to avert execution proceedings.
  7. An application to open insolvency proceedings with respect to the Purchaser's assets shall entitle the Supplier to withdraw from the contract and to demand the immediate return of the delivery item.
  8. If the conditional goods are processed, linked to and mixed with other goods by the Purchaser, the Supplier shall have joint title to the new item in the ratio of the conditional goods' invoice value to the invoice value of the other goods used, or in the absence of this to the cost of production. If the Supplier's title expires due to linkage or mixing, the Purchaser shall transfer to the Supplier on signing the contract the title to the new stock or item to the extent of the invoice value of the conditional goods, and shall keep them safe for the Supplier free of charge. The resulting joint ownership rights shall be construed as conditional goods within the meaning of Section V.1.
  9. The Purchaser may sell the conditional goods only in the normal course of business at his standard business conditions and as long as he is not in default, provided that he agrees retention of title with his customer and that the claims arising from the resale pass to the Supplier as laid down in Sections V. 10. to V. 12. He shall not be entitled to make any other dispositions regarding the conditional goods.
  10. The Purchaser's claims arising from the resale are assigned to the Supplier upon the signing of this contract. The Supplier hereby accepts this assignment.
  11. If the conditional goods are sold by the Purchaser together with other goods not purchased from the Supplier, the assignment of the claim arising from the resale shall apply only to the amount of the invoice value of the conditional goods sold in each case. If the resold goods are ones to which the Supplier has joint title in accordance with Section V. 8., the assignment of the claim shall apply to the amount of these joint ownership proportions.
  12. If the conditional goods are used by the Purchaser to fulfill a manufacturing contract, then Sections V. 10. and V. 11. shall apply correspondingly for the claim arising from this contract.
  13. The Purchaser may collect claims from resale in accordance with Sections V. 9.
- to V. 12. until revocation, to which the Supplier shall be entitled at any time. The Supplier may only exercise his right of revocation in the cases specified in Section II. 4.
14. The Purchaser shall on no account be entitled to assign the claims. Upon the Supplier's request, he shall be obligated to immediately inform his customers of the assignment to the Supplier, and to provide the information and documentation required for the purposes of collection.

15. If the value of the securities granted to the Supplier exceeds the secured claims by more than 25 % in total, then the Supplier shall be obligated upon the request of the Purchaser to release securities at his own option.

16. If the retention of title or the assignment is not operative under the laws applying in the area where the goods are located, then the security corresponding to the retention of title or assignment in this area shall be construed as agreed. If the involvement of the Purchaser is necessary for this purpose, he must, at his own expense, take all the necessary measures to substantiate and maintain such rights.

## VI. Warranty claims

With regard to defects and bad title, the supplier guarantees the following, with the exception of further claims, subject to Section VII:

### Defects

1. All parts which become defective due to circumstances occurring before the passage of risk must be repaired or replaced free of charge at the Supplier's discretion. The Supplier must be notified immediately in writing if any such defects are discovered. Replaced parts shall become the property of the Supplier.
2. After consulting with the Supplier, the Purchaser is to allow the Supplier the necessary time to carry out repairs and provide replacement parts; otherwise the Supplier shall be released from liability for the resulting consequences. The Purchaser only has the right to claim expenses incurred in repairing the damage himself or by a third party in urgent cases where safety is endangered or disproportionate greater damage could be prevented, in which case the Supplier must be informed immediately.
3. With respect to the direct costs incurred by the repair or replacement delivery, the Supplier shall bear, insofar as the complaint proves to be justified, the costs of the replacement piece including dispatch. The Supplier shall also bear the direct costs of removing and installing of the replacement piece, plus the costs for any necessary provision of the required fitters and assistants including travel costs, insofar as this does not entail an unreasonable burden for the Supplier. The Supplier shall not bear any further costs, particularly indirect ones (e.g. erection and dismantling work, modifications, scaffolds, safety and security measures).
4. The Purchaser has the right by law to withdraw from the contract if the Supplier, taking legal exceptions into consideration, does not meet a reasonable deadline set for the repair or replacement delivery due to a defect. If the defect is minor, the Purchaser is only entitled to a reduction in the contractual price. The Purchaser does not otherwise have the right to a reduction in the contractual price. Further claims are determined in Section VII. 2 of these conditions.
5. No warranty will be given for the following cases in particular:

unsuitable or improper use, faulty installation and/or commissioning by the Purchaser or third parties, natural wear and tear, faulty or negligent handling, inadequate or lack of maintenance, unsuitable equipment, defective construction work, unsuitable subsoil, chemical, electrochemical or electrical influences – unless they fall within the Supplier's scope of responsibility.

6. If the Purchaser or a third party does not carry out the repair work with proper care, the Supplier shall bear no liability for the consequences arising there from. The same shall apply for changes to the delivery item made without the Supplier's prior written permission.

Bad title

7. If the use of the product supplied causes a breach of commercial proprietary right or domestic copyright in the Federal Republic of Germany, the Supplier shall at his own expense in all cases either provide the Purchaser with the right to continue use or modify the delivery item in such a way that is reasonable to the purchaser and ensures that the proprietary right is no longer breached. If it is not financially viable to do this or to do it in a reasonable period of time, then the Purchaser shall be entitled to withdraw from the contract. Under the above-mentioned preconditions, the Supplier shall also be entitled to withdraw from the contract. In addition, the Supplier shall release the Purchaser from undisputed or non-appealable claims from affected copyright holders.

8. The obligations as defined in Section VI. 7 are subject to Section VII. 2, in the event of industrial property rights or copyrights being violated, shall be final.

They shall only be valid if

- the Purchaser informs the Supplier immediately of any claims of breach of proprietary rights or copyrights,
- the Purchaser supports the Supplier to a reasonable extent in rebuttal of claims or enables the Supplier to carry out modifications according to Section VI. 7
- the Supplier is entitled to all rebuttal measures including out-of-court settlements,
- the bad title is not based on an instruction from the Purchaser and
- the breach of rights was not caused by a change made to the delivery item by the Purchaser himself or use which was not covered under the contract.

## VII. Liability

1. If the delivery item cannot be used by the Purchaser for the contractually agreed purpose, due to negligence or fault on the part of the Supplier in the execution of suggestions or advice before or after completion of contract or by breach of other contractual subsidiary obligations, particularly instructions for use and maintenance of the delivery item, then the arrangements specified under Sections VI and VII. 2 shall apply correspondingly with the exception of further claims from the Purchaser.

2. For damage which is not to the delivery item

itself the Supplier shall only be liable, for whatever legal reasons, in the following situations:

- a. in the event of wrongful intent,

- b. in the event of gross negligence on the part of the owner/the Boards or senior executives,
- c. in the event of culpable injury to life, body, health,
- d. in the event of defects which the Supplier maliciously did not reveal or whose absence
- e. in the event of defects in the delivery item, insofar as liability exists under the German Product Liability Act for personal injury or property damage in privately used items.

In the event of culpable violation of significant contractual obligations, the Supplier shall also be liable in the event of gross negligence of non-senior executives and in the event of slight negligence; in the latter case, liability shall be limited to reasonably foreseeable loss or damage typical of the contract.

Further claims are excluded.

#### VIII. Statute of limitations

Claims for defects in a structure or for delivery items which have been used for a structure in accordance with their customary manner of utilization, and have caused the structure concerned to be defective shall become statute-barred after 5 years. Deviating from this, for electrical or pneumatic actuators and controls as well as wear parts, a statute of limitations of 2 years shall apply. Damages under Section VII. 2.a – e shall be governed by the statutory deadlines. All claims of the Purchaser, whatever the legal grounds involved, shall become statute-barred in 2 years.

#### IX. Software utilization

If software is included in the delivery, the Purchaser is granted a non-exclusive right to use the supplied software including its documentation. It is provided for use with that particular delivery item. Utilization of the software on more than one system is prohibited. The Purchaser may only re-produce, modify, translate the software or transfer from the object code to the source code in as far as it is legally permissible (§§ 69 German Copyright Law). The Purchaser shall be obligated not to remove or change any manufacturer's information, especially pertaining to copyright, without the prior explicit permission of the Supplier. All other rights to the software and its documentation including copies remain the property of the Supplier or that of the software supplier. The granting of sub-licences shall not be permissible.

#### X. Applicable law, place of jurisdiction

1. All legal relationships between the Supplier and the Purchaser shall be governed solely by the law of the Federal Republic of Germany. The application of the Convention on Contracts for the International Sales of Goods (CISG) is hereby excluded.
2. Unless otherwise agreed, the place of performance shall be the Supplier's plant. The place of jurisdiction for all disputes arising under this contract is Düsseldorf.



The Supplier shall, however, be entitled to file a lawsuit at the Purchaser's head offices.

## TROX INDIA PRIVATE LIMITED

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