

General Terms and Conditions of Delivery and Payment of Tröster Maschinenbau GmbH

Stand 2020-05-28

Section 1 Scope of Application

1. These terms of delivery and payment apply exclusively to entrepreneurs, legal entities under public law or special funds under public law within the meaning of Section 310 (1) German Civil Code [Bürgerliches Gesetzbuch – “BGB”]. We will only recognise any terms and conditions of the customer which conflict with or deviate from our terms and conditions of sale if we expressly agree to their validity in writing.
2. These terms of delivery and payment shall also apply to any and all future transactions with the customer, insofar as these are legal transactions of a related nature.

Section 2 Offer and Conclusion of Contract

1. Insofar as an order is to be regarded as an offer in accordance with Section 145 BGB, we may accept it within two weeks.
2. Orders become binding for Tröster Maschinenbau GmbH only after the customer order has been confirmed in writing.
3. This shall also apply to supplements, amendments or subsidiary agreements.
4. We consider any double orders placed by telephone or in writing, which are not recognized in time, as separate and independent orders and must insist on their fulfilment in case of a cancellation behind time.

Section 3 Prices

1. Our prices are quoted exclusive of statutory value-added tax ex works, plus packaging, unless otherwise agreed in this regard. Our prices refer to the prices and discounts valid on the day of delivery. In the event of changes in costs, we reserve the right to adjust prices accordingly after conclusion of the contract, in particular if material and energy costs change.
2. The minimum net invoice amount is EUR 100.00.

Section 4 Payments

1. Our invoices are to be paid as follows: 10 days after invoice date with 2% discount or 30 days after the invoice date net. Unless otherwise agreed, payment by cheque or bill of exchange will not be accepted. The valid payment deadline is met if we can dispose of the means of payment within the deadlines.

2. The customer is in default if the payment deadline is exceeded. In the event of default in payment, we are entitled to charge default interest in the amount of 8% above the base interest rate.
3. Retention or offsetting against counterclaims is only justified if these have been established by court order or are undisputed.
4. In the event of over-indebtedness and suspension of payments with subsequent application for insolvency proceedings and other culpable non-compliance with agreed payment targets, all claims to which we are entitled against the customer shall become due immediately.
5. We are entitled to carry out or render outstanding deliveries or services only against advance payment or security if circumstances become known after conclusion of the contract which are suitable to significantly reduce the creditworthiness of the customer and which endanger the payment of the outstanding claim by the customer from the respective contractual relationship.

Section 5 Dimensional and Weight Data

Information on dimensions, weights, properties, payloads, capacity, durability, etc. as well as corresponding illustrations (e.g. drawings and illustrations) are only approximate unless the usability for the purpose intended by the contract requires exact conformity. They do not constitute not guaranteed characteristics, but descriptions or designations of the delivery or service. Deviations customary in trade and deviations which result from legal regulations or represent technical improvements, as well as the replacement of components by equivalent parts, are permissible provided that they do not impair the usability for the purpose intended by the contract.

Section 6 Packaging

Packaging is necessary to protect the goods during transport. We use reusable or recyclable products which we take back at the customer's request if the return is arranged by the customer.

Section 7 Delivery

1. The delivery period begins with the dispatch of the order confirmation or with the time at which all commercial and technical prerequisites for the fulfilment of the contract incumbent on the customer have been clarified, documents to be procured by the customer have been received by Tröster Maschinenbau GmbH and agreed payments have been made.
2. The delivery period shall be deemed to have been observed if the delivery item has been handed over to the first carrier or the customer has been notified that it is ready for dispatch by the end of the delivery period.

3. Partial deliveries are permissible if they do not place an unreasonable burden on the customer.
4. Tröster Maschinenbau GmbH is not liable for delivery delays caused by unforeseeable, extraordinary events for which Tröster Maschinenbau GmbH is not responsible, such as industrial disputes, breakdowns, official measures, transport disruptions or other cases of force majeure, regardless of whether these events occur on the premises of Tröster Maschinenbau GmbH or at those of its suppliers. Agreed delivery dates shall be extended accordingly.
5. In the case of intra-Community EU deliveries and services, the customer shall be obliged to provide its VAT identification number as well as the other information required to obtain tax exemption and to provide the necessary documents (in accordance with Sec. 6 a German Value Added Tax Act [Umsatzsteuergesetz – “UStG”], Sec. 17 a-d German Value Added Tax Ordinance [Umsatzsteuer-Durchführungsverordnung – “UStDV”]) so that the supplier can submit the recapitulative statement in accordance with Sec. 18 a UStG correctly, completely, and in due time.
Should the customer culpably fail to comply with this obligation and tax exemption is therefore refused, the customer shall indemnify the supplier against any and all damages and expenses arising therefrom.

Section 8 Plans and Documents

1. Plans and technical documents which are handed over to the customer before the conclusion of the contract and which can be used to manufacture the delivery item or individual parts shall remain our exclusive property. Without our consent, the buyer may not use, copy, reproduce, transfer or disclose them to third parties.
2. Conversely, plans or technical documents which are handed over to us by the customer before or after conclusion of the contract and which can be used to manufacture the delivery item or individual parts shall remain the exclusive property of the customer.

Section 9 Retention of Title

1. We reserve title to the goods until they have been paid for in full.
2. The customer is entitled to dispose of the delivery item in the ordinary course of business. Pledging or transfer by way of security is not permitted. The claims arising from the resale or any other legal transaction with regard to the delivery item shall be assigned to us by the customer in full by way of security. We accept the assignment. The customer is revocably entitled to collect the claim assigned to us on its own account in its own name. If we make use of our security rights in person, the customer must state the name and address of the third party and make all notifications necessary for the assertion of our rights. Should the value of the security exceed our total claim by more than 10%, we shall be obliged to reassign it at the request of the customer.

3. If the goods are combined or mixed with other goods or processed in any other way, we shall also acquire ownership until the goods have been paid for in full or – if the combination or mixing consists of materials from several owners or if the value of the processed goods is higher than the value of the goods subject to retention of title – we shall acquire co-ownership (ownership in fractional shares) of the newly created goods in the ratio of the value of the goods subject to retention of title to the value of the newly created goods. In the event that a third party and not our selling customer acquires ownership, the customer transfers, already now, its future ownership or – in the above-mentioned proportion – co-ownership of the newly created object or its other rights resulting from the processing in proportion to the security to Tröster Maschinenbau GmbH.
4. Furthermore, the customer shall be obliged to keep the goods in good condition, to store them appropriately and well protected, and to insure them; the customer shall keep our goods separate from its own products and mark them as our property until payment has been made in full.

Section 10 Transport – Transfer of Risk

1. If the contract does not specify the type of sale, the delivery item shall be deemed to have been sold "ex works".
2. With the handing over of the goods to the carrier (post office, railway, parcel service, forwarding agent, etc...), the purchase contract is considered fulfilled and the risk is transferred to the customer. In individual cases, we determine the mode of dispatch, the dispatch route and, if necessary, the forwarding agent or carrier for the goods ordered from us.
3. Should it seem to us advantageous and economically sensible in the context of rapid processing, we will make partial deliveries. This is particularly the case when delivery times for existing products vary considerably, so that our customers receive their goods as quickly as possible.

Section 11 Further Transport and Storage

1. When transporting a fan or bearing unit, it must be ensured that no transport damage can occur to the bearing. The following should be noted in this respect:
 - a. Removal of the impeller during transport and appropriate securing of the bearing unit.
 - b. If the impeller cannot be removed, it must be supported for transport in order to avoid transport damage to the bearings (due to mass forces).If the transport is not secured, the bearing may suffer damage for which we assume no liability.

2. To ensure that the goods function properly, care must be taken to ensure that the bearing is not exposed to direct weather conditions during operation and storage, i.e. if the bearing is operated outdoors, it must be protected by a roof.
3. We assume no liability for improper handling.
4. Please observe our regulations and technical data sheets in order to use our goods correctly and to avoid complaints.

Section 12 Warranty

1. We supply all our products with the properties required for normal use. The warranty period shall be one year from delivery or, if acceptance is required, from acceptance. The goods must be carefully inspected by the customer immediately after delivery.
2. In particular, the customer is obliged to check the functionality of the bearing after installation of a bearing before further dispatch by means of a test run and, if necessary, to relubricate according to our lubrication instructions. Obvious defects must be reported to us within 7 working days of delivery, non-obvious defects within 7 working days of discovery. In the event of a justified notification of defects in due time, we shall, at our discretion, offer either repair or replacement free of charge. If the subsequent performance should fail (impossibility, unreasonability, refusal or unreasonable delay of the subsequent improvement or replacement), the customer can withdraw from the contract or reduce the purchase price appropriately. Upon request, a delivery item complained about shall be returned to us carriage paid. In the event of a justified complaint, we shall reimburse the costs of the cheapest shipping route; this does not apply if the costs increase because the delivery item is located at a place other than the location of the intended use.
3. If a defect is based on our fault, the customer may claim damages under the conditions specified in section 13.
4. In the event of defects in components of other manufacturers, which we cannot remedy for licensing or actual reasons, we shall, at our discretion, assert our warranty claims against the manufacturers and suppliers for the account of the customer or assign them to the customer. Warranty claims against us for such defects shall only arise under the other conditions and in accordance with these General Terms and Conditions of Delivery if the judicial enforcement of the aforementioned claims against the manufacturer and supplier was unsuccessful or is futile, for example due to insolvency. During the duration of the legal dispute, the statute of limitations of the relevant warranty claims of the customer against us shall be suspended.
5. The warranty is limited if the customer changes the delivery item or has it changed by third parties without our consent and the removal of the defect is made impossible or unreasonably difficult as a result. In any case, the customer shall bear the additional costs of remedying the defect incurred as a result of the change. Our warranty obligation

does not extend to defects which are based on the materials supplied by the customer or on a design specified by the customer.

6. A delivery of used items agreed with the customer in individual cases shall be made to the exclusion of any warranty for material defects.

Section 13 Liability for Damages Based on Fault

1. Our liability for damages, regardless of the legal reason, in particular based on impossibility, delay, defective or incorrect delivery, breach of contract, breach of duties during contract negotiations and tort, shall be limited in accordance with this section 13 to the extent that our fault is a decisive factor of our liability.
2. In the event of simple negligence on the part of our executive bodies, legal representatives, employees or other vicarious agents, we must exclude any liability insofar as it does not constitute a breach of essential contractual obligations. Essential to the contract are the obligation to deliver and install the delivery item on time, its freedom from defects that impair its functionality or usability by more than an insignificant degree, as well as obligations to provide advice, protection and care, which are intended to enable the customer to use the delivery item in accordance with the contract or to protect the life or limb of the customer's personnel or to protect the customer's property from considerable damage.
3. Insofar as we are liable on the merits of damages, such liability shall be limited to damages which we foresaw at the time of conclusion of the contract as a possible consequence of a breach of contract or which we should have foreseen using customary care. Besides, indirect damages and consequential damages resulting from defects of the delivery item shall only be eligible for compensation if such damages are typically to be expected when the delivery item is used in accordance with its intended purpose.
4. The above exclusions and limitations of liability shall apply to the same extent in favour of our executive bodies, legal representatives, employees, and other vicarious agents.
5. Insofar as we provide technical information or act in an advisory capacity and this information or advice is not part of the contractually agreed scope of services owed by us, this shall be done free of charge and to the exclusion of any liability.
6. The limitations of this section 13 do not apply to our liability on the merits of intentional behaviour, due to injury to life, body or health, according to the Product Liability Act or for guaranteed characteristics.

Section 14 Take-back Guarantee and Consignments on Approval

The return shall only be possible if this has been generally agreed prior to the placement of the order and the conditions have been laid down in writing. Custom-made products according to customer requirements are generally excluded from return and exchange. Our liability for defects remains unaffected.

Section 15 Data Storage

We store and process the personal and company-related data of our customers to the extent necessary for business purposes within the permissible framework of the German Federal Data Protection Act (Section 26 Bundesdatenschutzgesetz – “BDSG”). We hereby give you notice of this fact.

Section 16 Place of Jurisdiction

Place of performance and exclusive place of jurisdiction for any and all disputes arising from this contract shall be our place of business, unless otherwise stated in the order confirmation. The validity of the International Convention on the International Sale of Goods (CISG) is excluded.

Section 17 Legal Validity

Should any of our terms and conditions of sale, delivery and payment not be legally effective, in whole or in part, this shall not affect the legal validity of the remaining terms and conditions and the entire legal transaction.