

General Terms and Conditions of Delivery and Sale (GTCS)

of Tröster Maschinenbau GmbH

Version: December 12, 2022

Section 1 Scope of Application

- (1) These General Terms and Conditions of Sale (GTCS) shall apply to all our business relations with our customers ("Purchaser"). The GTCS shall only apply if the Purchaser is an entrepreneur (sec 14 German Civil Code [*Bürgerliches Gesetzbuch* – "BGB"]), a legal entity under public law or a special fund under public law.
- (2) Unless otherwise agreed, the GTCS in the version valid at the time of the Purchaser's order or, in any case, in the version last notified to the Purchaser in text form shall also apply as a framework agreement for similar future contracts without need for us to refer to them again in each individual case.
- (3) Our GTCS shall apply exclusively. Any deviating, conflicting or supplementary general terms and conditions of the Purchaser shall only become part of the contract if and to the extent that we have expressly agreed to their validity in writing. This requirement of consent shall apply in any case, for example even if the Purchaser refers to its GTC within the scope of the order and we do not expressly object to this.
- (4) Individual agreements (e.g. framework supply agreements, quality assurance agreements) and details in our order confirmation shall take precedence over the GTCS. In case of doubt, commercial clauses shall be interpreted in accordance with the Incoterms® published by the International Chamber of Commerce in Paris (ICC) in the version valid at the time of conclusion of the contract.
- (5) Legal declarations and notifications of the Purchaser with regard to the contract (e.g. setting of deadlines, notification of defects, revocation or reduction in price) must be made in writing. Written form within the meaning of these GTCS shall include written and text form (e.g. letter, e-mail, fax). Statutory form requirements and further evidence, in particular in the event of doubts about the legitimacy of the person making the declaration, shall remain unaffected.

- (6) References to the applicability of statutory provisions are for clarification purposes only. Even without such clarification, the statutory provisions shall therefore apply unless they are directly amended or expressly excluded in these GTCS.

Section 2 Offer and Conclusion of Contract

- (1) Our offers are subject to change and non-binding. We reserve the property rights and copyrights regarding calculations, drawings and similar information – also in electronic form. Passing on to third parties is only allowed with our written permission.
- (2) The order of the goods by the Purchaser is considered a binding offer of contract. Unless otherwise stated in the order, we shall be entitled to accept this offer of contract within 2 weeks as of receipt.
- (3) Offers of contract by the Purchaser shall only become binding if we have confirmed the order in writing. This shall also apply to purchase orders, amendments or subsidiary agreements.

Section 3 Prices

- (1) Our prices are quoted exclusive of statutory value-added tax, ex works, and plus packaging, unless otherwise agreed in this regard. Our prices refer to the prices and discounts valid on the day of delivery.
- (2) In the case of sale by delivery to a place other than the place of performance, the Purchaser shall bear the transport costs ex warehouse (cf. section 8 (1) of these GTCS) and the costs of any transport insurance requested by the Purchaser, if applicable.
- (3) The minimum order value amounts to EUR 100.00 net.

Section 4 Payment Terms

- (1) The purchase price is due and payable within 30 days from the date of invoice and delivery or acceptance of the goods. Unless otherwise agreed, payment by cheque and bill of exchange will not be accepted.
- (2) However, we are entitled to make a delivery in whole or in part only against advance payment or the provision of security at any time, also within the scope of an ongoing business relationship. We will declare a corresponding reservation at the latest together with the order confirmation.

- (3) Upon expiry of the aforementioned payment deadline, the Purchaser shall be in default. During the period of default, the purchase price shall bear interest at the applicable statutory default interest rate. We reserve the right to assert further damage caused by delay. With respect to merchants, our claim to interest arising from commercial transactions arising as of the due date (sec 353 German Commercial Code [*Handelsgesetzbuch* – “HGB”]) shall remain unaffected.
- (4) The Purchaser shall only be entitled to rights of set-off or retention insofar as its claim has been legally established or is undisputed. In the event of defects in the delivery, the Purchaser’s counterclaims shall remain unaffected, in particular those pursuant to section 11 (4) sentence 2 of these GTCS.
- (5) If, after conclusion of the contract, it becomes apparent that our claim to the purchase price is jeopardized by the Purchaser’s inability to pay (e.g. filing for the opening of insolvency proceedings), we shall be entitled to refuse performance and – if necessary after setting a deadline – to revoke the contract (sec 321 BGB) in accordance with the statutory provisions. In the case of contracts for the manufacture of non-fungible goods (custom-made products), we may revoke the contract with immediate effect; the statutory provisions on the dispensability of setting a deadline shall remain unaffected.

Section 5 Dimensional and Weight Data

- (1) 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 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

- (1) 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 Period and Delay in Delivery

- (1) The delivery period is agreed individually or stated by us upon acceptance of the order. The delivery period begins with the dispatch of the order confirmation, provided that at this time all technical specifications of the contract have been clarified (release of the design drawing). If Tröster Maschinenbau GmbH has not been provided with the technical data at this point in time, the delivery period shall not begin to run until all of the above-mentioned data relevant to the contract are available.
- (2) Tröster Maschinenbau GmbH is entitled to make and charge for partial deliveries.
- (3) The delivery period shall be deemed to have been observed if the delivery item has been handed over to the first carrier or if the Purchaser has been notified that it is ready for dispatch by the end of the relevant delivery period.
- (4) If we are unable to meet binding delivery deadlines for reasons for which we are not responsible (non-availability of the goods/services), we shall inform the Purchaser of this without delay and notify the Purchaser of the expected new delivery deadline at the same time. If the goods/services remain unavailable within the new delivery period, we shall be entitled to revoke the contract in whole or in part; we shall immediately refund any consideration already paid by the Purchaser. In particular, but not limited to the following events, it shall constitute an event of non-availability of the goods/services: late delivery by our suppliers, if we have concluded a matching cover transaction, in the event of any other disruptions in the supply chain, for example, due to force majeure, such as pandemics, natural disasters, armed conflicts, official interventions and prohibitions, transport and customs clearance delays, transport damage, energy and raw material shortages or if we are not obliged to procure the goods/services in the individual case.
- (5) Furthermore, we shall not be liable for delays in delivery in the event of labour disputes which impede or prevent compliance with the agreed delivery period. In these cases, the delivery period may be extended until these circumstances have come to an end.
- (6) The occurrence of our delay in delivery shall be determined in accordance with the statutory provisions. However, a reminder by the Purchaser is required in any case. If we are in default of delivery, the Purchaser may demand lump-sum compensation for the damage caused by the delay. The lump-sum compensation shall amount to 0.5% of the net price (delivery value) for each completed calendar week of the delay, not to exceed, however, a total of 5% of the delivery value of the goods delivered with delay. We reserve the right to prove that the Purchaser has not suffered any damage or that the damage is significantly less than the aforementioned lump sum.

- (7) The rights of the Purchaser pursuant to section 12 of these GTCS and our statutory rights, in particular in the event of an exclusion of the obligation to perform (e.g. due to impossibility or unreasonableness of performance and/or subsequent performance), shall remain unaffected.

Section 8 Delivery, Transfer of Risk, Acceptance, Default of Acceptance

- (1) Delivery is made ex warehouse; this is also the place of performance for the delivery and any subsequent performance. At the request and expense of the Purchaser, the goods shall be shipped to another destination (sale by delivery to a place other than the place of performance). Unless otherwise agreed, we are entitled to determine the type of shipment (in particular transport company, shipping route, packaging) ourselves. Unless otherwise agreed in the contract, deliveries shall be made FCA-Free Carrier (Incoterms 2020) from a place stated in the order confirmation.
- (2) The risk of accidental loss and deterioration of the goods shall pass to the Purchaser at the latest upon handover to the Purchaser. However, in the case of sale by delivery to a place other than the place of performance, the risk of accidental loss and accidental deterioration of the goods as well as the risk of delay shall pass already upon delivery of the goods to the forwarding agent, the carrier or any other person or institution designated to carry out the shipment. Insofar as acceptance has been agreed, this shall be decisive for the transfer of risk. In all other respects, the statutory provisions of the German law on sales contracts shall also apply mutatis mutandis to an agreed acceptance. Any default of acceptance of the Purchaser is equal to a handover or acceptance.
- (3) If the Purchaser is in default of acceptance, fails to cooperate or if our delivery is delayed for other reasons for which the Purchaser is responsible, we shall be entitled to demand compensation for the resulting damage, including additional expenses (e.g. storage costs). For this we charge a lump-sum compensation in the amount of 0.5% per calendar week, starting with the delivery deadline or – in the absence of a delivery deadline – with the notification that the goods are ready for dispatch.
- (4) The proof of a higher damage and our legal claims (in particular compensation for additional expenses, reasonable compensation, termination) shall remain unaffected; however, the lump sum shall be credited against any further monetary claims. The Purchaser shall have the right to prove that we have not suffered any damage at all or that the damage is significantly less than the aforementioned lump sum.

- (5) In the case of intra-Community EU deliveries and services, the Purchaser is obliged to provide its VAT identification number as well as the other information required to obtain tax exemption and to provide the necessary supporting documents (in accordance with sec 6 a German Value Added Tax Act [*Umsatzsteuergesetz* – “UStG”], sec 17 a-d German Value Added Tax Regulation [*Umsatzsteuer-Durchführungsverordnung* – “UStDV”]) so that Tröster Maschinenbau GmbH can submit the summarised report in accordance with sec 18 a UStG correctly, completely, and in due time. If the Purchaser culpably fails to comply with this obligation and the tax exemption is therefore denied, the Purchaser shall indemnify Tröster Maschinenbau GmbH and hold it harmless from any damages and expenses arising therefrom.

Section 9 Retention of Title

- (1) Until full payment of all our present and future claims arising from the purchase contract and an ongoing business relationship (secured claims), we retain title to the goods sold.
- (2) The goods subject to retention of title may not be pledged to third parties or assigned as security before full payment of the secured claims. The Purchaser must inform us immediately in writing if an application is made to open insolvency proceedings or insofar as third parties have access to the goods belonging to us (e.g. seizures).
- (3) In case of breach of contract by the Purchaser, in particular in case of non-payment of the due purchase price, we are entitled to revoke the contract in accordance with the statutory provisions or/and to demand the return of the goods on the basis of the reservation of title. The demand for return does not simultaneously include the declaration of revocation; in fact, we are entitled to demand only the return of the goods and to reserve the right of revocation. If the Purchaser does not pay the purchase price due, we may only assert these rights if we have previously set the Purchaser a reasonable deadline for payment without success or if setting such a deadline is dispensable under the statutory provisions.
- (4) Until revoked, the Purchaser is authorized to resell and/or process the goods subject to retention of title in the ordinary course of business. The Purchaser assigns to us in full and with immediate effect any and all claims arising from the resale or any other legal transaction with regard to the delivery item by way of security. We accept the assignment. Until revoked, the Purchaser is entitled to collect the claim assigned to us on its own account and in its own name. If we make use of our security rights, the Purchaser shall 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 Purchaser.

- (5) 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.
- (6) Furthermore, the Purchaser shall be obliged to keep the goods in good condition, to store them appropriately and well protected, and to insure them; the Purchaser shall keep our goods separate from its own products and mark them as our property until payment has been made in full.

Section 10 Handling, Commissioning, and Storage of our Products

- (1) Our products are customised single components. In the event of improper handling such as to incorrect handling or storage, we accept no liability for any damage incurred.
- (2) In order to maintain the warranty according to section 11 of our GTCS, the Purchaser is obliged to handle the goods in compliance with our assembly and maintenance instructions. These are available in their current version on our homepage at: <https://troester-maschinenbau.de/downloads>.

Section 11 Warranty/Claims of the Purchaser based on Defects

- (1) The statutory provisions shall apply to the Purchaser's rights in the event of material defects and defects of title (including incorrect and short delivery as well as improper assembly/installation or defective instructions), unless otherwise stipulated in these GTCS. In all cases, the special statutory provisions on the reimbursement of expenses in the case of final delivery of the newly manufactured goods to a consumer (supplier's recourse pursuant to secs 478, 445a, 445b43 or secs 445c, 327 (5), 327u BGB) shall remain unaffected, unless an equivalent compensation has been agreed, e.g. within the scope of a quality assurance agreement.

- (2) The basis of our liability for defects is above all the agreement reached on the quality and presumed use of the goods (including accessories and instructions). All product descriptions and manufacturer's specifications which are the subject of the individual contract or which were publicly announced by us (in particular in catalogues or on our Internet homepage) at the time of the conclusion of the contract shall be deemed to be an agreement on quality within this meaning. Insofar as the quality has not been agreed upon, the question whether a defect exists or not shall be assessed on the basis of the legal regulation (sec 434 (3) BGB). Public statements made by the manufacturer or on its behalf, in particular in advertising or on the label of the goods, shall take precedence over statements made by other third parties.
- (3) In the case of goods with digital elements or other digital content, we only owe provision and, if applicable, updating of the digital content insofar as this expressly results from a quality agreement pursuant to para. 2. In this respect, we accept no liability for public statements made by the manufacturer and other third parties.
- (4) As a matter of principle, we shall not be liable for defects of which the Purchaser is aware at the time of conclusion of the contract or is not aware due to gross negligence (sec 442 BGB). Furthermore, the Purchaser's claims for defects shall require that the Purchaser has complied with its statutory duties of inspection and notification (secs 377, 381 HGB). In the case of goods intended for installation or other further processing, an inspection must in any case be carried out immediately before processing. If a defect becomes apparent during delivery, inspection or at any later time, we must be notified of this in writing without delay. In any case, obvious defects must be reported in writing within 3 working days from delivery and defects that are not visible during the inspection must be reported within the same period from discovery. Should the Purchaser fail to properly inspect the goods and/or notify us of defects, our liability for the defect not reported or not reported in time or not reported properly shall be excluded in accordance with the statutory provisions. In the case of goods intended for incorporation, attachment or installation, this shall also apply if the defect became apparent as a result of the breach of one of these obligations only after the corresponding processing; in this case, in particular, there shall be no claims by the Purchaser for reimbursement of corresponding costs ("dismantling and installation costs").
- (5) If the delivered item is defective, we may initially choose whether to provide subsequent performance by remedying the defect (rectification) or by delivering an item free of defects (replacement). If the type of subsequent performance selected by us is unreasonable for the Purchaser in the individual case, the Purchaser may reject it. Our

right to refuse subsequent performance under the statutory conditions shall remain unaffected.

- (6) We are entitled to make the subsequent performance owed dependent on the Purchaser paying the purchase price due. However, the Purchaser is entitled to retain a reasonable part of the purchase price in relation to the defect.
- (7) The Purchaser shall give us the time and opportunity required for the subsequent performance owed, in particular to hand over the objectionable goods for inspection purposes. In the event of a replacement delivery, the purchaser shall return the defective item to us at our request in accordance with the statutory provisions; however, the Purchaser shall not have a claim for return. Subsequent performance shall neither include the dismantling, removal or disassembly of the defective item nor the installation, fitting or assembly of a non-defective item if we were not originally obliged to perform such services; claims of the Purchaser for reimbursement of corresponding costs ("dismantling and installation costs") shall remain unaffected.
- (8) If the item is actually defective, we shall bear or reimburse the expenses required for the purpose of inspection and subsequent performance, in particular transport, travel, labour and material costs and, if applicable, dismantling and installation costs, in accordance with the statutory provisions and these GTCS. Otherwise, we may demand reimbursement from the Purchaser of the costs incurred as a result of the unjustified request to remedy the defect if the Purchaser knew or was negligent in not knowing that there was actually no defect.
- (9) In urgent cases, e.g. if operational safety is endangered or to prevent disproportionate damage, the Purchaser shall have the right to remedy the defect itself and to demand reimbursement from us of the expenses objectively necessary for this purpose. We are to be notified immediately of any such self-execution, if possible, in advance. The right of self-performance is excluded if we would be entitled to refuse a corresponding subsequent performance in accordance with the statutory provisions.
- (10) If a reasonable period to be set by the Purchaser for subsequent performance has expired unsuccessfully or is dispensable under the statutory provisions, the Purchaser may revoke the purchase contract or reduce the purchase price in accordance with the statutory provisions. However, in the case of an insignificant defect, there is no right of revocation.

- (11) Claims of the Purchaser for damages and/or reimbursement of futile expenses in the case of defects shall be exclusively governed by section 12 and shall otherwise be excluded.

Section 12 Further Liabilities

- (1) Insofar as nothing to the contrary arises from these GTCS including the following provisions, we shall be liable in accordance with the statutory provisions in the event of a breach of contractual and non-contractual obligations.
- (2) We shall be liable for damages – irrespective of the legal grounds – within the scope of fault liability in the event of intent and gross negligence. In the event of simple negligence, we shall, subject to statutory limitations of liability (e.g. care in own affairs; insignificant breach of duty), only be liable
- a) for damages due to culpable injury to life, limb or health,
 - b) for damages resulting from the breach of an essential contractual obligation (obligation, the fulfilment of which enables the proper execution of the contract in the first place and on the compliance with which the contractual partner regularly relies and may rely); in this case, however, our liability shall be limited to the compensation of the foreseeable damage which is typical for the type of contract.
- (3) The limitations of liability resulting from para. 2 shall also apply to third parties as well as to breaches of duty by persons (also in their favour) whose fault we are responsible for on grounds of statutory provisions. They shall not apply if a defect was fraudulently concealed or a guarantee for the quality of the goods was assumed, as well as in the case of claims of the Purchaser under the German Product Liability Act [*Produkthaftungsgesetz*].
- (4) Due to a breach of duty that does not consist of a defect, the Purchaser may only revoke or terminate the contract if we are responsible for the breach of duty. An unconditional right of termination of the Purchaser (in particular pursuant to secs 650, 648 BGB) is excluded. In all other respects, the statutory requirements and legal consequences shall apply.
- (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.

Section 13 Limitation

- (1) By deviation from sec 438 (1) no. 3 BGB, the general limitation period for claims arising from material defects and defects of title shall be one year from delivery. Insofar as acceptance has been agreed, the limitation period shall commence upon acceptance.
- (2) The above limitation periods of the law on sales shall also apply to contractual and non-contractual claims for damages of the Purchaser based on a defect of the goods, unless the application of the regular statutory limitation period (secs 195, 199 BGB) would lead to a shorter limitation period in individual cases. Claims for damages of the Purchaser pursuant to section 12 (2) sentence 1 and sentence 2 (a) as well as pursuant to the Product Liability Act shall become time-barred exclusively in accordance with the statutory limitation periods.

Section 14 Choice of Law and Place of Jurisdiction

- (1) The law of the Federal Republic of Germany shall apply to these GTCS and the contractual relationship between us and the Purchaser to the exclusion of international uniform law, in particular the UN Convention on Contracts for the International Sale of Goods (CISG).
- (2) If the Purchaser is a merchant within the meaning of the German Commercial Code, a legal entity under public law or a special fund under public law, the exclusive (and internationally exclusive) place of jurisdiction for any and all disputes arising directly or indirectly from the contractual relationship shall be our registered office in Langgöns, Germany. The same shall apply if the Purchaser is an entrepreneur within the meaning of sec 14 BGB. However, in all cases we are also entitled to bring an action at the place of performance of the delivery obligation pursuant to these GTCS or a prior individual agreement, or at the general place of jurisdiction of the Purchaser. Overriding statutory provisions, in particular on exclusive jurisdictions, shall remain unaffected.

Section 15 Severability Clause

Should any provision of this contract and/or amendments or supplements be invalid, this shall not affect the validity of the remainder of the contract. In the event of an invalid provision, the contracting parties shall be obliged to negotiate an effective and reasonable replacement provision which comes as close as possible to the economic purpose pursued by the contracting parties with the invalid provision.