

Standard Terms and Conditions of Sale of TREMA Verfahrenstechnik GmbH

I. General

These General Terms and Conditions of Sale shall apply to all contracts concluded with TREMA Verfahrenstechnik GmbH. They shall also govern all future business relationships with our customers, irrespective of whether or not they have been explicitly agreed. Any additional or different terms proposed by our Customers including their Standard Conditions of Purchase shall not be binding on us, unless explicitly agreed to in writing by us.

II. Bid / Contract Conclusion

Bids for which we consider ourselves bound for a period of 8 weeks and purchase orders shall be deemed to be valid or accepted only if confirmed in writing by us.

No order placed verbally shall be binding on us unless explicitly confirmed in writing by us. Any side agreements, understandings and amendments to the contract including a waiver of this written form clause shall be valid only if made in writing.

All information provided in documents submitted with our bid, such as illustrations, drawings, weight, dimensional and performance data, shall be approximately only unless expressly designated as binding. We reserve title and copyright to all cost estimates, drawings and other documents and no such documents shall be disclosed to third parties without our prior consent. At our request, the bid documents shall be returned to us.

III. Scope of Supplies and Services

The scope of supplies and services shall be as defined in our written order confirmation. Obvious clerical errors and typographical errors or spelling slips shall have no legal effect. We reserve the right to make modifications to the design and geometry of the delivery item in the course of contract execution as required to take into account technical advances or ensure compliance with statutory requirements, to the extent such modifications do not result in substantial changes in the delivery item and can be reasonably expected to be accepted by the Customer.

IV. Prices

Our prices are quoted ex works or ex warehouse in Euro exclusive of shipping costs and the statutory value-added tax as applicable from time to time. The price stated in the order confirmation shall govern. Additional supplies and services will be separately charged.

If the time between contract conclusion and delivery exceeds four months through no fault of ours, we shall be entitled to adjust the purchase price in line with the increase in material, labour and other costs.

Should the price increase exceed 10 % of the agreed purchase price, the Customer shall have the right to cancel the contract. In the case of unexpected price increases, we undertake to notify the Customer promptly.

V. Packaging/Shipment

Packaging shall become the property of the Customer and will be charged by us. Postal and packaging charges will be separately invoiced. The method of shipment will be at our discretion.

VI. Terms of Payment/Setoff

Unless otherwise agreed in writing, invoices up to an amount of € 50.000,00 excluding statutory VAT shall be payable within 14 days of the invoice date less 2 % early payment discount or within 30 days without any deductions. Invoices in excess of an amount of € 50.000,00 excluding statutory VAT shall be payable as follows:

30 % downpayment upon receipt of the order confirmation
30 % after half the delivery time has elapsed
40 % upon notification of readiness for dispatch

Payment orders and cheques will be accepted only if specifically agreed in writing and only as conditional payment, all collection and discount fees being for Customer's account. In the case of payment by bill of exchange or cheque, payment shall only be deemed to have been made when our account is credited.

If the Customer defaults on payment, we may charge interest on overdue accounts at a rate of 8 percent above the prime lending rate for contracts not involving a natural person. This shall be without prejudice to any further claims for damages due to default.

If the Customer is in arrears with his payments or if there is clear evidence of a substantial deterioration in the Customer's assets we shall be entitled to demand advance payment or security before continuing performance.

The Customer may set off amounts owing from us against our claims only if such counterclaims are undisputed or have been determined by final court judgement. Any rights of retention may be exercised by the Customer only to the extent they are based on claims arising out of the underlying contract.

VII. Acceptance of Delivery/Transfer of Risk

Customer undertakes to accept the Goods on delivery. If the contract provides for the Goods to be delivered to a place other than the place of performance, the risk shall pass to the Customer on transfer of the Goods to the carrier or forwarding agent. The place of performance shall be our registered office in 95478 Kemnath.

VIII. Delivery time

Delivery dates or times shall be binding only if agreed in writing. Where delivery dates/times indicated have not been agreed in writing between the parties they shall be deemed to be free and non-binding. The delivery time shall start on receipt of the order confirmation, however, in no event before all documents to be provided by the Customer have been submitted and/or all technical details have been clarified. The delivery date shall be deemed to be met if notification of readiness for dispatch has been given before expiry of the delivery term.

In the event that performance is prevented due to circumstances beyond our reasonable control such as Acts of God, disruption of our or our suppliers' operations, labour disputes or unforeseeable material defects which prevent us temporarily from delivering the Goods by the agreed delivery date or within the agreed delivery time, the contractually agreed delivery date or time shall be extended for the duration of the inability so caused. In such a case we undertake to notify the Customer promptly of the inability of performance, giving reasonable full particulars. Should such circumstances result in a delay of more than six months, the Customer shall have the right to cancel the contract without any prejudice to any further rights of rescission he may have.

If the Customer fails to take delivery we shall be entitled to charge storage fees for the duration such default of acceptance exists. If the Customer fails to cure the default following default notice and the expiration of a reasonable cure period, we shall have the right to cancel the contract or claim damages.

If the Customer is a legal entity under public law, a special fund under public law or a businessman acting in the exercise of his trade or profession at the time of conclusion of the contract, any claims for damages due to delayed delivery occasioned through slight negligence on our part shall be expressly excluded. The same shall apply to any liability for accidental impossibility of performance while we are in default.

Part deliveries within the delivery times stated by us shall be allowed to the extent this does not result in any drawbacks with regard to the use of the Goods.

IX. Reservation of Title

We reserve full title to the Goods supplied by us until payment in full of all sums owed to us under the contract.

If the Customer is a legal entity under public law, a special fund under public law or a businessman acting in the exercise of his trade or profession at the time of conclusion of the contract, the reservation of title shall remain in existence until payment in full of all our claims against the Customer arising out of the current business relationship.

At the Customer's request, we undertake to waive the reservation of title provided that the Customer has incontestably satisfied any and all claims in connection with the Goods supplied by us and provides adequate security for the remaining claims from the current business relationship.

The Customer shall be authorized to resell the Goods subject to our reservation of title in the ordinary course of business. This authorization may be revoked by us at any time. Resale shall only be allowed against payment in cash or subject to a reservation of title.

The Customer shall not be entitled to pledge or in any way charge by way of security the Goods supplied by us or dispose of them in any other manner affecting our rights. By way of security, the Customer hereby assigns to us any and all future receivables accruing from a resale of Goods subject to retention of title. At our request, the Customer shall at any time submit a list of the receivables assigned to us and notify the debtor of such assignment. Notwithstanding the above, the Customer shall be entitled to collect the receivables assigned to us as long as he meets his payment obligations in accordance with the contract. At the Customer's request, we undertake to release our security interests to the extent that their value exceeds that of the receivables to be secured by more than 20 %.

If the Customer defaults on payment, all our claims shall become due for payment with immediate effect regardless of any credit periods granted.

If the Goods in which we have retained title are assembled with other goods or further processed, the Customer shall not acquire sole title to the resulting new item. Such processing shall be carried out at no cost to us. If the Goods are inseparably assembled or processed together with other goods not supplied by us, we shall acquire co-title in the resulting new item in proportion of the invoice value of our Goods to the invoice value of the other goods. The same shall apply if our Goods are inextricably commingled with other third-party goods.

X. Warranty

Our warranty terms for any defects in the Goods supplied by us shall be as follows:

The Customer shall be entitled to the making good of defects (rectification) occurring within 24 months after take-over of the Goods by the Customer. Should we not be able to make good a defect within the scope of our warranty obligations (failed rectification) or if the Customer cannot be reasonably expected to accept any further attempts at making good the defect, the Customer shall have the right to cancel the contract or reduce the purchase price in lieu of the rectification of the defect.

Any claim by the Customer which is based on incomplete or wrong deliveries or an evident defect shall be promptly notified to us, however, in no event later than one week from receipt of the Goods. Notice of hidden defects shall be given promptly on their becoming apparent, however, in no event later than one week after their discovery. The burden of proof for timely receipt of the notice of defects shall rest with the Customer. As for the rest, the statutory provisions shall apply. If the Customer fails to give notice in writing of the above objections or fails to give notice of defects in due time, the Goods shall be deemed to be accepted.

If the Customer accepts a delivery item despite knowing that it is defective, he shall not be entitled to any claims under our warranty unless he has expressly reserved his warranty claims in writing.

Defects resulting from improper use of the Goods shall be expressly excluded from our warranty. The Customer shall take into account in particular the biological, physical and chemical properties of the input streams to be processed.

Any changes in the design or construction which become necessary for technical or design reasons and were unforeseeable at the time of submittal of our bid or at the time of conclusion of the contract shall not entitle the Customer to any warranty claims.

Natural wear and tear shall be expressly excluded from our warranty.

Claims for consequential damage and property damage including loss of profit and, in particular, loss of production shall be expressly excluded unless attributable to wilful or grossly negligent conduct on our part. Any further liability other than our liability for damage to life, limb and health shall be expressly excluded. To the extent the damage is covered by an insurance policy maintained by the Customer for the specific type of damage, our liability shall be limited to the compensation of any disadvantages incurred by the Customer such as increased insurance premiums or interest lost during the period until claim adjustment by the insurer.

Regardless of whether the damage was caused through our fault, our liability for fraudulent non-disclosure of a defect, violation of a guarantee given by us or a procurement risk accepted by us as well as any liability under the product liability law shall remain unaffected by the limitation of liability.

Any personal liability on the part of our agents and employees for damage caused through slight negligence shall be expressly excluded.

XI. Commissioning

Commissioning of the vessels and machines supplied by us at the Customer's site will be undertaken by us only against reimbursement of all costs incurred. If the vessel or machine also incorporates components other than those supplied by us our liability shall be limited to the extent such components are commissioned by our specialist personnel. As a matter of principle, the vessels and machines shall be erected and commissioned by qualified personnel in accordance with the relevant drawings, instructions and procedures. Non-compliance with this provision shall void any liability and warranty on our part in the case of damage.

XIV. Place of Jurisdiction/Applicable Law

The place of jurisdiction for all disputes arising out of and in connection with contractual relationships in which the contractual party is a businessman, a legal entity under public law or a special fund under public law shall be Kemnath-Stadt for cases involving amounts of less than € 5000,00 and Bayreuth for cases involving amounts in excess of € 5000,00.

The same shall apply, if the contractual party does not have a place of jurisdiction in Germany, transfers its domicile or normal residence to another country or if its domicile or normal residence is not known at the time the action is filed.

The contractual relationship shall be exclusively governed by the law of the Federal Republic of Germany. This shall also apply to business conducted with international companies or supplies to countries other than Germany.

XII. Severability

Should one of the provisions of these Standard Terms and Conditions of Sale be held invalid or unenforceable the validity of the remaining provisions shall not be affected thereby. In such a case, the invalid or unenforceable provision shall be deemed replaced by such valid and enforceable provision which serves best the economic interest of the contracting parties originally pursued by the invalid or unenforceable provision.

No amendment or supplement to these Standard Terms and Conditions of Sale including a waiver of this provision shall be binding unless expressly confirmed in writing.