

# GENERAL TERMS & CONDITIONS OF TSI GMBH

## I. Application of the General Terms & Conditions and the Incoterms

1. Our General Terms & Conditions as set out below apply exclusively to companies, legal entities and special funds under public law. Our quotations, deliveries and services are subject exclusively to these General Terms & Conditions. The Customer's General Terms & Conditions are not part of the contract. Our General Terms & Conditions are deemed accepted upon acceptance of the delivery or service at the latest.
2. Insofar as not hereinafter regulated to the contrary, the FCA regulations of Incoterms 2010 apply.

## II. Written Form

All agreements between the parties must be in writing. This also applies to an agreement that the written form is not required.

## III. Prices, Payments

1. Absent a separate agreement, prices are "ex works", including packing, VAT at the statutory rate ruling at the time the invoice is raised, must be added to the prices.
2. All fees, levies, taxes and costs, which may be demanded for sales, purchases, delivery, storage, use or transport of the goods, must be paid by the Customer.
3. All set-off rights and liens of the Customer are debarred, unless the counterclaim is recognized by us, is not contested, or legally established. The Customer is only entitled to exercise a lien if the counterclaim arises from the same contract.

## IV. Delivery

1. Agreements with a binding delivery or assembly date (time of performance) must be in writing. Our punctual performance presumes that all business and technical queries between the Customer and ourselves have been settled, and that the Customer has complied with all his obligations, such as the procurement of required official permissions or the payment of a deposit.
2. Our delivery date is deemed met if our product has left the factory, or its readiness for transport has been notified, by the deadline. Insofar as acceptance is required, the planned acceptance date applies; this does not apply to justified refusal of acceptance.
3. If we are unable to deliver punctually, we will inform the Customer.
4. If we are not answerable for the delay, in particular in cases of power shortages, import difficulties, operational and traffic disruptions, strikes, force majeure, or delays by our suppliers, the time of performance will be extended accordingly. If we are unable to perform within a reasonable extension of time, then both the Customer and we shall have the right to withdraw from the contract. Claims for compensation by the Customer are debarred.
5. If we are answerable for the delay, the Customer may withdraw from the contract in accordance with the statutory regulations. If the Customer suffers damage due to the delay, he has the right to demand liquidated damages. These will amount to 0.5% for each full week of delay, but are limited to a total of 5% of the value of that portion of the performance which, due to the delay, cannot be utilized in good time or in accordance with the contract. Additionally, the liability for compensation due to delay is limited to the foreseeable, typically occurring damage. This limitation of liability does not apply in cases of malice or gross negligence by our legal representatives or executives.

## V. Transfer of Risk, Insurance

1. The risk is transferred to the Customer as soon as the product has left our factory or depot. This also applies if we undertake additional tasks, such as, in particular, transport costs or delivery. Insofar as there must be an acceptance, the risk is transferred upon acceptance.
2. If the transport or acceptance is delayed for reasons for which the Customer is answerable, the risk passes to the Customer as soon as we have notified him of the readiness for transport or collection.
3. At the Customer's express wish, we obligate ourselves to insure the product, at his cost.

## VI. Lien

1. The product delivered by us remains our property until fully paid for (goods subject to lien).
2. We have the right to insure the goods subject to lien against theft, fire, water damage, and other damage, at the Customer's cost, insofar as the Customer cannot prove that he has himself entered into such insurance. The Customer hereby already assigns to us all claims against the insurer.
3. If the Customer is in default with a whole, or substantial part, of an installment for more than ten days, and if a further period of grace granted by us expires fruitlessly, we may demand the handing over of the goods subject to lien. The same applies if there has been a filing for insolvency, which has not been withdrawn within ten days. If the Customer does not comply with the demand for the handing over of the goods subject to lien, or if there is a threat of loss or destruction of the goods subject to lien, we have the right to take the goods subject to lien into our possession. For this purpose, we are permitted to access the location of the goods subject to lien. The costs relating to the taking back of the goods will be borne by the Customer. We may freely exploit the taken back goods subject to lien, and at the best possible price. The Customer is entitled to any proceeds in excess of our secured debt.

## VII. Defect Claims

1. The Customer must inspect the product immediately after receipt. Recognizable defects must be reported to us immediately, or – if the defect is only discovered later – immediately after discovery, in writing. If this does not happen, the product is deemed approved.

2. Our liability only extends to the durability and freedom from defects of our products in accordance with the current technological situation. There is no liability for normal wear and tear. Our liability does not cover, in particular, defects due to:
  - a) Our products not being properly stored, installed, operated or used by the Customer or his staff;
  - b) Incorrect maintenance;
  - c) The use of unsuitable operating materials;
  - d) Damage caused by repair or other work carried out by third parties, not having been expressly approved by us.
3. Our legal liability for defects covers, in our option, remedy of the defect or replacement. The Customer must immediately give us sufficient opportunity to remedy; otherwise we are released from the liability for any consequences. Only in urgent cases, such as guaranteeing operational safety or defense against disproportionately great damage, may the Customer, following prior consultation with us, remedy the defect himself or have it remedied by a third party, and demand from us reimbursement of the necessary expenses. The Customer must, in any event, hand over the replaced components to us.
4. If the remedy is unsuccessful, the Customer has the right to reduce the consideration, or – in cases of substantial defects- to withdraw from the contract.
5. In cases of newly produced items and factory services, including the associated planning and supervisory services, we give a one year warranty from delivery or acceptance. Excluded here from are buildings, the associated planning and supervisory services, and building materials, to the extent installed.

## VIII. Liability (Compensation)

1. We are liable in accordance with the statutory provisions, but our liability for compensation is limited as follows:
  - a) In cases of simple negligence, there is only a liability with respect to damage to life, limb or health;
  - b) In cases of malice by vicarious agents, gross negligence of the legal representatives, employees or vicarious agents, liability is limited to the occurrence of typical, foreseeable damage. The limitation does not apply to damage to life, limb or health.
  - c) In case of a breach of a material obligation at variance from a) above, we are also liable in cases of simple negligence, but limited as per b) above. A material obligation is understood to be an obligation whose fulfillment makes the proper implementation of the contract at all possible, and upon whose fulfillment the contractual partner may regularly rely upon.
2. The mandatory requirements of the Product Liability Act remain unaffected. In other cases of breach of obligation, in particular, "culpa in contrahendo" or tort, we do not accept any liability other than regulated as above.
3. Our legal representatives, executives and simple employees have no greater liability than we ourselves.

## IX. Production in accordance with the Customer's Specifications, and use in connection with outside Products

If production has occurred in accordance with the Customer's specifications, or the product is used in connection with products not produced by us, the Customer must release us from all legal disputes, claims, losses, expenses and other disadvantages, including lawyers' fees, which arise from this specification or use.

All tools, materials and models and devices for the production of products in accordance with the Customer's specifications remain our property.

## X. Protection against Damage, and Indemnity against Claims

The Customer obligates himself to ensure that all our product and safety/security serving information is provided to the users (employees and contractual partners). This also includes, where appropriate, warning labels, user manuals, and instructions for safe installation and maintenance. The Customer must indemnify us as regards all legal disputes, claims, losses, expenses and other disadvantages, including lawyers' fees, which result from a culpable breach of his safety/security obligations.

## XI. Changes to the Product or Design

We may, at any time and at our discretion, alter the product or design. In such cases, we are not obligated to undertake appropriate alterations to products already produced for, or delivered to, the Customer, unless he has an overwhelming interest therein and it is reasonable for us to make the alterations.

## XII. Software

If the product includes software, or firmware with software, or if software is delivered in addition to the product, and then the Customer only gets a non-exclusive and non-assignable licence to use a copy of the software. The Customer recognizes that the software is our property and a business secret, and includes copyright or patent(s) which we own. The Customer does not have the right to, wholly or partially, copy the software (other than for back up), to process, to compile, to decompile, to grant a license to others, to transfer the software, or to reveal it to third parties.

### **XIII. Arbitration**

We may assert claims for payment at the responsible court in Aachen, without prior arbitration. All other claims or disputes arising in connection with this contract or its breach will be settled by arbitration, which will be carried out in accordance with the International Arbitration Regulations of the International Centre of Dispute.

The number of arbitrators shall be one.

The location of the Arbitration is Aachen.

The language of the Arbitration shall be German.

### **XIV. Choice of Law; Jurisdiction**

The law of the Federal Republic of Germany applies. The UN Convention on Contracts for the International Sale of Goods (CISG) is excluded. Jurisdiction in cases involving business people is Aachen. But we have the option of suing at the Customer's registered/head office.