

General Terms and Conditions of Purchase

The Terms and Conditions of Purchase agreed in the following apply to all – including future – business transactions, agreements and negotiations with business partners from which TRAPOROL GmbH (“TRAPOROL”) procures deliveries or services. The aforementioned business partners are referred to as “Supplier” below. The Terms and Conditions of Purchase shall only apply to entrepreneurs within the meaning of Section 14 German Civil Code (BGB).

I. Order, order confirmation

1. All agreements made between TRAPOROL and the Supplier in the execution of a contract must be set out at least in text form in the respective contract. Verbal orders, changes or additions to orders are only binding if they were confirmed by TRAPOROL in writing/in text form. Any correspondence or necessary oral questions must be handled through the Purchasing department of TRAPOROL. Any individual agreements entered into with the Supplier (including additional agreements, supplements and amendments) always take precedence over these Terms and Conditions of Purchase. Subject to proof to the contrary, declarations in writing or in text form shall be authoritative for the content of such agreements.
2. These Terms and Conditions of Purchase apply exclusively; TRAPOROL does not recognize any conflicting or deviating terms and conditions of the Supplier. These Terms and Conditions of Purchase shall also apply if TRAPOROL accepts the Supplier’s delivery without reservation in the knowledge that the Supplier’s terms and conditions contradict or deviate from these Terms and Conditions of Purchase.
3. In addition to these Terms and Conditions of Purchase, the safety regulations of TRAPOROL apply insofar as they go beyond legal requirements. The safety regulations of TRAPOROL can be requested from TRAPOROL by the Supplier, if needed.

II. Delivery and service obligations

1. Deliveries and services must be provided in accordance with the generally recognized rules of technology and must be executed such that the contractual use is guaranteed.
2. The Supplier must carry out the deliveries and services in accordance with the technical documents of TRAPOROL on which the order is based. Technical documents to be created by the Supplier for the proper execution of the order must be presented in a timely manner so that any changes deemed necessary by TRAPOROL may still be implemented.
3. If the Supplier has reservations about the proposed execution, the quality of the materials, components or specifications supplied by TRAPOROL or about the services of other companies, he must inform TRAPOROL immediately in writing/in text form; TRAPOROL, however, remains responsible for its information, orders or deliveries.
4. Changes to the agreed deliveries and services requested by TRAPOROL shall be made by the Supplier within the scope of technical possibilities. Any additional or reduced costs incurred as a result shall be agreed before the respective change is implemented.
5. If the scope of delivery contains items that – as individual parts or in terms of their arrangement in the overall system – are subject to regulatory approvals, the Supplier is obligated to procure the respective approval at his expense. The same applies to the overall system, unless TRAPOROL itself is responsible for obtaining the approval due to statutory or regulatory provisions. In this case, the Supplier shall provide, at his own expense, TRAPOROL with the appropriate documents in the correct quantity required for the approval application. At TRAPOROL’s request, the Supplier must provide TRAPOROL with written confirmation that the delivery item complies with the provisions of the “Electrical installations and equipment” accident prevention regulation (DGUV [German Social Accident Insurance] provision 3).
6. If software, including its documentation, is part of the scope of delivery, TRAPOROL shall have the right to use the product with the agreed performance features and to the extent required for the contractual use of the product in addition to the right to use the product with the agreed performance features and to the extent permitted by law. TRAPOROL is allowed to make backup copies even without express agreement.

III. Delivery and service deadlines

1. The delivery date or delivery schedule agreed with the order by TRAPOROL is binding. Supplies and services on earlier than the agreed dates require the prior consent of TRAPOROL.
2. If it is foreseeable that a delivery or service will be delayed, the Supplier is obligated to notify TRAPOROL in writing immediately and obtain a decision on further steps.
3. If the Supplier defaults, TRAPOROL is entitled to the statutory claims. In particular, TRAPOROL is entitled to claim damages instead of the service and to withdrawal after the fruitless expiration of a reasonable period of time. The arrangement in paragraph (4) shall remain unaffected by this.
4. If the Supplier is in default, TRAPOROL may – in addition to further statutory claims – demand a contractual penalty of 0.5% of the order value per commenced calendar week but no more than 5% of the order value. TRAPOROL reserves the right to prove that higher damages have been incurred. The Supplier reserves the right to prove that no damage or only a significantly lesser damage has been incurred. A contractual penalty incurred by the Supplier will be set off against claims for damages of TRAPOROL.

IV. Delivery

1. Even after the order has been placed, TRAPOROL is entitled to specify the packaging, mode of transportation, transport companies and freight forwarders to the Supplier within the meaning of Section 315 BGB if the parties have not come to an agreement yet in these matters. If the Supplier incurs additional costs as a result of this, TRAPOROL will reimburse these additional costs, insofar as the Supplier has pointed it out by stating the difference before execution.
2. Unless otherwise agreed, unloading and transport on the grounds of TRAPOROL are up to the Supplier.
4. TRAPOROL is forbidden to take out SVS/RVS insurance.

V. Acceptance/transfer of risk

1. If the acceptance of a delivery or service has been agreed upon, acceptability requires the complete and defect-free execution of the deliveries and services to be provided by the Supplier as well as the provision of all contractually required documents, e.g. approvals, drawings, operating manuals, etc. If a delivery or service is only affected by insignificant defects, this shall not prevent acceptance.
2. A report to be signed by TRAPOROL and the Supplier is written about the acceptance procedure. With the signing of the report, the deliveries and services are deemed accepted by TRAPOROL.
3. With the acceptance or receipt of the goods by TRAPOROL or a representative of TRAPOROL or with the delivery to the place where the goods are to be delivered in accordance with the order, if no acceptance has been agreed, the risk of accidental loss, destruction or deterioration shall pass to TRAPOROL.

VI. Property/confidentiality

1. Models, samples, production equipment, tools, measuring and test equipment, drawings, works standard sheets, print templates, etc., ceded to the Supplier by TRAPOROL (“items from TRAPOROL”) remain the property of TRAPOROL. They shall be stored by the Supplier with the diligence of a prudent business man, marked as the property of TRAPOROL and used by the Supplier exclusively for the execution of the deliveries or services to TRAPOROL. The Supplier shall insure items of TRAPOROL at his own expense against fire, water and theft at replacement value. At the same time, the Supplier hereby assigns to TRAPOROL all compensation claims arising from this insurance; TRAPOROL hereby accepts the assignment.

2. If TRAPOROL provides parts to the Supplier, TRAPOROL reserves ownership of these parts. The parts are stored by the Supplier for TRAPOROL. Any processing or transformation by the Supplier is carried out for TRAPOROL. In the case of processing or mixing, TRAPOROL acquires co-title to the new item in the ratio of the value of the item of TRAPOROL (purchase price plus VAT) to the other processed items at the time of processing.

3. The Supplier is obligated to treat with strict confidentiality all illustrations, drawings, calculations and other information and documents, including files. The obligation to confidentiality also applies after the execution of the contract. It only expires if and to the extent to which the knowledge contained in the documents has become generally known.

VII. Claims for defects and supplier recourse

1. TRAPOROL will check the delivery item immediately for any differences in quality and quantity; the notice of defects is deemed to be timely if it has been made within a period of 3-4 working days as of goods receipt or acceptance; or, in the case of hidden defects, as of the time of discovery.

2. TRAPOROL is entitled to the statutory claims for defects without any deduction; in any case, TRAPOROL is entitled to demand, at its own discretion, from the Supplier the rectification of the defect or the delivery of a new item. The right to claim damages, particularly the right to claim damages in lieu of performance, is expressly reserved.

3. If the Supplier does not begin with the rectification of the defect immediately after he has been requested to rectify the defect by TRAPOROL, TRAPOROL is entitled, in urgent cases, in particular if there is an imminent danger or to avoid greater damage, to rectify the defect itself or have it rectified by third parties at the expense of the Supplier. However, TRAPOROL is only allowed to make use of this right, if it points out the fact that there is an urgent case, as referred to in the first sentence, in its request for rectification.

4. The limitation period for claims for defects is 36 months, calculated from the transfer of risk. If the Supplier meets his obligation of subsequent performance within the limitation period by a replacement delivery, the limitation period for the goods delivered as replacement only begins after their delivery, unless, in the context of the replacement delivery, the Supplier declares expressly and legitimately that he made the replacement delivery only on a goodwill basis, in order to avoid disputes or in the interests of the continued supply relationship.

5. TRAPOROL is fully entitled to the statutory recourse claims within a supply chain (supplier recourse pursuant to Sections 445a, 445b, 478 German Civil Code) in addition to the claims for defects. TRAPOROL is entitled in particular to demand exactly the type of subsequent performance (rectification of defects or delivery of replacement) that TRAPOROL owes its buyers in each individual case. The statutory option rights of TRAPOROL (Section 439 [1] BGB) are not restricted by this.

6. Before TRAPOROL recognizes or fulfills a claim for defects asserted by its buyer (including reimbursement pursuant to Sections 445a [1] and 439 [2, 3] BGB), TRAPOROL will notify the Supplier and request a written statement with a brief description of the facts. If a substantiated statement is not provided within a reasonable period and if no amicable solution can be reached, the claim for defects actually granted by TRAPOROL is deemed to be owed to the customer of TRAPOROL. In this case, the Supplier shall be responsible for providing proof to the contrary.

7. TRAPOROL is also entitled to claims from supplier recourse if the defective item has been processed by TRAPOROL or another entrepreneur, e.g. by incorporating it in another product.

VIII. Legal defects/property rights/Minimum Wage Act (MiLoG)

1. The Supplier guarantees that no rights of third parties within the Federal Republic of Germany are infringed upon in connection with his delivery.
2. If claims are made against TRAPOROL by a third party due to an infringement of its rights in connection with the delivery, the Supplier is obliged to indemnify TRAPOROL against these claims at the first request, unless the Supplier proves that he is not responsible for the infringement. If an obligation of indemnification on the part of the Supplier is given, TRAPOROL is not entitled to enter into agreements of any kind, in particular a compromise settlement, with the third party without the consent of the Supplier.
3. The limitation period for claims for defects is 36 months.
4. To the extent that the Supplier and/or subcontractors he uses are covered by the area of application of the MiLoG and the Supplier and/or subcontractors provide work performances or services to TRAPOROL, the Supplier must ensure that the statutory provisions on minimum wages are complied with that are stipulated in the MiLoG in its applicable version. In addition, the Supplier must ensure that only such subcontractors are contracted who comply with the provisions and have confirmed it in writing. The Supplier undertakes, at the request of TRAPOROL, to confirm in writing his compliance with the MiLoG by transmitting suitable proof of payment of minimum wages (documents in accordance with Section 17 MiLoG). The Supplier is also obligated to request and check corresponding proof from the subcontractors used by him. The Supplier shall indemnify TRAPOROL at first request against any claims that may arise from non-compliance with the MiLoG by the Supplier or his subcontractors. The claim to indemnification is due in this case as of the moment claims are asserted against TRAPOROL. The Supplier is liable for damage incurred by TRAPOROL through non-compliance with provisions of the MiLoG by the Supplier or his subcontractors.

IX. Product liability/recalls

1. If product damage is caused by the delivery or service of the Supplier and the Supplier is responsible for it, the Supplier is obligated to indemnify TRAPOROL against claims by third parties at first request if he is liable in relation to third parties.
2. Within the scope of his liability for damages within the meaning of paragraph 1, the Supplier is also obligated to refund any expenses in accordance with Sections 683, 670 BGB and Sections 830, 426 BGB that arise from or in the context of any recalls carried out by TRAPOROL.
3. Other statutory claims remain unaffected by this.

X. Prices

1. The price shown in the order is binding. In the absence of any deviating written agreement, the price includes delivery "free to the door" as well as packaging. If TRAPOROL does not request otherwise, the Supplier is obligated to remove packaging material free of charge.
2. If no agreement exists, the prices are "delivered duty paid" (DDP according to Incoterms 2010), including packaging. VAT is not included.

XI. Invoices/payments

1. Invoices must contain a verifiable list of the deliveries and services and must be sent in duplicate to the address of TRAPOROL. The VAT must be shown separately.
2. Payments are made within 14 days with a deduction of 3% discount for cash payment or within 30 days net, unless special agreements have been made in the orders.
3. Payments do not mean recognition of the deliveries and services as being in accordance with the contract.
4. The assignment and pledging of contractual claims is only effective with the prior written consent of TRAPOROL. TRAPOROL will not refuse this consent without an important reason.

XII. Place of performance

The place of performance for the services of the Supplier is the place to which the contractual item must be delivered or at which the service must be rendered. Place of performance for the services of TRAPOROL is always Gescher-Hochmoor.

XVI. Other provisions

1. The invalidity of individual clauses of these Terms and Conditions does not affect the validity of the remaining provisions.
2. If the Supplier is a merchant within the meaning of the Commercial Code, a legal person under public law or a special fund, the exclusive place of jurisdiction – including international – for all disputes arising from this contractual relationship is the place of business of TRAPOROL. However, in all these cases, TRAPOROL is also entitled to file a lawsuit at the performance place of the delivery obligation in accordance with these Terms and Conditions of Purchase or at the general place of jurisdiction of the Supplier. Overriding statutory provisions, in particular regarding exclusive responsibilities, shall remain unaffected.
3. All legal relations between TRAPOROL and the Supplier are governed exclusively by the laws of the Federal Republic of Germany. The application of the CISG is excluded.