

# **General Terms and Conditions of Business and Delivery | Export**

(Issue: January 2021)

## **1. General**

- 1.1. These general conditions of supply shall be binding if declared applicable in the quotation or in the order acknowledgement. Any conditions stipulated by the customer which are in contradiction to these general conditions of supply shall only be valid if expressly acknowledged by Trendelkamp in writing.
- 1.2. All agreements and legally relevant declarations of the parties to the contract must be in writing in order to be valid.
- 1.3. Should a provision of these general conditions of sale prove to be wholly or partly invalid, the parties to the contract shall jointly seek an arrangement having a legal and economic effect which will be as similar as possible to the invalid provision.

## **2. Scope of supplies and services**

The supplies and services are exhaustively specified in the order acknowledgement and in appendices thereto. Trendelkamp shall be entitled to make any changes which lead to improvements provided such changes do not result in a price increase.

## **3. Quotation and technical documents**

- 3.1. Unless otherwise agreed upon, brochures and catalogues are not binding. Data provided for in the quotation and technical documents are only binding in so far as having been expressly stipulated as such.
- 3.2. Trendelkamp retains all legal titles and copyrights to technical documents provided by Trendelkamp to the customer. The customer recognizes these rights and shall - without previous written consent of Trendelkamp - not make the quotation and these documents available to any third party, either in whole or in part, nor use them for purposes other than those for which they were handed over.
- 3.3. Trendelkamp undertakes to not allow third parties access to the documents which the customer has marked as confidential unless the customer has given its consent.

## **4. Special protection and information obligations on customer's part**

- 4.1. The customer is obliged to follow the operating and maintenance instructions issued by Trendelkamp or its suppliers and make these instructions, particularly those regarding safety recommendations, familiar to its employees and third parties coming into contact with the supplies. If the customer fails to comply with this rule, it shall save Trendelkamp harmless from any claims by third parties including its own employees.
- 4.2. The customer undertakes to inform Trendelkamp comprehensively regarding statutory, labor agreement or any other safeguarding regulations, standard requirements and other rules which are significant for the design and technical execution of the supplies, particularly at foreign erection sites.  
If the customer fails to fulfil this obligation, it shall also be obliged to pay the full purchase price even if supplies cannot be taken over, accepted or put into operation due to non-observation of such regulations. In such cases the customer shall moreover bear the extra cost of adapting the supplies to the regulations in question, particularly to foreign regulations.  
If the supplies are in contradiction to regulations which the customer neglected to point out to Trendelkamp in accordance with Clause 4.1, Trendelkamp shall be free of any liability towards the customer in respect of Trendelkamp's non-observation of the regulations. The customer shall save Trendelkamp harmless of any and all claims as a result of injury, which the customer's employees or third parties suffer as a result of the supplies unless such injury had also been possible in spite of following such regulations. The burden of proof rests with the customer.

## **5. Prices**

- 5.1. Unless otherwise agreed upon, all prices shall be deemed to be ex works in accordance with the applicable Incoterms as amended, including loading at works, but excluding packing. Erection and commissioning work are not included in the prices and shall be charged separately.
- 5.2. Any and all additional charges, such as, but not limited to, freight charges, packing, insurance premiums, fees for export, transit, import and other permits, as well as for certifications, shall be borne by the customer. Likewise, the customer shall bear any and all taxes, fees, levies, customs duties and the like which are levied out of or in connection with the contract, or shall refund them to the Trendelkamp against adequate evidence in case Trendelkamp is liable for them.

## **6. Terms of payment**

- 6.1. Payments shall be made by the customer at to one of Trendelkamp's accounts according to the agreed terms of payment, without any deduction for cash discount, expenses, taxes, levies, fees, duties, and the like.  
Unless otherwise agreed upon, the price shall be paid in the following instalments: One third as advance payment on placing the order, one third on expiry of half the agreed delivery time, one third as soon as the customer has received Trendelkamp's advice that the main equipment is ready for dispatch.
- 6.2. The dates of payment shall also be observed if transport, delivery, erection, commissioning or taking over of the supplies or services is

delayed or prevented due to reasons beyond Trendelkamp's control, or if unimportant parts are missing, or if post delivery work is to be carried out without the supplies being prevented from use.

- 6.3. If the advance payment or the contractually agreed securities are not provided in accordance with the terms of the contract, Trendelkamp shall be entitled to adhere to or to terminate the contract, and shall in both cases be entitled to claim damages. If the customer, for any reason whatsoever, is in delay with a further payment, or if Trendelkamp is seriously concerned that it will not receive payments in total or in due time because of circumstances having taken place since entering into the contract, Trendelkamp, without being limited in its rights provided for by law, shall be entitled to refuse the further performance of the contract and to retain the supplies ready for dispatch until new terms of payment and delivery will have been agreed and until Trendelkamp will have received satisfactory securities. If such an agreement cannot be reached within a reasonable time, or in case Trendelkamp does not receive adequate securities, Trendelkamp shall be entitled to terminate the contract and to claim damages.
- 6.4. If the customer delays in the agreed terms of payment, it shall be liable, without reminder, for interest with effect from the agreed date on which the payment was due at a rate depending on the terms prevailing at the customer's domicile, but not less than 4 per cent over the current 3 Months EURIBOR or LIBOR respectively. The right to claim further damages is reserved.

## **7. Reservation of title**

- 7.1. Trendelkamp shall remain the owner of all supplies until having received the full payments in accordance with the contract. The customer shall cooperate in any measures necessary for the protection of Trendelkamp's title. In particular upon entering into the contract it authorizes Trendelkamp to enter or notify the reservation of title in the required form in public registers, books or similar records, all in accordance with relevant national laws, and to fulfil all corresponding formalities, at customer's cost. In particular, Trendelkamp shall also be entitled to establish and register a reservation of title in accordance with German property law (BGB). During the period of the reservation of title, the customer shall, at its own cost, maintain the supplies and insure them for the benefit of Trendelkamp against theft, breakdown, fire, water and other risks. It shall further take all measures to ensure that Trendelkamp's title is in no way prejudiced.
- 7.2. If reservation of title or any other security agreed according to these conditions cannot be agreed in the country in which the customer is located or in which the supplies are to be brought, but the reservation of other, economically equivalent rights to the supplies or other means of security are allowed, Trendelkamp shall be entitled to such rights and they shall be deemed as agreed.

## **8. Delivery time**

- 8.1. The delivery time shall start as soon as the contract is entered into, all payments due with the order have been made, any agreed securities given and the main technical points settled and all documents to be procured by the customer such as, but not limited to, permits, releases, etc. have been received by Trendelkamp. If the customer is behind schedule with the work it has to execute, the delivery time is extended by the delay caused by the customer, regardless of whether such delay is within the customer's control or not. Any specific completion date shall be extended by the same period of delay.
- 8.2. The delivery time shall be deemed to be observed if by that time Trendelkamp has sent a notice to the customer informing that the supplies have left the works or are ready for dispatch. In case liquidated penalty is agreed, the value of equipment which is not available at agreed time is concerned only.
- 8.3. If hindrances occur which Trendelkamp cannot prevent despite using the required care, the delivery time is reasonably extended. Such hindrances include, but shall not be limited to, labor conflicts, in particular strikes and lockouts, serious breakdown in the works and unexpected hindrances beyond Trendelkamp's control, provided that such hindrances can be proved to have influence on completion or delivery of the supplies. These circumstances shall also apply to late or deficient delivery on the part of Trendelkamp's suppliers. The above circumstances shall also be deemed to be beyond Trendelkamp's control when they occur during a delay already caused. Trendelkamp shall inform the customer as soon as possible of the beginning and end of such hindrances in important cases.
- 8.4. In case delay in delivery is caused by Trendelkamp, claims for damages for nonperformance as well as for any losses due to delay are excluded unless the default is due to gross negligence or unlawful intent.

## **9. Packing**

Packing shall be charged for separately by Trendelkamp and shall not be returnable. However, if it is declared as Trendelkamp's property, it shall be returned by the customer, carriage paid, to the place of dispatch.

## **10. Passing of benefit and risk**

- 10.1. The benefit and the risk of the supplies shall pass to the customer by the date of their leaving the works.
- 10.2. If dispatch is delayed at the request of the customer or due to reasons beyond Trendelkamp's control, the risk of the supplies shall pass to the customer at the time originally foreseen for their leaving the works. From this moment on, the supplies shall be stored and insured on the account and at the risk of the customer.

## **11. Forwarding, transport and insurance**

- 11.1. Trendelkamp shall in time be notified of special requirements regarding forwarding, transport and insurance. The transport shall be at customer's expense and risk. Objections regarding forwarding or transport shall upon receipt of the supplies or of the shipping documents be immediately submitted by the customer to the last carrier.

11.2. The customer shall be responsible for taking insurance against risks of any kind.

## 12. Inspection and taking-over of the supplies and services

- 12.1. As far as being normal practice, Trendelkamp shall inspect the supplies and services before dispatch. If the customer requests further testing, this has to be specially agreed upon and paid for by the customer.
- 12.2. The customer shall inspect the supplies and services within a reasonable period and shall immediately notify the Trendelkamp in writing of any deficiencies. If the customer fails in doing so, the supplies and services shall be deemed to have been taken over.
- 12.3. Having been notified of deficiencies according to Clause 12.2, Trendelkamp shall as soon as possible remedy them, and the customer shall give Trendelkamp the possibility of doing so. After remedy of such deficiencies, a taking-over test according to Clause 12.4 will be carried out at the request of the customer or of Trendelkamp.
- 12.4. Subject to Clause 12.3 the carrying out of a taking-over test as well as laying down the conditions related thereto need a special agreement. In the absence of such agreement the following shall apply:  
-> Trendelkamp shall advise the customer in time of the execution of the taking-over test so that the customer or its representative can attend.  
-> A taking-over report shall be prepared which shall be signed by both the customer and Trendelkamp or by their representatives. Such report shall either state that the taking-over has taken place, or that it has taken place under reservations, or that the customer has refused the acceptance. In the last two cases, the deficiencies shall be listed individually in the report.  
-> In case of insignificant deficiencies, in particular those which do not substantially hinder the efficient functioning of the supplies or services, the customer shall not be entitled to refuse the acceptance of the supplies or services and the signature of the taking-over report. Trendelkamp shall remedy such deficiencies without delay.  
-> In case of important deviations from the contract or of serious deficiencies the customer shall give Trendelkamp the possibility of remedying these within a reasonable time. Thereafter a further taking-over test shall take place.  
If during this test important deviations from the contract or serious deficiencies appear again, the customer shall be entitled to claim either a price reduction or an indemnity or other compensations from Trendelkamp, provided this has been agreed before. If, however, the deviations and deficiencies appearing during such test are of such importance that they cannot be remedied within a reasonable time and provided the supplies and services cannot be used for their specified purpose, or such use is considerably impaired, then the customer shall be entitled to refuse acceptance of the defective part or, if partial acceptance is economically not justified for it, to terminate the contract. In such case Trendelkamp can only be held liable to reimburse the sums, which have been paid to it for the parts affected by the termination.
- 12.5. Taking-over shall also be deemed completed  
-> if the taking-over test cannot be carried out on the date provided for due to reasons beyond Trendelkamp's control;  
-> if the customer refuses the acceptance without being entitled to do so;  
-> if the customer refuses to sign the taking-over report prepared in accordance with Clause 12.4;  
-> as soon as the customer uses the supplies or services.
- 12.6. Deficiencies of any kind in supplies or services shall not entitle the customer to any rights and claims other than those expressly stipulated in Clauses 12.4 and 13 (guarantee, liability for defects).

## 13. Guarantee, liability for defects

- 13.1. Guarantee period  
The guarantee period is 12 months. It starts when the supplies leave the works or at the taking-over of the supplies and services should such taking over have been agreed upon before, or, if Trendelkamp undertakes the erection, upon completion thereof. If dispatch or taking-over or erection are delayed due to reasons beyond Trendelkamp's control, the guarantee period shall end not later than 18 months after Trendelkamp's notification that the supplies are ready for dispatch.  
For replaced or repaired parts the guarantee period starts anew and lasts 6 months after replacement or completion of the repair, but not earlier than the expiry of the original guarantee period stipulated for the supplies.  
The guarantee expires prematurely if the customer or a third party undertakes inappropriate modifications or repairs or if the customer, in case of a defect, does not immediately take all appropriate steps to mitigate the damage and give Trendelkamp the possibility of remedying such defect.
- 13.2. Liability for defects in material, design and workmanship upon written request of the customer, Trendelkamp undertakes at its choice to repair or replace as quickly as possible any parts of the supplies which, before the expiry of the guarantee period, are proved to be defective due to bad material, faulty design or poor workmanship. Replaced parts shall become Trendelkamp's property. Trendelkamp shall bear the costs of remedying the defective parts in its works. If the repair cannot be carried out in Trendelkamp's works, the customer shall bear the related costs to the extent exceeding the customary costs of transport, personnel, travelling, living, dismantling and reassembly of the defective parts.
- 13.3. Liability for express warranties Express warranties are only those which have been expressly specified as such in the order acknowledgement or in the specifications. An express warranty is valid until the expiry of the guarantee period at the latest. If a taking-over test has been agreed, the warranty shall be deemed to have been fulfilled as soon as the test results prove the relevant quality or capacity. If the express warranties are not or only partially achieved, the customer may first of all require Trendelkamp to carry out the improvements immediately. The customer shall give Trendelkamp the necessary time and possibility of doing so and allow Trendelkamp a period of respite. If such improvements fail completely or in part even after repeated attempts at such improvements, the customer may claim such compensation as has been agreed before for such case, or, if such an agreement has not been made, a reasonable reduction of price. If, however, the defects are of such importance that the supplies and services cannot be used for their specified purpose, or if Trendelkamp is incapable of remedying such defects, then the customer shall be entitled to refuse acceptance of the defective part or, if partial acceptance is economically not justified for it, to terminate the contract. In such case Trendelkamp can only be held liable for reimbursing the sums which have been paid to

it for the parts affected by the termination.

- 13.4. Exclusions from the liability for defects Excluded from Trendelkamp's guarantee and liability for defects are all deficiencies which cannot be proved to have their origin in bad material, faulty design or poor workmanship, e.g. those resulting from normal wear and tear and corrosion, improper maintenance, failure to observe the operating instructions, excessive loading, use of any unsuitable material, influence of chemical or electrolytic action, building or erection work not undertaken by Trendelkamp, or resulting from other reasons beyond Trendelkamp's control.
- 13.5. Supplies and services of subcontractors for supplies and services of subcontractors requested by the customer, Trendelkamp assumes guarantee and liability for defects only to the extent of such subcontractors' guarantee and liability obligations.
- 13.6. Exclusivity of guarantee claims With respect to any defective material, design or workmanship as well as to any failure to fulfil express warranties, the customer shall not be entitled to any rights and claims other than those expressly stipulated in Clauses 13.1 to 13.5.
- 13.7. Liability for additional obligations Trendelkamp is only liable to the extent of unlawful intent or gross negligence as far as claims arising out of faulty advice and the like or out of breach of any additional obligations are concerned.
- 13.8. Liability for design and engineering work With respect to faulty design and engineering work, Trendelkamp guarantees that it shall repair or replace the faulty work at its account. Design and engineering faults are to be notified to Trendelkamp in writing within seven days after their discovery. Trendelkamp shall not be liable for design and engineering or changes to design and engineering which the customer requests despite Trendelkamp's reservations expressed. Moreover, Clauses 13.1, 13.3, 13.5, 13.6 and 13.7 shall apply accordingly. The guarantee shall start at the time of dispatch of the design and engineering work ex works.
- 13.9. Liability for software the provisions mentioned in Clause 13.8 apply accordingly to defective software for which Trendelkamp has granted the customer right of use. The guarantee shall start at the time of dispatch of the software ex works. 13.10 Liability for items furnished by customer Trendelkamp shall not be liable for items, services, drawings or documents furnished by customer, irrespective of whether these have been approved by Trendelkamp and/or connected with or used for Trendelkamp's supplies/services. If claims are asserted against Trendelkamp or damage is incurred by Trendelkamp in this respect, Purchaser shall release Trendelkamp from all claims in this connection and indemnify it for all damage and expenses incurred.

#### **14. Termination of the contract by Trendelkamp**

The contract shall be adapted appropriately, if unforeseen events considerably change the economic effect or the content of the supplies or services or considerably affect the activities of Trendelkamp, or if performance subsequently becomes impossible. In so far as such adaptation is economically not justifiable, Trendelkamp shall be entitled to terminate the contract or the parts affected thereby. If Trendelkamp wishes to terminate the contract it shall - after having recognized the consequences of the event - immediately inform the customer; this applies even if an extension of the delivery time has been agreed before. In case of termination of the contract Trendelkamp shall be entitled to the payment of those parts of the supplies and services, which have already been carried out. Claims for damages on the part of the customer because of such termination are excluded.

#### **15. Exclusion of further liability on Trendelkamp's part**

All cases of breach of contract (non-performance, delay and liability for defects) and the relevant consequences as well as all rights and claims on the part of the customer, irrespective on what ground they are based, are exhaustively covered by these general conditions of sale. In particular, any claims not expressly mentioned for damages, reduction of price, termination of or withdrawal from the contract are excluded. In no case whatsoever shall the customer be entitled to claim damages other than compensation for costs of remedying defects in the supplies. This in particular refers, but shall not be limited, to loss of production, loss of use, loss of orders, loss of profit and other direct or indirect or consequential damage. This exclusion of liability, however, does not apply to unlawful intent or gross negligence on the part of Trendelkamp, but does apply to unlawful intent or gross negligence of persons employed or appointed by Trendelkamp to perform any of its obligations. This exclusion of liability does not apply as far as it is contrary to mandatory law.

#### **16. Exclusion of Trendelkamp's liability in the event of embargoes or similar occurrences**

Supply and services (the fulfilment of contract and liability for defects) shall be under the proviso that fulfilment is not being restricted by any national or international regulations, particularly export control regulations and embargoes or any other restrictions. The contract partners shall be obliged to provide all information and documentation needed for the export/shipment/import. Delays caused by export checks or licensing procedures shall override any lead times or deadlines stipulated. The customer shall have no claims whatsoever against Trendelkamp for damages or reimbursement of expenses relating to failures to meet time-limits, non-performance of the contract and/or warranty works on account of export control regulations, embargoes or any other restriction.

#### **17. Right of recourse of Trendelkamp**

If, through actions or omissions of the customer or of persons employed or appointed by it to perform any of its obligations, personal injury or damage to the property of third parties occurs and if a claim is made against the Trendelkamp, then the latter shall be entitled to take recourse against the customer.

#### **18. Erection, commissioning and service work**

If Trendelkamp is to provide erection, commissioning or service work, Trendelkamp's terms and conditions for erection, commissioning and service work and the rates specified therein shall apply in addition hereto.

#### **19. Integrity Clause**

The parties undertake to take all necessary measures to avoid corruption, in particular that no payments, gifts or other advantage will be offered or accepted. Failure to meet this obligation shall entitle Trendelkamp to terminate the contract. Trendelkamp shall be entitled to the payment of those parts of the supplies and services, which have already been carried out. Claims for damages on the part of the customer because of such termination are excluded.

## **20. Arbitration and applicable law**

- 20.1. All disputes, controversies or differences, which may arise between the parties in connection with the contract shall be settled amicably. Should the parties not come to an amicable settlement, such cases shall be finally settled under the current Rules of Conciliation and Arbitration of the International Chamber of Commerce (ICC) by one or more arbitrators appointed in accordance with the said rules. The arbitral tribunal shall have its seat in Zurich, Switzerland. The arbitration proceedings shall be conducted in the language of the contract (German or English).
- 20.2. The contract shall be governed by Swiss substantive law. The application of international commercial law agreements, particularly the UN Convention on Contracts for the International Sale of Goods (CISG), is hereby expressly excluded.