

General Terms and Conditions of Business with Customer Information

1. **Scope of application, definition of terms and contractual object**
 - 1.1. The following General Terms and Conditions of Business (hereinafter referred to as "GTCB") apply to all business relations between TROB Tröstler & Oberbauer GmbH, Rudolf-Diesel-Str. 4, 85296 Rohrbach, Tel.: +49 (0) 8442 - 9676-0, Fax: +49 (0) 8442 - 9676-56, Email: info@trob.de, Internet: <https://www.trob.de/index.php> (hereinafter referred to as "Seller") and the customers (hereinafter referred to as "Purchaser", jointly also referred to as "parties") of the Seller.
 - 1.2. These GTCB apply exclusively if the Purchaser is an entrepreneur. According to sec. 14 of the BGB (German Civil Code) an entrepreneur is a natural or legal person or a partnership with legal personality who or which, when entering into a legal transaction, acts in exercise of his or its commercial or independent professional activities. A consumer, on the other hand, is according to sec. 13 of the BGB every natural person who enters into a legal transaction for purposes that are predominantly outside his or her commercial or independent professional activities.
 - 1.3. Entrepreneurs within the meaning of these GTCB also include public authorities, corporations, institutions, foundations, legal entities of public law or a special fund under public law which is acting exclusively in a private law capacity upon contractual conclusion.
 - 1.4. These GTCB apply to contracts concerning the sale and/or delivery of movable goods (hereinafter referred to as "goods"), irrespective of whether the Seller manufactures the goods itself or purchases them from suppliers (secs. 433 and 650 of the BGB).
 - 1.5. The GTCB of the Seller apply exclusively. If the Purchaser uses contrary or supplementary general terms and conditions of business, their application is hereby rejected; they only become components of the contract if the Seller has explicitly agreed to their validity.
 - 1.6. Unless otherwise agreed, these GTCB also apply for the Purchaser in the version valid at the time of the Purchaser's order or in any event in the latest version notified to the Purchaser in text form as a framework agreement also for future contracts of a similar nature, without the Seller having to refer to them against specifically in each individual case.

2. Contractual conclusion

- 2.1. The offers of the Seller are subject to change and non-binding. The Seller reserves the property rights and copyrights to its offers and/or other documents. Before passing on the offers and/or other documents to third parties, the Purchaser shall require the express written consent of the Seller.
- 2.2. The order of the goods shall be deemed a binding offer of contract. Unless otherwise stated in the order, the Seller shall be entitled to accept the Purchaser's offer to enter into a contract within 14 days after receipt by the Seller.
- 2.3. Acceptance shall take place either,
- by the Seller sending the Purchaser a declaration of acceptance (e.g. by order confirmation) in writing or text form (e.g. by letter, or e-mail or fax), in which case the receipt of the declaration of acceptance by the Purchaser shall be decisive, or
 - by delivering the ordered goods to the Purchaser, in which case the receipt of the goods by the Purchaser shall be decisive, or
 - by the Seller requesting payment from the Purchaser after the Purchaser has placed the order.

If there are more than one of the aforementioned alternatives, the contract shall be concluded at the time when one of the aforementioned alternatives occurs first. The period for acceptance of the offer shall commence on the day following the Purchaser's dispatch of the offer and shall end at the end of the fourteenth (14th) day following the dispatch of the offer. If the Seller does not accept the Purchaser's offer within the aforementioned period, this shall be deemed to be a rejection of the offer with the consequence that the Purchaser shall no longer be bound by its declaration of intent.

- 2.4. Contractual conclusion is done in German and English.
- 2.5. If the parties have agreed special conditions, these do not apply for any concurrent or future contractual relations with the Purchaser.

3. Delivery, delivery period and default of delivery

- 3.1. The delivery period is to be agreed individually or stated by the Seller upon acceptance of the order.
- 3.2. Delivery is made ex works (Incoterms 2020), which is also the place of fulfilment for delivery and any subsequent fulfilment. At the request and expense of the Purchaser the goods are to be sent to another place of destination (sales shipment). Unless otherwise agreed, the Seller is entitled to determine the type of shipment (in particular transport company, shipping method, packaging).

- 3.3. The Seller is entitled to make partial deliveries provided this is reasonable for the Purchaser. In the case of permissible partial deliveries the Seller is also entitled to present partial invoices.
- 3.4. The risk of accidental destruction and accidental deterioration of the goods passes to the Purchaser at the latest upon handover of the goods to the Purchaser. In the case of sales shipments, however, the risk of accidental destruction and accidental deterioration of the goods and the risk of delay passes to the Purchaser upon handover as soon as the Seller has delivered the object to the carrier, freight forwarder or other person or organisation appointed to execute delivery. If acceptance has been agreed, this is decisive for the transfer of risk. Also in other respects the statutory regulations for contracts to produce a work apply correspondingly for an agreed acceptance. Handover or acceptance is deemed to have occurred if the Purchaser is in default of acceptance.
- 3.5. If the Seller is unable to comply with binding delivery periods for reasons for which it is not responsible (non-availability of service), the Seller is to inform the Purchaser of this without undue delay and at the same time state the expected new delivery period. If service is also unavailable within the new delivery period, the Seller is entitled to withdraw wholly or partly from the contract; any payment already made by the Purchaser is to be refunded by the Seller without undue delay. A case of non-availability of service in this respect is late delivery to the Seller itself by the Seller's supplier if the Seller has concluded a congruent covering transaction, if neither the Seller nor its supplier is at fault or if the Seller is not obliged to make a purchase in the individual case.
- 3.6. The onset of delivery default on the part of the Seller is determined according to the statutory provisions. But in any event a reminder from the Purchaser is required. If the Seller is in default of delivery the Purchaser can demand a fixed-rate compensation for default damage suffered. The fixed-rate compensation is 0.5 % of the net price (delivery value) for each full calendar week of default, but at most 5 % of the delivery value of the goods delivered late. The Parties remain entitled to prove that no damage, or a lower or higher level of damage was incurred by them than the above-mentioned fixed-rate compensation.

4. **Prices, shipping costs and payment conditions**

- 4.1. Unless otherwise agreed in the Seller's offer, the prices given are to be understood in EURO and are net prices subject to addition of VAT at the statutory rate applicable on the date of invoicing.
- 4.2. The minimum order value per order is EUR 75.00 net.
- 4.3. In the case of sales shipments in line with clause 3.2. the Purchaser is to bear the transport costs from the warehouse and the costs of any transport insurance requested by the Purchaser. Any customs duties, fees, taxes and other public authority charges are to be borne by the Purchaser.
- 4.4. If in the case of a sales shipment in accordance with 3.2. above the transport company

returns the dispatched goods to the Seller because delivery to the Purchaser was not possible, then the Purchaser is to bear the costs of fruitless shipping. This does not apply if the Purchaser is not responsible for the circumstances leading to impossibility of delivery or if the Purchaser was temporarily prevented from accepting the offered delivery, unless the Seller had given the Purchaser reasonable advance notice of delivery.

- 4.5. If partial deliveries are made in line with clause 3.3. at the request of the Purchaser, the Seller is to calculate shipping costs for each partial delivery.
- 4.6. In the event that at the time of performance there has been a price increase due to an increase in the costs of material production and/or the procurement of materials and/or products, wages and ancillary wage costs, social contributions and energy costs and the costs of environmental levies and/or currency rules and/or changes in customs duties, and/or freight rates and/or public authority charges and/or increases in the fees charged by third parties involved in performance, then the higher price applies. If, as a result of the Seller's right to price adjustment, the new price exceeds the price originally agreed by 20 % or more, then the Purchaser has the right to withdraw from the contract. This right must be exercised by the Purchaser immediately after notification of the increased price.
- 4.7. If deliveries are made to countries outside the European Union further costs may be incurred in individual cases. These costs shall be borne by the Purchaser if the Seller is not responsible for them. These costs can include taxes, customs duties and other public authority duties and charges for monetary transfers by credit institutes (e.g. bank transfer fees, exchange rate fees). Some of the aforementioned individual costs can also be incurred for deliveries to countries within the European Union if the Purchaser initiates payment from a country outside the European Union.
- 4.8. The purchase price is payable within 30 days of receipt of invoice without deduction, unless otherwise agreed between the parties. For timely payment the date that the invoiced amount is received in the business account of the Seller is decisive.
- 4.9. Upon expiry of the aforementioned payment deadline the Purchaser is in default. The unpaid fee is subject to interest during the default period at the statutory default interest rate valid at any given time. The Seller retains the right to claim additional default damages. In respect of merchants the Seller's claim to the commercial interest rate for default interest (sec. 353 HGB [German Commercial Code]) remains unaffected.
- 4.10. Rights of set-off are available to the Purchaser only if their counterclaims are legally established or undisputedly mutually linked to the main claim of the Seller or have been acknowledged by this latter.
- 4.11. The Purchaser's right to retention of ownership is excluded, unless the counterclaim of the Purchaser originates from the same contractual relationship and is undisputed or legally established. To assert this right a written notification to the Seller is required.
- 4.12. If it is clear after conclusion of the contract (e.g. due to an application to commence in-

solvency proceedings) that the Seller's claim to payment is at risk due to the Purchaser's inability to pay, then the Seller is entitled to refuse performance in line with the statutory regulations and – if applicable after setting a time limit - withdraw from the contract (sec. 321 of the BGB).

5. **Liability for defects**

- 5.1. Unless expressly otherwise agreed between the parties, the statutory defect liability regulations apply. Contrary to this:
- 5.2. 1In the case of new goods the expiry period for defect claims is one (1) year from the transfer of risk. The statutory expiry periods for the right of recourse in accordance with sec. 445a of the BGB (German Civil Code) remain unaffected.
- 5.3. 1The Seller initially provides relief to the Purchaser according to this latter's choice either by correcting the defect (subsequent improvement) or by delivering a defect-free object (replacement delivery). If replacement delivery is provided in the course of defect liability, the expiry period does not begin again.
- 5.4. For the quality of the goods the Seller's own article descriptions and the manufacturer's details incorporated into the contract apply exclusively; the Seller assumes no liability for public statements by the manufacturer or other third parties (e.g. advertising statements).
- 5.5. An insignificant defect does not justify defect claims and does not entitle the Purchaser to refuse acceptance of the goods. If part of the goods display a not insignificant defect, this does not justify a complaint relating to the whole delivery. This does not apply in the case that partial delivery is of no interest to the Purchaser. Furthermore, the Seller is entitled to make the subsequent fulfilment owed dependent upon the Purchaser paying the purchase price due. However, the Purchaser is entitled to retain a reasonable portion of the purchase price proportionate to the defect. If goods are provided free of charge, the Seller is only liable for defects if it is accused of a deliberate act or gross negligence.
- 5.6. Deviations in quality, weight, size, thickness, width, equipment, patterns, colours, etc. which are permissible in line with branch or trade standards or which are insignificant are not defects.
- 5.7. Defect claims also do not arise in the case of natural wear and tear or damage occurring after the transfer of risk due to incorrect or negligent treatment, excessive use, unsuitable operating materials or specific external influences which are not provided for under the contract. If the Purchaser or third parties undertake improper alterations or maintenance work then no defect claims arise for this or the resulting consequences, unless the Purchaser can prove that the defect complained of was not caused by these alterations or maintenance work.
- 5.8. If the Seller delivers a defect-free object in the course of subsequent fulfilment, then the Seller can claim compensation for use from the Purchaser in accordance with

sec. 346 (1) of the BGB (German Civil Code). Other statutory claims remain unaffected.

5.9. The liability limitations and shortened expiry periods stated above do not apply to claims due to damage caused by the Seller, its legal representatives or vicarious agents:

- in the case of damage to life, limb or health
- in the case of deliberate or grossly negligent violations of duty and malicious concealment of a defect,
- for goods which have been used in a building construction in line with their standard use and have caused its defective state,
- in the case of the violation of fundamental contractual duties upon whose fulfilment proper execution of the contract depends and upon whose fulfilment the Purchaser may generally rely (cardinal duties)
- in the course of a guarantee specifically agreed between the parties
- to the extent that the German Product Liability Act (ProdHaftG) applies.

5.10. Among merchants within the meaning of sec. 1 of the HGB (German Commercial Code) the duty to inspect and notify defects as defined in secs. 377, 381 of the HGB applies. If in the course of delivery, inspection or at any other point a defect is found, then the Seller is to be sent written notification of this without undue delay. If the Purchaser fails to undertake the duty to inspect and/or notify defects then the goods are deemed accepted, unless the defect is such that it was not manifest upon inspection. This does not apply if the Seller maliciously concealed a defect.

6. **Liability for damages**

6.1. With regard to the Seller's performances, the Seller, its legal representatives and its vicarious agents are liable unrestrictedly

- in the case of deliberate acts or gross negligence,
- in the case of deliberate or negligent damage to life, limb or health,
- in the case of guarantees, to the extent agreed between the parties,
- to the extent that the German Product Liability Act (ProdHaftG) applies.

6.2. In the case of violation of fundamental contractual duties, liability in the case of simple negligence is limited to the foreseeable, contractually typical damages, unless there is unlimited liability in line with clause 6.1. Fundamental contractual duties are those duties which are imposed upon the Seller by the content of the contract for achievement of the contractual purpose, upon whose fulfilment proper execution of the contract depends and upon whose fulfilment the Purchaser may generally rely (cardinal duties).

6.3. In all other respects liability on the part of the Seller is excluded.

7. Processing of goods according to the specific requirements of the Purchaser

- 7.1. If between the parties not only delivery of the goods but also processing of the goods is contractually agreed, then the Purchaser is obliged to provide the Seller with all the content needed for processing (texts, images, graphics, etc.) in the data formats, formatting, image and file sizes specified by the Seller. The Purchaser is also obliged to grant the Seller the necessary rights of use to these materials. The Purchaser is responsible for obtaining the content and the legal rights thereto. If the Purchaser provides the Seller with content, the Purchaser offers an assurance of their entitlement to provide and use the aforementioned content. The Purchaser is in particular responsible for the fact that the provision and use of the content does not violate any third party rights, in particular copyrights, trademarks and personality rights.
- 7.2. If third parties can assert claims against the Seller arising in connection with a violation of their rights due to the contractual use of the Purchaser's content by the Seller, then the Purchaser is obliged to indemnify the Seller and its employees or representatives against the claims of third parties. Sec. 254 of the BGB (contributory negligence) remains unaffected. The Purchaser is to inform the Seller without undue delay if third parties assert claims against the Seller which fall under the aforementioned indemnification duty, and give the Seller the opportunity, as far as possible under the specific circumstances, to defend itself against the claims asserted. The Purchaser is obliged to provide the Seller with all information available to them relating to the relevant circumstances in full, truthfully and without undue delay in written or text form (by letter or email). Any more extensive claims of the Seller remain unaffected. Furthermore, the Purchaser is obliged to assume all legal costs of the Seller incurred in defending the case against third parties, to the extent that these are necessary and reasonable. These include, in particular, all court and legal defence costs at the statutory levels. The obligation to assume costs is not applicable if the Purchaser is not responsible for the legal infringement.
- 7.3. If the content provided by the Purchaser violates valid statutes, the rights of third parties, common decency, statutory or public authority bans, then the Seller can refuse the associated processing orders, even after contractual conclusion. There is a violation in particular if the Purchaser provides content which is unconstitutional, racist, xenophobic, discriminatory, insulting, dangerous to young persons and/or glorifies violence.

8. Acts of God

- 8.1. The Seller is not liable for acts of God. Acts of God include all events unforeseeable and unavoidable upon contractual conclusion and events which are outside the sphere of influence of the parties even if they had been foreseeable. These include in particular, but not exclusively, the following events: natural catastrophes such as floods, storm tides, hurricanes, typhoons, lightning strikes and other storms of similar scale, earthquakes, avalanches and landslides, fires, pestilences, pandemics, epidemics and infectious diseases (provided these are established as such by the WHO or a government ministry, or the Robert Koch Institute establishes a risk level of at least "moderate"), war or war-like conditions, riots, revolutions, military or civil putsches, uprisings, blockades, public authority or government ordinances, cardinal changes in the law, difficulties in obtaining re-

sources and materials or delivery shortages, sabotage, strikes, unrest, lockouts.

- 8.2. In the case of acts of God which affect contractual fulfilment, the Seller is entitled to extend its delivery dates and delivery periods depending on the scope and duration of the act of God and in the case of longer-term delays to withdraw from the contract in part or in full without this enabling assertion of any compensation claims against the Seller on the part of the Purchaser. For the period of the justified extension of delivery dates and periods the Seller shall not be in default.
- 8.3. In the case that an act of God occurs, the Seller is obliged to inform the Purchaser without undue delay, but at the latest within 14 days of gaining awareness, in written or text form (a letter sent by post or an email) of the onset of an event constituting an act of God and the consequences of this on contractual performance.
- 8.4. Both parties are obliged to undertake all reasonable measures in their power to mitigate damage.
- 8.5. Any statutory rights of the Purchaser remain unaffected.

9. **Expiry of claims**

- 9.1. Claims of the Purchaser against the Seller expire – with the exception of claims regulated under clause 5 - one year after gaining awareness of the facts justifying the claim, but at the latest five years after contractual performance, provided there is no unlimited liability in line with clause 6 above.

10. **Retention of ownership**

- 10.1. The Seller retains ownership of the goods delivered until full settlement of all current and future claims of the Seller arising out of the sales contract and an existing business relationship (secured claims). The Purchaser is entitled to sell on the goods subject to retained ownership in the ordinary course of business. The Purchaser assigns to the Seller in advance all claims against third parties arising from the onward sale – regardless of any mixing or blending of the goods subject to retention of ownership with new goods – up to the amount of the relevant invoice including VAT at the statutory rate in force on the day of invoicing. The Purchaser remains entitled to collect the claims even after assignment. The Seller's authorisation to collect the claims itself remains unaffected by this. The Seller will not collect the claims as long as the Purchaser fulfils its payment obligations towards the Seller, is not in default and no applications are made to commence insolvency proceedings.
- 10.2. The Purchaser is obliged to treat the goods subject to retention of ownership with care until the transfer of ownership. In addition, the Purchaser is obliged at its own expense to adequately insure the goods subject to retention of ownership at their original price against theft, fire and water damage to the extent that this is reasonable and standard in the industry. The Purchaser must also undertake any required servicing and inspection

work in good time at its own expense.

- 10.3. The goods subject to retained ownership may not be either pledged or handed over as security to third parties until full settlement of the secured claims. The Purchaser must inform the Seller in writing without undue delay if an application is made to commence insolvency proceedings or if third parties are granted rights (e.g. pledges) to goods belonging to the Seller.
- 10.4. In case of acts on the part of the Purchaser which contravene the contract, in particular in the case of non-payment of the purchase price due, then the Seller is entitled under the statutory conditions to withdraw from the contract and/or demand handover of the goods on the basis of retention of ownership. A demand for handover of the goods does not also mean a declaration of contractual withdrawal. Instead the Seller is simply entitled to demand return of the goods and retain the right of withdrawal. If the Purchaser does not pay the purchase price due, then the Seller may only assert these rights if the Seller has previously set the Purchaser a reasonable time limit for payment without success or such a time limit is unnecessary under the statutory conditions.
- 10.5. The Purchaser is authorised up until revocation in line with clause 10.5.3 below to sell on the goods subject to retention of ownership in the regular course of business and/or to process them. In this case the following provisions apply in addition.
- 10.6. The retention of ownership extends to products of the Seller created through the processing, mixing or combining of the goods at their full value, whereby the Seller is deemed the manufacturer. If in the case of processing, mixing or combination with the goods of third parties, their ownership rights are retained, then the Seller acquires co-ownership of the processed, mixed or combined goods in proportion to the invoiced value. In all other respects the same applies to the created product as for the goods delivered subject to retention of ownership.
- 10.7. The claims against third parties arising from the onward sale of the goods or products are assigned as security by the Purchaser to the Seller already now in full or up to the level of any co-ownership portion in line with the clause above. The Seller accepts the assignment. The duties of the Purchaser set out in clause 10.4 also apply in respect of the assigned claims.
- 10.8. The Purchaser remains entitled to enforce the claim alongside the Seller. The Seller is obliged not to enforce its claim as long as the Purchaser fulfils its payment obligations towards the Seller, there is no deficiency in payment ability and the Seller has not asserted its retained ownership claim by exercising a right under clause 10.5. If this is the case however then the Seller can demand that the Purchaser disclose the assigned claims and their debtors, give all details necessary for collection of the claims, hand over the necessary documentation and notify the debtors (third parties) of the assignment. In addition, the Seller is entitled in

this case to revoke the Purchaser's authorisation for onward sale and processing of the goods to which ownership has been retained.

- 10.9. The Seller is obliged to release the securities to which it is entitled at the request of the Purchaser if the level of the securities exceeds by more than 10 % the sum of all the claims still unpaid arising from the business relationship (in the case of a utilisation risk by more than 50 %). The Seller may freely select the securities relinquished.

11. **Amendment of the GTCB**

- 11.1. The Seller retains the right to amend these GTCB at any time without giving a reason, unless this is not reasonable for the Purchaser. The Seller is to inform the Purchaser of any amendments to the GTCB in good time in text form. If the Purchaser does not object to application of the new GTCB within a time limit of four (4) weeks after notification, then the amended GTCB are deemed accepted by the Purchaser. The Seller is to inform the Purchaser in the notification of the right to object and the consequences of the time limit for objection. If the Purchaser objects to the amendments within the aforementioned time limit, then the contractual relationship continues under the original conditions.

- 11.2. The Seller also retains the right to amend these GTCB

- if obliged to do so due to a change in the legal situation;
- in order to comply with a court judgment against the Seller or the decision of a public authority;
- if the Seller introduces additional, completely new services or goods which require description in the GTCB, unless this results in a detrimental change to the contractual relationship in force up to this time;
- if the change is purely advantageous for the Purchaser; or
- if the change is for purely technical or procedural reasons, unless it has considerable consequences for the Purchaser.

- 11.3. The cancellation right of the parties remains unaffected.

12. **Final provisions**

- 12.1. These GTCB and the contractual relationship between the parties are subject to the law of the Federal Republic of Germany under exclusion of international uniform regulations, in particular the UN Convention on the International Sale of Goods.

- 12.2. If the Purchaser is a merchant within the meaning of the HGB (German Commercial Code), an entrepreneur within the meaning of sec. 14 of the BGB (German Civil Code), a legal entity of public law or a special fund under public law, then

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the sole – also international – place of jurisdiction for all disputes arising directly or indirectly out of the contractual relationship is the business seat of the Seller in Rohrbach. The Purchaser is in all cases also entitled to assert claims at the place of fulfilment of the performance obligation under these GTCB or an individual agreement that takes precedence or at the general place of jurisdiction of the Purchaser. Statutory provisions that take precedence, particularly regarding exclusive competences, remain unaffected.

Valid from: 07.02.2022

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