

General Terms and Conditions of Business of TRINAMIC Motion Control GmbH & Co. KG

1. **General**
- 1.1. **Scope of application** These terms and conditions shall apply for deliveries and services of any kind rendered by us to our customers to the extent that no agreements to the contrary are made in the purchase, service, works or other contract (contract) concluded between Customer and ourselves. The present terms and conditions shall also apply for all future transactions with Customer. To the extent that these contractual terms and conditions only claim validity towards merchants (for transactions forming part of the operation of their trading), public-law legal entities and public-law special assets, reference is made thereto below. Silence of TRINAMIC does not constitute agreement.
- 1.2. **Contradiction clause** Deviating terms and conditions of Customer are hereby contradicted to the extent that we do not expressly approve of their validity in writing. Such an approval shall only apply for an individual case, not for previous or future deliveries.
- 1.3. These standard terms and conditions of trade only apply in relation to businesses as defined in section 310 (1) BGB (German Civil Code).
2. **Offers, Sales contracts and order confirmation**
- 2.1. **Our offers** shall be without obligation and non-binding and only contain requests for quotations by Customer. We shall be bound by specifically elaborated quotations for 14 days to the extent that nothing to the contrary has been agreed. Orders and agreements only become binding on written confirmation from us. If no written confirmation has been issued by us within 14 days of our receipt of such order or agreement, the contract shall be considered not to have materialized. Acceptance of our deliveries shall in any event constitute agreement with our General
- 2.2. **Quality descriptions:** The information in our publication, such as brochures, type lists, catalogs, data sheets and other advertising, in specifications, requirement specifications and other technical terms of delivery, in certificates (e.g. Certificate of Compliance) and other such forms contains no guarantee of quality and durability within the meaning of section 443 of the German Civil Code (BGB). Information on the reliability of our products constitutes statistically computed average values. This information is intended to help the purchaser and is made to the best of our knowledge and belief; it does not, however, refer to specific deliveries and thus does not constitute a guarantee of quality and durability within the meaning of section 443 of the German Civil Code (BGB).
- 2.3. **Order documents** We retain ownership rights, copyrights and industrial protection rights to estimates, diagrams, logos, design patents and other documents transferred to Customer in the course of the order negotiations and implementation of the contract. They may not be used, reproduced or made accessible to third parties by Customer for other purposes. Diagrams and other documents shall be returned without delay upon request if the order is not placed with us.
- 2.4. **Order confirmation** Following receipt of an order, Customer shall receive an order confirmation without delay.
- 2.5. **Subcontractors** We shall be entitled to deploy subcontractors for all services according to the contract.
- 2.6. **Alterations of performance** If Customer requests an alteration, we shall comply as far as possible; the costs caused by this alteration shall be borne by Customer in addition to the agreed remuneration.
- 2.7. **Samples:** Should we provide the purchaser with samples of products, these are to be treated as test samples and are exclusively designated for internal use of the purchaser with the aim of determining whether these are suitable for the purchaser's intended application or not. When testing samples the purchaser must strictly adhere to the given tolerance ranges of the product samples and to any further information issued by us on the delivery documents pertaining to the handling of samples
3. **Prices**
- 3.1. **Price list** Deliveries and services not agreed in the contract shall be charged on the basis of our price list valid upon receipt of the order.
- 3.2. **Price adaptations** We reserve the right to adjust the agreed prices in accordance with changed cost of wages and materials at the time of delivery. If the contractual goods contain precious metals or other materials whose value is subject to short-term fluctuations in price, prices may be adjusted without any time limit provided the change in price between the date of our confirmation of order and the planned delivery date is at least 10%. In all other events, such price adjustment shall be permissible when the period between the date of our confirmation of the order and the planned delivery date is at least 4 months. In the event of conclusion of the contract and date of delivery being more than four months apart and our procurement costs rising after conclusion of the contract and before provision of the goods, we shall be entitled to raise the agreed price by the same amount with a unilateral declaration. In commercial dealings, a period of one instead of four months shall apply. Customer shall be entitled to withdraw from the contract provided the declaration of withdrawal reaches us within a period of one week of notification of adaptation of the purchase price.
- 3.3. **Adaptation of a current remuneration** In all contracts providing for a current remuneration, we shall be entitled to increase this remuneration with three months' notice if and insofar as this is necessary due to a rise in wage and ancillary costs or the employees entrusted with the rendering of our service and/or the procurement costs of the materials and services necessary for the rendering of our services. If this increase exceeds 10% of the remuneration valid for the previous year, Customer shall be entitled to terminate the contract prematurely with three months' notice, notwithstanding any possible agreed minimum term, within one month of receipt of the notification of increase; in this case, the last valid remuneration shall remain in force until the end of the contract.
- 3.4. **Value Added Tax** The statutory Value Added Tax shall not be included in our prices in commercial dealings; it shall be added separately on the invoice at the statutory rate on the date of the invoice.
4. **Delivery**
- 4.1. **Deliveries** All deliveries of computer hardware products, computer hardware programmes, accessories and other products (hereinafter: "commodities") shall be ex warehouse Hamburg, Incoterms 2000. Our prices shall also be understood accordingly. Customer alone shall be responsible for the export and import capability of all commodities and services and shall obtain any necessary approvals.
- 4.2. **Delivery dates** Delivery dates shall only be binding if agreed in writing. Compliance with them shall presuppose fulfilment of all delivery conditions to be fulfilled by Customer. Firm deals shall require our express confirmation.
- 4.3. **Delays in delivery and service** If delivery or rendering of the service is delayed, Customer shall be notified without delay. We shall not be answerable for delays in delivery and service due to force majeure and due to incidents making delivery considerably more difficult or impossible for us - this shall include, but not be limited to, difficulties in procurement of material, operational disturbances, strikes, lock-outs, lack of personnel, lack of means of transport, official orders, in particular bans on exportation, non-performance by our suppliers etc. even if they occur with their suppliers or the latter's sub-suppliers - even in the event of bindingly agreed periods and deadlines. They shall entitle us to postpone the delivery or service, as the case may be, by the duration of the prevention plus a reasonable run-up time or to withdraw from the contract completely or partly on account of the part not yet fulfilled. In the event of withdrawal, we shall reimburse considerations already received to the extent that no claim accrues to them on our part.
In non-compliance with the delivery period by our proven fault, Customer can demand indemnification of 0.5 % for each completed week of delay up to the total max. amount of 5 % of the value of commodities not delivered in time in the event of proven occurrence of damage through arrears, following the fruitless expiry of a suitable subsequent period of at least two weeks set in writing. Higher claims to damage of Customer shall be ruled out in all cases of delayed delivery, unless we shall be liable for malice aforethought or gross negligence.
- 4.4. **Immediate falling due, suspension of deliveries:** All our accounts receivable shall fall due immediately, irrespective of the term of any accepted bills discounted, if the agreed conditions of payment remain unfulfilled despite reminder or if the financial situation of the purchaser deteriorates to an extent jeopardizing our entitlements (section 321 of the German Civil Code(BGB)). In this case we shall also be entitled to make each and any further delivery conditional upon prepayment or provision of security. The same shall apply if the purchaser performs offsetting against receivables that have been neither accepted nor finally established.
- 4.5. **Variations in quantity:** Where our products are supplied in packing units we reserve the right to supply up to 10% in excess of or up to 5% below the ordered quantity due to production and packaging tolerances, and to adjust the invoice accordingly.
- 4.6. **Delivery to us** The right to correct and punctual delivery to us shall be reserved in commercial dealings. We reserve the right to supply successor models in lieu of the commodities ordered, insofar as they also fulfil the agreed specifications and are no more expensive than the goods ordered.
- 4.7. **Part deliveries** The right to part deliveries shall remain reserved.
- 4.8. **Dispatch costs** If not agreed to the contrary, prices shall be understood freight and duty unpaid ex dispatch warehouse (POB), albeit including packaging customary in the branch. If we dispatch the commodities in a different way than the one selected by us upon Customer's request (e.g. Express, UPS Air), Customer shall bear the additional costs incurred by us. We shall be entitled to make deliveries only by Cash on Delivery. The additional costs incurred by this shall be borne by Customer.
- 4.9. **Acceptance** System installation and other works produced by us shall be inspected by Customer within two weeks of delivery in the presence of representatives of both parties. Acceptance shall be confirmed in writing by Customer if the specifications stated in the performance description have essentially been fulfilled.
- 4.10. **Consumer contracts** If the regulations of § 361a German Civil Code (right of revocation in consumer contracts) or § 361b German Civil Code (right of return in consumer contracts) are applicable to a contract concluded with a customer and if Customer makes use of a right of return or revocation according to § 361a German Civil Code or § 361b German Civil Code, it shall hand over or return the commodities delivered or the documents and objects delivered to it in this connection to us at our request. If Customer makes use of a right of revocation according to § 361a German Civil Code, it shall bear the regular costs of the return unless the value of the order exceeds the amount of 40 Euro or the commodities delivered do not correspond to those ordered.
5. **Payment terms and retention of title**
- 5.1. **Payment period and payment date** All invoices shall be due for payment 14 days after receipt purely net without deduction if nothing to the contrary has been agreed in the contract. We reserve the right to charging default interest to the amount of 1.5% per month in the event of default in payments. If this term of payment is exceeded, we shall be entitled as of the due date to charge interest at a rate of 4percentage points above the base rate, at least at a rate of 6 percent.
- 5.2. **Payment** Payments will only have debt-discharging effect if they are made out to TRINAMIC Motion Control GmbH & Co. KG.
- 5.3. **Payment date:** If there is a customer behind the schedule with his payments, all open invoices are due at once.
- 5.4. **Payment date.** The receipt of the credit entry on Eurofactor AG's account shall be decisive for the determination of the payment date.
- 5.5. **Offsetting and rights of retention** Offsetting and claiming of - also commercial - rights of retention shall only be admissible if the counter-claims used as a basis are undisputed, determined to be legally effective, or have been acknowledged by ourselves. The customer shall only be entitled to exercise a right of retention in as far as his counter-claim is based on the same contractual relationship.
- 5.6. **Cession** Claims from the business relations are ceded to TRINAMIC Motion Control GmbH & Co. KG. Customer shall only be entitled to cede the rights from the contract - with the exception of payment claims - with our prior approval. Approval may only be rejected by us for good and sufficient reason.
- 5.7. **Extended Retention of title, processing clause** The commodities sold shall remain our property until our claims from the business relationship with Customer have been completely paid. Customer shall be entitled to dispose of the sold commodities in the ordinary course of business.
The retention of title shall also extend to products resulting from processing, mixing or combining of our goods to their complete value, and we shall continue to be regarded as manufacturer. If a third party's retention of title remains effective in processing, mixing or combining with a third party's goods, we shall acquire co-ownership in the ratio of the invoice values of these processed commodities.
Customer here and now cedes the claims against third parties arising from resale to us in their entirety or to the amount of our possible share of co-ownership (see previous sub-section) by way of security. It shall be empowered to collect them for our account until revocation or until stoppage of its payments to us. Customer shall also not be entitled to cede these claims for the purpose of collection of claims by way of factoring unless there is a simultaneous substantiation of the obligation of the factor to effect the consideration to the amount of our share of the claim directly to us as long as claims on our part against Customer still exist.
Interventions of third parties against the commodities and claims belonging to us shall be notified to us by Buyer without delay by recorded delivery.
Exercising retention of title shall not mean withdrawal from the contract.
The commodities and the claims substituting them may neither be pledged to third parties nor transferred by way of security nor ceded before complete payment of our claims.
If the value of the securing exceeds our claims by more than 20 %, we shall release securities to this extent at our option upon request by Customer.
Deterioration of assets: In the event of any deterioration of the financial situation of the purchaser we shall be entitled to prohibit resale or processing of the items delivered subject to retention of title and to demand return of the same at the cost of the purchaser.
6. **Responsibilities of Customer**
- 6.1. **Vicarious agents** If not agreed otherwise, Customer shall be responsible for laying the wiring necessary for the function of the commodities delivered, setting up a constant current supply protected against voltage fluctuations etc., if need be with an uninterruptible power supply, and for giving us all the information and statements necessary. To the extent that we advise Customer of a company for the installation preparations, the latter shall not be deemed our vicarious agent.
- 6.2. **Use of computer software products including firmware** Customer engages to omit from using, reproducing, propagating, processing or in any other way reworking computer software products delivered by us, including firmware, for any other purpose than that intended, insofar as this is not expressly permitted by a licence contract concluded with us or the owner of the rights to the software in question. All back-up copies must include the protection right information provided by the owner of the rights. The source code of computer software products shall only be supplied if this has been expressly agreed.
- 6.3. **Assurance of properties** In any case, assurance of properties shall require our express declaration. Information about the products sold by us in brochures, type lists, catalogues, data sheets and other advertising publications, in specifications and other technical terms and conditions of delivery, in certificates (e.g. certificate of compliance) and other forms shall not represent an assurance of properties.
7. **Warranty and liability**
- 7.1. **Warranty** We reserve the right either to replace or to repair commodities delivered by us proving to be defective. If these measures fail, Customer shall be entitled, at its option, to reduce the purchase price paid for these commodities or to cancel the order for the defective commodities. The obligations of examination and notification of defects existing in commercial dealings shall remain unaffected.
- 7.2. **Warranty periods** The warranty period shall amount to twenty-four months from passage of risk. In this period, claims to reimbursement of any possible consequential losses shall also be barred by limitation to the extent that these are not claims from tort.
- 7.3. **Liability** A contractual or extra-contractual obligation to damages on our part and also on the part of our employees and vicarious agents shall only exist to the extent that the damage or consequential loss is to be put down to gross negligence or malice aforethought. This shall not apply insofar as (a) we are liable for a breach of an essential contractual obligation (cardinal obligation), (b) the damage or consequential loss is based on a lack of an assured property and Customer is making claims from a purchase, works, work performance or rental contract according to §§ 463, 480 sub-section 2, 635, 538 German Civil Code or (c) injury to the health or the life of a person is involved.
In commercial dealings, liability shall be limited in any case to damage and consequential loss foreseeable for us upon conclusion of the contract. This shall not apply to the extent that injury to the health or the life of a person is involved.
The mandatory provisions of the Product Liability Act shall remain unaffected.
- 7.4. **Legal defects** In the event of a third party claiming a breach of patents applying in this country or other domestic protective rights against Customer on account of the commodities delivered by us, we shall support Customer to the best of our ability in defending such claims. If and insofar as we are obliged to do so according to the contract and the present terms and conditions, we shall assume the costs of the defence and hold Customer harmless from such claims, provided Customer completely leaves the defence up to us and gives us all the necessary powers of attorney upon request. Our liability with regard to a possible breach of patents or other protective rights applying abroad shall be ruled out to the extent that no deviation has been agreed in individual cases.
- 7.5. **Receiving inspection, complaint in respect of defects:** To preserve claims in respect of defects, the purchaser shall, pursuant to section 377 of the German Commercial Code (HGB), in particular be obliged to perform a receiving inspection and to lodge an immediate, written complaint upon discovery of any defects or any variances of quantity not conforming to the contract. More return of the goods shall not be deemed a complaint and shall not release the purchaser from their obligation to settle the purchase price. Any return of goods has to refer to a Return Merchandise Authorization (RMA) provided by TRINAMIC Motion Control GmbH & Co. KG on request.
- 7.6. **Barring by limitation** Possible claims to damages against us, with the exception of claims to damages on account of tort, shall be barred by the statutory provisions on limitation, albeit no later than two years after rendering of the service on which the claim is based.
- 7.7. **Industrial property rights and copyrights; defects in title:** TRINAMIC Motion Control GmbH & Co. KG shall not accept any responsibility i respect of industrial property rights of third parties affected by the use of TRINAMIC Motion Control GmbH & Co. KG products in combination with products of the purchaser or third parties. Verification of non-existence of industrial property rights regarding such applications shall not be included in the contractual scope of performance and shall be the duty of the purchaser - unless TRINAMIC Motion Control GmbH & Co. KG has positive knowledge of the existence of such an industrial property right in respect of any application created.
8. **Final provisions**
- 8.1. **Declarations** All declarations, notices and announcements to be made in accordance with the present contract or with the present terms and conditions shall only be effective in writing.
- 8.2. **Partial nullity** Should one or more of the provisions of the present contract or of the present terms and conditions be or become ineffective or unenforceable, the effectivity of the remaining provisions shall not be affected.
- 8.3. **Selection of law** All legal relationships of the parties shall be governed by the law of the Federal Republic of Germany, excluding joint purchase laws. The UN convention on the international sale of goods shall not be applicable.
- 8.4. **Venue** The Courts in Hamburg shall be exclusively responsible for disputes arising out of or in connection with the contract or the present terms and conditions insofar as Customer is a full merchant, a public-law legal entity or public-law special assets or the residence or customary abode of Customer at the time of suing is either not in this country or is unknown.
- 8.5. **Data recording** Customer is informed that we store and process person-related data of Customer within the framework of the business relationship.