

“TRAMEC Corporation Conditions of Delivery of Machines and Equipment for Foreign Companies”

For use with respect to:

1. a person who contracts in exercise of commercial or self-employed activity (Entrepreneur);
2. a legal entity under public law or a separate entity regulated by public law.

I. In General

1. These conditions as well as possible separate contractual accords form the basis of all deliverables and services. Different conditions of purchase of Purchaser do not become subject terms of the Contract even through acceptance of an order. Unless otherwise agreed, a Contract results from written confirmation of an order.
2. Contractor reserves to himself prototypes, cost proposals, markings and similar physical and incorporeal information – even in electronic form – and copyrights; they may not be made accessible to third parties. Contractor pledges to make information and documentation that Purchaser designates as confidential available to third parties only with Purchaser’s agreement.

II. Prices and Payment

1. The prices apply – absent special accord – ex works including loading on site, but excluding packing and removal. Sales tax at the appropriate legal rate is added to the prices.
2. Absent special accord, payment is to be made to Contractor’s account without any discount, namely

30% deposit after receipt of acknowledgement of order,

70% with the delivery,
3. Purchaser is entitled to a right to withhold payment or to reckon with counterclaims only to the extent that the counterclaims are uncontested or established as legally binding.

III. Delivery Time, Delay in Delivery

1. The delivery time results from agreements of the parties to the Contract. Compliance by Contractor presupposes that all commercial and technical questions between the parties to the Contract are clarified, and that Purchaser has fulfilled all incumbent commitments, such as, *e.g.*, procuring required official certificates or authorizations or making payment. If this is not the case, then the delivery time is extended proportionately. This does not apply to the extent that delay is attributable to Contractor.

2. Compliance with the delivery time is subject to accurate and timely self-management. The Contractor will communicate emerging delays as soon as possible.

3. The delivery time is complied with if the object to be delivered has left Contractor's works or notification of readiness to deliver is made by that time. To the extent that an acceptance has to take place, the date fixed for acceptance, or alternatively for notification, is controlling unless there is a refusal of acceptance.

4. If shipment or acceptance of the object to be delivered is delayed for reasons attributable to Purchaser, then the costs arising from the delay are charged to Purchaser, beginning one month after notification of readiness to ship or readiness to accept.

5. If failure to comply with the delivery time is attributable to an Act of God, labor disputes, or other events that are outside Contractor's sphere of influence, then the delivery time is delayed proportionately. Contractor will inform the Purchaser as soon as possible of the onset and end of such circumstances.

6. Purchaser may withdraw from the Contract without setting a date if Contractor ultimately cannot deliver complete performance before the transfer of perils. Moreover, Purchaser may withdraw from the Contract if execution of part of the delivery against a purchase order becomes impossible, and Purchaser has a legitimate interest in declining the partial delivery. If this is not the case, then Purchaser has to pay the Contract price apportionable to the partial delivery. The same applies in the case of incapacity of Contractor. Further, Section VII.2 applies.

If the impossibility or incapacity arises during default of acceptance, or if Purchaser is solely or predominately responsible for these circumstances, then Purchaser remains liable for consideration.

7. If Contractor falls behind schedule and Purchaser sustains a loss as a result, then Purchaser is entitled to demand an allowance to compensate for the loss. The allowance amounts to 0.5% for every week of delay, but not to exceed .5% of the value of that part of the total performance which, as a consequence of the delay, cannot be used in a timely way or in a manner consistent with the Contract.

If--allowing for statutory exceptions--Purchaser allots to Contractor a reasonable time period for performance and the deadline is not met, Purchaser is entitled to cancel the Contract within the framework of statutory regulation.

Further claims arising from delay of delivery are decided exclusively under Section VII.2 of these conditions.

IV. Transfer of Perils, Acceptance

1. Peril transfers to Purchaser when the object to be delivered leaves the works, and in fact at the time when partial deliveries occur or Contractor has assumed other services, *e.g.*, shipping and handling, or delivery and assembly.

To the extent that acceptance has to take place, it is controlling for the transfer of perils. It must be carried out promptly at the time appointed for acceptance. Purchaser may not refuse acceptance by presenting a non-essential defect.

2. If shipment or acceptance is delayed or does not occur because of circumstances that cannot be imputed to Contractor, peril transfers to Purchaser from the day of notification of readiness to ship or readiness to accept. Contractor is obligated to procure insurance that Purchaser requests, at Purchaser's expense.

3. Partial deliveries are acceptable to the extent reasonable for Purchaser.

V. Retention of Title

1. Contractor retains title to the object to be delivered until receipt of all payments under the delivery Contract. Until payment is completed, the buyer does not acquire ownership in the wholly or partially produced property by processing the goods.

2. At Purchaser's expense, Contractor is entitled to insure the object to be delivered against theft, breakage, fire, water and other damage, inasmuch as Purchaser has not demonstrably procured insurance.

3. Purchaser may not sell the object to be delivered, nor pledge it, nor transfer it. In the event of attachment or confiscation or other disposal by a third party, Purchaser has to notify Contractor about it immediately.

4. In case of contrary-to-contract behavior by Purchaser, especially in default of payment, Contractor is entitled, after admonition, to retake the object to be delivered, and Purchaser is obligated to release it.

5. Contractor may demand the object to be delivered on the basis of retention of title only if he has withdrawn from the Contract.

6. Application to open insolvency proceedings entitles Contractor to withdraw from the Contract and to demand immediate return of the object to be delivered.

VI. Claims of Deficiencies

Contractor provides as follows for property defects and legal defects in delivery to the exclusion of further claims—except as provided in Section VII:

1. All these parts or services are calculated as free of charge, subject to the choice of Contractor in his equitable discretion to repair or replace (supplementary performance), within 12 months from the day of transfer of perils, particularly because of defective design, bad materials, or defective execution, not exhibiting the contractually agreed upon character that is usual and to be expected in material of like nature, or otherwise defective under law. For used parts breach of warranty proviso for defects lasts 12 months. Purchaser has to test delivery and performance within 10 days after receipt and promptly inform Contractor in writing of possible deficiencies. If Purchaser fails to do this, delivery and performance are deemed approved.

2. Prior to accepting all repairs and replacements (supplementary performance) that seem necessary in the equitable judgment of Contractor, after communication with Contractor, Purchaser has to give Contractor the time and opportunity requested; otherwise Contractor is freed from liability for consequences that arise as a result. Contractor is entitled to refuse supplementary performance insofar as it is linked to unreasonable costs or expenses. In the individual case Contractor may demand that component parts and deliveries for repair be sent to the Contractor. Purchaser has the right to have the deficiency remedied himself or through third parties and to demand refund of necessary costs from Contractor only in urgent cases of danger to plant safety, or to defend against disproportionately greater losses, with Contractor to be notified promptly. Replaced parts become property of Contractor.

3. Insofar as the complaint turns out to be justified, Contractor bears the costs of direct charges arising from the post-improvements or substitutions, the cost of replacement parts including shipment. In addition, he bears the reasonable costs of deconstruction and reconstruction. Further, if in the situation of the individual case this can be reasonably demanded at lower cost, he bears the costs, for example, of the required set up of necessary technicians and support staff including costs of transport, within a permissible cost cap to be agreed upon separately. Otherwise, Purchaser bears the costs. He also bears potential extra costs that arise from the fact that the improvement or substitution undertaken by Contractor takes place at a site other than the site of the contractual delivery, for example at Purchaser's ultimate consumer's location. Costs that accrue to Contractor as a consequence of unwarranted complaints about delivery of parts and services are to be assumed on Purchaser's side within a framework of reasonable charges. To that extent existing conditions of repair and assembly are deemed agreed upon.

4. If Contractor--allowing for statutory exceptions--vainly lets a reasonably established deadline elapse for him to make repairs or replacements on account of a material defect, then Client has a right to reduction of the Contract price within the framework of statutory provisions. Client's right to reduction of the Contract price also exists in other cases of failure to remedy deficiencies. Client may withdraw from the Contract only if repair is verifiably of no interest to Client despite reduction of the Contract price. The right to reduction of the Contract price remains otherwise barred.

Further claims are determined according to Section VII.2 of these conditions.

5. No guarantee is assumed particularly in the following cases:

Inappropriate or improper use, deficient installation or start-up by the Purchaser or third parties, natural wastage, component-specific wear and tear, particularly with respect to warehousing, waterproofing, gaskets, clamps, rotary connections, couplers, gear tooth systems, belts, brakes, unless these do not meet the technical standard for wear parts; or, damages that arise after the transfer of perils for the following reasons: external influences such as liquidity, dampness, excessive vibrations and the like, deficient installation or start-up, by Purchaser or third parties, deficient or negligent management, especially in contravention of operations-, assembly-, and maintenance manuals, and Contractor's instructions, improper maintenance, inappropriate equipment or replacement materials, inadequate construction works, unsuitable foundation, chemical, electrochemical or electrical influences--to the extent that Contractor is not responsible for them..

6. If Purchaser or third parties carry out changes or repair work improperly, then no liability or guarantee exists in Contractor for them and consequences arising from them. The same applies for changes of the object to be delivered without prior agreement of the Contractor.

Defects of Title

7. If use of the object leads to infringement of commercial or copyright protections in country, Contractor will basically create at his cost the right for wider use for Purchaser or will modify the delivered object in a way that is reasonable for Purchaser, so that the injury to the protection right no longer exists. If this cannot be done under economically reasonable conditions or within a reasonable time, Purchaser is entitled to withdraw from the Contract. Under the indicated preconditions Contractor also has a right to withdraw from the Contract. Moreover, Contractor will hold Purchaser harmless from legally established or uncontested claims of the relevant holder of the intellectual property right.

8. The commitments of Contractor stated in Section VI.7 are reserved exclusively to Paragraph VII.2 the case of infringement of commercial or copyright protections. They exist only, if

- * Purchaser instructs Contractor without delay about claimed protection faults or copyright infringement,
- * Purchaser supports Contractor in reasonable scope defending against off the asserted claims or enables Contractor to carry out the modification measures consistent with Paragraph VI.7,
- * all defense measures including extra-judicial regulations remain preserved to Contractor,
- * the legal deficiency does not rest on an instruction of Purchaser, and

- * the violation of law was not caused in that Purchaser arbitrarily changed the object to be delivered or used it in a manner that was contrary to Contract.

VII. Liability

1. If the object to be delivered cannot be used through fault of the Contractor as a consequence of negligent or deficient execution of suggestions and advice provided before or after the conclusion of the Contract or through breach of other collateral Contract obligations, then the regulations of Section VI and VII apply respectively to the exclusion of further claims of the Purchaser.

2. For damages that did not arise on the object to be delivered itself, the Contractor is liable – whatever the legal basis – only

a. with intent

b. in case of gross negligence of the owner /essential elements or chief executive employee

c. in case of criminal injury of life, body, health

d. in case of deficiencies that he concealed deceitfully or whose absence he guaranteed

e. in case of deficiencies of the object to be delivered, to the extent liable under product liability law for personal or property damage for privately used objects

In the case of criminal damage to essential Contract duties Contractor is also liable for gross negligence of non-executive employees, limited in that case to reasonably foreseeable damages typical of contracts.

Further claims are excluded.

VIII. Limitation of Actions

All claims of the Purchaser – on any legal ground whatsoever – expire in 12 months.

Statutory time periods apply to claims for damages according to Paragraph VII.2.a-e. They also apply to deficiencies in construction or to articles of sale that were used for a building in accordance with their common use and caused its imperfection.

IX. Use of Software

To the extent that software is included in the scope of delivery, Purchaser is allowed a non-exclusive right to use the delivered software including its documentation. It is handed over for application to the delivery item intended for it. The use of software on more than one system is prohibited.

Purchaser may duplicate software only in the legally permissible quantity (§§69a ff. UrhG), adapt, translate, or convert from object code to source code. Purchaser pledges not to remove or change the manufacturer's instructions--especially the copyright mark – without express prior agreement of Contractor.

All other rights in the software and the documentation, including copies, remain with Contractor or with the supplier of the software. Granting sublicenses is not permitted.

X. Applicable Law, Court of Jurisdiction

1. The law of the Federal Republic of Germany applicable to privity of contract as between domestic parties is exclusively applicable for all legal relationships between Contractor and Purchaser
2. The court of jurisdiction is the court appropriate for the domicile of Contractor. Contractor is nevertheless entitled to bring suit at Purchaser's headquarters.

XI. Changes in Construction

Contractor reserves to himself the right to carry out modifications of construction at any time. He is nevertheless not obligated also to carry out such changes on already delivered products.

XII. Binding Character of the Contract

If a term in these delivery conditions or a term in the framework of other accords should be or become ineffective, the effectiveness of all other terms or accords is not affected thereby. This does not apply if adherence to the Contract would represent an unreasonable hardship for a party. Otherwise, the terms of the VDMA are applicable.