

## General Terms and Conditions valid from 15.10.2016

### General

1. These General Terms and Conditions apply to all transactions between Tridonic GmbH & Co KG, Färbergasse 15, A-6850 Dornbirn, (hereinafter "Seller") and its business partners and customers (hereinafter "Buyer"), for deliveries of goods and (as applicable, analogously) for the provision of services (hereinafter "services"). All offers made by the Seller are based upon these General Terms and Conditions.
2. Should any of the provisions in these General Terms and Conditions directly contradict those contained in the Seller's offer or order confirmation, the provisions of the Seller's offer and order confirmation shall apply. In this event only those provisions of these General Terms and Conditions, or parts thereof, that are not in direct conflict with the provisions of the Seller's offer or order confirmation shall remain valid.
3. The Buyer expressly acknowledges that the Seller already objects to all provisions deviating from those conditions contained in points 1 and 2 resulting from an order or other commercial documents of the Buyer. Unless explicitly agreed to by the Seller in writing, the Seller does not acknowledge differing General Terms and Conditions of the Buyer even where the Seller does not explicitly contradict those individual provisions.
4. These Terms and Conditions shall apply – unless a newer version of the General Terms and Conditions are applied to the transaction – as the framework agreement for all further transactions with the Buyer. Should any of these individual General Terms and Conditions be or become invalid, this shall not affect the validity of the remaining provisions.
5. The Seller provides products and services to commercial customers and public authorities only, not however to consumers.

### Offer

6. Offers by the Seller are non-binding and therefore do not constitute an offer within the meaning of §§ 862 *et seq.* ABGB (Austrian General Code of Civil Law).
7. Offer, implementation and project documentation may not be reproduced or made accessible to third parties without the Seller's consent. These may be reclaimed and are to be returned to the Seller should the order be placed elsewhere.

### Conclusion of agreement

8. An agreement is considered concluded as soon as the Seller has sent a written order confirmation or has dispatched a delivery upon receipt of the order.
9. Information contained in catalogues, brochures and the like, as well as other written or verbal statements are only relevant if explicitly referred to in the order confirmation.
10. Subsequent amendments and additions to the agreement or additional agreements are valid only when confirmed by the Seller in writing. The Seller may at any time correct clerical mistakes and/or calculation errors in offers, order confirmations or invoices.

### Prices

11. Unless otherwise noted, prices apply FCA Seller's premises or dispatch warehouse including packaging and loading, however, excluding VAT, and are binding only up to the delivery date specified in the order confirmation. The Buyer is responsible for all fees, taxes or other charges arising from deliveries.
12. In the case of service and/or repair engagements (e.g. planning, commissioning and/or reviewing installations, training), services deemed appropriate by the Seller shall be performed and invoiced to the Buyer on the basis of expenses incurred plus any additional travel and transportation costs. This also applies to services and additional services the necessity of which becomes apparent only during performance of the engagement; these additional services do not require special notification to the Buyer. Unless otherwise agreed in writing, the Buyer shall be invoiced for the preparation of service and/or repair offers and/or assessments.

## **Transfer of risk**

13. Use and risk are transferred to the Buyer upon the goods leaving the works or warehouse of the Seller independent of the written pricing terms agreed to for the delivery. This also applies when the delivery forms part of an assembly or if the transportation is performed or organised and implemented by the Seller.
14. The place of performance for services is the location where the service is performed. The risks of a service or agreed to partial service are transferred to the Buyer upon performance.

## **Delivery / services**

15. The Seller's delivery obligations are controlled solely by the Seller's written order confirmation.
16. Without a written agreement to the contrary, a specified delivery date (e.g. as contained in the order confirmation) serves only as an indication for the Buyer and is not binding.
17. The Buyer shall obtain all necessary official third-party permits. Should these permits not be obtained on time, the delivery period is extended accordingly. The delivery period is also extended in the event of delayed scheduled payments.
18. The Seller is entitled to provide and invoice partial and/or advance deliveries. Should delivery on demand be agreed, the goods are considered delivered at most 1 year after placement of the order.
19. Insofar as no specific written arrangements have been made, the Seller shall choose the method and nature of shipment. In particular, there is no obligation to select the most cost effective mode of shipment.
20. Deliveries are made only in full packaging units. If smaller units are ordered, the Seller reserves the right to charge a minimum quantity/volume surcharge. The packaging, also for partial and/or advance deliveries, conforms to standard commercial practice.
21. The nature and extent of the services to be provided by the Seller is described in the respective order confirmation. The Buyer shall facilitate the performance of the services and in all cases shall make available a competent person and all required equipment (e.g. ladders, scaffolds, work cage). The Buyer shall provide replacement parts (e.g. light sources, control units, lighting, lamps etc.) at its own expense; alternatively these may be provided and charged for by the Seller.
22. Services are performed on workdays between 08.00 and 17.00. Should the Buyer request and receive services from the Seller outside of these timeframes the following surcharges apply:
  - 50 % surcharge for services performed on Saturdays
  - 100 % surcharge for services performed on Sundays and public holidays.
23. The Buyer is obliged to immediately inform the Seller of all material circumstances regarding the plant and/or performance of services in question and, at the request of the Seller, the Buyer shall withdraw from operation either the whole or part of the plant for the duration of the service provision. The Buyer is obliged to immediately inform the Seller in writing of any safety precautions or compliance with any safety standards required in performing the service. Relevant training required by the Seller's personnel is undertaken at the Buyer's expense. The Seller is entitled to separately charge the Buyer for any resulting additional efforts.
24. Where unforeseeable circumstances arise or where the circumstances are independent of the intent of the Parties, for example all cases of force majeure, that impede compliance with a delivery date agreed in writing, such delays shall extend the delivery date under exclusion of all legal claims the Buyer could otherwise assert for the duration of these circumstance; included herein are, for example, official interventions and prohibitions, transport and customs delays, transport damage, energy and raw materials shortages, labour disputes, and default on the part of essential or difficult to replace subcontractors. These aforementioned circumstances also entitle an extension of the delivery period if they affect the Seller's suppliers.

## Payment

25. Unless other written payment conditions have been agreed, each delivery and/or service is payable upon receipt of invoice. In the event of partial invoices the partial payment is also due upon receipt of invoice.
26. Payments are to be made without deductions in the agreed currency. Any acceptance of cheques or bank transfers is possible only on account of payment. All resulting interest and charges are borne by the Buyer.
27. The Buyer is not entitled to withhold or offset payments as a result of warranty claims or any other claims.
28. If the Buyer is in arrears regarding an agreed payment or for other services, the Seller may, without prejudicing other rights:
  - a) Delay fulfilment of its own obligations until payment has been effected,
  - b) Demand payment of all outstanding receivables and demand interest arrears in the amount of 12% per annum plus VAT from the due date, provided that the Seller cannot prove costs in excess of these amounts. In the event of default all granted discounts and bonuses are forfeited. The Seller is entitled to invoice pre-trial costs, in particular reminder fees and legal expenses.
29. The Seller retains ownership in all goods delivered by it until full payment of invoice amounts plus interest and expenses. In order to secure the purchase price claim, the Buyer herewith assigns all its claims from the resale of reserved goods even where these have been processed, transformed or combined, to the Seller as collateral security and agrees to make the corresponding entries in its accounts or invoices. The Seller accepts this assignment. Upon request, the Buyer shall inform the Seller of the assigned claims and the debtors, and make available all required information and material for collection of the debt as well as notifying third-party debtors of the assignment. In the event of seizure or other claims the Buyer is obliged to point out the Seller's property rights and to inform the Seller immediately.
30. In the event of a lack of credit worthiness or risk of credit unworthiness on the part of the Buyer, the Seller is entitled to withhold delivery and/or performance and to demand securities.
31. A processing fee will be charged for orders which fall below the Seller's stated minimum net order value (excluding taxes, fees and charges). Upon request, the Buyer shall be informed as to the amount of the applicable surcharge, minimum net order value and the processing fee.
32. In the event of late payment, the Buyer is liable for any currency losses incurred between the original due date and the actual date of payment.
33. The Seller is obliged to release securities to the extent that their realisable value exceeds the claims due to the Seller by more than 10%, whereby the Seller reserves the right to determine which goods or claims are released.
34. If retention of title pursuant to the law in the location of the goods is not valid, a security corresponding to retention of title is deemed agreed. If the cooperation of the Buyer is required, upon the request of the Seller it is obliged to undertake all reasonable measures at its own expense to establish and preserve such rights.

## Warranty

35. In accordance with the following provisions, the Seller is obliged to rectify any defect impairing functionality that exists at the time of delivery or performance based on faults in construction, materials or workmanship.
36. The warranty period for defects undetectable at time of delivery is 24 months and these must be reported without delay upon discovery. Defects detectable upon delivery must be reported in writing within a period of 8 days, otherwise they shall be considered forfeited. The warranty period for latent defects also begins at the time of delivery (transfer of risk) and is neither extended nor interrupted by remedial activities. This warranty period also applies to partial deliveries. Defects are to be reported without delay in writing otherwise warranty or other claims are excluded, however, this does not entitle the withholding of invoice amounts or parts thereof. The Buyer shall provide proof that the defect existed in the good at the time of delivery. The provisions of § 924 ABGB (Austrian General Code of Civil Law) are explicitly precluded.

37. **In the event of a defect subject to a warranty obligation in accordance with this “warranty” section, the Seller may, at its discretion, repair the defective good or part at the place of performance or have it sent for repair or to replace (exchange) it or to award the Buyer a price reduction. Invoices for repairs by third parties shall not be recognised.**
38. All ancillary expenses incurred in connection with rectifying defects (such as assembly and disassembly, transport, disposal, travel and travel time expenses) are borne by the Buyer. For warranty work carried out at the Buyer’s premises, the necessary assistance, hoisting gear, scaffolding and sundry materials etc. are to be supplied free of charge.
39. If the Seller produces a good on the basis of design specifications, drawings or other information provided by the Buyer, the Seller’s liability is limited to the implementation of these instructions. All claims of the Buyer are to be judicially asserted within 24 months from the transfer of risk, otherwise the claim will forfeit.
40. The Seller shall accept returns only after giving its prior written consent.
41. The provisions in points 35 to 40 also apply analogously for each defect arising from other legal grounds, including, but not limited to, claims for damages.
42. The assignment of warranty claims and/or damages claims and similar matters is not permitted.

#### **Damages and liability limitations**

43. **The Seller is liable to the Buyer for damages incurred during the performance of the transaction – insofar as this is legally permissible – only to an amount of no more than one half of the value of the order and only in the event of intent or gross negligence on the part of the Seller. Liability in the event of slight negligence – insofar as is legally permissible – is precluded except in cases of personal injury. The Buyer must prove gross negligence on the part of the Seller. This also applies to instances of slight negligence with regard to personal injury.**
44. **Compensation for purely financial losses, lost profit, interest losses, losses from claims by third parties – whether direct or indirect damages - consequential damages or (criminal) damages is – insofar as is legally permissible – precluded.**
45. Claims for damages expire – insofar as is legally permissible – within 6 months of knowledge of the damage and of the damaging party. The Buyer shall notify the Seller of any damage in writing within a reasonable period of time, however, not exceeding 7 calendar days. In addition, the Buyer must provide detailed proof that the damage has occurred as well as the extent of the damage.
46. Should the Buyer be held liable under the Austrian Product Liability Act or any such equivalent foreign law, it waives any recourse against the Seller, in particular within the meaning of § 12 Austrian Product Liability Act or equivalent foreign law. Should the Buyer bring goods supplied by the Seller outside of the European Economic Area, it is obliged to exclude the indemnification obligation under the Product Liability Act or equivalent foreign law, insofar as this is possible according to the law applicable to the Buyer and its customer or according to the law agreed to between them. In this event, or by omission of this mandatory exclusion, the Buyer is obliged to indemnify the Seller from third party claims regarding product liability.
47. Claims in accordance with § 933b ABGB are precluded.

#### **Withdrawal from agreement**

48. In particular, the Seller may withdraw from this agreement if, (i) performance of delivery and/or service is delayed by the Buyer or (ii) the Seller has concerns regarding the Buyer’s solvency.

#### **Industrial property rights and copyrights**

49. The Buyer shall indemnify the Seller for all infringements of property rights where goods have been manufactured by the Seller on the basis of design specifications, drawings, models or other specifications provided by the Buyer.

50. Production documents, such as plans, drawings and other technical documents as well as samples, catalogues, brochures, illustrations and the like remain the property of the Seller and are subject to the relevant statutory provisions governing reproduction, imitation, competition etc.

## **Compliance with export control regulations**

51. In the event of transfer of goods supplied by the Seller (e.g. hard and/or software and/or technology including related documentation, independent of the manner of provision) or of services provided by the Seller (including all technical support) to third parties at home and abroad, the Buyer shall comply with all applicable national and international (re)export control regulations. In all cases it must observe the (re)export control regulations of the European Union and of the United States of America.
52. To the extent required for export control checks, the Buyer shall supply the Seller immediately upon request with all information pertaining to the final recipient, destination and intended use of the goods or services provided by the Seller as well as any export control restrictions. The Buyer shall fully indemnify the Seller against all claims by public authorities or other third parties for non-observance of the above export control regulations and is obliged to indemnify the Seller for all expenses and damages incurred in this regard, unless the Buyer is not responsible for the breach of duty. This does not constitute a reversal of the burden of proof.
53. Performance of the agreement on the part of the Seller is subject to the proviso that no obstacles based on national or international foreign trade regulations, as well as embargos and/or other sanctions prevent performance.

## **Applicable law and legal venue**

54. This agreement is subject to Austrian substantive law under exclusion of conflict of law principles of international private law and exclusion of the UN Convention on the International Sale of Goods.
- 55. If the Buyer has its domicile within the EU or in a country where the 2007 Lugano Convention has been ratified, the agreed legal venue for all disputes arising from the agreement and the contractual relationship – including its existence or non-existence – or legal consequences arising therefrom, is the exclusive territorial jurisdiction of the Regional Court Feldkirch, Austria. In addition, the Seller is also entitled to bring suit against the Buyer at the location of its registered office or at the competent court for the branch where the Seller concluded the agreement.**
- If the Buyer has its domicile outside the EU or not within a country in which the 2007 Lugano Convention has been ratified, all disputes and claims arising from the agreement – including disputes regarding its validity, infringement, termination or nullity – are decided under the Rules of Arbitration of the International Arbitration Court of the Austrian Chamber of Commerce (Vienna Rules) by one or three arbitrators appointed in accordance with these rules. The place of arbitration shall be Vienna and the language used for the arbitration process shall be English.**

## **Additional conditions for agreements concluded on the internet**

56. The Buyer obtains access to the Seller's eCommerce Portal ([portal.tridonic.com](http://portal.tridonic.com)) when it enters a legitimate username and password (hereinafter "login data") supplied by the Seller. The Buyer is obliged to change the password immediately upon receipt, as well as periodically thereafter and to protect it from unauthorised access. The Seller shall assign, within reasonable limits, each person authorised by the Buyer with individual login data. Login data assigned to the Buyer by the Seller may not be disclosed under any circumstances and the Buyer is obliged to immediately notify the Seller of any significant changes regarding access permission for authorised persons. The Buyer is responsible for the consequences of non-observance of this provision by it or by its organs, employees, assistants and agents.
57. Whoever legitimises himself with the login data of the Buyer is considered by the Seller to be authorised to carry out all possible eCommerce Portal transactions on behalf of the Buyer irrespective of whether this person is actually the Buyer or its representative. The Buyer accepts that all transactions made in the Seller's eCommerce Portal using its login data are binding.
58. Processing of all agreements concluded in the eCommerce Portal as well as all related information is carried out in part by automated email. The Buyer is responsible for ensuring its registered email address is valid and the receipt of emails is assured.

59. The Seller assumes no responsibility for error free operation of its eCommerce Portal and explicitly excludes liability for damages resulting from its use and from the related use of the internet. Responsibility and liability for access failures such as limited or no availability of the eCommerce Portal, faulty transmission of information and instructions on the use of the eCommerce Portal is also precluded. By its use of the eCommerce Portal the Buyer confirms that it is sufficiently informed as to the risks associated with the internet.
60. The Buyer acknowledges that use of the eCommerce Portal abroad may infringe upon foreign laws, for example, by use of the eCommerce Portal encryption process. The Seller assumes no responsibility or liability in this regard.
61. Representations of the Seller's goods in the eCommerce Portal are non-binding and do not represent a binding offer for the conclusion of an agreement. Orders placed in the eCommerce Portal are a binding offer of the Buyer to the Seller. The Seller's automatically generated order confirmation is intended for information purposes only and does not result in the conclusion of an agreement. Receipt of the Buyer's purchase offer is confirmed separately in writing by the Seller (e.g. by email) upon execution of the order (order confirmation) or by dispatch of the goods (dispatch confirmation).

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