

GENERAL TERMS AND CONDITIONS OF SALE AND DELIVERY

These General Terms and Conditions of Sale and Delivery (hereafter "general conditions") apply to all contracts and orders placed with Treibacher Industrie, Inc.. Unless otherwise agreed in writing, Treibacher Industrie Inc. (hereafter "we", "us" or "our") will sell exclusively on these general conditions as set forth below, which shall be an integral part of every contract of sale of goods or materials (hereafter "material" or "goods") with the purchaser (each purchaser of material from us is hereafter referred to as "you" or "your"), even in the absence of an express confirmation thereof by You. Any reference to Your terms or conditions of purchase is rejected and shall have no effect on the applicability of our general conditions.

1. Quotations and acceptance

Our quotations are always subject to alteration and to our conditions of sale. Quotations made by our representatives and agents shall not be legally binding until confirmed in writing by ourselves. The same shall apply to all sub agreements and other promises. An order shall only be deemed to be accepted when acceptance has been acknowledged in writing. Any declaration in which we assume obligations or relinquish rights must be made in writing and bear the signature of two appropriately authorized persons. This also applies to any declaration that a different procedure is to be used from the one defined above.

2. Communication

Our contractual partners are obliged to treat any correspondence with us with special diligence. Particularly, all current „best practices“ ensuring a secure exchange of information, integrity of any message content and the reliable identification of sender and receiver must be strictly followed and have to be implemented (especially: scrutiny of e-mail-headers and signatures). Our contractual partners are fully liable for the safety and security of all information exchanged and have to fully indemnify us for any damage arising out of or in connection with any unauthorized access to and/or abuse of their internal or external IT-infrastructure or any other breach of their obligations out of this section.

3. Prices

Prices are ex-works Althofen, Austria.

4. Delivery

In case we bear the freight costs, we may choose the means of transport. In the event that, due to force majeure or circumstances beyond our control, goods cannot be delivered by the agreed date or delivered at all, the delivery shall be regarded as cancelled. This applies in particular when, despite meticulous ordering by us, the necessary raw materials have not been supplied to us and we are unable to procure substitute materials at acceptable cost. We shall notify the customer immediately of any such situation by furnishing the customary documentary evidence and, in the case of straightforward delay, advise a new delivery date. We accept no liability in such an event for the consequences of non-performance or delay. Should the above apply to only part of a delivery, the rest of the contract shall remain in force.

5. Notification of defects / Indemnity

The information given about our Material, whether given orally or in writing, is not a guarantee or warranty concerning the qualities and characteristics of the material. All warranties, both express and implied, are hereby disclaimed, including but not limited to any warranty of merchantability and any claim of fitness for a particular purpose. You must verify that the material to be purchased is suitable for your intended purpose. Following delivery, notification of defects in Material must be presented in writing within two business days of receipt of the Material. If the defect is not found to be justified, and no adjustment is made as herein provided, then any action for damages must be commenced by you within one year of receipt of the Material. If the notification of defect is found to be justified, either by us or by a court of law, your sole remedy shall either be replacement of the material or recovery of the price you paid for such material.

In no case shall we be liable for damage incurred by you or your customer as a result of the Material supplied by us. You agree to indemnify and hold harmless us, our agents, servants, employees, officers, directors successors and assigns of and from (a) any and all claims, actions, causes of action, damages, liabilities, costs and expenses, including attorney fees, relating to or arising out of any use of the material sold pursuant to this agreement, unless such loss is as a result of our demonstrable gross negligence and (b) any and all claims of infringement of intellectual property rights of any person, including third persons, which relate to or arise out of the sale or use of material covered by this contract.

6. Reservation of title

We reserve title to the goods supplied until payment in full is made. If the goods subject to this reservation of title are processed, the reservation of title shall extend to the product of such processing and we shall be entitled if the necessity arises to select for separation such amount of the said product as shall cover the value of the goods supplied by us. In the event of an encroachment by a third party, the purchaser shall inform us immediately of the manner and perpetrator thereof. The purchaser shall compensate us for the costs of any legal action. He undertakes to insure at his expense any goods subject to the reservation of title. The legal consequences of processing as set out above shall also apply to compounds, mixtures or blends of the goods supplied.

6a. Security interest (valid for USA only)

In jurisdictions where reservation of title cannot be made effective against third parties by simple declaration on invoices or other written instruments, the purchaser, by acceptance of these terms and conditions of sale, affirms that a security agreement exists between him and the seller and undertakes to cooperate with the seller in completing and filing with the proper authorities the financing statements or other documents needed to perfect the seller's security interests in the goods sold and in the proceeds from any disposition of the seller's interests herein by the buyer.

7. Non-compliance

Any breach of this agreement shall entitle us to rescind the contract. The purchaser shall bear the costs of the return of the goods and shall also be liable for any damages incurred as a result of the breach of the agreement.

8. Terms of payment

As a matter of principle, our invoices are payable on receipt without deduction. The bank accounts stated on our invoices may only be changed by written agreement. For the purposes of this section electronic communication, such as (but not limited to) E-Mail and Fax, does not constitute an agreement in writing. In the event of delayed payment, it is understood that the statutory interest on arrears shall be applied of 9.2 per cent above the basic interest rate (i.e. the interest rate repayable for borrowed funds set by the European Central Bank); you shall also be obliged to reimburse any costs of collection, including reasonable attorney fees. Bills of exchange and cheques shall only be accepted in fulfilment of debt. Payments received from you, irrespective of the invoice it is intended to settle, shall be applied to the longest outstanding debt on your account.

9. Place of performance

The place of performance of making of this agreement is – unless otherwise explicitly agreed upon in writing – Toronto, Ontario, Canada. The place of performance of payment of price is Toronto, Ontario, Canada.

10. Applicable law

These conditions shall be construed and interpreted exclusively according to the law of Ontario, Canada, including the UN-Convention on Contracts for the International Sale of Goods.

11. Court of jurisdiction

The parties hereto agree to submit to the exclusive personal jurisdiction of the courts of Toronto, Ontario, Canada in the event any dispute arises out of this agreement or any of the transactions contemplated by such.

Neither party shall bring any action relating to this agreement in any court other than in the courts of Toronto, Ontario, Canada.

11. Confidentiality

"Proprietary Information" shall mean all information, knowledge or data (including without limitation financial, business, and product strategy information; product specifications; product designs; procedures; studies; tests; and reports) in written, electronic, tangible, oral, visual or other form. If either party furnishes sample products, equipment, or other objects or material to the Non-Disclosing Party, the items so received shall be used and the information obtained from said items shall be treated as if they were Proprietary Information disclosed in connection with this Agreement. Unless the party receiving the Proprietary Information (the "Receiving Party") has received the express written consent from the disclosing party (the "Disclosing Party") to the contrary, the Receiving Party shall (i) use the Disclosing Party's Proprietary Information solely for the purposes of this Agreement, and not for any other purpose (including, without limitation, designing, manufacturing, selling, servicing or repairing equipment for entities other than You; providing services to entities other than You; or obtaining any government or third party approvals to do any of the foregoing); (ii) safeguard the Disclosing Party's Proprietary Information to prevent its disclosure to or use by third parties; (iii) not disclose the Disclosing Party's Proprietary Information to any third party; and (iv) not reverse engineer, disassemble, or decompile the Disclosing Party's Proprietary Information. The Receiving Party may disclose the Disclosing Party's Proprietary Information to employees, officers, directors, or, with the written consent of the Disclosing Party, to contract labor personnel of the Receiving Party who have a need to know such Proprietary Information for the purposes of performing this Agreement and who have executed a written agreement with the Receiving Party obligating such person to treat such information in a manner consistent with the terms of this paragraph. This Agreement shall not restrict the Receiving Party from using or disclosing any information that, as proven by written contemporaneous records kept in the ordinary course of business: (i) is or may hereafter be in the public domain through no improper act or omission of the Receiving Party or a third party; (ii) is received by the Receiving Party without restriction as to disclosure by the Receiving Party from a third party having a right to disclose it; (iii) was known to the Receiving Party on a non-confidential basis prior to the disclosure by the Disclosing Party; or (iv) was independently developed by employees of the Receiving Party who did not have access to any of the Disclosing Party's Proprietary Information. If Proprietary Information is required to be disclosed pursuant to judicial process, the Receiving Party shall promptly provide notice of such process to the Disclosing Party and, upon request, shall fully cooperate with the Disclosing Party in seeking a protective order or otherwise contesting such a disclosure. Disclosure of such requested Proprietary Information shall not be deemed a breach of the Order provided that the obligations of this Section are fulfilled by the Receiving Party.

12. Partial invalidity

The legal invalidity of a part or parts of this agreement shall have no effect on the validity of the remainder of the agreement.

13. Amendments

Amendments of contractual terms shall not be valid unless expressly confirmed in writing by both parties.

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