

## **TRILUX General Terms and Conditions of Purchase ("GTCP"), Version: 01/09/2015**

### **1. General, Scope**

- 1.1 The following GTCP shall apply exclusively and finally, even if not separately agreed upon from case to case, except for the purchase of machines and machine equipment including further required services required in connection thereto, e.g. mounting and installation work. For such cases, our General Terms and Conditions for Purchase of Machines and Machine Equipment ("GTCPM") shall apply exclusively and finally.
- 1.2 The GTCP shall apply to orders of the TRILUX Group Management GmbH, Arnsberg ("TGM") and those of companies of the TRILUX Group affiliated with TGM pursuant to sections 15 ff. AktG (German Corporation Act) (hereinafter: "TRILUX Companies), if and insofar as the TRILUX Companies incorporate these GTCP. The group companies encompassed by this arrangement are listed on the TRILUX Group website at [www.trilux.com](http://www.trilux.com).
- 1.3 Supplier terms and conditions contradicting or deviating from our GTCP shall not be accepted by us unless their validity has been explicitly agreed upon by us in writing. Any contradicting or deviating terms and conditions by supplier are hereby rejected and shall be considered waived, even when no further explicit rejection is declared upon conclusion of contract or at a later time. Our GTCP shall also apply in the event that we unreservedly accept deliveries by supplier with knowledge of supplier terms and conditions contradicting or deviating from our GTCP.
- 1.4 Our employees are not authorised to agree to any validity of conditions other than these GTCP, be it verbally or on delivery notes, receipts of delivery or the like. Modifications of these GTCP or of contractual contents shall require approval by our purchasing department, senior management or executive management. At the latest with the first delivery of merchandise (goods, rights, services etc. in a comprehensive sense) performed by supplier, these GTCP shall be considered acknowledged, also for later orders, even when no explicit reference is made therein to these GTCP.
- 1.5 Our GTCP shall also apply to any amendments to this order and any future business with supplier.
- 1.6 All agreements made between us and supplier concerning the execution of the contract must be recorded in the contract in writing.
- 1.7 Where declarations must be made in writing pursuant to these GTCP, textual form (e.g. E-Mail, Fax) shall be permissible as well as written form.

### **2. Offer, Offer Documents, Conclusion of Contract**

- 2.1 Suppliers' offers shall be made at no charge to us. Supplier shall be bound by its offer for 4 weeks.
- 2.2 In its offer, Supplier shall observe enquiry or tender with respect to quantity, quality and execution. Supplier may offer alternatives, however only with explicit mention of their alternative character. Such alternatives may only be executed once we have explicitly ordered in writing the respective alternative offer deviating from our enquiry.
- 2.3 Only orders placed by us in writing shall be legally binding. Verbal agreements also regarding the execution of an order shall be valid once confirmed by us in writing.
- 2.4 Orders shall be confirmed immediately in writing by signature (for the attention of the purchasing department), supplemented by these GTCP also confirmed in writing by signature.

- 2.5 We shall not / no longer be bound by our order, if supplier's confirmation including signed GTCP is not received by us within the period stated by us in the corresponding order, or, where no such specifications exist, within 10 working days.

### **3. Prices, Payment Terms**

- 3.1 The price stated in the order shall be binding (fixed price) and is understood to include all ancillary cost. In default of any deviating written agreement, delivery shall be considered agreed as free to stipulated destination DDP INCOTERMS® 2010, including packaging, insurance cost etc. In the case of deviating agreements, freight and packaging costs shall be advanced by supplier and itemised separately on the invoices. The agreed upon price shall include all license rights for the use of the goods, documents etc.
- 3.2 Modifications due to any increase of costs, taxes etc. after the fact shall be excluded.
- 3.3 The statutory sales tax is not included in the price and must be itemised separately on supplier's invoices.
- 3.4 Invoices can only be processed by us when they include the order number, according to the specifications in our order, as stated in said order; all consequences of non-compliance with this obligation shall be the responsibility of supplier. Invoices must be submitted separately and immediately upon completed delivery in compliance with statutory and regulatory requirements. Monthly invoices must also be submitted at the latest by the 5<sup>th</sup> of the month following the delivery. Invoices shall become payable within 60 days net upon full delivery and performance (including, as the case may be, an agreed upon approval) as well as receipt of a proper invoice compliant with German statutory requirements for corresponding standard invoices.
- 3.5 We shall not owe any due date interest. For any occurrence of default, statutory provisions apply, whereas in deviation thereof an overdue notice in writing by supplier shall be required in any case.
- 3.6 We shall be entitled to rights of set-off as well as rights of retention to the statutory extent. Moreover, we shall be entitled to set-off against any and all receivables due to us or another TRILUX Company by supplier. The group companies encompassed by this arrangement are listed on the TRILUX Group website at [www.trilux.com](http://www.trilux.com) (subpage for suppliers). Supplier may only transfer its claims to a third party or have them collected by a third party with our confirmation in writing.

### **4. Delivery, Period of Delivery, Default, Penalty**

- 4.1 Each order must be confirmed immediately, specifying a binding period of delivery. The period of delivery stated in the order shall be binding. The period of delivery shall commence on the date of receipt of the order by supplier. Supplier shall be in default upon expiry of a binding period of delivery without need for any overdue notice. Compliance with delivery dates or delivery deadlines shall be determined by receipt of goods at the coming in department/unloading point specified by us and within our standard hours of business. In the event that goods are delivered to an incorrect goods receiving point, this shall not qualify as a delivery.
- 4.2 Supplier shall be obligated to inform us immediately in writing if circumstances occur or become apparent to it, also such due to force majeure, which result in a failure to comply with the stipulated period of delivery. In such cases, we shall be entitled to either extend the approval period or, should our interest in the delivery be substantially reduced, to withdraw partially or entirely from the contract and, as the case may be, to demand compensation for damages. Contractor shall be obligated to inform us immediately once the obstacle has ceased to exist. Supplier cannot derive any rights therefrom. In particular, supplier shall not be entitled to withdraw from the contract or to increase its prices in events of force majeure or the like at its own discretion. Shortage of staff, production materials or resources, breach of contract by third parties commissioned by supplier as well as untimely deliveries to supplier shall not be considered as events of force majeure.
- 4.3 In the event of late delivery, we shall be entitled to demand a penalty in the amount of 0.3 % of the net price per working day, but not more than 5 % of the net price for the goods delivered with delay in total. The assertion of damages caused by the delay and further damages shall remain unaffected. In the event of a default by supplier

we shall be entitled to demand compensation for damages instead of performance, and to withdrawal upon unsuccessful expiry of a reasonable time period. In the event that we demand compensation for damages or a contractual penalty, supplier shall be entitled to prove to us that it is not responsible for the violation of obligations.

## **5. Execution**

- 5.1 In the event that we require an initial sample / approval sample, supplier may only start series manufacturing once the series sample has been cleared in writing.
- 5.2 We may request modifications in the quality and/or agreed specification of supplied goods or services within supplier's scope of technical capability later on. Technical modifications and their effect on prices, delivery period or other terms and conditions shall require an agreement pursuant to article 2 of these GTCP.
- 5.3 Partial deliveries shall only be permissible upon prior agreement in writing, otherwise we may refuse acceptance. In any case, partial deliveries shall not be considered independent transactions and must be marked in writing.
- 5.4 In the event of urgent issues in our company, e.g. due to force majeure, fire, flooding etc. we shall be entitled to withdraw from the contract against a compensation payment of 5 % of the agreed upon price of the goods not yet delivered from the respective order without further costs. Supplier's right to demonstrate higher costs / expenses shall remain unaffected.

## **6. Shipping, Transfer of Risk, Default of Acceptance, Place of Delivery**

- 6.1 Unless otherwise agreed upon in writing, deliveries shall be made to the shipping address / point of use specified by us on the order.
- 6.2 Transfer of risk to us shall not occur before receipt of goods. The receipt of a delivery shall not constitute an approval of the goods.
- 6.3 Goods shall be separately packaged corresponding to their orders. If this is not the case, we reserve the right to return the goods or to claim the additional expenditures arising with regards thereto.
- 6.4 We shall not enter in default of acceptance if said acceptance is obstructed by force majeure.
- 6.5 Unless otherwise stated in our order, place of performance shall be the headquarters of that TRILUX Company which is supplier's contract partner. This shall also apply for all rights and obligations arising from this legal relationship as well as our payments.

## **7. Documents, Export controls, Supplier's Declarations**

- 7.1 Supplier shall be obligated to enclose a delivery note with every delivery and to state exactly our order number on all shipping documentation and delivery notes; if supplier fails to do so, it shall bear responsibility for any delays resulting therefrom.
- 7.2 Supplier shall notify us immediately in the event that a delivery is subject to any export restrictions. Moreover, supplier shall communicate upon request customs tariff numbers for its goods as well as other information pertaining to its territorial and organisational area relating to its deliveries and services which are necessary for us to ensure compliance with export control regulations.
- 7.3 Supplier shall be obligated to make supplier's declarations according to VO / EG 1207 / 01. Where long-term supplier's declarations are used, changes in originating status shall be communicated to us without request along with the respective order confirmation. The same shall apply for sales tax documentation concerning foreign and intra-community deliveries.

## **8. Warranties, Quality Agreements**

- 8.1 Supplier shall warrant to us particularly but not conclusively a) that the goods are suitable for their intended use, that they are new and free of faults in construction, manufacturing, material, design and production, b) that the goods correspond to the samples and descriptions provided by supplier and comply with the stipulated specifications and quality agreements, c) that the goods are free of any rights of third parties and d) that the goods comply with the applicable statutory requirements, guidelines, provisions and regulations, particularly regarding occupational safety, environmental and product safety, e.g. RoHS or REACH, and comply with property insurer's requirements, and that the goods are certified for CE conformity.
- 8.2 In any case, such product descriptions, which – particularly through designation or reference in our order – are subject of the respective contract or have been included in the contract in the same manner as these GTCP shall be considered quality agreements. It shall thereby make no difference whether the product description originated with us, supplier or manufacturer.
- 8.3 If supplier has concerns about the manner of execution, it shall immediately notify us thereof in writing. Where deviations from provisions become indispensable in individual cases, supplier must obtain our consent to this in writing. Supplier's liability shall not be restricted by this.

## **9. Incoming Goods Inspection, Liability for Material Defects**

- 9.1 We shall be entitled to statutory claims for defects in full; in any case, we shall be entitled to request from supplier at our own choosing either remedy of defects or delivery of a new item. Supplier shall be obligated to bear all necessary expenditures for any remedy of defects or replacement delivery, such as transport costs, experts' fees, administration costs, own expenses, installation and removal costs, costs for equipment, lifting devices and scaffolding. Our liability for damages in the event of unjustified requests to remedy a defect shall remain untouched, however we shall only be liable insofar as it was apparent to us or did not become apparent to us due to gross negligence that a defect did not exist. We may also demand the reimbursement of costs originating in relation to inspections if defects occur in a number that is above average and thus necessitate incoming goods inspections exceeding standard sample inspections.
- 9.2 We shall report obvious defects in the delivery to supplier insofar as such defects can be identified within the circumstances of a proper course of business. Where approval is agreed upon, there shall be no obligation to inspect. We shall not be obligated to perform a further incoming goods inspection. Any notice of defects shall be deemed on time if sent within a period of five working days upon expiry of the notice period pursuant to section 377 HGB (German Commercial Code). In the case of goods where defects can only be identified in the course of processing, a notice of defects may be sent within up to one week upon identification of defects. In this respect, supplier shall waive the objection of late notification of defects. Any self-checks performed by us shall not release supplier from its obligation to deliver goods free from defects.
- 9.3 The right to compensation for damages, particularly the right to compensation for damages due to non-performance, shall be expressly reserved, and supplier shall particularly be obligated to compensate us for any damages, even consequential damages, resulting from any existence of a defect. We shall be entitled to perform the remedy of defects ourselves at supplier's cost if its remedy has failed, if there is imminent danger or in cases of particular urgency. In such cases, we shall immediately inform supplier thereof, if possible beforehand.
- 9.4 Any payment of the purchase price or parts thereof as well as acceptance or approval of any documents (drawings, drafts, models, samples, proofs, even intermediate goods etc.) before an identification of defects shall not constitute an acknowledgement of the goods being free from defects and having been delivered according to contract, and thus shall not constitute any waiver of claims to remedy of defects.

## **10. Liability, Producer's Liability, Third-Party Property Rights**

- 10.1 Supplier shall, upon first request, indemnify us against indirect third-party claims which such parties may make against us due to poor performance of supplier. Supplier shall be free to provide proof of any contributory responsibility or contributory negligence on our part.
- 10.2 If supplier is responsible for product damages, it shall be obligated to indemnify us, upon first request, against third-party claims for damages, especially against claims for product damages, insofar as the cause is located in its sphere of control and organizational area and it is individually liable in relation to third parties. In this respect, supplier shall be also obligated to compensate accordingly for expenditures, as they occur, according to sections 683, 670 or according to sections 830, 840, 426 BGB (German Civil Code) arising from or in relation to recall actions and/or warning actions performed by us. We shall inform supplier – as far as possible and reasonable – about content and scope of the recall and/or warning actions to be performed and give supplier the opportunity to comment. Other statutory claims shall remain untouched.
- 10.3 Supplier shall be obligated to maintain a product insurance policy with a coverage amount of at least EUR 5.000,000.00 per personal injury / material damage (flat). Said policy and any changes in insurance protection shall be verified towards us upon request. Supplier shall pre-emptively release its insurance company already now from its confidentiality obligation so that we shall be entitled to obtain information directly from said insurance company. Where we are entitled to further compensation for damages, those shall remain unaffected.
- 10.4 Supplier shall warrant that no third-party rights, particularly patents, trademarks and copyrights, are being infringed in relation to its delivery and that the delivered goods meet all statutory regulations and official requirements insofar as supplier was familiar with the infringement or should have been in its capacity as a specialised company. Supplier shall, upon first request, indemnify us against any third-party claims for compensation of damages in the event of any infringement of such rights or provisions of public law. Supplier's duty to indemnify shall relate to all expenditures inevitably arising to us from or in relation with the third-party claim.
- 10.5 We shall be entitled to obtain from the holder of the property rights all necessary licences for delivery, commissioning, use, resale etc. of the delivery item at supplier's cost if the costs thus incurred turn out substantially lower than the damages resulting for both parties in the case of a reverse transaction.

## **11. Statute of Limitations**

- 11.1 The mutual claims of the parties to the contract shall expire by limitation according to statutory provisions unless agreed upon otherwise in the following.
- 11.2 The general limitation period for claims for defects shall be (deviating from section 438 par. 1 no. 3 BGB) 36 months starting from delivery, and where an acceptance is agreed upon, starting from acceptance, unless the mandatory provisions of sections 478, 479 BGB apply. The period, however, shall only commence upon complete and defect-free delivery of goods. Notifications of defects can be submitted at any point within the limitation period whereas a first-time notification of defects suspends limitation until all notifications of defects are settled, unless settlement is a goodwill service by supplier or defects are entirely negligible.

## **12. Auxiliary Goods, Retention of Title, References, Confidentiality**

- 12.1 We reserve property rights and copyrights to all technical and commercial documents, drafts, drawings, product descriptions, images and other documents provided by us. Such documents shall be used exclusively for the performance of the contract and shall be returned to us at our request upon completion of contract. Documents and other information communicated to supplier which should be classified as confidential following a reasonable assessment must be kept strictly confidential towards third parties, must not be disclosed to third parties and shall not be used for supplier's own competitive purposes unless we expressly agree thereto in writing.



- 12.2 Aforementioned provision likewise shall apply to substances and materials (e.g. software, finished and semi-finished products) as well as tools, templates, samples and other items provided by us to supplier for manufacturing purposes. Such items, provided that they are not being processed, shall be stored separately by supplier and reasonably insured against destruction and loss at supplier's cost. Processing, mixing and binding (further processing) of provided items by supplier shall be carried out for us.
- 12.3 Any extended and expanded retention of title by supplier shall be excluded. Supplier shall treat the conclusion of contract confidentially. Supplier shall be prohibited from naming us as a reference, unless it obtains our prior consent in writing.
- 12.4 The confidentiality obligations shall not apply if supplier obtains confidential information from third parties without any breach of this agreement, provided that the respective third party has obtained the information lawfully, and/or supplier is bound legally and/or by judicial or official order to disclose the confidential information. In such cases, supplier shall inform us insofar as legally permissible and possible in good time prior to disclosure so that we may prevent disclosure through legal measures.
- 12.5 Confidentiality obligations shall remain valid after conclusion of this contract; they shall expire once and insofar as the knowledge contained in the provided images, drawings, calculations and other documents has become generally known.

### **13. Specific Grounds for Cancellation**

In addition to the rights to withdraw from contract stated in these GTCP, we shall be entitled to withdraw or terminate extraordinarily if (preliminary) insolvency proceedings are opened on supplier's assets or supplier discontinues its payments for a more than only temporary time period. The same shall apply in the event that circumstances occur which prevent supplier from performing delivery (e.g. preliminary injunctions or official orders) and such circumstances subsist uninterruptedly for a period exceeding 2 months, as well as in the event that improper competition or corruption offences concerning us become known.

### **14. Social Responsibility, Environmental Protection, Data Protection**

- 14.1 We have aligned ourselves with the ZVEI Code of Conduct, a code of conduct by the central association of the electrical and electronics industry (ZVEI) which can be accessed on the ZVEI website <http://www.zvei.org/Themen/GesellschaftUndUmwelt/Seiten/ZVEI-Code-of-Conduct.aspx>, and we expect our suppliers to comply with these provisions, which are based on internationally established standards. TRILUX endeavours to implement these principles throughout the supply chain as far as its sphere of influence reaches. Supplier shall undertake all suitable and reasonable efforts to promote compliance and sustainability throughout the entire supply chain, and particularly to continuously implement and apply the principles and values stated in the "ZVEI Code of Conduct for Social Responsibility" or comparable codes of conduct of supplier's own. Upon request, supplier shall report to us within the scope of a reciprocal cooperation concerning the substantial measures taken and render possible a review within the scope of audits in order to establish accountability on the fundamental guarantee of their observation. This shall not constitute a right for disclosure of business and trade secrets or information pertaining to competition or worthy of protection.
- 14.2 In the performance of contractual services, supplier shall strictly adhere to statutory and official provisions for environmental protection. Particularly concerning the use of materials and substances capable of polluting or in other form negatively affecting soil or water, supplier shall take precautions against any leakage. Moreover, supplier shall be obligated to take back packaging.
- 14.3 Supplier shall agree to the processing of its data as far as it is necessary for business. The above shall be considered as a notification pursuant to section 33 par. 1 Bundesdatenschutzgesetz (BDSG – German Privacy Law).

## 15. Governing Law, Jurisdiction, Final Provisions

- 15.1 Concerning all legal relationships between us and supplier, the law of the Federal Republic of Germany shall apply; UN convention on the international sales of goods (CISG) shall not apply.
- 15.2 Arnsberg shall be place of jurisdiction for all conflicts arising from the legal relationship with supplier, other places of jurisdictions shall be excluded. The TRILUX Company may furthermore sue at its registered headquarters.
- 15.3 In case of any conflict, the German wording of these GTCP shall prevail.
- 15.4 These GTCP shall remain valid even in the event that individual clauses prove to be legally invalid. Any invalid clause shall be amended or reinterpreted by the parties in such a manner that the economic purpose intended by the invalid clause is achieved as far as possible. The same shall apply in the event that a gap requiring amending is identified in the execution of the contractual relationship. If the invalidity is due to a performance or time provision, the statutorily admissible extent shall apply instead.
- 15.5 Where a provision of these GTCP or the contract becomes invalid with regards to mandatory foreign law, supplier shall upon request arrange for such contractual amendments with us and make such declarations towards third parties or authorities that guarantee the effect of the provision in question and, should that not be possible, their economic content under foreign law.

*I have read the GTCP and agree with the provisions.*

*Supplier, address* \_\_\_\_\_

*Name and position of signee:* \_\_\_\_\_

*Date:* \_\_\_\_\_ *Stamp/signature:* \_\_\_\_\_