

# **General Terms and Conditions of Sale**

## **TPS TECHNITUBE RÖHRENWERKE GmbH**

### **Sect. 1 Scope of Application**

1. These conditions of purchase apply exclusively towards entrepreneurs and juristic persons under public law and special funds under public law as laid down in Sect. 310 Para. 1 of the German Civil Code. Conditions of purchase of the purchaser contrary to or deviating from our terms are not recognised unless we expressly agree to their validity in writing.
2. These conditions of purchase also apply to all future business dealings with the purchaser insofar as they are legal transactions of a related kind.

### **Sect. 2 Quotation and Conclusion of Contract**

If an order is to be regarded as an offer pursuant to Sect. 145 of the German Civil Code, we may accept it within two weeks.

### **Sect. 3 Ceded Documents**

We reserve the right of ownership and copyright to all documents, such as calculations, drawings etc., ceded to the purchaser in connection with placing an order. It is inadmissible to make these documents accessible to third parties unless we expressly agree so with the purchaser in writing. Insofar as we fail to accept the purchaser's offer within the period as per Sect. 2, these documents are to be returned to us without delay.

### **Sect. 4 Pricing and Payment**

1. Unless otherwise agreed in writing, our prices apply ex works excluding packaging and applicable value-added tax. Packaging costs are billed separately.
2. The purchase price is exclusively payable to the account stated on the opposite page. A cash discount is only admissible if a special agreement exists in writing.
3. Unless otherwise agreed, the purchase price is payable within 21 days following delivery. Default interest is calculated at the amount of 8% p.a. above the respective base interest rate. We reserve the right to assert claims for higher damages caused by default.
4. In the absence of a fixed rate agreement, prices are subject to adequate alterations because of changed wage, material, and sales costs for deliveries occurring three months or later after the conclusion of contract.

### **Sect. 5 Offset and Right of Retention**

The purchaser is entitled to offsetting only if their counterclaims have been legally ascertained or are undisputed. The purchaser may exercise a right of retention only insofar as their counterclaim arises from the same contractual relationship.

### **Sect. 6 Delivery Time**

1. The beginning of the delivery time specified by us assumes the purchaser's proper and timely meeting of responsibilities. We reserve the defence of lack of performance of the contract.
2. If the purchaser fails to accept delivery when offered by the seller or otherwise culpably breaches other obligations to cooperate, we are entitled to claim compensation for any damages we incur including any additional expenses. We reserve the right to assert additional claims. Insofar as the above prerequisites are present, the risk for accidental perishing or accidental deterioration of the purchased items passes to the purchaser at the time at which they fail to accept the delivery when offered by the seller or fall into default of the debtor.
3. Further legal rights and entitlements of the purchaser because of delayed delivery remain unaffected by this.

### **Sect. 7 Transfer of Risk with Shipment**

If the goods are shipped to the purchaser at their request, the risk of accidental perishing or accidental degradation of the goods is transferred to the purchaser when the goods are shipped to the purchaser, and no later than when the goods leave the factory / warehouse. This applies regardless of whether the goods are shipped from the place of fulfilment or of who bears the freight costs.

### **Sect. 8 Retention of Ownership**

1. We reserve ownership of the delivered item until all receivables from the delivery contract have been paid in full. This also applies to any future deliveries even if we do not always expressly refer to this fact. We are entitled to cancel the purchased items if the purchaser behaves contrary to the contract.
2. While transfer of ownership is still outstanding the purchaser is obligated to treat purchased items with care. In particular, they are obligated to insure them sufficiently at reinstatement value at their own expense against damage from theft, fire, and water (note: only admissible for high-quality goods sale). If maintenance and inspection tasks need to be performed, the purchaser is to do so in a timely manner and at their own expense. While transfer of ownership is still outstanding, the purchaser is to notify us without delay in writing if the delivered object has been seized or is otherwise subject to third-party intervention.

Insofar as the third party is not in a position to reimburse us the judicial and extrajudicial costs for legal proceedings in accordance with Sect. 771 ZPO, the purchaser accepts liability for the loss we sustain.

3. The purchaser is entitled to resell the reserved items in normal trading. The purchaser already conveys to us the buyer's claims from resale of the reserved items in the amount of the invoiced final sum (including value-added tax). This transfer applies regardless of whether the purchased items have been resold without or following processing. The purchaser is authorised to collect receivables even following such transfer. Our authority to collect receivables ourselves remains unaffected. However, we will not collect receivables while the purchaser (i) meets their payment obligations from the collected profits; (ii) does not fail to pay in due time; and in particular (iii) has not applied to file for insolvency proceedings or (iv) has ceased to pay.
4. The conditioning and processing or alteration of the purchased items by the purchaser always occurs in our name and on our behalf. In this case the purchaser's expectant right to the purchased items extends to also include the altered item. Unless the purchased items are processed together with other objects not belonging to us, we acquire co-ownership of the new object in the ratio of the objective value of our purchased items to the other processed objects at the time of processing. The same applies in case of mixing. If the mixing is performed in such a way that the purchaser's items are deemed the main item, it is agreed that the purchaser transfer us co-ownership on a pro rata basis and detain for us the sole ownership or co-ownership thus created. In order to secure our claims against the purchaser, the purchaser also transfers such claims as they will gain from the connection of the reserved items with a property of a third party; we accept this transfer with our signature of the contract.
5. We undertake to release the securities to which we are eligible upon request of the purchaser provided that their value exceeds the demands to be guaranteed by more than 20%.

### **Sect. 9 Guarantee, Notification of Defects, and Recourse / Manufacturer Redress**

1. Statutory warranty rights on the part of the purchaser assume that they have correctly fulfilled their inspection and reproof obligations pursuant to Sect. 377 of the German Civil Code.
2. Claims for faults lapse twelve months after completed delivery of the goods delivered by us to our purchaser. The above provisions do not apply insofar as the law pursuant to Sect. 438 Para. 1 No. 2 BGB (buildings and building materials), Sect. 479 Para. 1 BGB (right of recourse) and Sect. 634a Para. 1 BGB (construction defects) prescribes obligatory longer delivery terms. Our agreement is to be obtained prior to any potential reshipments.
3. If, despite the care taken, the delivered goods show a defect present at the time of transfer of risk, we will, subject to a timely notification of defects and at our own discretion, mend the goods or deliver a replacement. We are always to be given an opportunity for supplementary performance within an adequate period of time. Rights of recourse remain unaffected by the above provision without any restrictions.
4. If supplementary performance fails, the purchaser can—regardless of potential claims for damages—withdraw from the contract or reduce payment.

5. Claims for faults do not exist for (i) insignificant deviation from the agreed consistency; (ii) insignificant impairment of usability; (iii) natural wear and tear; and (iv) damage occurring after the transfer of risk, which result from (a) defective or negligent treatment; (b) excessive strain; (c) inadequate resources; (d) faulty construction work; (e) unsuitable foundation soils; or (f) special external influences discontinued following the contract duration. If the purchaser or third parties perform improper repairs or alterations, these and the consequences resulting from them also constitute no basis for claims for faults.
6. Claims of the purchaser's for the expenses required for supplementary performance, in particular transport, travel, working, and material costs, are excluded insofar as the expenses increase because the goods we delivered were later moved to a location other than the purchaser's premises, unless the movement corresponds to their intended use.
7. The purchaser's recourse claims against us exist only insofar as the purchaser with their buyer have not agreed on anything beyond compelling statutory claims for faults. The scope of the purchaser's recourse claims against the supplier is also governed by Para. 6.

#### **Sect. 10 Miscellaneous**

1. This contract and the entire legal relationship of the parties are subject to the law of the Federal Republic of Germany excluding the regulations of the United Nations Convention on Contracts for the International Sale of Goods.
2. Place of fulfilment and exclusive place of jurisdiction for all disputes arising from this contract is our place of business unless the order confirmation indicates otherwise.
3. All contracts concluded between the parties concerning performance of this contract are stipulated in the contract in writing.
4. Should individual provisions of this contract be or become invalid or contain a loophole, the validity of its remaining provisions remains unaffected. In place of the ineffective provision, the parties undertake to agree on a legally admissible provision coming closest to the economical purpose of the ineffective provision and/or filling this loophole.