Terms and Conditions of Sale and Delivery of Truma Gerätetechnik GmbH & Co. KG

1. General remarks; applicability

(1) Our deliveries and other services vis-a-vis entrepreneurs, corporate bodies under public law as well as special funds under public law, take place exclusively to the following conditions. These terms and conditions also apply to our future deliveries and other services provided in the future to the afore mentioned customers, even if we do not at that point once again expressly refer to the validity of these terms and conditions.
(2) Any deviating or supplementary general terms and conditions of business of the customer are herewith objected to. This also applies if we, fully aware of deviating or supplementary terms and conditions of business of the customer, carry out an order or other performance without reservation. Deviating or supplementary terms and conditions of business of the customer shall apply only if we expressly confirm these in writing, and then only to the contract in question.

2. Offers; conclusion of contract

(1) Descriptions of goods in our (online and offline) sales material do not constitute offers in the legal sense of the term and are without obligation unless we expressly confirm otherwise in writing.
(2) A contract is formed, and amendments, additional agreements and other agreements take effect only after we have confirmed your order in text form ("order confirmation").
(3) We are entitled to refuse to accept and/or to not confirm orders, without having to cite any reason for this.
(4) We reserve the right to check the creditworthiness of any customer prior to confirmation of the order; should invoices for deliveries that have already been made still be payable by the customer, we reserve the right to confirm additional orders only after payment has been made of the outstanding invoices. Paragraph (3) shall remain unaffected.

3. Delivery

(1) Unless otherwise agreed, the delivery of the goods shall be made FCA Putzbrunn or from an alternative warehouse in Germany (Incoterms 2020).
(2) The minimum order value per order is EUR 150.00. In the case of an order for less than EUR 150.00, we reserve the right to apply a reduced value surcharge of EUR 25.00.
(3) We endeavour to provide binding delivery dates for orders confirmed by us. In individual cases however, in particular, whenever relevant factors beyond our control are a decisive factor in establishing a definite delivery date, it is not possible for us to provide a reliable, binding delivery date. We are to this extent entitled in principle to provide merely non-binding, estimated delivery dates, without having to provide the customer with a detailed account of the reasons for this. We would in particular point to the fact that, in some cases, we are not permitted to disclose the precise reasons owing to contractual non-disclosure obligations towards our sub-suppliers which preclude this.
(4) Delivery dates are wherever necessary delayed for the period of time in which the customer is late in the fulfilment of his duties or obligations. The customer may rescind the contract under statutory provisions only if we are responsible for the delivery delay.
(5) We are entitled to make partial deliveries and provide services in part within the agreed delivery deadlines if this is reasonable for the customer and is notified at least three working days beforehand. This is notably the case whenever we are only able to provide deliveries and services in part because of delivery difficulties experienced by our suppliers and sub-suppliers. Where customers do not consider partial deliveries and/or the provision of services in part to be reasonable, they may object to these within three working days of the notification.
(6) Returns require our prior consent in text form. Otherwise, we are not required to accept a return consignment. Any incidental processing fees will be levied individually at cost.

4. Delivery disturbances; Force Majeure

(1) Unless we ourselves are responsible for any delivery delays, any delivery dates provided, whether binding or not, are subject to the reservation that we ourselves are properly supplied on time by our suppliers (reservation as to obtaining supplies from third parties).
(2) If we are unable to deliver the goods ordered on the binding delivery date provided by us for practical reasons that are beyond our control (notably where we for our part duly and properly ordered the goods or products from the sub-supplier, but these were not delivered or not delivered on time to us, so-called matching, covering transactions), we shall inform the customer of this without delay and at the same time advise the estimated, new delivery date. The due date of the service to be provided by us shall be extended accordingly.
(3) If we provide in the order confirmation a non-binding, estimated delivery date, we shall make every effort to deliver the goods ordered to the customer on this delivery date. We shall inform the customer without delay if the goods cannot be delivered on the estimated delivery date, and shall provide a new, binding or non-binding estimated delivery date.
(4) If the service to be provided is also not available within the new delivery deadline for reasons beyond our control, we shall be entitled to rescind the contract in full or in part; if the customer has already paid a consideration, we shall refund this without delay. Customers' statutory rights of rescission shall not be affected by this.
(5) In the event of the occurrence of a force majeure event leading to disruptions at our end or to our sub-suppliers, then we shall be entitled to extend the delivery deadline by the duration of the impediment. We shall inform the customer without delay in text form (as a rule, via email) of the start and end dates of such circumstances. If the service to be provided is permanently not available on account of such an event, i.e. even within the time afforded by a reasonable extension of the delivery deadline, paragraph (4) shall apply accordingly, including the refund of any considerations already paid.
(6) An event within the meaning of paragraph (5) may include but shall not be limited to:
   a) War (whether war is declared or not), hostilities, aggression, acts of foreign enemies, comprehensive military mobilisation;
   b) Civil war, riots, rebellion and revolution, military or other seizure of power, uprising, acts of terrorism, sabotage or piracy;
   c) Currency and trade restrictions, embargo, sanctions;
   d) Lawful or unlawful official acts, observance of legislation or government orders, expropriation, confiscation of works, requisition, nationalisation;
   e) Plague, epidemics, pandemics, natural disasters or an extreme natural event;
   f) Explosion, fire, destruction of equipment, non-availability for a longer period of time of means of transport, telecommunications, information systems or energy;
   g) General industrial disputes such as boycott, strike and lockout, work-to-rule, occupation of factories and buildings.
(7) We shall assume no liability for disruptions to deliveries which are beyond our control.

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5. Warranty

(1) The customer must inspect the goods without delay upon delivery and, for an incomplete or incorrect delivery, as well as any recognisable defects, must object without delay following receipt of the goods, and for other defects, without delay following discovery, in both cases in text form. If such an objection is not made or not made without delay, the delivered goods are deemed to have been approved by the customer.

(2) Customers may not refuse to take delivery of goods on account of insignificant defects.

(3) Insofar as the delivered goods are defective, we will remedy the defects or deliver defect-free deliverables, at our discretion. If any defect cannot be remedied through reasonable expenditure, customers shall where applicable have a right of rescission under the law; customers shall then owe a reasonable amount for the period in which they were able to make use of the respective service. Customers shall not have any right to choose.

(4) Above and beyond what is stated above, customers have no further claims to any warranty. This does not apply to defects which we have fraudulently concealed or where we have guaranteed the condition of the goods. Clause 6 shall prevail with respect to any claims for damages.

(5) Defects arising as the result of the goods not being used as intended are expressly excluded from the scope of the warranty. This applies in particular to defects caused by a failure to follow the instructions and directions for use, maintenance or installation up-to-date and valid as of the date of the order, inappropriate, non-conforming, improper, incorrect or negligent use, natural wear and tear, changes made to the product by the customer or third parties, or by the use or fitting of accessories that do not belong to the respective product.

(6) Where goods contain digital elements, software, firmware, communication interfaces or similar functions, 'intended use' also includes compliance with the security, update, installation, configuration and operating instructions provided by us for the goods in question. The customer shall comply with any security-related updates, patches or other instructions that we provide for the relevant goods, shall pass these on immediately to the relevant contractual and service partners, and shall take appropriate and effective contractual, organisational or technical measures to ensure that they are observed and implemented.

(7) Any use of the delivered goods in countries for which there is no approval in accordance with the requirements for product approval in that specific country does not fall within the scope of the warranty and shall be at the customer's risk.

(8) With regard to the warranty, we would expressly point out as follows:

a) Our goods are products that are designed, intended, manufactured and tested, respectively approved for a specific use and a precise intended purpose. This intended purpose is clear from the materials provided by us, and notably from the instructions and directions for use, maintenance or installation up-to-date and valid as of the date of the order. We assume no liability or warranty for any use of our goods above and beyond this specific use and for any resultant defects.

b) Some of our products may, if they are used improperly (including improper installation), give rise to hazards (fires, short circuits, carbon monoxide poisoning and the like). We assume no warranty or liability for fires and consequential loss or damage arising as the result of the misuse/improper use and/or improper installation of our products by customers or third parties.

c) All our products require professional installation. If our products are not professionally installed, and in particular not in accordance with the respectively up-to-date and valid installation instructions and not by competent personnel, we assume no warranty for defects arising as the result of this non-professional installation, nor any liability arising from the consequences of such an improper installation.

d) We can only guarantee the usability free of defects and the safety of our products if the products are used solely with the original spare parts or original accessories available from us, since our products are tested for functionality, compatibility and safety with these original accessories only. Only if the original spare parts or original accessories are used, therefore, can we guarantee the functionality, compatibility and safety of our products and provide a corresponding warranty against defects for the goods. We shall on the other hand assume no liability and warranty for defects arising as a result of the use of our goods with accessories other than the original accessories available from us, including notably their use with self-made or printed improvised accessory parts or spare parts. The latter may also result in the loss of type approval for third-party devices in which our products are integrated, as type approval for such devices is generally granted on the basis of the original components used in our products.

e) The same applies where defects, security risks or functional impairments are attributable to modifications to software, firmware, interfaces, security functions or configurations (hereinafter referred to as 'modifications') carried out by the customer or third parties and not approved by us. We would however, as a precaution, point to the fact that the use of unsuitable accessory parts or spare parts or modifications to our products that have not been approved by us in connection with our products might not just lead to damage being caused to the products but may also, in the worst-case scenario, endanger the life of the user.

(9) With regards to the use of our products to control devices from third-party providers, the following applies:

a) We maintain no contractual relations with third-party providers who warrant that our products can be used to control devices from these third-party providers. Such a control option is therefore only offered in those cases in which the third-party provider discloses and makes available for use a specification of the interfaces required for this. Such control functions are therefore offered only as additional functions, without obligation, that go beyond the scope of the function owed. There is no entitlement to future support for these control functions and they are subject at all times to the reservation that there is technical facilitation and legal acquiescence on the part of the third-party provider.

b) If our products are used to control devices from third-party providers, we shall be liable only for the correct implementation of the API interface which the respective third-party provider makes available in our products. Our area of responsibility ends at the point at which our product correctly sends the third-party provider's device an instruction that matches the third-party provider's API specification as notified to us.

c) Where third-party providers implement our products into their devices via an API interface – for example, when our products are controlled via a third-party panel – the third-party provider is responsible for the correct implementation and functionality of the API interface.

d) We assume no liability for compatibility issues or errors caused by any subsequent change to the API used by a third-party provider. If the third-party provider subsequently changes its API specification, thereby making the product no longer compatible with our products, this does not come under our area of responsibility. When using the products the customer shall observe the technical instructions provided by us for this purpose, as well as any safety and update instructions, and shall not take or arrange for any measures that could compromise the security or functionality of the interface or the products connected via it.

(10) The warranty period is two years from delivery to the customer.

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6. Liability; Limitation of liability

(1) We shall accept unlimited liability for damages in the event of intent and gross negligence only. Where material contractual obligations are breached, we shall also be liable in the event of ordinary negligence. Material contractual obligations, also known as primary obligations, are understood to be obligations without which the proper performance of the contract is not even possible and on the fulfilment of which the contracting party may rely.
(2) Our liability to pay damages, should material contractual obligations be breached, is in each case limited to the loss or damage that is foreseeable and typical for that type of contract.
(3) We rule out any liability above and beyond this.
(4) The above exclusions and/or limitations of liability apply also to the liability of our salaried employees, employees, members of staff, agents and subcontractors, and operate in particular to the benefit of shareholders, members of staff, agents, executive bodies and their members in terms of their personal liability.
(5) The above limitations of liability shall not apply to liability in case of injury to life, body and health, the fraudulent concealment of any defect or the assumption by us of a guarantee, or liability pursuant to the Products Liability Act.
(6) Customers are obliged to notify us without delay in text form, or to allow us to record, loss or damage for which we are obliged to assume liability.
(7) Customers will inform us without delay as soon as they receive claims from third parties that are related or may be related to goods supplied by us. The same applies to administrative rulings and to any security risks, vulnerabilities, security incidents or other circumstances of which he becomes aware that may affect the cybersecurity, product safety or compliance of the goods we supply. . Customers will keep us informed on an ongoing basis in such matters and will coordinate with us to decide on a further course of action. To the extent necessary to prevent or mitigate risks, it shall communicate appropriate and effective security, update, warning or remedial measures to contractual and service partners or end users of our products.

7. Payment

(1) We are entitled to issue invoices immediately for partial deliveries and services provided in part (cf. clause 3.).
(2) Our invoices are due as of the invoice date, but no earlier than upon receipt of the invoice and to be paid without deductions. For new customers and for deliveries outside of Germany – unless otherwise agreed on – payment is due on delivery or in advance.
(3) Customers may not withhold payments based on counterclaims, respectively offset them against counterclaims, unless the customer's counterclaims (i) are undisputed, (ii) have been legally established or (iii) are contractual counterclaims from the customer arising from the legal transaction forming the basis for our claims for payment.
(4) In the event of any delayed payment by customers, we are entitled to charge interest for a delayed payment at the statutory amount. Additional statutory claims, such as for example rescission and damages, shall remain unaffected by this.
(5) All prices are net, plus any applicable value added tax.

8. Retention of Title

(1) Until the complete payment of all our current and future claims arising from the business relationship with the customer, we retain the retention of title to all merchandise delivered by us ("Goods subject to retention of title"). For open accounts, the retention of title also serves as a security for the claim to the outstanding balance.
(2) The goods subject to retention of title may not be pledged to third parties nor pledged or assigned as security before complete payment of the secured claims. The customer is to notify us without delay if an application for the opening of insolvency proceedings has been filed or if and when third parties have seized the goods subject to retention of title.
(3) If the goods subject to retention of title are mixed, combined or processed, we become co-owners correspondent to the respective value percentage of the respective acquisition prices. The customer shall further assign to us, here and now, his (joint) rights of ownership and possession to the new total entity by way of security. Customers shall keep our (joint) property in safekeeping at no charge and according to the principles of sound stewardship.
(4) For the event that customers sell goods subject to retention of title (including goods processed or treated, mixed or combined, either alone or with other goods), or use them in third-party items, they hereby assign to us in advance, by way of security, all claims that have accrued against their customers by way of a consideration for this, even if such claims are valuable consideration for work performed, third-party goods and the like, together with all securities (including rights of ownership and possession). We accept the assignment. Customers are only authorised to sell the goods subject to retention of title, or use them in other items, pursuant to sentence 1, in the ordinary course of business provided they are not in breach of their payment obligations towards us. They are revocably authorised to collect the claims assigned to us themselves, provided they are not in default of payment as stated above. On our request, the customer will disclose the assignment and provide us with the necessary information and documentation for enforcing the claims vis-a-vis his customers.
(5) The customer hereby assigns to us, by way of security, all future claims on account of loss or damage to goods subject to retention of title within his area of responsibility (e.g. insurance claims or tort claims). We accept the assignment.
(6) Should the customer act in breach of contract, we are entitled to request return of the goods subject to retention of title. We are entitled to collect the goods subject to retention of title and for this purpose enter the place where the said goods are stored or used if the customer does not comply with the request for a return or if this is required in order to prevent the definitive destruction or loss of the goods.
(7) The purchaser waives the rights to which he would be entitled based on unlawful interference with possession.
(8) We shall release the securities provided their value is more than 10 percent higher than the value of the secured claims and, in so doing, we have the right to choose which security to release.
(9) If the applicable law of the country in which the goods are located does not permit a retention of title pursuant to clause 8 but permits a seller to hold other comparable security interests in the goods, we may enforce such other security interests. The customer shall take all measures at his own expense which are necessary to confirm and safeguard the retention of title or other security rights.

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9. Export Control

(1) When passing on the goods delivered by us to third parties, the customer must comply with the applicable provisions of national and international (re-) export control law, including any embargoes, sanctions or other restrictions on the movement of goods. In any case, when passing on our goods delivered to the customer to third parties, the customer must observe the relevant (re-) export control regulations of the Federal Republic of Germany, the European Union, the United States of America and the United Nations. Insofar as these conflict with the fulfilment of the contract, we shall be released from its obligation to perform.

(2) Before passing on the goods delivered by us to third parties, the customer shall, in particular, check and take appropriate measures to ensure that
   a) he does not violate a relevant embargo of the Federal Republic of Germany, the European Union, the United States of America and the United Nations – also taking into account any restrictions on domestic business and any prohibitions on circumvention – by passing on such goods to third parties, by brokering contracts for such goods, work and services or by providing other economic resources in connection with such goods; in particular, the customer must ensure that he does not directly or indirectly sell, deliver, transfer or export products purchased from us that are subject to export controls to natural or legal persons, organisations and institutions in the relevant EU embargo countries and other sanctioned countries or for use in these countries.
   b) goods are no further exported or re-exported directly or indirectly to Russia/Belarus and exports for use on Russian/Belarusian territory are also prohibited; in particular, the customer may not sell, export or re-export, either directly or indirectly, to the Russian Federation or Belarus or for use in the Russian Federation or Belarus any goods supplied under this Agreement or in connection with the Agreement that fall within the scope of Art. 12g Russia Embargo Regulation 833/2014 or Art. 8g Belarus Embargo Regulation 765/2006 in their current versions, including any subsequent, amended or replacement provisions;
   c) such goods are not intended for a prohibited or nuclear or weapons-related use requiring authorisation, unless any necessary authorisations have been obtained;
   d) the regulations of all relevant sanctions lists of the Federal Republic of Germany, the European Union, the United States of America and the United Nations regarding business transactions with companies, persons or organisations named therein are complied with.

(3) The customer shall notify us immediately of any problems in the application of this clause 9, including any relevant activities of third parties which could frustrate the purpose of this clause 9. If necessary for the performance of export control checks by authorities or by us, the customer shall, upon request, immediately provide us with all information about the final recipient, the final destination and the intended use of the goods delivered by us as well as any export control restrictions applicable in this respect.

(4) The customer shall indemnify us in full against all claims asserted against us by authorities or other third parties due to the customer's failure to comply with the above export control obligations. In the event of a breach of the provisions of this clause 9, we reserve the right to appropriate legal remedies as provided for by the provisions of national and international (re-) export control law. Any breach of the provisions of this clause 9 shall constitute a material breach of material contractual obligations and we shall be entitled to demand appropriate remedies and, in particular, to seek remedies as provided by national and international (re)export control law. This also includes the right to terminate or withdraw from the Agreement.

10. Data privacy statement

We process and use customers' personal data, notably contact details, to process the order. Details can be found in the privacy policy at https://www.truma.com/gb/privacy-policy/.

11. Jurisdiction; applicable law; final provisions

(1) Place of performance for our deliveries and performances and for the obligations of the customer is Putzbrunn.

(2) The law of the Federal Republic of Germany shall apply, with the exclusion of the conflict of laws rules, Private International Law and the UN Convention on Contracts for the International Sale of Goods (CISG).

(3) Exclusive place of jurisdiction for all disputes from and in connection with the delivery relationship is, if the customer is a registered trader, corporate body under public law or special fund under public law, as well as in case the customer does not have a place of jurisdiction domestically, Munich. We are, however, also entitled to take legal action at the customer's place of business. Unaffected remain the legal place of jurisdiction for the enforcement proceedings as well as other legal places of jurisdiction, which cannot be deviated from by means of agreements between the parties.

(4) § 312i Par. 1 Sent. 1 No.1, 2 and 3 as well as § 312i Par. 1 Sent. 2 German Civil Code, which provide for certain obligations on part of the entrepreneur for contracts in electronic commerce, are waived.

(5) If a provision is or becomes ineffective, the validity of the remaining provisions shall remain unaffected.

(6) In case of such invalidity, the invalid term or condition must be replaced by a valid term or condition that comes closest to the economic objective pursued by the invalid provision.

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