

General Terms and Conditions of Sale and Delivery of TRACTO-TECHNIK GmbH & Co. KG

I. General Terms and Conditions of Sale and Delivery

1. General Conditions

- 1.1. Agreements with our customers are formed solely on the basis of the following General Terms and Conditions of Sale and Delivery (hereinafter referred to as "T&Cs"), even if we do not expressly refer to them in the future once a continual business relationship has been established. These T&Cs shall only apply, however, if the customer is an entrepreneur, a legal entity under public law or a special fund governed by public law.
- 1.2. Any conditions stated by the ordering party that contradict, expand on or deviate from these conditions shall apply only if and when confirmed by us in writing. Our T&Cs also apply if delivery is effected by us without reservation while being aware of contradictory or deviating conditions of the ordering party.
- 1.3. In the event that we entrust software to our customer, our separate terms and conditions governing the licensing of software products shall apply in addition.

2. Offers

- 2.1. Our offers are non-binding and subject to alteration, unless otherwise indicated. Especially concerning the scope of supply, we are only obligated as specified in our written order confirmation. Changes and amendments to our order confirmation shall only be valid when submitted in writing.
- 2.2. Documents provided with the offer, such as illustrations, drawings, indications of weights, dimensions and other services outside the offer are only approximate, unless they have been expressly specified as binding. We retain full copyright and – unless they form part of the scope of delivery – all ownership rights to cost proposals, drawings and technical documents; they must not be made accessible to third parties.
- 2.3. Details concerning services and prices given in catalogues and electronic media shall be binding only with our express written confirmation to that effect.

3. Prices and payment

- 3.1. Our prices are valid ex works, excluding shipment, packing and value-added tax at the statutory rate. The minimum net order value per shipment is EUR 50.00. Orders below this value are subject to an extra charge for small quantities in the amount of the difference between the actual and the minimum order value. Services rendered and other duties performed on weekends or public holidays, as well as overtime, are charged with an appropriate allowance.
- 3.2. Our invoices are payable within ten days of the date of invoice at the indicated cash discount rate or within 30 days of the date of invoice without deduction. An exception is made in the case of invoices for services and for the rental of machines and devices; these are payable within 14 days of the date of invoice without any deductions. Without any further notice from us (e.g. payment reminder) being necessary, the ordering party will be in default the day after the due date, unless the invoice has been paid by then.
- 3.3. Bills of exchange are accepted by us only on account of performance and subject to their discountability. Costs incurred for discounting and collection shall be borne by the ordering party.
- 3.4. The ordering party is not entitled to withhold or set off payments against any counterclaims, unless the counterclaim is undisputed or has been established as final and absolute or is in a close relationship of mutuality to our claim.
- 3.5. In case of unjustified termination of the contract, 15% of the net sales price of the goods will be charged as a lump-sum compensation. Where applicable, we reserve the right to give proof of a higher loss actually suffered and to recover the respective amount. This does not affect the right to recover other claims to which we are entitled by law or by these T&Cs.

4. Delivery

- 4.1. We will advise the ordering party of delivery times at the time of order acceptance; these can be either binding or non-binding, as specified in each case. Delivery times start when the contract is formed, though not before the ordering party has duly and promptly fulfilled their cooperation obligations that are necessary to enable us to fulfil our obligations. Even if binding dates have been agreed, we shall be in default only upon receipt of a reminder.
- 4.2. Partial deliveries are permitted, provided these can be used by the ordering party within the scope of the contractually agreed intended use, the delivery of the remaining goods ordered is ensured and the ordering party is not subject to extensive additional effort or extra costs as a result (unless we declare we are prepared to absorb these costs).

- 4.3. The delivery period shall be deemed honoured if, by the time the delivery period expires, the goods have left the factory or notice has been given that they are ready for collection. If dispatch has been agreed, delivery times refer to the time at which the goods are handed to the first carrier.

- 4.4. We cannot be held liable should a delivery prove impossible or in the case of delays in delivery due to force majeure or other events that were unforeseeable upon formation of the contract (e.g. any kind of disruption to operations, complications in procuring materials or energy, transport delays, strikes, lawful lockouts, shortages of staff, energy or raw materials, difficulties obtaining the necessary approvals from authorities, official sanctions or the failure of suppliers to deliver the correct goods on schedule or at all), and for which we are not accountable. We reserve the right to withdraw from the contract if such occurrences substantially complicate delivery or make delivery impossible, and if the disruption is not merely of a temporary nature. If the disruption is of a temporary nature, delivery times shall be extended and/or delivery dates postponed to account for the period of disruption plus a reasonable start-up period. If such a delay makes acceptance of delivery unreasonable for the ordering party, the latter shall be entitled to withdraw from the contract by issuing us immediate written notice.

5. Transfer of risk and acceptance of goods

Delivery is carried out FCA ("Free Carrier"). Without prejudice to the rights and obligations laid down in Item 7 of these T&Cs, the ordering party undertakes to accept the goods supplied. Non-acceptance of the goods or the assertion of claims for or in case of early delivery is excluded.

6. Retention of title

- 6.1. All goods supplied remain our property (retained-title goods) until all debts, especially those concerning outstanding balances arising from our business relationship with the ordering party and debts established by the liquidator unilaterally when opting for performance, are paid. This also applies to any debts arising or incurred in the future, e.g. as a result of changes in acceptance, and also where payments are effected for special designated debts.
- 6.2. The ordering party is only permitted to sell the retained-title goods in the ordinary course of business and under reservation of the right of property. The ordering party herewith assigns to us all claims arising from the resale of such goods. The same shall apply to any other claims that take the place of retained-title goods or otherwise accrue with respect to retained-title goods, such as insurance claims or claims arising from unauthorised actions in case of loss or irreparable damage. We herewith accept the above assignment. We revocably authorise the ordering party to collect receivables assigned to us on its own behalf.
- 6.3. We reserve the right to withdraw permission to sell on the retained-title goods and to collect receivables assigned to us, if the ordering party is in arrears or if circumstances become apparent that reduce the latter's creditworthiness. Upon our request, the ordering party undertakes to provide all the information regarding the assigned receivables that is necessary for collection, including the documents required for enforcement, and to notify their debtors of the assignment.
- 6.4. No other disposal of the retained-title goods – especially pledging, assigning securities or mortgaging of goods – is allowed. In any cases of pledging, seizure or other disposals of the goods, the ordering party must immediately inform the third party of our ownership and notify us without delay. If the third party is not in a position to reimburse us for legal expenses or out-of-court settlement costs, the ordering party shall be responsible for these.
- 6.5. The ordering party undertakes to insure the retained-title goods delivered against fire, break-in, theft and water damage at their own expense.
- 6.6. If the value of our securities exceeds the amount of our claims by more than 20%, we shall be obligated, upon request of the ordering party, to release securities in this respect at our discretion.
- 6.7. In case of violation of the contract by the ordering party, especially if due to delayed payment, we shall be entitled, upon issuing a reminder, to redemption of the goods and the ordering party undertakes to surrender the goods. If we claim redemption of the goods, this shall not be deemed a cancellation of the contract unless expressly declared.

7. Liability for material defects

- 7.1. Defects must be immediately reported in writing to us giving a detailed list of all defects found. This also applies if the complaints relate to the performance of the machines. The notice of defects must be submitted along with the acceptance note confirming the delivery of the accompanying documents (instruction manuals etc.) and the technical training conducted by an expert. In all other respects, Section 377 German Commercial Code (HGB) shall apply for commercial sales.



- 7.2. It is our sole discretion to choose between remedying a defect or replacement. If we opt for remedy, such remedy shall be deemed failed only after the second unsuccessful attempt. Replaced parts shall become our property.
- 7.3. Any delivery of used goods agreed on a case-by-case basis with the ordering party excludes any warranty against material defects. This does not, however, affect our liability for fraudulently concealed defects, arising from the assumption of a warranty or in accordance with the Product Liability Act.
- 8. Liability for damages/period of limitation/our protective rights**
- 8.1. Our liability for damages of any kind, including for breaches of duty by people whose culpability we are legally required to represent, is limited to malicious intent and gross negligence. This shall not apply in the event of injuries, loss of life or impairments to the health of the ordering party, fraudulently concealed defects, the acceptance of a warranty, claims arising from the Product Liability Act and claims for violation of material contractual obligations, i.e. obligations that are essential to the proper performance of the contract and upon the performance of which the ordering party therefore relies and may rely. In the event of a breach of material contractual obligations, we shall, however, be liable only for foreseeable damages typically incurred.
- 8.2. If our liability for damages is excluded or restricted, this shall also apply with regard to the personal liability for damages of our employees, workers, staff members, representatives and vicarious agents.
- 8.3. We are not liable for damages resulting from operational errors for which we are not responsible. The operating instructions must be followed. Furthermore, we are not liable for damages resulting from the use of unsuitable accessories, unsuitable equipment or replacement materials, from incorrect installation or commissioning, from unsuitable building ground or external mechanical, chemical or electrical influences, unless we are attributable for these circumstances.
- 8.4. We are not liable for unauthorised alterations to the goods made by the ordering party or third parties or any other alterations to the goods completed without our prior approval.
- 8.5. For the sale of new goods and the performance of services, the limitation period of warranty claims is one year from delivery of the goods and/or acceptance of the service; for the sale of used machines, a warranty period of six months from delivery shall apply. Sentence 1 shall not apply to claims to damages relating to injuries, loss of life and impairments to health arising from violations of obligations as a result of malicious intent and gross negligence, in the cases of Section 438(1) no. 1 and no. 2 of the German Civil Code (BGB) and Section 634a(1) no. 2 BGB and shall also not apply in the event that we fraudulently conceal a defect. In these instances, the relevant statutory limitation period regulations shall apply. The legal provisions governing recourse claims (Sections 478 and 479 BGB) shall otherwise remain unaffected.
- 8.6. The reconstruction and/or modification of our machines – or parts of them – as well as our tools is not allowed if this infringes on protective rights (patents, utility models or copyrights) and/or the reconstruction is unfair according to the definition of Section 1 of the German Act Against Unfair Competition (UWG) (complementary protection of performances). In case of violation, we are entitled to request that the ordering party refrains from doing so and/or to claim damages.
- 9. Rights in case of imminent or actual breach of contract by the ordering party**
- 9.1. If the ordering party falls completely or partially behind with a payment, if a bill of exchange or a cheque of the ordering party's is not honoured, or if facts become known that point to a worsening of the financial situation of the ordering party, or if a motion for insolvency proceedings is filed, we shall be entitled to request the immediate payment of all non-settled invoices (even if they have not yet fallen due) and to request advance payment for all outstanding deliveries, or to cancel the contract with regard to a part of or all deliveries without prejudice to the rights to which we are otherwise entitled, without having to specify a notice period or grace period in any of these cases. We shall not, however, be entitled to cancel the contract if the ordering party files a motion for insolvency proceedings. The ordering party can be released from the obligation to make advance payments and from our right of cancellation by providing appropriate securities. We shall be entitled to the above rights also in case the company of the ordering party is dissolved or liquidated, or if business activities cases, if major parts of the company are transferred or if enforcement measures are taken with respect to the assets of the ordering party.
- 9.2. The ordering party shall not be entitled to assert claims for damages in case of a cancellation for one of the above reasons.
- 10. Taking back of items ordered in error**
- We have no obligation whatsoever to take back new goods supplied without defects if the ordering party ordered such goods by mistake. If, however, we take back these goods as a gesture of goodwill, we are entitled to request from the ordering party, without any special agreement, a restocking fee of 15% of the net invoice amount and to deduct the respective amount from the purchase price. In the event that such goods have been used and/or damaged after transfer of risk to the ordering party and we still take them back as a gesture of goodwill, the ordering party shall also reimburse us for the consequent loss in value; we are also entitled to deduct this amount from the purchase price. Cases of an effective challenge according to Sections 119 et seq. of the BGB are not covered by this provision. In case the ordering party contests the contract because of a mistake, they shall make good any damage accruing there from.
- 11. Exclusion of taking back and disposing of waste electrical and electronic equipment**
- 11.1. If the goods fall within the scope of application of the Electric and Electronic Equipment Act (ElektroG), the ordering party shall assume the obligation to dispose of the equipment at its own expense upon termination of use in accordance with legal requirements and shall release us from the obligation to take the items back and indemnify us against any related claims of third parties. If the ordering party passes the goods on to any commercially active third party, the ordering party shall obligate this third party to dispose of the equipment at its own expense and in accordance with legal requirements upon termination of use and to obligate any other commercial purchaser accordingly, if the equipment is passed on again. If the ordering party passes the goods on and fails to obligate the third party to dispose of the goods and re-obligate subsequent parties, the ordering party shall, at its expense, take the goods back upon termination of use and dispose of them in accordance with the German Electrical and Electronic Equipment Act (ElektroG).
- 11.2. Our claim for assuming the disposal of the equipment and for being released from the obligation of taking it back shall only lapse after a period of two years after termination of use of the goods with the limitation period commencing no earlier than the time of receipt of the ordering party's written notification of the termination of use.
- 12. Place of performance, place of jurisdiction and applicable law**
- The place of performance is Lennestadt, the place of business of our company; this shall also apply to any claims concerning bills of exchange and cheques. If the ordering party is a merchant, a legal entity under public law or a special fund governed by public law, or if they have no general place of jurisdiction within Germany, the exclusive place of jurisdiction for all disputes arising from or in relation to the contract shall be the court of our registered office. However, we shall also have the right to initiate legal proceedings at the ordering party's general place of jurisdiction if we see fit. Legal regulations regarding sole responsibility remain unaffected by this. The contract shall be governed by the laws of the Federal Republic of Germany. The application of the UN Convention on Contracts for the International Sale of Goods is excluded.
- 13. Severability clause**
- If one or several of the above conditions should be or become invalid, this does not affect the validity of the remaining conditions or the validity of the contract. The parties to the contract undertake to replace the invalid condition by a condition that corresponds to it as closely as possible with regard to ensuring commercial success.
- II. Conditions governing work and services contracts**
- Separate terms and conditions shall apply to object-related demonstrations. The provisions stated in Item I of these T&Cs, with the exception of Items 3.5 and 6, shall apply accordingly for the remaining work and services contracts, with a limitation period of one year (as per Item 8.5) applying only to those work and services contracts that cover work on movable objects (repair work in particular) as well as planning and monitoring activities.
- III. Conditions for SIM card usage**
- 1. Mobile data connection**
- Certain services, the use of which requires the customer to complete online registration, are provided via a SIM card installed in the machines. The customer shall be made aware of this during the registration process. TRACTO-TECHNIK can also use SIM cards installed in the machines to resolve defects (debugging of software by way of remote access) or to perform agreed remote maintenance tasks via VPN.



2. General information

A SIM card installed in the TRACTO-TECHNIK machines establishes a data connection to the respective operator of the telecommunications network (telecommunications service provider). The customer does not need their own mobile phone contract. The customer does not incur any other roaming and connection fees.

The availability of the services requires a functional and operational mobile phone network. The availability and performance of the mobile data connection can be affected by external factors, such as the coverage of the radio stations operated by the network operator, the position of the machines or atmospheric and topographic interferences.

3. Purpose and functionality

For the purposes specified in Item 1 above and, in particular, within the scope of the purpose detailed in sentence 1 thereof, the mobile data connection is designed to link TRACTO-TECHNIK and its customers for the planning and implementation of machine usage. The complexity of the underground installation and renewal of pipelines may require the support of the manufacturer. The mobile data connection makes possible the planning and calculation of bore paths, the tensile load measurement or the monitoring of machine parameters. The information is displayed in a web-based app.

4. Data protection

4.1. Type of personal data collected

TRACTO-TECHNIK collects, saves and uses planning data, location data, position data and machine data. Planning data is all data associated with the calculation of bore paths. Location data describes the exact position of the drill head in the drilling process. Position data indicates the geographical location of the machine determined by Global Positioning System (GPS) (longitude and latitude of position). Machine data is technical performance data of the machine in use.

A personal reference of this data with an individual user of the machine is only possible when the customer uses the software for the web-based app. In this respect the personal data which the user has entered in the app, e.g. as part of creating a user account, is recorded.

In addition to the data entered in the app, TRACTO-TECHNIK also collects, saves and uses usage data in the context of legal provisions. Usage data includes the start, end and duration of the machine usage, as well as the GPS location of the user.

4.2. Data transfer

The data mentioned in 4.1. is only transferred to TRACTO-TECHNIK. The data transmitted is also used in a completely anonymous form for the purposes of quality improvement.

4.3. Order processing

TRACTO-TECHNIK forms an order processing contract between the seller and the purchaser for the purpose of storing and using the data specified in 4.1 in compliance with the legal requirements of Article 28 of the GDPR.

4.4. Clauses I.12 and I.13 of the general conditions of sale and delivery apply to the use of SIM cards.

4.5. Remote maintenance

In the case of remote maintenance work, data is processed in an anonymised form. The activities on the end device are not secretly monitored. Access to an end device is only established via the SIM card upon prior receipt of the customer's express consent or that of their vicarious agent. Updates completed in the same manner, but outside working hours, can be made without the employee's consent. Misuse of administrator rights may lead to the contract being terminated without notice.

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