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## **TIRA GmbH Standard Terms of Sale**

### **1. Scope**

1. These Standard Terms of Sale shall apply to the entire business transactions between TIRA GmbH (hereinafter referred to as "TIRA" ) and the customer even if they are not mentioned in subsequent contracts. They shall apply accordingly to works and services. For works, the acceptance of delivered products is replaced by the acceptance of the work and for services, it is replaced by the reception of the services.
2. Terms set by the customer which are contrary to, additional to or deviate from these Standard Terms of Sale do not become part of the contract without the advance written agreement of TIRA. These Standard Terms of Sale shall also apply if TIRA implicitly executes a delivery to the customer being aware of its contrary, additional or deviating terms.
3. Agreements additional to or deviating from these Standard Terms of Sale which are reached between TIRA and the customer in order to implement a contract must be put into writing in the contract. This shall also apply to a waiver of this written form requirement.
4. Rights additional to these Standard Terms of Sale, to which TIRA is entitled by law or other agreements, shall remain unaffected.

### **2. Conclusion of a contract**

1. Offers made by TIRA are subject to confirmation and are non-binding.
2. Figures, drawings, weights, measures, performance and consumption figures as well as other descriptions of the products in the offer documents are only roughly decisive unless they are designated as binding in writing. They do not represent any agreement or guarantee of a respective quality or durability of the products.
3. TIRA reserves all property rights, copyright and other protective rights of all offer documents. Such documents must not be made accessible to any third party. The same shall apply in particular for samples, drawings and other documents of TIRA.
4. An order becomes binding only when it is confirmed in writing by TIRA or when TIRA executes the order, in particular by shipping the products. An order confirmation prepared with the assistance of an automated system, where signature and an indication of the name are lacking, is applied in writing. Silence on the part of TIRA in response to quotes,

requests or other statements from the customer is only deemed to constitute acceptance to the extent agreed in writing. An order confirmation is not binding for TIRA if it contains obvious mistakes or typing or computational errors.

5. If the customer submits an application for the commencement of insolvency or comparable proceedings with regard to its assets or if a legitimate application for the commencement of insolvency or comparable proceedings with regard to the customer's assets on the part of a third party is denied due to insufficient assets, TIRA is entitled to revoke the contract in whole or in part.

### **3. Scope of delivery**

1. The written order confirmation of TIRA is decisive for the scope of delivery. Changes in the scope of delivery made by the customer must be confirmed in writing by TIRA in order to become effective. The products are subject to changes in construction and form as far as the changes are not substantial and they are reasonable for the customer.
2. Partial deliveries are permissible.

### **4. Delivery time**

1. Agreements on delivery periods and dates must be made in writing. Delivery periods and dates are non-binding unless they have been designated by TIRA in advance in writing.
2. The delivery period starts with the dispatch of the order confirmation by TIRA, but not before complete submission of documents, permissions and releases by the customer, clarification of all technical questions and receipt of an agreed advance payment or, in the case of an international business, receipt of the total payment. In the case of a delivery date, the delivery date is postponed appropriately if the customer does not timely submit the documents and permissions, does not grant releases in time, not all technical questions have been clarified in time or the agreed advance payment or, in the case of an international business, the total payment is not received in time by TIRA. Adherence to the delivery time requires the timely and proper fulfilment of the other obligations of the customer.
3. The delivery time is met if the products leave the factory prior to expiry or if TIRA provides notice that the products are ready for collection or shipment. Compliance with delivery times is subject to timely and proper delivery to TIRA from its suppliers.

4. In the case of a delay in delivery, the customer may revoke the contract if a reasonable additional period has been granted to TIRA following the delay in delivery.

## **5. Prices and payment**

1. Unless otherwise agreed, the prices shall apply ex factory and do not include any shipment or packaging costs, insurance, statutory taxes, customs or other duties. Costs incurred to such an extent, in particular the costs for packaging and transport of the products, will be charged separately. Statutory VAT will be stated separately in the invoice and in the statutory amount on the day of the accounting.
2. Orders for which expressly agreed fixed prices have not been agreed to and for which delivery time is six weeks after the conclusion of the contract, will be invoiced by TIRA using the list prices valid on the day of delivery. Entry of the list price valid on the day of the order on an order form or an order confirmation shall not be deemed as agreement on a fixed price. If the price is increased by more than 5%, the customer is entitled to revoke the contract. Upon request of TIRA, the customer will declare immediately whether it wants to exercise its right to withdrawal. If there are production-related price increases on the day of delivery, TIRA is entitled to adjust the price accordingly regardless of the offer and the order confirmation.
3. Unless otherwise agreed, the customer will make an advance payment in the amount of 20% of the gross contract price without deduction within 14 days from the date of the order confirmation and invoice date. The remaining gross contract price will be charged after the service is provided. This invoice must be paid in all events without deduction within 14 days from the invoice date. Date of payment is considered to be the day that TIRA can dispose of the payment. In the case of a delayed payment, the customer must pay default interest in the amount of 8% over the respective base rate p.a. This is without prejudice to additional rights on the part of TIRA.
4. In the case of foreign business, payment will be made prior to delivery different from paragraph 3 unless otherwise agreed in writing.

## **6. Transfer of risk**

1. The risk of accidental loss and of accidental deterioration is transferred to the customer as soon as the products are given to the person executing transport or leave TIRA's factory for the purpose of shipping. In the case of collection by the customer, the risk is transferred to the customer as soon as it is informed about the readiness for collection. Sentences 1 and 2 shall apply even if delivery is executed in parts or TIRA has taken on further services, for example transportation costs or installation of the products for the customer.
2. If the customer falls into default of acceptance, TIRA may demand compensation for the resulting damage including any additional expenses. The same shall apply if the customer breaches other duties to cooperate unless the customer is not at fault for the breach of other duties to cooperate. The risk of accidental loss or accidental deterioration of the products is transferred at the time stated in paragraph 1 if the customer falls into default of acceptance or breaches other duties to cooperate. If the customer falls into default of acceptance at an earlier time, the risk is transferred to the customer at the time it falls into default of acceptance. TIRA is entitled to dispose otherwise of the products and to supply the customer within a reasonably extended period of time when a reasonable period of time granted by TIRA expires without result.
3. If shipping is delayed due to circumstances for which TIRA is not at fault, risk is transferred to the customer when it is informed about readiness for shipment.
4. Notwithstanding its claims for defects, the customer must accept delivered products even if they have negligible defects.

## **7. Claims for defects**

1. The customer's claims for defects require them to inspect the delivered products on receipt, as far as this is reasonable also by a test processing or test use, and to immediately inform TIRA in writing about patent defects, at the latest two weeks after receipt of the products. TIRA must be informed in writing about latent defects immediately after their discovery. The defects must be described in writing by the customer when it informs TIRA. The claims for defects of the customer furthermore require that during planning, construction, assembly, connection, installation, commissioning, operation and maintenance of the products the guidelines, notes, policies and conditions in the technical information, assembly or operating instructions, planning policies, interpretation guidelines

and other documents are observed, in particular that maintenance is carried out and proven duly and that recommended components are being used.

2. If the products are defective, TIRA shall be entitled to fix it and may choose whether to eliminate the defect or to deliver a non-defective product. In the case of fixing, TIRA shall be obliged to bear the costs necessary for fixing, in particular costs for transportation, toll, labour and material as long as these do not increase because of the products having been transported to a place different from the delivery address. Costs for personnel and materials claimed in this context by the customer must be calculated on the basis of its cost. Replaced parts shall become property of TIRA and must be returned to TIRA.
3. In the event TIRA is not willing or able to effect cure, the customer may, at its option, revoke the contract or reduce the contract price, without prejudice to any claims for damages or reimbursement of expenses. The same applies in the event the attempt at cure is without success, is not reasonable for the customer or extends beyond a reasonable amount of time due to reasons for which TIRA is at fault.
4. The customer's right of revocation is excluded if it is unable to return the goods received and this is not due to the fact that return is not possible based on the nature of the goods received, that TIRA is at fault or the defect first became apparent when processing or transforming the products. The right of revocation is further excluded if TIRA is not at fault for the defect and if the customer is obligated to pay compensation in lieu of return.
5. There are no claims for defects in the case of defects due to normal wear and tear, in particular in the case of parts subject to consumption, improper handling, installation, in particular installation on an unsuited surface, use or storage or improperly performed modifications or repairs to the products by the customer or a third party. The same applies with respect to defects for which the manufacturer is at fault or which have a technical cause other than the original defect.
6. Claims of the customer for the reimbursement of expenses as damages in lieu of performance are excluded to the extent the expenses would not have been incurred by a reasonable third party.
7. TIRA provides no guarantees, in particular no guarantees as to quality or durability, to the extent not otherwise agreed in writing in specific cases.
8. The limitation period for claims for defects on the part of the customer is one year. If the defective products have been used for a building in accordance with their normal manner of use and there this caused them to be defective or a defect in the building is involved, the limitation period is five years. This also applies to claims resulting from unauthorised

acts resulting from a defect in the products. The limitation period commences upon delivery of the products. The reduction of the limitation period does not apply to unlimited liability on the part of TIRA for damages from the breach of a guarantee or from injury to life, limb or health, for intent and gross negligence and for product defects. A response on the part of TIRA to a defect claim asserted by a customer is not deemed to be the start of negotiations regarding such claim or the circumstances upon which the claim is based to the extent the defect claim is rejected by TIRA in its entirety.

## **8. Liability on the part of TIRA**

1. TIRA has unlimited liability for damages resulting from the breach of a guarantee or from an injury to life, limb or health. The same applies in cases of intent or gross negligence. In cases of simple negligence, TIRA is only liable to the extent material duties have been breached which result from the nature of the contract and which are of particular importance to achieving the purpose of the contract. Upon the breach of such duties, default and impossibility, liability on the part of TIRA is limited to such damages as must be typically expected in connection with this contract. Strict legal liability for product defects remains unaffected.
2. Insofar as the liability of TIRA is excluded or limited, this shall also apply to the personal liability of the staff, employees, associates, representatives and other agents of TIRA.

## **9. Liability for defective products**

1. The customer shall not modify the products, in particular it will not modify or remove existing warnings regarding danger in the case of improper use of the products. In the event of a breach of this obligation, the customer shall indemnify and hold TIRA harmless as to claims asserted by third parties unless the customer is not responsible for the defect giving rise to liability.
2. In the event TIRA is required to initiate a product recall or warning based on a product defect, the customer shall cooperate to the best of its ability with such measures as TIRA believes to be necessary and reasonable and will support TIRA in such measures, in particular when determining the necessary customer data. The customer is obliged to bear the expenses of the product recall or warning unless it is not responsible for the product defect and the resulting damages based on principles of product liability law. Additional claims of TIRA shall remain unaffected.

3. The customer shall immediately inform TIRA in writing regarding risks related to the use of the products of which it is becoming aware and of potential product defects.

## **10. Force majeure**

1. To the extent TIRA is prevented from fulfilling its contractual obligations, in particular from delivering the products, due to a force majeure event, TIRA is released from its duty to perform for the duration of the hindrance and a reasonable lead period thereafter without being obligated to pay damages to the customer. The same applies if it becomes unreasonably difficult or temporarily impossible for TIRA to satisfy its obligations due to unforeseeable circumstances for which it is not responsible, in particular as a result of labour disputes, governmental action, energy shortage and major operating disturbances. The foregoing also applies if these circumstances are experienced by a supplier of TIRA. The foregoing also applies in the event TIRA is already in default. To the extent TIRA is released from its obligation to perform, TIRA shall return any advance work performed by the customer.
2. TIRA is entitled to revoke the contract if such an impediment lasts for more than four months and TIRA no longer has an interest in fulfilling the contract as a result of such hindrance. On demand of the customer, following expiry of a deadline, TIRA will state whether it intends to exercise its right of revocation or will deliver the products within a reasonable period.

## **11. Retention of title**

1. The products delivered shall remain the property of TIRA until full payment of all claims to which TIRA is entitled under the commercial transaction with the customer. The customer is obliged to handle products subject to retention of ownership with care for the duration of the retention of title. In particular, it is obligated to adequately insure the products at its own cost against fire, water and theft risks at replacement cost. On request, the customer is required to provide documentation of the purchase of such insurance to TIRA. The customer now assigns all claims for compensation from such insurance to TIRA. TIRA hereby accepts this assignment. To the extent an assignment should be impossible, the customer hereby instructs the insurance provider to make any payments only to TIRA. Additional claims of TIRA shall remain unaffected. In the event the customer cannot provide TIRA documentation of the conclusion of an insurance policy following expiry of a

reasonable period provided by TIRA, TIRA is entitled, but not obligated, to conclude the relevant insurance policy at the customer's expense.

2. The customer may only sell products subject to retention of ownership in the ordinary course of business. The customer is not entitled to pledge, provide as security, or make other dispositions with regard to the products subject to retention of ownership which could endanger TIRA's ownership interest. In the case of pledges and other attachments by third parties, the customer must immediately notify TIRA in writing and must provide all necessary information, must inform such third party of TIRA's ownership interest and cooperate in measures undertaken by TIRA to protect its retention of ownership. To the extent the third party is not able to reimburse TIRA for its in-court and out-of-court expenses for purposes of asserting its ownership interest, the customer is obliged to reimburse TIRA for the resulting loss unless the customer is not responsible for the breach of the duty.
3. The customer now assigns receivables from the sale of the products, with all ancillary rights, to TIRA and that is regardless of whether the products subject to retention of ownership are sold with or without further processing. TIRA immediately accepts this assignment. To the extent an assignment should be impossible, the customer hereby instructs the third party debtor to make any payments only to TIRA. The customer is revocably empowered to collect in its own name the receivables assigned to TIRA on a fiduciary basis. Amounts collected must be immediately transferred to TIRA. TIRA may revoke the customer's collection authority as well as the customer's right for re-sale for cause, in particular if the customer does not properly fulfil its payment obligations to TIRA, defaults on payment, discontinues payment or if the customer submits an application for the commencement of insolvency or comparable proceedings for the settlement of debts with respect to the customer's assets or if a legitimate application for the commencement of insolvency or comparable proceedings with regard to the customer's assets on the part of a third party is denied due to insufficient assets. In the event of a blanket assignment by the customer, the rights assigned to TIRA must be expressly excluded.
4. Upon request by TIRA, the customer is obliged to inform the third party debtor immediately of the assignment and to procure for TIRA the information and documents required for collection.
5. In the event of conduct in violation of the contract, in particular in the case of a default in payment on the part of the customer, TIRA is - without prejudice to its other rights - entitled to revoke the contract following expiry of a reasonable period set by TIRA. The customer must provide TIRA or its agent immediate access to the products subject to retention of ownership and surrender them. Following the corresponding timely notice, TIRA may



otherwise sell the products subject to retention of ownership for purposes of satisfying its claims which have come due against the customer.

6. Processing or transformation of the products subject to retention of ownership by the customer is always performed on behalf of TIRA. The customer's expectant rights in the products subject to retention of ownership continues in the processed or transformed goods. If the products are processed or transformed in association with articles which do not belong to TIRA, TIRA acquires a co-ownership interest in the new article in proportion to the value of the products delivered to the other articles processed at the time or their processing or transformation. The same applies if the articles are so closely associated or intermingled that TIRA loses ownership therein. The customer shall hold the new articles for the benefit of TIRA. The same provisions applicable to products subject to retention of ownership apply otherwise to the article created upon processing or transformation as well as connection or amalgamation.
7. On request of the customer, TIRA is obliged to release the security interests to which it is entitled if the realisable value of the security interests exceed TIRA's claims against the customer by more than 15% taking into account discounts customarily applied by banks. For purposes of valuation, the invoice value of the products subject to retention of ownership and the nominal value of the receivables shall be used. The selection of individual goods to be released lies with TIRA.
8. In the case of deliveries to other legal systems, in which these retention of ownership provisions do not grant the same security interests as is the case within the Federal Republic of Germany, the customer hereby grants a corresponding security interest to TIRA. To the extent additional measures are required to accomplish this, the customer shall perform all acts necessary to grant such a security interest to TIRA. The customer shall cooperate in all measures required and beneficial to the effectiveness and enforceability of such security interests.

## **12. Non-disclosure**

1. The parties are obliged to keep confidential all information made available to them which is designated as confidential or which is recognisable as trade or business secrets based on other circumstances, for an unlimited period and, to the extent reasonable for the business relationship, may neither record nor transmit or exploit them.

2. Each party shall, by means of appropriate agreements with its employees and agents, ensure that they are likewise forbidden for an unlimited period from making any own use, distribution or unauthorised recording of such business or trade secrets.

### **13. Final provisions**

1. The transfer of the customer's rights and obligations to a third party is only permissible with the prior written consent of TIRA.
2. Counter-claims on the part of the customer only entitle it to a set-off if they have been finally legally determined or are undisputed. The customer may only assert a right of retention if the counter-claim is based on the same contract.
3. The laws of the Federal Republic of Germany govern the legal relationship between the customer and TIRA subject to the exclusion of the United Nations Convention on the International Sales of Goods (CISG).
4. The exclusive place of jurisdiction for all disputes arising under or in connection with the business relationship between TIRA and the customer is the location of TIRA's registered office. TIRA is also entitled to file suit at the location of the customer's registered office or any other permissible place of jurisdiction.
5. The place of performance for both the customer and TIRA is the location of TIRA's registered office.
6. The contractual language is German.
7. In the event a provision of the Standard Terms of Sale is or becomes invalid or unenforceable in whole or in part or should these Standard Terms of Sale contain an oversight, the validity of the remaining provisions shall be unaffected. In the place of the invalid or unenforceable provision, the parties are deemed to have agreed to that valid and enforceable provision which comes as close as possible to fulfilling the objectives of the invalid or unenforceable provision. In the event of an oversight, the parties are deemed to have agreed to a provision which correspond to the purpose of these Standard Terms of Sale and which would have been agreed to had it been considered from the outset.