



triorail

Terms and Conditions

January 2019

1. Scope of application

- (1) These terms and conditions apply to entrepreneurs, legal entities under public law or special fund under public law (hereinafter referred to as customer).
- (2) Our deliveries, services and offers are only made on the basis of these terms and conditions. They also apply to all future transactions with the customer that are legal transactions of the same or similar nature.
- (3) Terms and conditions or purchase conditions of the customer are hereby contradicted.

2. Offer and conclusion of contract

- (1) Our offers are non-binding and subject to confirmation, unless we have expressly stated these as binding.
- (2) An order, which is placed by a customer and qualifies as an offer to conclude a contract, can be accepted by us within a period of two weeks by sending a written confirmation or by rendering contractual performance within the same period.
- (3) Drawings, figures, dimensions, weights and other performance data are only binding if they have been expressly agreed upon in writing.

3. Delivery

- (1) Our delivery obligations are subject to correct and timely deliveries from our suppliers unless we are responsible for the incorrect or late delivery.
- (2) We are entitled to partial deliveries and services if they are of interest to the customer according to the purpose of the contract and if this does not result in significant additional expenses for the customer.
- (3) Information regarding delivery dates is approximate unless otherwise agreed with the customer. Delivery times begin after complete clarification of all execution details and require the timely and proper fulfilment of the customer's obligations.
- (4) Should the customer be in default of retrieval, acceptance or collection of the goods, we are entitled to claim compensation for all damages incurred; upon the occurrence of default of acceptance, the risk of accidental deterioration and loss shall pass to the customer.
- (5) In the event of default in delivery that has not willfully or negligently been caused by us, we accept liability for each completed week of delay with a flat rate of compensation of 2% of the purchase price, max. however not more than 10% of the purchase price. Other legal claims and rights of the customer because of default in delivery shall remain unaffected.

4. Prices and payment

- (1) Our prices are quoted ex works or ex warehouse plus the applicable value added tax. Freight costs are not included in the prices and will be charged separately.
- (2) For the standard packaging used for transport/shipping, we charge prime costs unless otherwise agreed upon with the customer.

- (3) Our invoices are stated in Euro currency and payment is due within 30 days without reduction. We only grant discounts after separate arrangements.
- (4) The customer may only set off claims against our claims under the following conditions: -undisputed, recognized by us and stated legally binding, or -under the relationship of mutuality. The customer shall only be entitled to exercise a right of retention, if his counterclaim is based on the same contractual relationship.
- (5) If the customer is in default of payment the legal regulations shall apply.

5. Transfer of risk upon shipment

- (1) If the goods are dispatched at the request of the customer, the risk of accidental loss or accidental damage is transferred to the customer at the moment of dispatch, or at the latest, at the time the goods leave the plant or warehouse. This shall apply regardless of who bears the freight costs.
- (2) If the dispatch is delayed on the customer's request, the risk is transferred to the customer upon the notification of readiness for dispatch.

6. Retention of title

- (1) The goods shall remain our property until all claims resulting from the contract will have been settled completely (reserved goods). If several claims exist on the basis of this contract, the reservation of title shall serve as security of payment of any outstanding balance even if individual deliveries of goods have already been paid for.
- (2) In the case of the customer's behavior contrary to the contract, e.g. default of payment, we have the right to take back the reserved goods after prior setting of a reasonable period. If we take back the reserved goods, this will represent a rescission of the contract. After taking back the reserved goods, we are entitled to utilize them. After deduction of an adequate amount for the utilization costs, the utilization net profit is to be charged with the amounts that are owed to us by the customer.
- (3) In cases where third parties access the reserved goods, particularly in the case of seizure, the customer shall state our ownership and inform us immediately so that we can implement our right of ownership.
- (4) The customer shall be entitled to sell or process the reserved goods within the scope of the proper course of business as long as the customer is not in default. Pledging or transfer of ownership by way of security is not admissible. The claims arising out of the onward sale or another legal ground (insurance, unlawful act) with regard to the goods subject to retention of title are hereby assigned (now) by the customer to us to the full extent, for the sake of precaution. We revocably authorize the customer to collect claims assigned to us for his own account and in his own name. This authorization to collect terminates if the customer does not duly fulfil his payment, if he gets into financial difficulties, execution measures are taken against him or insolvency proceedings with regard to his assets have been initiated or their initiation has been rejected for lack of assets.

- (5) Any processing or reworking of the goods shall always be carried out on behalf of us as manufacturers, but without any obligations on our part. Should the delivery items be processed with other items, not belonging to us, we shall acquire co-ownership in the new item in a ratio of the value of the delivery items to the other processed items at the time of processing. Should the delivery items be combined or inseparably mixed with other items, not belonging to us, we shall acquire co-ownership in the new item in a ratio of the value of the delivery items to the other items combined or mixed with the delivery items. In the event that the combining or mixing is done in a manner whereby the customer's item is regarded as the principal item, the parties hereby agree that the customer shall transfer proportional co-ownership of the new item to us. The customer shall keep the resulting title to co-ownership on our behalf.
- (6) We shall be obligated to release the securities due to us if their value exceeds 10% of the value of its claims against the customer, provided that we shall be free to elect which specific securities we shall release.

7. Warranty

- (1) In case of a violation of a contractual obligation the customer is entitled against us to the rights according to the statutory provisions in accordance with the following regulations:
- (2) Warranty claims against us may only be asserted by the customer if the customer has fulfilled his duties of inspection and making of complaints about defects § 377 German Commercial Code (HGB).
- (3) If the customer duly asserts a claim of warranty, the delivery object item complained about shall be sent back to us on our request with the freight pre-paid on our request. If the complaint is justified, we will reimburse the costs of the most inexpensive shipping method; this does not apply if the costs increase because the object of delivery is at a different location than that of the intended use.
- (4) Where reports of defects are received in good time and are justified inside the warranty period, we may elect either to repair the goods, or supply a defect-free replacement (subsequent performance). Where subsequent performance fails or is not performed within a grace period given us by the customer, the customer may demand reduction of payment or withdraw from the contract.
- (5) The guarantee will cease to be valid if customers make changes or conduct repairs themselves or have this done by third parties without our agreement thus making the rectification of the given defect(s) either impossible or unreasonable. The warranty also ceases to apply if the product is used contrary to the designated use.
- (6) Where the defect is due to our fault, the customer may demand compensation for loss suffered as per the regulation in number 8 of these contract provisions only if the subsequent performance has failed or if it would otherwise be unreasonable for us. The right of the customer to assert further compensation claims according to the following provisions of number 8 are not affected.
- (7) Only the customer is entitled to claims against Triorail Bahnfunk GmbH due to defects, such rights are non-transferable.
- (8) The period to claim defects shall be limited to two years after the transfer of risk, insofar as the parties do not agree otherwise and provided that this complies with the minimum statutory period of limitation.

8. Liability for compensations caused by fault

- (1) Our liability for damages, irrespective of their legal grounds, in particular on account of impossibility, defective or incorrect delivery, breach of contract, breach of duties when conducting contractual negotiations, and unlawful acts, as far as they are subject to fault, shall be limited in accordance with the following provisions. In case of delay of delivery, the provision in number 3 paragraph 5 applies.
- (2) We do not take ownership of liability for ordinary negligence by our organs, legal representatives, employees or other auxiliary persons, as long as these violations do not breach an essential contractual obligation. Essential contractual obligations include the obligation to provide timely delivery and, where agreed, installation services of the delivery item, the absence of legal defects and such material defects, which affect the functionality or serviceability of the delivery item more than insignificantly, as well as duties of consultation, protection and care, which will make the use of the delivery item in accordance with the contract possible for the customer or which serve the purpose of protecting the life and limb of personnel of the customer or the customer's property against considerable damage.
- (3) In so far as we are liable for damages in accordance with paragraph 2, this liability is limited to damage which we have foreseen when concluding the contract as a possible consequence of a contractual infringement or which should have been foreseen, when applying due care and attention. Indirect damage and consequential damage which results from defects in the delivery item shall in addition only be reimbursable if such damage is typically to be expected if the delivery item is used as intended.
- (4) In the event of liability for ordinary negligence, our obligation to pay compensation for property damage shall be limited to an amount of EUR 10.000,00 per claim, even if this is a case of infringement of essential contractual obligations.
- (5) The aforementioned exclusions and limitations of liability apply to the same extent in favor of the organs, legal representatives, employees and other auxiliary persons of us.
- (6) As far as we provide technical information or counselling, and such information or counselling is not included in the contractual agreed scope of delivery, such information or counselling is offered free of charge and to the exclusion of any liability.
- (7) The above limitations of liability do not apply to our liability with regard to willful conduct, guaranteed features, injury to life, body or health, or product liability laws.

9. Place of fulfilment/place of jurisdiction/applicable law

- (1) Place of fulfilment for all delivery obligations on our part and for all other contractual obligations is Pfaffenhofen, Germany.
- (2) This contract and these terms of conditions as well as all legal relationships between the customer and us shall be subject to the law of the Federal Republic of Germany, excluding references to other jurisdictions and international agreements. Application of the UN Sales Convention is excluded.
- (3) For all disputes arising in connection with the contractual relationship Pfaffenhofen, Germany is the place of jurisdiction. However, we shall be entitled to sue the customer at his place of business as well.