

TRIAM TECHNOLOGIES

GENERAL TERMS OF DELIVERY

§ 1 Area of Validity

- (1) Our terms of delivery apply to business transactions with companies. We shall not recognize any terms of the customer contrary to ours or deviating from our general terms of delivery, unless we have expressly agreed in writing to such terms.
- (2) Our terms of delivery still apply, if we carry out the delivery to the customer without reservations knowing of conditions of the customer, which contradict or deviate from our terms of delivery.
- (3) Our terms of delivery shall also be valid for all future transactions with the customer as far as legal transactions of similar nature are concerned.

§ 2 Prices and Payment

- (1) Unless agreed to the contrary in writing, our prices are to be understood as net ex works. Costs for packaging shall be charged separately.
- (2) Payments shall be made exclusively to our account as indicated on the invoice. The deduction of discounts is only permissible only after special written agreement.
- (3) Unless agreed otherwise in writing, the purchase price is due for payment immediately after invoicing.

§ 3 Set-off and Rights of Retention

The customer may only set off such claims, which are uncontested or which have been determined legally. The customer is entitled to their right of retention only to the extent that their counter claim is based on the same contractual relationship.

§ 4 Delivery Time

- (1) Prerequisite for the beginning of the delivery time indicated is clarification of all technical questions as well as the proper fulfilment in due time of the obligations of the customer. The objection to the unfulfilled agreement shall remain reserved.
- (2) If the customer delays acceptance or if they culpably violate their other obligations of cooperation, we shall be entitled to request compensation for such damage incurred by this including possible additional expenses. Claims exceeding this shall be reserved.

§ 5 Passage of Risk

- (1) Unless agreed otherwise in writing, the delivery shall be made "ex works".
- (2) If the goods are dispatched to the customer at their request, the risk of accidental loss or accidental deterioration of the goods shall pass with shipment to the customer. This applies regardless from where the goods are shipped or who bears the freight costs.
- (3) We shall insure the shipment against the common transportation risk. The incurred costs in this respect shall be borne by the customer, unless otherwise agreed in writing.
- (4) If shipment or delivery is delayed for reasons due to fault of the customer, or if the customer delays acceptance for any other reasons, the risk shall pass to the customer.

§ 6 Retention of Title and Property

- (1) The delivered goods (reserved goods) shall remain our property until complete payment of all our claims pending within the scope of the business relationship. We shall be entitled to take back the reserved goods, if the customer behaves contrary to the contract. Taking back the reserved goods by us shall represent a withdrawal from the contract. After taking back the reserved goods we shall be entitled to dispose of them, the proceeds from such disposal shall be set off against the liabilities of the customer – minus appropriate realization costs.
- (2) The customer shall be obligated to treat the reserved goods with care and shall in particular be obligated to take out a new for old policy for these goods at their own expense against damages caused by fire, water and theft.
- (3) In case of pledging or other infringements by third parties the customer shall immediately inform us in writing in order to enable us to file legal action according to Canadian Code of Civil Procedure. If the third party is not in a position to reimburse us with the judicial and extra-judicial fees of a legal action, the ordering party shall be liable for our loss incurred.
- (4) The customer shall be entitled to resell the reserved goods in the proper course of business. Already now the customer, nevertheless, shall assign to us all claims of the total amount of the invoice (including value added tax) of our claims, to which the customer is entitled from the resale against their customers or against third parties. This assignment shall be regardless of whether the reserved goods are resold without processing or after their processing. The ordering party shall remain entitled to collect such claims also after the assignment. Our authorization to collect the claims ourselves shall thereby remain unaffected. We shall, however, not undertake to collect the claims, as long as the ordering party fulfil their obligations of payment from the proceeds received, as long as they are not behind in payment and in particular as long as no compensation or insolvency proceedings are initiated against the ordering party or payments are suspended. Should this be the case, we may request that the customer inform us of the assigned claims and their debtors. The customer shall provide us with all the necessary information required for collection and forward us the pertaining documents and informs the debtors (third parties) of the assignment.
- (5) Processing or modification of the reserved goods by the customer shall always be made for us. If the reserved goods are processed together with other goods not belonging to us, we shall acquire the joint ownership of such new goods at the ratio of the value of the reserved goods (total amount of the invoice including any taxes) in the other processed goods at the time of the processing. The same shall apply for the goods resulting from the processing as for the reserved goods.
- (6) If the reserved goods are mixed with other goods not belonging to us in an inseparable way, we shall acquire the joint ownership of the new product at the ratio of the value of the reserved goods (final amount of the invoice including necessary taxes) in the other mixed goods at the time of the mixing. If the mixing of the goods is made in such a way that the subject matter of the ordering party is to be considered main subject matter, it shall be considered as agreed that the ordering party transfers joint ownership to us on a pro rata basis. The ordering party shall keep the arising sole ownership or joint ownership for us.

- (7) To the extent that the value of all securing rights, to which we are entitled, exceeds the amount of all secured claims by more than 20 %, we shall release a respective part of the securing rights upon express request of the customer. The selection of the securities to be released shall be at our discretion.

§ 7 Warranty

- (1) A prerequisite for claims of the customer due to defects in quality is that the customer has fulfilled its duties of inspection in an orderly manner.
- (2) The customer shall immediately assert in writing recognizable defects, however, at the latest within 14 days after receipt of the goods, hidden defects immediately after their discovery, however, at the latest 1 (one) month after receipt of the goods. Otherwise the goods shall be considered as approved. The mere sending back of the goods shall not represent a proper notice of defect in quality.
- (3) The customer is considered to have fulfilled his duties of inspection in a proper way only, if he has inspected the delivered goods in part shipments by appropriate random inspections with respect to faultlessness according to the AQL system (Acceptable Quality Level System, DIN 40080).
- (4) Claims due to defects in quality become statute-barred within twelve months. This provision shall not apply, if further extended time limits are stipulated by law, as well as in cases of injury of life, body or health, in case of grossly negligent breach of duty on our side or in case of fraudulent concealment of a defect.
- (5) The claims of the customer for warranty of quality shall be restricted to the right to withdraw from the contract. Excluded from this restriction shall be the liability for damages arising from the injury of life, body and health, which is caused by an intentional or grossly negligent breach of duty on our side or by one of our legal representatives or subcontractors, as well as the liability for other damages, which are caused by an intentional or grossly negligent breach of duty on our side or by one of our legal representatives or subcontractors, as well as the liability for damages caused by the violation of essential rights and duties, the breach of which endangers the realization of the scope of the contract.
- (6) Claims for defects are not given in the case of only minor deviation from the agreed consistence, in case of only minor impairment of usefulness, in case of natural wear and tear, in case of damages, which occur after the passing of the risk due to faulty or negligent treatment, excessive use, unsuitable machines and equipment or due to special outside influences, which according to the contract are no precondition. No warranty claims are valid if improper processing or changes are made by the customer or by third parties, or for such improper processing or changes and for the consequences arising from it.
- (7) Claims exceeding this or claims other than those settled here in § 7 of the customer against us and against our subcontractors due to a defect shall be excluded.

- (8) We shall warrant for the quality of the goods in the sense of only if we have expressly agreed to this in writing.

- (9) Claims of recourse by the customer against the supplier shall exist only to the extent that the customer has not made any arrangements exceeding the statutory provisions. In case of shipment recourse and the customer shall be obligated to inform us immediately thereof in writing. In addition this shall apply only, if the delivered goods were not stored for more than twelve month by the customer.

§ 8 Joint Liability

- (1) Claims for damage compensation and compensation of expenses on the part of the customer for whatever legal cause, in particular on the grounds of non-compliance with the contractual obligation and tortuous acts, shall be excluded.
- (2) This shall not apply to cases of a statutory obligation for liability like, such as, for example, according to the Product Liability Act, in cases of intent, gross negligence, injury of life, body or health, non-compliance with major contractual obligations. Damage compensation claims and claims for compensation of expenses for the breach of essential contractual obligation shall be restricted, however, to a compensation for contract-specific, foreseeable damage, unless intent or gross negligence have occurred or liability has been assumed for injury of life, body or health.
- (3) As far as our liability is excluded or restricted, this shall also apply for the personal liability of our employees, workers, staff members, representatives or other subcontractors. Beyond that we shall not be liable for the faults of our other subcontractors, unless this refers to substantial contractual obligations.

§ 9 Other Provisions

- (1) This contract and the complete legal relationship of the parties shall be subject to the laws of the province of Quebec, Canada by excluding the application of the UN Convention on Contracts for the International Sale of Goods (CISG).
- (2) Exclusive place of jurisdiction for all legal disputes arising out of this contract with the customer being merchant shall be Montreal, Quebec Canada. We shall also be entitled, however, to file legal action at the domicile of the customer.
- (3) All agreements made between us (including our subsidiaries) and the customer for carrying-out the order shall be made in writing.
- (4) Should individual provisions of this agreement be or become invalid or include a gap, the remaining provisions shall thereby remain unaffected. The parties shall undertake to replace the invalid provision by a legally permissible one, which comes as close to the economic scope as possible to the ineffective provision respectively which fills this gap.