



# GENERAL TERMS AND CONDITIONS OF DELIVERY

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# GENERAL TERMS AND CONDITIONS OF DELIVERY

## Valid for:

- TROX SE
- TROX HGI GmbH
- TROX X-FANS GmbH
- DR. ERMER GmbH

## I. GENERAL INFORMATION

1. These General Terms and Conditions of Delivery apply to all deliveries made by TROX SE, TROX HGI GmbH, TROX X-FANS GmbH or DR. ERMER GmbH, (hereinafter referred to as "TROX"), unless different arrangements have been agreed in individual cases. The purchasing conditions of the Purchaser shall not be recognised, even if TROX does not expressly reject them upon receipt.

In the absence of a separate agreement, a contract shall only become effective when TROX confirms the order in writing.

2. TROX reserves the right to title and copyright of samples, cost estimates, drawings or similar information of a physical and non-physical nature – also in electronic form – property rights and copyrights; they may not be made accessible to third parties. TROX must have the Purchaser's permission to make available to third parties information and documents that have been designated as confidential by the Purchaser.

3. All the details provided by TROX about the item sold in the catalogue or during the contractual negotiations are characteristic descriptions, not warranties in the legal sense. Unless expressly stated or referred to otherwise in the sales contract, TROX has not issued any warranties.

4. In case of doubt, the interpretation of trade clauses shall be governed by Incoterms 2025.

5. Offers are subject to change. Details on delivery times are only approximate. The delivery date shall be the day of shipping ex works.

6. Data protection notice:

Please note that we shall process and distribute your personal data – i.e. that of the Purchaser's contact persons – with the aid of electronic data processing solely for business purposes and in accordance with the provisions of the Federal Data Protection Act. In this context, certain data (name, address, billing details and payments by the Purchaser that were not on time) may be given to financial credit agencies and commercial credit insurance companies.

## II. PRICE AND PAYMENT

1. Unless otherwise agreed, prices are ex works including loading at the factory and standard packaging, but excluding unloading. Prices quoted for individual items that are part of a special offer

apply only if all items included in the special offer are ordered. Confirmed prices shall only apply if delivery of the agreed quantity is taken. The applicable sales tax must be added. If, after the contract has been concluded, there is a change in the taxes/duties or other outside costs included in the agreed price or if new costs emerge, TROX shall be entitled to adjust the price accordingly. If requested, TROX shall provide the Purchaser with evidence of this cost increase.

2. Unless otherwise agreed, payment must be made without any deduction to the TROX account, in the form of net cash within 20 days from the date of invoice. Payment must be made in such a way that the amount in full is at the Supplier's disposal on the due date. The costs of the payment transaction shall be borne by the Purchaser. Default interest will be charged in accordance with § 288 BGB. We reserve the right to assert a higher damage caused by default.

3. The Purchaser may only withhold payments or offset payments against counterclaims if such counterclaims are determined to be undisputed or legally binding.

4. All TROX receivables shall become due for payment immediately, irrespective of the term of any discounted and irrevocably credited bills, if the terms of payment are not observed or if TROX learns of circumstances that are likely to reduce the Purchaser's creditworthiness. In this case, TROX may carry out outstanding deliveries, but only against payment in advance.

5. If the Purchaser defaults on their payments, TROX may additionally withdraw from the contract and also claim damages. Moreover, TROX is entitled to demand that the Purchaser refrain from reselling and installing delivered goods, and can demand their return or the transfer of indirect ownership of the delivered goods at the Purchaser's expense. The Purchaser hereby authorises TROX to enter their premises in the above-mentioned cases, and to remove the delivered goods; their removal shall not be deemed to constitute withdrawal from the contract.

6. The Purchaser may avert the legal consequences specified in paragraph 5 by providing security in the amount of TROX's jeopardised payment claim.

### **III. DELIVERY TIME, DELIVERY DELAY**

1. The delivery time is agreed upon by the contractual parties. In order for TROX to meet the delivery time, all commercial and technical issues must have been clarified by the contractual parties and the Purchaser must have fulfilled all their obligations, such as submission of all the official certificates or permits required or the making of an advance payment. If this is not the case, the delivery period will be extended as appropriate. This does not apply if TROX is responsible for the delay. If the order is subsequently altered by the Purchaser, TROX shall be entitled to extend the delivery time.

2. Compliance with the delivery deadline shall be subject to the proviso of correct and punctual deliveries to the Supplier. TROX shall notify the Purchaser as soon as possible of any imminent delays.

3. The delivery time shall be deemed to have been met if the delivery item has been dispatched from the TROX production facility or if TROX has notified the Purchaser that the delivery item is ready for dispatch by the specified date. If acceptance of goods has to be performed, then (except when refusal of acceptance is justified) the date of acceptance shall be definitive, or alternatively notification of acceptance readiness.

4. If the dispatch or the acceptance of the delivery item is delayed for reasons within the scope of the Purchaser's responsibility, then they shall be invoiced the costs incurred by the delay, beginning one month after notification of readiness for dispatch or acceptance.
5. If the delivery is delayed by force majeure, industrial disputes or other such circumstances beyond the control of TROX, the delivery time shall be extended commensurate to the circumstances. TROX shall inform the Purchaser as soon as possible of the beginning and ending of such circumstances.
6. The Purchaser may withdraw from the contract without giving notice if it becomes absolutely impossible for TROX to perform the full contract before passage of risk. The Purchaser may also withdraw from the contract if it becomes impossible to deliver part of an order and they have a justified interest in refusing the partial delivery. If this is not the case, the Purchaser must pay the applicable contractual cost of the partial delivery. The same shall apply in the event of incapacity. Otherwise, Section VII. 2 shall apply. If impossibility or incapacity occurs during the delay in acceptance, or if the Purchaser is solely or for the most part responsible for these circumstances, the Purchaser shall be held liable for payment.
7. If TROX defaults, the Purchaser must set a reasonable deadline of 10 days after the due date to allow delivery to be made. If the Purchaser suffers loss or damage due to delayed delivery beyond the extended deadline and if they can prove this, they shall be entitled to demand compensation from TROX, unless TROX agrees to pay the Purchaser a lump sum as compensation for delayed completion. This shall amount to 0.5% for each full week of delay but in total shall not exceed 5% of the value of that part of the overall delivery which could not be utilised on time or in accordance with the contract because of the delay. If the Purchaser – taking the statutory exceptions into consideration – sets TROX a reasonable deadline after the due date to perform the contract, and this deadline is not met, the Purchaser may withdraw from the contract in accordance with statutory regulations. Further claims due to delay in delivery are exclusively determined by Section VII. 2 of these conditions.
8. If the Purchaser cancels their order or declines to accept the delivery item for reasons lying within their own scope of responsibility, TROX shall be entitled, in place of its claim to fulfilment of the contract, to demand cancellation costs in lieu of damages amounting to ten per cent of the order value without the need for any further evidence. In addition to the cancellation costs, the Purchaser must, at TROX's request, pay for the delivery item equipment that has been specially manufactured on its behalf, which in this case will be made available to TROX on request.

#### **IV. PASSAGE OF RISK, ACCEPTANCE**

1. Unless otherwise agreed, TROX shall decide on the method and route of dispatch, plus the forwarding agent and carrier. If the Purchaser demands a method of transport other than that selected by the Supplier (means of transport, transport route), the Purchaser shall be liable for the corresponding additional costs. This includes the provision of HGVs with a lifting platform, delivery by means of motor vehicles, or delivery by a fixed date. Goods shall be shipped in heavy goods vehicles (irrespective of the delivery conditions) and delivered to the place of unloading/curb. The place of unloading must be accessible for all commercial heavy goods vehicles on a street fit for traffic in all weather conditions. Islands are not included in the terms of freight and delivery.
2. The risk shall pass to the Purchaser when the delivery item has left TROX's production facility, even if it is only a partial delivery or if TROX has been contracted to perform other services, e.g. shipping costs or delivery and installation. If acceptance of goods must take place, this is the point when risk passes. It must be carried out immediately at the time of acceptance, or alternatively after notification of readiness of acceptance from TROX. A minor defect does not entitle the Purchaser to refuse acceptance.

3. Should dispatch or acceptance be delayed or prevented due to circumstances beyond TROX's control, the risk shall pass to the Purchaser on the date when TROX provides notification of readiness for dispatch or acceptance. TROX is obligated to take out any insurance demanded by the Purchaser at the Purchaser's expense.

4. If, through no fault of TROX, transportation is impossible on the intended route or to the intended place in the intended time, TROX shall be entitled to carry out the delivery using an alternative route or to a different place; the additional costs incurred as a result of this shall be borne by the Purchaser. The Purchaser shall be given an opportunity to express their opinion beforehand.

5. Partial deliveries shall be permissible, insofar as these are reasonable for the Purchaser. Shipments of greater or lesser quantities than the agreed amount shall be permissible to the extent that is customary in the industry.

6. In the event of damage during transport, the Purchaser must immediately arrange for the damage to be assessed by the responsible agencies.

7. Deliveries must be accepted by the Purchaser, even if they exhibit minor defects, without prejudice to their rights under Section VI of these conditions.

8. The goods are supplied without packaging and are not protected against rust. If and insofar as customary in the trade, TROX will deliver the goods with packaging. TROX will provide packaging, protection and/or transportation aids on the basis of its own experience and at the Purchaser's expense. Transportation packaging and all other packaging covered by the German Packaging Ordinance will not be taken back by TROX.

## **V. RETENTION OF TITLE**

1. TROX shall retain title to the delivery item until all payments due under the delivery contract have been received.

2. TROX shall be entitled to insure the delivery item at the Purchaser's expense against theft, breakage, fire, water and other damage, unless the Purchaser can provide proof that they have taken out such insurance cover themselves.

3. The Purchaser may neither sell nor pledge the delivery item, nor assign it as security.

In the event of attachments, confiscations or other dispositions by third parties, they must notify TROX thereof immediately.

4. In the event of a breach of contract by the Purchaser, particularly default of payment, TROX shall be entitled to take back the delivery item after prior warning has been given, and the Purchaser shall be obligated to surrender it.

5. Due to the retention of title, TROX can only demand the return of the delivery item if it has cancelled the contract.

6. The Purchaser is obligated to notify TROX immediately of all execution measures against an item that is subject to retention of title, and to send TROX copies of garnishee orders and bailiff's returns. In addition, they must make every effort to avert execution proceedings.

7. An application to open insolvency proceedings with respect to the Purchaser's assets shall entitle TROX to withdraw from the contract and to demand the immediate return of the delivery item.

8. If the goods subject to retention of title are processed, linked to and mixed with other goods by the Purchaser, TROX shall have joint title to the new article in the ratio of the invoice value of the goods subject to retention of title to the invoice value of the other goods used, or in the absence of this to the cost of production. If TROX's title expires due to linkage or mixing, the Purchaser shall transfer to TROX on conclusion of the contract the title to the new stock or article to the extent of the invoice value of the goods subject to retention of title, and shall keep them safe for TROX free of charge. The resulting joint ownership rights shall be construed as conditional goods within the meaning of Section V.1.

9. The Purchaser is only permitted to sell the goods subject to retention of title in the normal course of business according to their standard terms of business and as long as they are not in default, provided that they agree retention of title with their customer and that the receivables claims arising from the resale pass to TROX as laid down in Sections V. 10. to V. 12. They shall not be entitled to make any other dispositions regarding the conditional goods.

10. The Purchaser's receivables claims arising from the resale are assigned to TROX upon conclusion of this contract. TROX hereby accepts this assignment.

11. If the goods subject to retention of title are sold by the Purchaser together with other goods not purchased from TROX, the assignment of the receivables claim arising from the resale shall apply only to the amount of the invoice value of the goods subject to retention of title that are sold in each case. If the resold goods are ones to which TROX has joint title in accordance with Section V. 8., the assignment of the receivables claim shall apply to the amount of these joint title proportions.

12. If the conditional goods are used by the Purchaser to fulfil a manufacturing contract, then Sections V. 10. and V. 11. shall apply correspondingly for the claim arising from this contract.

13. The Purchaser is entitled to collect receivables generated by the resale in accordance with Sections V. 9. to V. 12. until this power – which TROX is entitled to revoke at any time – is revoked. TROX shall be excluded from the right of revocation only in the cases described in Section II. 4.

14. The Purchaser shall on no account be entitled to assign the receivables claims. Upon TROX's request, the Purchaser must immediately inform their customers of the assignment to TROX, and provide the information and documentation required for the purposes of collection.

15. If the value of the securities granted to TROX exceeds the secured receivables by more than 25% in total, then TROX shall, at the Purchaser's request, release securities of its own choice.

16. If the retention of title or the assignment is not operative under the laws applying in the area where the goods are located, then the security corresponding to the retention of title or assignment in this area shall be construed as agreed. If the involvement of the Purchaser is necessary for this purpose, they must, at their own expense, take all the necessary measures to substantiate and maintain such rights.

## **VI. WARRANTY CLAIMS**

TROX provides the following warranty for defects of quality and title in respect of the delivery, to the exclusion of further claims, subject to Section VII:

## Defects

Insofar as the parties have agreed on the quality of the purchased item, objective requirements for the purchased item shall not apply in this respect.

1. All parts which become defective due to circumstances occurring before the passage of risk must be repaired or replaced free of charge at the discretion of TROX. TROX must be notified immediately in writing if any such defects are discovered. Replaced parts shall become the property of TROX.
2. Following consultation with TROX, the Purchaser shall allow TROX the necessary time and opportunity to carry out any repairs and deliver any replacements that TROX deems necessary; otherwise, TROX shall be released for the resulting consequences. The Purchaser only has the right to remedy the defect themselves or have the defect remedied by a third party and to claim reimbursement of the necessary expenses from TROX in urgent cases where a risk is posed to operational safety or where it is necessary to avert disproportionately high levels of loss or damage, in which case TROX must be informed immediately.
3. If the complaint proves to be justified, TROX shall bear the expenses necessary for the purpose of subsequent fulfilment, provided that this does not result in a disproportionate burden for TROX. Insofar as expenses increase due to the fact that the Purchaser has taken the object of sale to a place other than the place of performance after delivery, any additional costs incurred as a result shall be borne by the Purchaser. When selling a newly manufactured item, TROX shall also reimburse, to the extent of its legal obligation, the expenses incurred by the Purchaser in the context of recourse claims in the supply chain.
4. The Purchaser has the right by law to withdraw from the contract if TROX, taking legal exceptions into consideration, does not meet a reasonable deadline set for the repair or replacement delivery due to a defect. If the defect is minor, the Purchaser is only entitled to a reduction in the contractual price. The Purchaser does not otherwise have the right to a reduction in the contractual price.
5. Further claims are determined in Section VII. 2 of these conditions.
6. No liability will be assumed for the following cases in particular: unsuitable or improper use, faulty installation and/or commissioning by the Purchaser or third parties, natural wear and tear, faulty or negligent handling, inadequate maintenance, unsuitable equipment, defective construction work, unsuitable subsoil, chemical, electrochemical or electrical influences – unless they fall within TROX's scope of responsibility.
7. If the Purchaser or a third party does not carry out the repair work properly, TROX shall bear no liability for the resulting consequences. The same shall apply to alterations made to the delivery item without TROX's prior permission.

## Defects of title

8. If the use of the delivery item causes an infringement of industrial property rights or domestic copyright in the Federal Republic of Germany, TROX shall – at its own expense and in all cases – either provide the Purchaser with the right to continue using the delivery item or shall modify the delivery item in a manner reasonable for the Purchaser to ensure that the industrial property right is no longer being breached. If it is not financially viable to do this or to do it in a reasonable period of time, then the Purchaser shall be entitled to withdraw from the contract. Under the above-mentioned

preconditions, TROX shall also be entitled to withdraw from the contract. In addition, TROX shall indemnify the Purchaser against undisputed or legally binding claims by affected holders of industrial property rights.

9. The obligations as defined in Section VI. 8 are subject to Section VII. 2 and, in the event of industrial property rights or copyrights being violated, shall be deemed final.

They shall only be valid in the following cases:

- the Purchaser informs TROX without undue delay about any intellectual property or copyright claims
- the Purchaser supports TROX to a reasonable extent in the defence of the asserted claims or enables TROX to carry out the modification measures in accordance with Section VI. 8,
- TROX is entitled to all rebuttal measures including out-of-court settlements,
- the defect of title is not based on an instruction from the Purchaser and
- the infringement of rights was not caused by an unauthorised change to the delivery item by the Purchaser themselves or by the Purchaser using it in a manner not consistent with the contract.

## **VII. LIABILITY OF TROX, EXCLUSION OF LIABILITY**

1. If, through the fault of TROX, the delivery item cannot be used by the Purchaser for the contractually agreed purpose because TROX fails or fails to properly implement suggestions and advice provided before or after conclusion of the contract or because of breaches of other subsidiary contractual obligations, particularly instructions for use and maintenance of the delivery item, then the provisions of Sections VI and VII. 2 shall apply mutatis mutandis, to the exclusion of further claims by the Purchaser.

2. For damage that is external to the delivery item itself, TROX shall only be liable, irrespective of legal grounds, in the following situations:

- a. in the event of intent and gross negligence,
- b. in the event of culpable injury to life, body, health,
- c. in the event of defects that TROX has maliciously concealed,
- d. as part of a guarantee commitment,
- e. in the event of defects in the delivery item, insofar as liability exists under the German Product Liability Act for personal injury or property damage in privately used items.

In the event of culpable violation of essential contractual obligations, TROX shall also be liable for simple negligence, but limited to reasonably foreseeable damages typical for the contract. Further claims are excluded.

## VIII. STATUTE OF LIMITATIONS

1. All claims of the Purchaser – regardless of legal grounds – shall expire after 12 months; this also applies to the limitation period for recourse claims in the supply chain pursuant to Section 445b Paragraph 1 of the German Civil Code (BGB). The suspension of the expiry period pursuant to Section 445b Paragraph 2 of the BGB remains unaffected; it shall expire at the latest five years after the date on which TROX delivered the item to the Purchaser. These provisions on the limitation period for recourse claims and the suspension of expiry shall not apply if the last contract in this supply chain is a sale of consumer goods. Damages under Section VII. 2 a-c and e shall be governed by the statutory deadlines. They also apply to defects in a building or to delivery items that have been used for a building in accordance with their normal use and have caused its defectiveness.

2. Notwithstanding clause 1, a limitation period of 24 months shall apply to fans and their accessories, electric or pneumatic drives and controls as well as wearing parts, even when used for a building.

## IX. SOFTWARE UTILISATION

If software is included in the delivery, the Purchaser shall be granted a non-exclusive right to use the supplied software including its documentation. It is provided for use with that particular delivery item. Utilisation of the software on more than one system is prohibited. The Purchaser may only re-produce, modify, translate the software or transfer from the object code to the source code in as far as it is legally permissible (§§ 69 German Copyright Law). The Purchaser undertakes not to remove manufacturer's details – in particular copyright notices – or to change them without the prior express consent of TROX. All other rights to the software and its documentation, including copies, remain the property of TROX or the software supplier. The granting of sub-licences shall not be permissible.

## X. APPLICABLE LAW, PLACE OF JURISDICTION

1. All legal relationships between TROX and the Purchaser shall be governed exclusively by the relevant laws of the Federal Republic of Germany. The application of the UN Convention on Contracts for the International Sale of Goods (CISG) is excluded.

2. The place of jurisdiction for all legal disputes arising from the contractual relationship is the court responsible for the registered office of the respective TROX company. This is

a) Moers for TROX SE and TROX X-FANS GmbH,

b) Ibbenbüren for TROX HGI GmbH,

c) Cologne for DR.ERMER GmbH.

TROX shall, however, be entitled to take legal action at the location of the customer's head office.

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