



# GENERAL TERMS AND CONDITIONS FOR SERVICES

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# GENERAL TERM AND CONDITIONS FOR SERVICES

## Valid for:

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

## A. General provisions

### I. SCOPE OF APPLICATION

These General Terms and Conditions apply to all services, in particular commissioning, installation, maintenance or repairs, provided by TROX SE, TROX HGI GmbH, TROX X-FANS GmbH or DR. ERMER GmbH, (hereinafter referred to as "TROX"), unless otherwise agreed in individual cases. The customer's purchasing terms shall not be recognised, even if TROX does not expressly object to them upon receipt.

### II. APPLICABLE LAW, PLACE OF JURISDICTION

1. All legal relationships between TROX and the customer shall be governed exclusively by the laws of the Federal Republic of Germany applicable to legal relationships between domestic parties.

2. The place of jurisdiction for all legal disputes arising from the contractual relationship shall be the court with jurisdiction over 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.

### III. CONCLUSION OF CONTRACT

1. Offers made by TROX are not legally binding. Verbal agreements shall only form part of the contract once confirmed in writing.

2. If an order confirmation is issued in writing and remains uncontested, it shall be decisive for the content of the contract and the scope of the services to be provided.

### IV. WITHHOLDING OR SET-OFF OF CLAIMS DISPUTED BY TROX

The withholding of payments or the set-off of any counterclaims disputed by TROX shall not be permitted.

## **V. CUSTOMER COOPERATION AND ASSISTANCE FOR SERVICES PERFORMED OUTSIDE TROX PREMISES**

1. The customer shall, at its own expense, assist TROX's personnel in carrying out the contractual repair and installation services and any other services.
2. The customer shall take the special measures necessary for the protection of persons and property at the place of performance, in particular in accordance with the applicable accident prevention regulations and other official safety regulations. He must also inform the repair/installation supervisor of any existing special safety regulations that are relevant to the repair/installation personnel. He shall notify TROX of any breaches of such safety regulations by the repair/installation personnel. In the event of serious breaches, he may, in consultation with the repair/installation supervisor, refuse the person in violation access to the repair/installation site.
3. The customer is obliged to provide technical assistance at his own expense, in particular:
  - a) Provision of the necessary suitable auxiliary personnel in the number required for the service and for the time required; the auxiliary personnel must follow the instructions of the repair/installation supervisor. TROX shall assume no liability for the auxiliary personnel. If the auxiliary personnel cause a defect or damage due to instructions given by the repair/installation manager, the provisions of Sections VII to X shall apply accordingly.
  - b) Carrying out all construction, bedding and scaffolding work, including the procurement of the necessary building materials.
  - c) Provision of all necessary equipment and heavy tools, as well as the required consumables and materials.
  - d) Provision of heating, lighting, operating power, water, including the necessary connections.
  - e) Provision of necessary dry and lockable rooms for the storage of the service personnel's tools.
  - f) Transport of the repair/installation parts at the repair/installation site, protection of the repair/installation site and materials against any harmful influences, and cleaning of the repair/installation site.
  - g) Provision of suitable, theft-proof common rooms and work rooms (with heating, lighting, washing facilities, sanitary facilities) and first aid for service personnel.
  - h) Provision of materials and performance of all other actions necessary for the adjustment of the repair/installation item and for the performance of a contractually stipulated test.
4. The customer's technical assistance must ensure that the service can be started immediately upon arrival of the service personnel and can be carried out without delay until acceptance by the customer. If special plans or manuals are required on the part of TROX, TROX shall provide these to the customer in good time.
5. If the Customer fails to fulfil its obligations, TROX shall be entitled, but not obliged, to perform the actions incumbent on the customer in its place and at its expense after setting a deadline. Otherwise, the statutory rights and claims of TROX shall remain unaffected.

## **VI. BINDING DEADLINES**

1. A binding deadline shall be deemed to have been met if, by the time it expires, the subject matter of the service is ready for acceptance by the customer or, in the case of a contractually agreed test, for the test to be carried out.
2. If the performance of the service is delayed due to measures within the scope of industrial action, in particular strikes and lockouts, as well as the occurrence of other circumstances for which TROX is not responsible, an appropriate extension of the deadline shall apply, insofar as such obstacles demonstrably have a significant impact on the completion of the service; this shall also apply if such circumstances arise after TROX has already defaulted.
3. If TROX defaults, the customer shall set a reasonable additional period, usually 10 days. If the customer suffers damage due to the delay, even beyond the expiry of the additional period, which can be proven by the customer, the customer shall be entitled to demand compensation from TROX, unless TROX agrees to pay the customer a lump-sum delay compensation in settlement of such damage. It amounts to 0.5 % for each full week of the delay, but in total no more than 5% of the price of the service for that part of the system to be serviced/installed/repaired by TROX that cannot be used in time due to the delay.
4. If the customer sets TROX a reasonable deadline for performance after the due date, taking into account the statutory exceptions, and if the deadline is not met, the customer shall be entitled to withdraw from the contract within the framework of the statutory provisions. Further claims for delay shall be determined exclusively in accordance with Section IX.1 of these Terms and Conditions.

## **VII. ACCEPTANCE**

1. The customer is obliged to accept the service as soon as he has been notified of its completion and any contractually stipulated testing of the serviced/repaired/installed item has taken place. If the service proves to be non-compliant with the contract, TROX shall be obliged to remedy the defect. This shall not apply if the defect is insignificant for the customer's interests or is due to circumstances attributable to the customer. If the defect is insignificant, the customer is not entitled to refuse acceptance.
2. If acceptance is delayed without fault on the part of TROX, the service shall be deemed accepted two weeks after notification of its completion.
3. Upon acceptance, TROX shall no longer be liable for recognisable defects, unless the customer has reserved the right to assert a specific defect.

## **VIII. CLAIMS FOR DEFECTS**

1. After acceptance of the service, TROX shall be liable for defects in the service, to the exclusion of all other claims of the customer, without prejudice to Clause 5 and Sections IX, XIV, and XXI, in such a manner that it is obliged to remedy the defects. If a defect is identified, the customer must immediately inform TROX in writing.
2. TROX shall not be liable if the defect is insignificant for the customer's interests or is due to a circumstance attributable to the customer. This shall apply, in particular, to the parts provided by the customer.
3. TROX shall not be liable for the consequences of any improper modifications or repair work carried out by the customer or third parties without the prior consent of TROX. Only in urgent cases where

operational safety is at risk or to prevent disproportionately large damage, provided that TROX is notified immediately, or if TROX has allowed a reasonable period set for remedying the defect to expire, the customer shall have the right to remedy the defect itself or through a third party and to claim reimbursement of the necessary costs from TROX.

4. If the complaint is justified, TROX shall bear the costs required to rectify the defect, provided that this does not result in a disproportionate burden for TROX.

5. If TROX - taking into account the statutory exceptions - allows a reasonable deadline set to rectify the defect to expire without effect, the customer shall be entitled to a reduction in price within the framework of the statutory provisions. The customer may only withdraw from the contract if the repair/installation is demonstrably of no interest to them despite the price reduction.

6. Further claims shall be determined exclusively in accordance with Section IX. of these Terms and Conditions.

## **IX. GENERAL LIABILITY OF TROX**

1. TROX shall only be liable for damage that has not occurred to the object of the service itself - regardless of the legal grounds -

a. in cases of intent and gross negligence,

b. in the event of culpable injury to life, body, or health,

c. in the case of defects that TROX has fraudulently concealed,

d. insofar as liability exists under the German Act on Liability for Defective Products (ProdhaftG) for personal injury or property damage to privately used objects.

2. In the event of culpable breach of essential contractual obligations, TROX shall also be liable in cases of simple negligence; but limited to reasonably foreseeable damage typical for this type of contract. Further claims are excluded.

## **X. STATUTE OF LIMITATIONS**

All claims of the customer arising from the provision of the service - regardless of the legal grounds - shall become time-barred after 12 months. For claims for damages according to Section IX. 1 a - d the statutory limitation periods shall apply. If TROX provides the services on a structure and thereby causes it to become defective, the statutory limitation periods shall likewise apply.

## **XI. COMPENSATION BY THE CUSTOMER**

If, during services performed outside TROX's premises, the equipment or tools provided by TROX are damaged at the place of performance without any fault on the part of TROX, or are lost without its fault, the customer shall be obliged to compensate for such damage. Damage attributable to normal wear and tear shall not be taken into account.

B. Special provisions for commissioning, installation and maintenance

## **XII. PRICES**

1. The service shall be invoiced on a time-basis in accordance with the appendix, unless a fixed price has been expressly agreed.
2. Surcharges shall be applied for assignments outside normal working hours.
3. The material required is charged according to actual consumption. The parts used will be invoiced at the prices valid at the time of delivery in accordance with TROX's General Terms and Conditions of Delivery and Payment.
4. The agreed amounts are exclusive of value added tax (VAT), which is to be paid to TROX at the statutory rate.

## **XIII. DEADLINES**

Unless otherwise expressly agreed, deadlines are binding.

## **XIV. LIABILITY**

1. If, in the course of performing the service, a component supplied by TROX is damaged due to TROX's fault, TROX shall, at its discretion, either repair it at its own expense or supply a replacement.
2. If, due to TROX's fault, the object of the service cannot be used by the customer in accordance with the contract as a result of omitted or faulty proposals and advice provided before or after the conclusion of the contract, or as a result of other contractual ancillary obligations – in particular instructions for the operation and maintenance of the installed item – the provisions of Sections VIII and IX shall apply, to the exclusion of any further claims by the customer.

C. Special provisions for repairs

## **XV. NON-FEASIBLE REPAIR**

1. The services provided for the submission of a cost estimate, as well as the further expenses incurred and documented (troubleshooting time equals working time) shall be invoiced to the customer, if the

repair cannot be carried out for reasons for which TROX is not responsible, in particular because

- the reported fault did not occur during the inspection,
- spare parts cannot be procured,
- the customer has culpably missed the agreed appointment,
- the contract has been terminated during its performance.

2. The item to be repaired shall only be restored to its original condition upon the express request of the customer against reimbursement of the costs, unless the work carried out was not necessary.

3. If the repair is not feasible, TROX shall not be liable for damage to the item to be repaired, for breaches of contractual ancillary obligations, or for damage not occurring on the item itself, irrespective of the legal grounds on which the customer bases any claim. The liability provision of Section IX applies accordingly.

## **XVI. COST INFORMATION, COST ESTIMATE**

1. Where possible, the customer shall be informed of the estimated repair cost upon conclusion of the contract; otherwise, the customer may set cost limits. If the repair cannot be carried out at the stated cost, or if TROX considers the performance of additional work necessary during the repair, the customer's consent must be obtained if the quoted costs are exceeded by more than 15%.

2. If a cost estimate with binding prices is desired before the repair is carried out, this must be expressly requested by the customer. Unless otherwise agreed, such a cost estimate is only binding if issued in writing. It is to be remunerated. The services provided for the preparation of the cost estimate shall not be charged to the customer insofar as they can be utilised in the course of carrying out the repair.

## **XVII. PRICE AND PAYMENT**

1. TROX is entitled to demand a reasonable advance payment upon conclusion of the contract.

2. When calculating the repair costs, the prices for parts, materials and special services used, as well as the prices for labour, travel and transport costs must be stated separately. If the repair is performed on the basis of a binding cost estimate, it is sufficient to refer to the cost estimate and merely list any deviations in the scope of services separately.

3. VAT shall be charged additionally at the respective statutory rate and shall be borne by the customer.

4. Any correction of the invoice by TROX and any complaint by the customer must be made in writing no later than four weeks after receipt of the invoice.

5. Payment shall be made upon acceptance and delivery or dispatch of the invoice, without any discount.

## **XVIII. TRANSPORT AND INSURANCE FOR REPAIRS AT THE TROX FACTORY**

1. Unless otherwise agreed in writing, any collection and delivery of the item to be repaired carried out at the customer's request – including any packaging and loading – shall be at the customer's expense; otherwise, the customer shall deliver the item to be repaired to TROX at their own cost and collect it from TROX after the repair has been completed.

2. The customer bears the transport risk.

3. At the customer's request, the outward and, if applicable, return transport shall be insured against insurable transport risks, e.g. theft, breakage, fire, at the customer's expense.

4. There is no insurance cover during the repair period at the TROX factory. The customer is responsible for maintaining existing insurance coverage for the item to be repaired, for example in respect of fire, water damage, storm, and machinery breakdown insurance. Insurance cover for these risks can only be obtained at the customer's express request and at its expense.

5. If the customer is in default of acceptance, TROX may charge storage fees for keeping the item at its factory. The item to be repaired may also be stored elsewhere at TROX's discretion. The costs and risk of storage shall be borne by the customer.

### **XIX. REPAIR PERIOD**

1. The information regarding repair periods is based on estimates and is therefore not binding.

2. The customer may only demand the agreement of a binding repair deadline, which must be designated as binding, once the scope of the work has been precisely determined. If such a deadline has been agreed, the provisions of Section VI shall apply.

3. If additional and extension orders are placed at a later date, or if additional repair work is necessary, the agreed repair period shall be extended accordingly.

### **XX. RETENTION OF TITLE, EXTENDED LIEN**

1. TROX retains title of all accessories, spare parts and replacement units used until receipt of all payments under the repair contract. Further security agreements may be agreed.

2. TROX shall have a lien on the customer's item to be repaired that comes into its possession under the contract, in respect of its claim under the repair contract. The right of lien may also be asserted in respect of claims arising from previously performed work, the supply of spare parts, and other services, provided they are related to the item to be repaired. The right of lien shall only apply to other claims arising from the business relationship if said claims are undisputed or have been established as legally binding.

### **XXI. LIABILITY OF TROX, LIABILITY DISCLAIMER**

1. If parts of the item to be repaired are damaged through the fault of TROX, TROX shall, at its discretion, repair or replace them at its own expense. The obligation to provide a replacement shall be limited to the contractual repair price. In all other respects, Section IX shall apply accordingly.

2. If, due to TROX's fault, the item to be repaired cannot be used by the customer in accordance with the contract as a result of omitted or faulty proposals and advice provided before or after the conclusion of the contract, or due to other contractual ancillary obligations – in particular instructions for the operation and maintenance of the item to be repaired – the provisions of Sections VIII and IX shall apply, to the exclusion of any further claims by the customer.

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