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TROIKA GERMANY GmbH – General terms and conditions of sale and delivery

TROIKA GERMANY GmbH will hereinafter be referred to as 'TROIKA', and the party making purchases from TROIKA or which is in a pre-contractual relationship with TROIKA with respect to a prospective purchase will hereinafter be referred to as 'PURCHASER'. The present general terms and conditions of sale and delivery will hereinafter be referred to as 'TERMS AND CONDITIONS'.

1. Sphere of application: These TERMS AND CONDITIONS apply to all offers, acceptances of offers and sales. They apply to business persons and other entrepreneurs, to persons under public law and separate assets under public law; they apply in respect of other persons wherever legally permissible. Any contrary terms and conditions of the PURCHASER are hereby excluded and are only valid in relation to TROIKA if expressly accepted by TROIKA in writing.

2. Offers, concluding contracts and conditions of merchandise, onward export:

2.1 All offers are non-binding and subject to availability, to the timely delivery of materials and to coverage by TROIKA's commercial credit insurance. Catalogues and other TROIKA sales documents and presentations, including electronic versions thereof, purely constitute invitations to make offers.

2.2 The PURCHASER's orders are only deemed to have been accepted by TROIKA if they are accepted in writing by TROIKA within 30 days or are executed as soon as the order is received, in which case the corresponding invoice also constitutes the order acceptance.

2.3 Verbal statements or assurances given by TROIKA sales representatives or commercial agents which go beyond the written contract or order confirmation are only valid if confirmed in writing by TROIKA. However, this does not apply to individuals who have unlimited powers or externally illimitable powers to represent TROIKA.

2.4 Quantities, qualities and description and any specifications of merchandise are determined by the offer made by TROIKA, if accepted by the PURCHASER, or by the current TROIKA catalogue in conjunction with TROIKA's order confirmation in the event of an order placed by the PURCHASER. Offers and price lists must be treated as confidential and may only be disclosed to third parties with TROIKA's prior consent.

2.5 TROIKA is entitled to correct obvious errors or misprints in catalogues, price lists, order documents or other documentation, and doing so does not give rise to any right for the PURCHASER to assert any associated claims.

2.6 TROIKA reserves the right to change or improve the merchandise without notifying the PURCHASER if this is necessary in order to comply with legal requirements and/or provided this does not lead to any permanent deterioration in their quality, function or utility. Any such changes do not give rise to any right for the PURCHASER to assert any associated claims.

2.7 Specimens and samples constitute items indicative of the approximate quality, dimensions, weights and colours.

2.8 Sundry product and merchandise deficiencies, such as leather grain, colour discrepancies of +/-10% and printing registration differences of up to 0.1 mm, insignificant discrepancies of colours and contour guiding arising from the nature of the materials used and the coating in the case of engravings, shall not be deemed non-contractual.

2.9 The onward export of supplied merchandise requires the supplier's express consent, except in the case of European Union and European Economic Area member countries.

3. Termination and merchandise returns

The rescission of a validly concluded contract, and any associated return of merchandise that has already been delivered, requires an express agreement between the vendor and the PURCHASER. In the case of merchandise manufactured or procured specifically for the PURCHASER, rescission of the contract and the return of non-defective merchandise is generally excluded.

4. Purchase price and terms of payment, arrears

4.1 The purchase price is determined by the offer made by TROIKA, or if no price is expressly offered by the price list applicable for the PURCHASER on the date on which the contract is concluded. Unless otherwise agreed in writing, all prices quoted in any sales documents are non-binding, are applied plus value added tax and packaging costs and are ex works (Incoterms 2000).

4.2 If for more than two months elapse between concluding the contract and delivery, TROIKA reserves the right, after duly notifying the PURCHASER, to raise the price prior to delivering the merchandise in order to pass on any increases in TROIKA's costs which are beyond its control, for instance due to changes in exchange rates or customs duty rates, or increases of over 10% in materials or manufacturing costs.

4.3 Unless otherwise agreed the PURCHASER must pay the full purchase price within 21 days of the invoice date, and will be deemed in arrears without warning if failing to do so. If, after concluding the contract, TROIKA becomes aware of circumstances which in its due commercial judgement lead it to conclude that there has been a material deterioration in the PURCHASER's financial situation or ability to obtain credit, in particular through arrears in the payment of other suppliers, TROIKA shall be entitled to demand payment on account or to demand security. If this is refused, TROIKA can terminate the contract, in which event payment for any partial performance already undertaken would be due immediately.

4.4 Payments should only be made via bank transfer. Bills of exchange, cheques or payments by other means do not constitute fulfilment of payment obligations unless and until TROIKA has irrevocably and irreversibly gained possession of the payment amount. Any discount charges must be met by the PURCHASER.

4.5 In the event of an agreement for the PURCHASER to issue a documentary credit, this must be done in conformity with ICC Publication No. 500 (Uniform Customs and Practice for Documentary Credits, 1993 version). All costs arising in connection with the documentary credit must be met by the PURCHASER.

4.6 If the PURCHASER falls into arrears with its payment obligations, all TROIKA's other claims automatically become due for immediate payment without the need for any separate notice of default. Furthermore, without prejudice to any other claims or rights, TROIKA is at its own choice entitled: a) to terminate or rescind the contract, demand damages for non-fulfilment and/or suspend any further deliveries to the PURCHASER or b) to charge interest at the statutory rate of the base rate plus 8% from the due date until full settlement of the corresponding claim and to suspend any further deliveries to the PURCHASER. However, the PURCHASER is entitled to demonstrate that the arrears have either caused a lesser loss or damage or no loss or damage at all.

4.7 If the PURCHASER falls into payment arrears or fails to honour a bill of exchange on maturity, the vendor is entitled to repossess the merchandise. In this event the PURCHASER hereby grants the vendor the right to enter its premises in order to remove the merchandise. The vendor is also entitled to forbid the onward sale and disposal of the merchandise. Repossession does not constitute rescission of the contract. If, on the other hand, the merchandise was delivered in connection with an individual contract which is not relating to an ongoing business relationship, the vendor undertakes first to rescind the contract. However, the PURCHASER can avert this legal consequence by furnishing security in the amount of the doubtful payment claim.

4.8 It is hereby expressly agreed that all judicial and extrajudicial costs incurred by TROIKA due to the PURCHASER's payment arrears, for instance the costs of contracting a collection company, must be reimbursed by the PURCHASER.

4.9 The PURCHASER is only entitled to offset claims which are undisputed or established in law. Refusals of performance and rights of retention on the PURCHASER's part are hereby excluded in so far as these rest on a different contractual relationship, and in particular a different contract of purchase, or if they are not founded on claims which are undisputed or established in law or arise from gross fault on TROIKA's part. The PURCHASER is not entitled to refuse payment of the purchase price on grounds of defects which are minor in relation to the purchase price.

5. Delivery of merchandise

5.1 Delivery of merchandise is chiefly done ex works (Incoterms 2000), to wit TROIKA's headquarters.

5.2 If delivering bulk cargo, TROIKA is entitled to deliver up to 3% more or less without adjusting the purchase price.

5.3 If TROIKA is required to manufacture or otherwise finish or process the merchandise, and also if the merchandise is not included in TROIKA's current catalogue, over- or under-deliveries of up to 15% shall be deemed contractual, though in this case the purchase price will be adjusted.

5.4 TROIKA is entitled to make part deliveries without notifying the PURCHASER in advance. If doing so, they shall be deemed to be deliveries in their own right for which a separate invoice may be presented.

5.5 Unless a written undertaking expressly designated as binding has been given by a TROIKA sales representative, or a similar verbal undertaking has been made by individuals who have unlimited powers or externally illimitable powers to represent TROIKA, delivery times and deadlines are deemed approximate only, do not constitute delivery promises and shall be regarded as met provided any departures from them are no greater than 14 days.

5.6 Delivery periods shall be extended as appropriate, including within a single contract, in the event of instances of force majeure, such as violence, strikes, lockouts, interventions by national or international authorities as well as all unforeseen obstacles arising after conclusion of the contract for which TROIKA is not responsible, provided such obstacles demonstrably have a substantial impact on delivery. This also applies if such circumstances affect TROIKA's suppliers or subcontractors. These provisions concerning said special circumstances apply correspondingly to the PURCHASER. If any such circumstances render the execution of the contract untenable for either of the contracting parties, that party may rescind the contract after a period of notice of at least one week. Any claims for damages are excluded in any such event.

5.7 If merchandise is damaged in any way by a carrier prior to delivery or if merchandise is missing, the PURCHASER must immediately request written confirmation thereof from the carrier. Written confirmation of full and correct surrender of merchandise to carriers must be duly acknowledged by the PURCHASER.

6. Shipment and transfer of risk

6.1 TROIKA is entitled to choose the means and route of shipment and also the type of packaging.

6.2 The risk of deterioration, destruction or loss of merchandise transfers to the PURCHASER as follows:

- In the event of delivery by TROIKA ex works (Incoterms 2000) – the moment that TROIKA notifies the PURCHASER that the merchandise is ready for collection.

- In the event of shipment by TROIKA to another location, at the moment when TROIKA surrenders the merchandise to the carrier or indicates its readiness to do so.

- In the event of an agreement whereby TROIKA in exceptional circumstances delivers merchandise at its own risk to a location other than its legal seat, at the moment of surrender or, if the PURCHASER delays in taking receipt of the merchandise, at the moment when TROIKA offers to surrender it. In this event TROIKA will warehouse the merchandise at the PURCHASER's cost and risk.

7. Retention of title

7.1 Title to the merchandise does not transfer to the PURCHASER until the entire purchase price, plus all other purchase price and interest claims due in relation to the business relationship, have been settled. This continues to apply even if the PURCHASER makes payments on claims specifically pointed out to it. The addition of individual items to an open account or the acknowledgement of a balance do not affect the retention of title. Merchandise to which TROIKA holds title or joint title are referred to below as retained merchandise.

7.2 Until full payment by the PURCHASER and in the event of the PURCHASER falling into arrears TROIKA is entitled to demand the return of the retained merchandise and to sell it elsewhere or otherwise utilise it.

7.3 The PURCHASER must at all times securely store the retained merchandise for TROIKA in trust, free of charge and separately from its own property and that of third parties. Furthermore, the retained merchandise must be insured and labelled as being the property of TROIKA.

7.4 If retained merchandise is processed along with items to which TROIKA does not hold any title, or is otherwise combined or mixed with such items, TROIKA shall hold joint title to the new item proportionately to the invoiced value of the retained merchandise as compared with that of the other merchandise and the value of the processing. In so far as TROIKA's title is extinguished by the combining, mixing or processing, the PURCHASER must transfer to TROIKA title to the new items to the extent of the invoiced value of the retained merchandise. Thereafter, these provisions in relation to retained merchandise apply analogously to the partial or joint title thus created.

7.5 The PURCHASER may use the retained merchandise during its normal business operations or sell it on provided it is not in arrears. However, its pledging or assignment as collateral is not permitted.

7.6 The PURCHASER hereby now assigns as security all its claims arising from the usage or sale, including all rights to insurance benefits or damages and all current-account balances, to TROIKA, who hereby accepts said assignment.

7.7 The PURCHASER is not entitled to reassign the claim. Assignment by means of true factoring is only permitted if TROIKA is notified hereof, along with the name of the factoring bank and details of the accounts held there by the PURCHASER, and provided the factoring proceeds exceed the value of TROIKA's secured claim. Once the factoring proceeds have been credited to the PURCHASER, TROIKA's claim immediately becomes due for payment.

7.8 TROIKA hereby authorises the PURCHASER, on a revocable basis, to collect the assigned claims or benefits in its own name and on its own behalf. This collection authorisation may only be revoked if the PURCHASER fails to duly meet its payment obligations. The PURCHASER undertakes, if so demanded by TROIKA, to notify its customers immediately of the assignment to TROIKA (if TROIKA does not do so itself) and furnish them with the information and documents necessary for the collection of the payment.

7.9 The PURCHASER must hold any remuneration or other items it receives as a result of the collection authorisation in trust for TROIKA and free of charge, keeping them separate from its own assets and those of third parties. These then serve as security for TROIKA up to the full value of the retained merchandise.

7.10 In the event of payment by cheque, title to this passes to the vendor as soon as it receives it from the PURCHASER. If payment is made by bill of exchange, the PURCHASER hereby assigns in advance the rights to this arising to TROIKA, who hereby accepts said assignment. Instead of the physical transfer of these documents, they will be held in safekeeping for TROIKA by the PURCHASER or, if it does not gain direct possession of them, it hereby assigns its right to their issue by third parties to TROIKA. On receipt, the PURCHASER will immediately surrender these documents, bearing its endorsement, to TROIKA.

7.11 In the event of the seizure of the merchandise or other third-party interference in TROIKA's title or joint title, the PURCHASER must notify the third party of TROIKA's title and immediately report the matter to TROIKA so that it can assert its rights. If the third party is unable to meet the judicial and extrajudicial costs incurred by TROIKA in this connection, the PURCHASER is liable for them. In the event of the non-fulfilment of these duties of disclosure, the PURCHASER is liable for all loss or damage thus suffered by TROIKA.

7.12 The repossession or seizure of the retained merchandise by TROIKA does not constitute the rescission of the contract.

7.13 At the PURCHASER's request, TROIKA hereby undertakes to release portions of the security to which it is entitled should the total realisable value of said security exceed the value of TROIKA's claims by more than 20%. However, TROIKA has the sole choice regarding which portions of the security to release.

8. Warranty and liability disclaimer

Within the meaning of section 434 of the German Civil Code (BGB), TROIKA accepts liability for defects in the merchandise it sells in accordance with the following provisions:

- Pursuant to section 377 of the German Commercial Code (Handelsgesetzbuch – HGB), the PURCHASER must inspect delivered merchandise and make any complaints in writing immediately, and at the latest within seven days, and in any event before any onward sale or processing. The above is without prejudice to any additional statutory obligations.

- If the PURCHASER discerns any defects in the merchandise, it must not use them without TROIKA's consent if this could lead to greater loss or damage.

- The PURCHASER undertakes on request to return to TROIKA the purchased item or sample which gave rise to the complaint. If it culpably refuses to do so, the warranty ceases to apply. TROIKA regains title to any replaced items or parts.

- Except if it has made a written statement to that effect, TROIKA is not liable for the suitability of the merchandise for a given purpose.

- In the event of defects or damage which are due to a description, specification, design or design documents produced by the PURCHASER, any warranty or liability is hereby disclaimed unless their defective nature was discernible by TROIKA without any additional inspection. The same applies to defects or damage caused by parts, materials or other items of equipment which the PURCHASER has provided or which were manufactured by third parties on the PURCHASER's orders.

- TROIKA offers no warranty and is not liable for defects or damage caused by faulty installation or use, incorrect handling or similar actions by the PURCHASER or the third parties it contracts.

- In the case of justified complaints, TROIKA is entitled, taking duly into account the nature of the defect and the PURCHASER's legitimate interests, to decide itself on the nature of its supplementary performance (replacement delivery or remedying of the defect). Only if TROIKA fails in its attempts at supplementary performance or refuses to make any such attempt can the PURCHASER reduce its payment or terminate the contract.

- The PURCHASER must notify TROIKA immediately if a customer asserts a warranty claim.

- Claims due to material defects lapse after 12 months. However, this does not apply if the law prescribes the longer periods laid down in sections 438, paragraph 1 No. 2, section 479, paragraph 1 and section 634, paragraph 1 No. 2 BGB.

- Rights of recourse pursuant to sections 478 and 479 BGB only apply in so far as their assertion by the consumer was legitimate, and only to the statutory extent. They do not apply in respect of ex gratia arrangements not approved by TROIKA. Furthermore, they are conditional on compliance by the party asserting the right of recourse with its own obligations, and in particular those in relation to making complaints.

- Claims for damages are subject to the general liability limitations set out in section 9 below.

9. General liability limitations

9.1 Any claims for damages or reimbursement of expenses on the PURCHASER's part (hereinafter referred to as claims for damages), irrespective of their legal grounds, and in particular due to the breach of obligations or tort, are hereby excluded. However, this does not apply in instances of the assumption of a guarantee or a procurement risk, nor does it apply in the event of statutory liability, for instance under the Product Liability Act (Produkthaftungsgesetz), in instances of gross fault, loss of life, physical injury or harm to health or the breach of material contractual obligations. However, claims for damages for the breach of material contractual obligations are limited to contractually typical, foreseeable loss or damage except in cases of gross fault or in the event of loss of life, physical injury or harm to health. This does not, though, entail any change in the burden of proof incumbent on the PURCHASER.

9.2 This provision applies to the PURCHASER analogously.

10. Data protection

The PURCHASER is hereby notified that TROIKA will process the personal data obtained during the course of its business activities in accordance with the provisions of the Federal Data Protection Act.

11. Proprietary rights

11.1 Samples produced by third parties on commission by TROIKA and based on TROIKA designs may not under any circumstances be made available to third parties, in particular competitors. If in breach of this obligation, the PURCHASER shall be liable for any loss or damage suffered by TROIKA as a result of the exploitation of the sample by unauthorised parties.

11.2 The PURCHASER is liable for any breach of third-party proprietary rights if this results from the manufacture and delivery by TROIKA of items according to the PURCHASER's specifications. The PURCHASER undertakes immediately to indemnify TROIKA against all third-party claims for damages asserted as a result of any such breach and to reimburse TROIKA for any subsequent loss or damage suffered as a result of legal action taken by third parties or incurred in settling such legal disputes.

11.3 The items manufactured by TROIKA are used for advertising purposes. If the PURCHASER has a legitimate interest in maintaining the confidentiality of the items it produces, TROIKA is only subject to a corresponding obligation if an agreement to this effect is entered into before the conclusion of the contract.

12. Tools

Tools for special models manufactured either by TROIKA or by third parties acting on TROIKA's behalf belong to TROIKA on the strength of their design and their use of in-house manufacturing experience even if the PURCHASER has met all or some of the cost of their production or if they are used exclusively for the PURCHASER's orders on the basis of a specific agreement to that effect. They will be stored voluntarily for a maximum of two years, though subject even if owned by the PURCHASER to a duty of care no greater than that applying to TROIKA's own affairs. In the event of failure to place for the delivered merchandise TROIKA has a right of retention with respect to the tools owned by the PURCHASER.

13. Governing law, place of jurisdiction and miscellaneous

German law applies to the exclusion of UN sales law, even in the event of deliveries directly from a foreign affiliate of TROIKA. The place of performance and exclusive place of jurisdiction for all disputes (including rejected cheques and protested bills of exchange) with business persons and other entrepreneurs, juristic persons under public law or separate assets under public law is TROIKA's headquarters. However, TROIKA is also entitled to take legal action at the competent court for the PURCHASER's legal seat or at any other court which may be competent under national or international law. In the event of the assignment of claims by TROIKA, the right to choose the place of jurisdiction also passes to the assignee.

As of: 2013