

TRACO General Conditions of Sale and Delivery

§ 1 Background

1. All sales are concluded in accordance with the specific conditions stipulated in order confirmations and with these General Conditions of Sale and Delivery. They are applicable to all orders once they are confirmed by TRACO. The customer expressly waives any procurement terms and conditions. Any deviation from these GCSD must be expressly agreed upon by TRACO in writing. By acceptance of our quotations, order confirmations and invoices these GCSD are becoming valid.
2. These GCSD also are valid for future business with the customer.

§ 2 Applicable law and court

This contract and all legal interrelationships are governed by German law, to the exclusion of UN convention of contracts (CISG). In the event of any dispute arising from the interpretation or the execution of this contract then the place of court will be the location of seller.

§ 3 Confidentiality of documents and items left to the customer

All commercial and technical documents provided by TRACO such as samples, quotations, invoices, catalogues, brochures, drawings, plans, calculations, diagrams, etc. remain in the property of TRACO and must not be copied or sent to a third party without TRACO's written consent.

§ 4 Prices and payment

1. Unless otherwise agreed upon our prices are net prices and quoted „ex works“, excluding packing. There are no banking costs on us allowed.
2. Unless otherwise agreed upon the payment has to be done in advance on our account named in our invoice only. When the payment has arrived on our account we will start the manufacturing process.
3. Our prices are subject of change 3 months or later after date of invoice. Quotations are valid for 30 days after date of quotation.

§ 5 Delivery dates

1. Delivery dates are given only as a guide. TRACO is doing all to deliver within the time indicated. Due to production incalculabilities especially with special products, customer designed products, prototypes, etc., delays of 4 weeks or more may occur. As far as we can judge the situation of delay, the customer will be informed immediately.
2. If the buyer will get behind the acceptance of delivery or if he will hurt his obligations, we have the right to claim for compensation. In this case the risk of damage, loss or deterioration of goods is changing to the customer.
3. **Force Majeure:** TRACO shall not be held liable if the execution of the contract is delayed or prevented as a result of the „*Force Majeure*“ or other reasons beyond its control, or when this is caused by the customer or a third party. Force majeure refers specifically to events cited by German case law and the German courts, but it also includes total or partial strike, earth quakes, fire, storm, terrorist attack, flood, epidemic, loss or malfunction of telecommunications, electricity or road networks. The occurrence of any of these or similar cases of Force Majeure shall result in the suspension of the contract or will allow later delivery, if the cases or their effects have been overcome.

§ 6 Transportation of goods

1. All risks are transferred to the buyer from the moment when the goods are handed over to the 1st. carrier for transport to the buyer. This is expressly agreed upon by the buyer notwithstanding the United Nations Convention on Contracts for the International Sale of goods whatever the payment terms for transport costs, and even when TRACO organizes the shipment of goods on behalf of its customer.
2. In the event of damage, delay or missing items the customer must register any complaints or reservations within 48 hours from the point of delivery or the theoretical delivery date from the carrier. Any claim against the carrier shall also be his/her personal responsibility.

§ 7 Ownership of goods

1. After delivery of the goods to the buyer, the ownership thereof shall remain in ourselves until the buyer shall have paid in full to us the invoice price of those goods and any ancillary costs payable in respect thereof. This also applies for future shipments even we do not refer to this separately. We are allowed to take back the goods immediately, if the customer should act contrary to this contract.
2. The buyer is obliged, until he is not yet owner of the goods, to handle the goods carefully and to guarantee service and inspections acc. to our Assembly Instructions in time. Third rights and seizures must not be put on the delivered goods, in those cases we have to be informed immediately. The buyer is responsibility for all costs of court and similar ones resulting out of this.
3. The buyer is allowed to resell the goods as normal business.

§ 8 Warranty, complaints and recourse

1. The buyer's right of warranty only can be drawn, if he will have followed up all the researches and obligations due to the German law (HGB § 377) properly.
2. TRACO only may be responsible for proven fault.
3. From delivery, the customer shall be liable for any damage, destruction or loss which might be caused to the TRACO products which are placed under her/his care by express agreements.
4. Faults have to be announced in writing by registered letter with receipt sign within 48 hours after date of delivery. We should be put into position to judge the claims personally at the customer. Before sending back the claimed goods, TRACO must have given their acceptance to this. Economical aspects have to be considered.
5. The customer shall not be entitled to make a claim for any latent defect more than one year from the date of invoice or packing list.
6. The time of warranty is one year beginning with the date of invoice. Regarding TRACOpres ECOcushions and TRACOpres POWERcushions there are special warranties applied on, which are pointed out on each quotation, order confirmation and invoice.
7. Liabilities caused by intent and gross negligence as well as injuries of life, body or health because of willful and grossly negligent breach of duty the above named periods of limitation will apply.
8. TRACO undertakes to do its best to deliver products, which conform to the products shown in our sales literature, drawings and quotations taking into account the tolerances usually permitted to the special types of products. We are reserving the right to make improvements which it considers to be in the best interest of the customer. Lack of conformity shall only be established, if the goods delivered are not fit for the purposes for which such goods usually are used.
9. Any intervention or modification to the product supplied made by the customer or a third party shall render the product warranty null and void.
10. The warranty is covering repair or substitution of our products, there is no liability for consequential direct or indirect costs. If repair or substitution should fail, the buyer may withdraw from the contract or may reduce the amount. We have to be put in the position for repairing or substitution firstly within appropriate time.
11. Our warranty does not cover ordinary wear and tear, and damage caused by misuse of the products or deviations from design, colour, shape not reducing the function of the products. Also the warranty does not cover prototypes, special design of which only theoretical data are available and the function only can be determined during use.

§ 9 Partial invalidity

In the event of any clause or clauses of the present terms and conditions becoming invalid wholly or in part the remaining clauses will remain in force.