

General Terms and Conditions of Sale and Delivery of TROWIS GmbH
(September 2019 version)**I. Scope of application:**

1. The offers, deliveries and services of TROWIS GmbH (hereinafter TROWIS) are provided based exclusively on the following General Terms and Conditions of Sale and Delivery (hereinafter GT&Cs). These apply to all present and future business relationships between TROWIS and its customers (hereinafter Contractual Partner) even where these are not again separately agreed. The GT&Cs shall apply only where the Contractual Partner is an entrepreneur (Sec. 14 German Civil Code - BGB), a legal entity under public law or a special fund under public law.
2. The TROWIS GT&Cs apply exclusively. The Contractual Partner's varying, contradictory or supplementary general terms and conditions shall not apply even where TROWIS does not take individual issue with their application. To the extent that TROWIS makes reference to confirmation by the Contractual Partner that contains or refers to the Contractual Partner's terms and conditions, this shall not constitute any agreement by TROWIS to the application of those terms and conditions. In particular the regulations concerning retention of title in Clause VIII will apply in any case, including in the case of the existence of the Contractual Partner's contradictory terms and conditions.
3. Legally relevant declarations and notifications by the Contractual Partner with respect to the Agreement (such as deadline specification, notice of defect, withdrawal or reduction), shall be submitted in writing - (e.g. letter, email, fax). Formal requirements under the law and additional verifications, especially in case of doubts regarding the legitimation of the declarant, remain unaffected.
4. Amendments or supplements to the GT&Cs shall be invalid unless made in text form (such as email, fax). Individual agreements concluded with the Contractual Partner (including ancillary agreements, supplements and amendments) shall in every case take priority over these GT&Cs. Subject to evidence to the contrary, a written contract or our written confirmation is authoritative over the content of such agreements.

II. Offer and conclusion of contract

1. All TROWIS offers are non-binding and without commitment unless expressly designated as binding or unless they contain a specific period of acceptance.
2. The purchaser's order shall constitute a binding contractual offer. TROWIS can accept the Contractual Partner's order within two weeks of receipt of the order. The Agreement comes into being upon receipt by TROWIS of an order confirmation sent by post, fax or email.
3. Other information concerning the delivery object, such as weight, dimensions or descriptive product information in the documentation associated with the offer, shall not constitute a guaranteed agreement on condition unless this was expressly agreed in writing.
4. In case of doubt, the Incoterms in force at the time the Agreement is concluded shall be authoritative with respect to the interpretation of trade terms.
5. TROWIS reserves ownership and copyright of cost estimates, drawings or other documentation. These may only be divulged to third parties with permission.
6. Should deliveries be made in accordance with drawings or other information from the Contractual Partner, and should the property

rights of third parties be violated in this process, the Contractual Partner shall release TROWIS from all claims.

7. Amendments and/or supplements to the respective Agreement must be made in writing.

III. Prices and payments

1. The prices shall apply to the scope of services and deliveries stated in the offer and/or order confirmation. These are quoted in EUR subject to transport costs and statutory value added tax. Any duties, fees, taxes and other public charges shall be borne by the Contractual Partner.
2. Invoiced amounts are due and payable within 14 days of invoicing and delivery or provision of services. TROWIS is nonetheless entitled to perform delivery, whether in whole or in part, only against prepayment. TROWIS shall state a corresponding reservation no later than upon confirmation of the order. This shall also apply to partial invoicing based on partial deliveries by TROWIS.
3. Receipt by TROWIS or credit to the TROWIS account shall be authoritative for the date of payment.
4. Upon expiry of the payment deadline in accordance with Par. 2, the Contractual Partner shall be in default. During the default period, the invoice amount shall be subject to interest at the prevailing statutory default interest rate. TROWIS reserves the right to claim further default compensation. With respect to merchants, the claim to commercial default interest (Sec. 353 German Commercial Code - HGB) remains unaffected.
5. The Contractual Partner is only entitled to set-off rights or rights of retention to the extent that its claim is legally determined or undisputed. The reciprocal right of the Contractual Partner with respect to delivery defects remain unaffected.
6. Should it become apparent following the conclusion of the Agreement (for example, through insolvency proceedings) that claims by TROWIS are at risk due to the Contractual Partner's lack of capacity, TROWIS is entitled under the law to refuse service and - if applicable after a deadline has been set - to withdraw from the Agreement (Sec. 321 BGB). With respect to agreements over the manufacture of specific items (making to specification), TROWIS can withdraw immediately; the provisions of the law regarding the dispensable nature of setting deadlines remain unaffected.

IV. Delivery and performance period

1. Delivery is effected ex-warehouse, which is also the place of performance and of any supplementary performance.
2. Deadlines and dates promised by TROWIS with respect to deliveries and performance shall always be approximate unless a specific deadline or date has been expressly approved or agreed. To the extent shipment has been agreed, the delivery deadlines and dates refer to the moment of transfer to the forwarder, carrier or other third party charged with the transport.
3. For changes to assignments or orders undertaken at the request of the Contractual Partner, all delivery deadlines begin anew.
4. In the case of events not foreseen at the conclusion of the Agreement that are not attributable to TROWIS and are of a temporary nature (incorrect or delayed delivery by suppliers, force majeure, operational malfunctions of any kind, legal lockouts and strikes, official measures, etc.) and do not exceed a period of 3 (three) months, the delivery deadlines shall be extended or the delivery dates shall be moved in accordance with the time period of these events plus a reasonable restarting period. To the extent that such events make delivery by TROWIS significantly more difficult or impossible or that these last beyond a period of 3 (three) months and the impediment is not merely of a temporary nature, TROWIS is entitled to withdraw from the contract.

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5. TROWIS is entitled to effect partial deliveries and to invoice these to the extent that the partial deliveries are suitable to the Contractual Partner within the context of the intended purpose of the Agreement, delivery of the remaining ordered goods is assured and the Contractual Partner does not hereby incur significant expense or additional costs unless TROWIS indicates its willingness to assume these additional costs.
6. TROWIS is entitled to refuse delivery of the object of the agreement until the Contractual Partner fulfils its agreed obligation to cooperate or make payment unless TROWIS is obligated to provide advance performance under the Agreement.
7. The occurrence of delivery default by TROWIS is determined by legal provisions. In any case, however, a warning by the Contractual Partner is required. Should TROWIS enter into default of delivery, the Contractual Partner can demand flat-rate damage compensation. The flat compensation rate amounts to 0.5% of the net price (delivery value) for each full calendar week of default but totalling no more than 5% of the delivery value of the goods delivered behind schedule. TROWIS reserves the right to provide evidence that the Contractual Partner has incurred no damage at all or only damage valued at substantially below the existing flat rate.
8. The Contractual Partner's rights in accordance with Clause VII of these GT&Cs and TROWIS's legal rights, especially in the event of an exclusion of the performance obligation (for example, due to impossibility or unreasonableness of performance and/or supplementary performance) remain unaffected.

V. Transfer of risk, delayed acceptance and notification of defects

1. The risk of accidental loss and accidental degradation of the delivery object shall pass to the Contractual Partner no later than upon transfer to the forwarder, carrier or other third party charged with the transport, whereby the start of the loading process is authoritative. Furthermore, this shall apply even in the event of partial deliveries or where TROWIS has assumed other services (such as shipment of the goods). Should a reduction be agreed, this shall be authoritative for the transfer of risk. In all other respects, the legal provisions governing contracts for work and services shall apply accordingly for an agreed acceptance. The transfer and/or acceptance is the same if the Contractual Partner is in default of acceptance.
2. Should the Contractual Partner enter into default of acceptance, fail to perform an act of cooperation or delay the delivery by TROWIS for other reasons attributable to the Contractual Partner, TROWIS is entitled to demand flat-rate compensation of the damage arising therefrom, including additional expenses (such as warehousing costs). The flat compensation rate amounts to 0.5% of the net price (delivery value) for each full calendar week of default but totalling no more than 5% of the delivery value of the goods delivered behind schedule or 10% of the delivery value in the case of definitive non-acceptance. TROWIS reserves the right to provide evidence of greater damage and to assert claims under the law (especially compensation for additional expenses, reasonable indemnification, termination); the flat rate is however to be offset against further monetary claims. The Contractual Partner is permitted to provide evidence that TROWIS has incurred no damage at all or only damage valued at substantially below the existing flat rate.
3. The delivered goods are to be carefully inspected promptly upon delivery to the Contractual Partner or to the third party engaged by the Contractual Partner. Defects are to be promptly reported to TROWIS in accordance with Clause I. 3.
4. Negotiations regarding objections shall not release TROWIS from the objection over insufficient or delayed notice of defects.

VI. Warranty and liability for defects

1. Quality designations shall be provided in accordance with official German (DIN) and/or European (EN) standards. Inclusion of official standards in force outside Europe requires written agreement. Where official German or European standards do not exist, the procedure/quality customary at the place of fulfilment shall be authoritative for the delivery.
2. Warranty claims shall not exist in the event of only slight deviation from the agreed condition (such as breaking force, weight), natural wear or damage occurring after the transfer of risk as a result of erroneous or careless handling, excessive stress based on external factors (inappropriate temperature, chemical factors, etc.) or other conditions that were not specified in the Agreement.

Modifications to models, construction or materials that correspond to more recent technical developments do not justify claims for defects.

3. An agreed condition shall not be present especially where the object of delivery was adapted to customer specification and for this reason the object of delivery no longer possesses the originally warranted properties (such as breaking force, weight). TROWIS shall be liable for the lack of agreed condition only to the extent that the Agreement has the purpose of providing the Contractual Partner with security against damages specifically incurred as a result of the non-presence of the condition. Simple reference to the contents of DIN or EU standards does not constitute agreement as to condition.
4. The warranty period amounts to 12 (twelve) months following transfer of risk in accordance with Clause V. 1. Individually agreed delivery of used objects shall take place under exclusion of the warranty.
5. These warranty periods shall not apply to claims for compensation due to culpable violation of life, body or health, to fraudulent intent, to malice or gross negligence.
6. The carrying out of repair or subsequent delivery by TROWIS shall not imply restart of the warranty period.
7. In the event of material defects to the delivered goods, TROWIS is obligated to effect repairs or subsequent delivery within a reasonable period at its own discretion. Multiple repairs and/or subsequent deliveries are permitted. In the event of failure - that is, the impossibility, unreasonableness, refusal or unreasonable delay in repair or subsequent delivery - the Contractual Partner can withdraw from or limit the Agreement.
8. Should the defect be attributable to TROWIS, the Contractual Partner can demand compensation of damages in conformity with the requirements specified in Clause VII of these GT&Cs.
9. Should the Contractual Partner undertake to remedy the defect without having first set a reasonable period for TROWIS to provide repair or subsequent delivery, its claims arising from liability for defect are cancelled.
10. The legal provisions regarding burden of proof with respect to claims for defects remain unaffected.

VII. Limitation of liability

1. Where there is a question as to fault, regardless of legal basis, TROWIS's liability for damage compensation is limited in accordance with this Clause VII.
2. TROWIS shall not be liable
 - in the event of simple negligence by its legal representatives, management personnel or other comparable vicarious agents

- in the event of gross negligence by its other employees or its comparable vicarious agents to the extent that this does not involve a breach of obligations essential to the Agreement.
3. To the extent that TROWIS is liable in principle for damage compensation, this liability is limited to damage that TROWIS anticipated as a possible consequence of violation of the Agreement at the time the Agreement was concluded or in consideration of circumstances of which it was aware or should have been aware or that it should have been able to foresee through the application of due care and attention. In addition, other damages caused by defects not resulting directly from defects in the object of purchase or financial losses, such as claims arising from lost profits, only qualify for compensation to the extent that such damages can be typically expected under proper use of the object of purchase.
 4. The liability limitations under this Clause VII shall not apply to liability against malicious or grossly negligent violation of obligations, to guaranteed quality features, and due to compensation claims due to violation of life, body or health or in accordance with the Product Liability Act.
 5. The legal provisions regarding burden of proof with respect to compensation claims remain unaffected.

VIII. Retention of title

1. The goods delivered by TROWIS (reserved goods) remain in the ownership of TROWIS until complete payment of all present and future receivables under the Agreement and an ongoing business relationship has been made. The Contractual Partner is entitled to process and dispose of the reserved goods in the normal course of business in accordance with Paras. 2 and 3 until such point as a claim is made against it (Clause VIII. 6). However, pledges and transfers by way of security are not permitted.
2. Connecting the reserved goods to land shall only occur on a temporary basis. The working and processing by the Contractual Partner shall occur under the condition that these actions take place in the name and for the account of TROWIS as manufacturer in the sense of Sec. 950 BGB and that TROWIS directly acquires ownership or co-ownership of the newly created item.
3. In the event that no such acquisition of ownership occurs, the Contractual Partner grants TROWIS its future ownership and/or co-ownership right as security as of the present moment.
4. In the event of further disposal of the reserved goods, the Contractual Partner assigns TROWIS the resulting claim against the acquirer as of the present moment as a security. The same shall apply to other claims that take the place of the reserved goods or that otherwise arise with respect to the reserved goods. TROWIS accepts the assignment.
5. Should third parties gain access to the reserved goods, especially through pledging, etc., the Contractual Partner shall promptly inform these parties of TROWIS's ownership right and shall inform TROWIS of this matter so that it may exercise its rights. To the extent that third parties are not in a position to compensate TROWIS for the court costs and out-of-court costs arising in this connection, the Contractual Partner shall be liable for these.
6. TROWIS will release the reserved goods as well as goods or claims that substitute these on demand as it chooses if the value exceeds the amount of the secured claims by more than 15 %.
7. To the extent that the Contractual Partner acts contrary to the Agreement – especially to the extent that it enters into default of payment – TROWIS is entitled to take back the reserved goods to the extent that it has set a reasonable period for performance in this matter. The redemption of the reserved goods shall represent a withdrawal from the Agreement.

IX. Consultancy services

1. TROWIS consultancy services that involve recommendations concerning specific cable constructions and/or materials used for these based on customer parameters shall have the status of an advance development stage. In other words, recommended constructions, etc. must be validated on the basis of customer demands through further testing. The recommendations are based on empirical data from laboratory tests and not on tests carried out according to customer parameters. The sample deliveries emerging from the consultancy do not raise a claim of product maturity but rather constitute merely a recommendation based on information provided by the customer and the experience of the supplier.

The recommendations made by TROWIS in the context of its consultancy regarding constructions, material, manufacturing procedures, products and or machines etc. are subject to TROWIS copyright. The customer may use the information provided only for the purposes of the job and shall otherwise maintain confidentiality with respect to third parties. Use, dissemination or marketing involving third parties is permissible only upon prior approval by TROWIS.

X. Place of jurisdiction and applicable law

1. If the Contractual Partner is a merchant in the sense of the Commercial Code, a legal entity under public law or a special fund under public law, the exclusive place of jurisdiction for all domestic and international disputes directly or indirectly arising from the contractual relationship is TROWIS headquarters in Chemnitz (Saxony). The same shall apply if the purchaser is an entrepreneur in the sense of Sec. 14 BGB. Notwithstanding the above, TROWIS is entitled in all cases to bring suit at the place of fulfilment of the delivery obligation in accordance with these GT&Cs and/or an overriding individual agreement or at the place of general jurisdiction of the Contractual Partner. Overriding legal provisions, especially those regarding exclusive competence, remain unaffected.
2. The law of the Federal Republic of Germany shall apply with respect to these GT&Cs and all legal relations between TROWIS and the Contractual Partner to the exclusion of all international and supranational (contractual) legal systems, especially the United Nations Convention on Contracts for the International Sale of Goods.