

**TRATON General Terms and Conditions for Purchasing  
(Status 24/09/2018)**



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## **TRATON General Terms and Conditions for Purchasing (Status 24/09/2018)**

### **1. Validity of contractual conditions**

#### **1.1**

These General Terms and Conditions for Purchasing (GTCP) shall apply to all business relationships with our business partners and suppliers (hereinafter referred to as the "Contracting party").

The GTCP shall only apply if the seller is an entrepreneur (Article 14 BGB [German Civil Code]), a legal entity under public law, or a special fund under public law.

#### **1.2**

The GTCP shall apply in particular to contracts for the sale and/or delivery of goods (hereinafter referred to as the "Goods"), regardless of whether the seller manufactures the goods themselves or buys them from suppliers (Articles 433, 651 BGB). Unless otherwise agreed, the GTCP shall apply in the version valid at the time of the order of the buyer or at least in the version last communicated in text form as a framework agreement, which shall also apply to future, similar contracts, without us having to refer to them again in each individual case.

#### **1.3**

The business terms and conditions used by the Contracting party shall not become an integral part of the contract, even in the event that their application is not expressly objected to upon conclusion of the contract. Other agreements shall only be valid in the event that TRATON expressly authorises the inclusion of the Contracting party's business terms and conditions in writing.

#### **1.4**

Conflicting business terms and conditions shall not affect the contract's realisation, provided the parties have reached an agreement on all points required to conclude the contract ("essentialia negotii"). In such cases, the concordant provisions of both sets of business terms and conditions and the relevant legal regulations shall apply as regards the contract's interpretation.

### **2. Tenders**

#### **2.1**

Tenders to TRATON must be effected in writing in accordance with Articles 126 and 126a BGB and must be free of charge. They must always be written in German, and in English upon the request of TRATON.

#### **2.2**

In the event that the tender is submitted on the basis of a request or call for tenders from TRATON, the Tendering party/Contracting party shall be obliged to comply with the guidelines issued by TRATON. If there are nevertheless deviations, they must be expressly pointed out to TRATON.

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The Tendering party/Contracting party shall be free to submit alternative tenders and specific proposals.

### **2.3**

Only complete tenders encompassing all the requested services should be submitted.

### **2.4**

All prices should be stated in the national currency of the Tendering party/Contracting party (if this is not the euro, then in euros as well and if necessary including currency hedging shown separately). Unless otherwise agreed, all prices shall be fixed prices. In the event that the price quotation does not specify whether the prices include VAT, these should be interpreted as gross prices.

### **2.5**

Tenders should always be addressed to the purchasing office specified in the tender documentation.

### **2.6**

The Contracting party may not act as the legal representative of TRATON. However, they are entitled to make arrangements that are necessary for the contractual execution of the commissioned consultancy services, for the achievement of the objectives of the project and for ensuring a flawless project process, provided that such undertakings have no negative effects of a qualitative and schedule nature for TRATON. This also applies to declarations for TRATON, which are factually necessary for the fulfilment of the order in order to coordinate and support the consultancy services so that the project goals may be met.

Financial obligations incurred by the Contracting party on behalf of TRATON may only be justified with the express prior written consent of TRATON.

### **2.7**

TRATON shall be entitled to unilaterally change or expand the scope of services to the extent that this change or extension is based on fairness, in particular if the Contracting party is in a position to implement the change/extension request.

## **3. Conclusion of contracts**

In principle, contracts with TRATON shall be concluded in writing. If, by way of exception, a contract is entered into verbally, it must be confirmed in writing by both contracting parties without delay.

## **4. Inspection obligations of the Contracting party**

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### **4.1**

If the Contracting party of TRATON is provided with a service request or a service description, they are obliged to check the information contained therein for accuracy and completeness. Objections, ambiguities or incompleteness, which are easily recognisable within the framework of the care required in the preparation of the quotation and price calculation, shall be reported to TRATON without delay.

### **4.2**

Section 4.1 applies accordingly to service calls in framework contracts.

### **4.3**

The Contracting party undertakes to subject the goods to an adequate quality inspection prior to delivery to TRATON and in particular to check whether the goods comply with the agreed quality and are suitable for the intended use or customary use under the contract. The scope and content of the quality inspection shall either be based on a contractual agreement made in individual cases, or otherwise on the nature and meaning of the goods, the property of the Contracting party (manufacturer or intermediary), and the reasonable effort undertaken as part of a quality inspection.

## **5. Inspection obligation of TRATON**

TRATON is obliged to inspect the goods for any quality and quantity deviations within a reasonable period of time.

## **6. Performance and fulfilment, transfer of risk**

### **6.1**

TRATON is not obliged to accept non-defective goods as fulfilment. Goods are also deemed to be defective if the Contracting party delivers a product other than the goods owed or in an insufficient quantity.

### **6.2**

Without prejudice to its contractual or statutory rights, in the event of defects, TRATON reserves the right to accept the goods in spite of their defective nature.

### **6.3**

The place of performance is the place specified in the performance request or the minutes of the negotiations. As a rule, this will be a plant, branch, or other place of business of TRATON. If a place of performance is not expressly determined and cannot be inferred by interpretation from the agreements between the parties, Braunschweig shall be deemed to be the place of performance.

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### **6.4**

The agreement of the place of performance and the assumption of risk are based on the Incoterms in the currently valid version.

### **6.5**

Unless otherwise agreed, transport and shipping of ordered goods shall be at the risk of the Contracting party.

### **6.6**

Risk shall be transferred when the goods are handed over to an authorised representative of TRATON.

## **7. Delivery time, delay**

### **7.1**

The delivery date specified in the order as well as the provision of consultancy services on the basis of an agreed schedule shall be binding, unless TRATON agrees to a change of the schedule.

### **7.2**

The Contracting party is obligated to notify the client immediately if they wish to deliver at an earlier time or if they cannot meet the agreed delivery date. The contractual and statutory rights of TRATON due to delay shall remain unaffected.

### **7.3**

If the Contracting party delays a delivery, they shall pay 0.1% of the net order sum as a contractual penalty for each working day of the delay, but the penalty may not exceed 5% of the net order sum. If partial deliveries have been agreed or if it is an order from a framework agreement, the net order value for the partial delivery or the individual order shall be the basis for the calculation above. The assertion of claims due to delay or delay in performance shall remain unaffected by the contractual penalty. The contractual penalty shall be offset against the damage caused by the delay.

### **7.4**

If TRATON is prevented from accepting the goods at the agreed place of performance due to force majeure, default of acceptance by TRATON as well as claims by the Contracting party relating to consideration or compensation shall be excluded. Force majeure shall be deemed to include all unforeseeable and unavoidable circumstances, or those that are unavoidable only with unreasonable means at the time of conclusion of the contract, in particular natural disasters, civil unrest, strikes and lawful lockouts. The Contracting party is obliged to store the goods properly for the duration of the disturbance at their own expense and risk.



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### **7.5**

TRATON shall immediately notify the Contracting party of the existence of circumstances that constitute force majeure.

## **8. Prices, payment**

### **8.1**

The Contracting party shall provide TRATON and the companies affiliated with TRATON (Article 15 AktG [German Stock Corporation Act]) with its services and goods at the most favourable conditions that it offers the TRATON Group and the affiliated companies worldwide with the same quality and market situation.

### **8.2**

A fixed price agreed upon conclusion of the contract shall settle all expenses incurred in connection with the provision of services, including all ancillary costs.

### **8.3**

Additional cost-effective services occurring during the contract period must be agreed in writing between the contracting parties prior to execution. If a Contracting party violates this obligation, they are obliged to compensate TRATON for the resulting damage.

### **8.4**

Unless otherwise agreed in writing in a particular case, payment is due 30 days after receipt of a proper and verifiable invoice. Payments shall be made exclusively by credit transfer.

### **8.5**

In the event of a defective performance, TRATON shall be entitled to retain payment on a pro-rata basis until proper fulfilment.

## **9. Publication of documents/rights of retention and offsetting**

### **9.1**

The original documents (presentations, minutes, etc.) prepared by the Contracting party for the fulfilment of the order are to be handed over to TRATON in a clear and complete manner and at the request of TRATON as other electronic media or on data carriers. The Contracting party must provide TRATON with their documents if they are no longer needed to carry out their task by the date on which the order has been finally completed without being asked to do so.

The Contracting party is entitled to destroy documents created by them in connection with the fulfilment of the order after the statutory retention period has expired. However, the Contracting party must first offer the handover of these documents to TRATON and notify TRATON in writing of the intended destruction. The documents may only be destroyed if TRATON is in delay of acceptance or has consented to the destruction.

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### **9.2**

A right of retention of the Contracting party to the documents or services or goods, which are necessary for the performance of the services, is excluded. The Contracting party is therefore obliged to perform work in advance until completion of the services owed.

This shall not apply in the event of ordinary termination by TRATON or a termination by the Contracting party for reasons where TRATON is deemed to be responsible. In these cases, the Contracting party is entitled to retain the documents or services provided by the Contracting party until TRATON compensates them for justified and due payment claims. This right of retention lapses if the Contracting party does not submit a verifiable final invoice within two weeks after receipt of the termination, or if TRATON provides collateral by way of a bank guarantee in favour of the Contracting party in the amount of the claimed payment entitlements.

## **10. Intellectual property rights, expertise**

### **10.1**

TRATON is entitled to the exclusive, royalty-free, unlimited, irrevocable and transferable right to use the work results. All documents, presentations, reports, and protocols made by the Contracting party in connection with the provision of services are subject to the full right of ownership and disposition of TRATON without any additional remuneration.

### **10.2**

The Contracting party assigns to TRATON the rights of use and exploitation of all copyrighted services in connection with the performance of the contract. Furthermore, the Contracting party assures that they are not aware of any circumstances, in particular any third-party property rights that make it difficult or inadmissible to produce the objects and procedures required to fulfil the contract and that no claims for infringement of industrial property rights have or can be asserted against them.

### **10.3**

The Contracting party shall indemnify and hold harmless TRATON from all third-party claims arising from the infringement of intellectual property rights resulting from a breach by the Contracting party of the obligations pursuant to Para. 10.1 and 10.2.

## **11. Liability and liability insurance**

### **11.1**

Unless otherwise agreed, the contracting parties shall be liable amongst themselves according to statutory law.**11.2**

The Contracting party shall be obliged to take out a business liability insurance policy, a product liability insurance policy and an environmental liability policy with adequate coverage per claim for personal injury, material damage and financial loss and to maintain the above-mentioned policies for the duration of the contract. In the event that the insurance contract

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stipulates a maximum coverage for all claims made within any one insurance year, this must correspond to at least double the coverage stipulated per claim.

### 11.3

If the Contracting party has retained a guarantee according to Article 443 BGB based on the condition of the commodity or based on the commodity retaining a certain condition for a certain duration, then the Contracting party is liable to TRATON, irrespective of fault, for all damages resulting from a breach of the guarantee, insofar as a different legal consequence has not been agreed. Guarantees of third parties remain unaffected.

### 11.4

TRATON, in addition to the rights from any guarantee of quality or durability, is also entitled to the statutory warranty claims in full. TRATON is in any case entitled to demand the Contracting party, at its discretion, to remedy the defects or deliver new items. The right to compensation, in particular for damages in lieu of performance, is expressly reserved.

### 11.5

If the owed item is determined only by its type, the Contracting party is liable, provided that the performance based on the type is not impossible for everybody, without consideration for a fault in the procurement of the owed goods, unless the Contracting party is unable to procure such due to force majeure.

### 11.6

If TRATON sets a deadline for the Contracting party without specifying the type of supplementary performance (remedying of defects or delivery of a defect-free product), the declaration must be interpreted in such a way that TRATON gives the Contracting party the choice of remedy.

### 11.7

If TRATON has unsuccessfully determined a reasonable period for supplementary performance, TRATON shall be entitled to remedy a defect itself or by a third party at the expense of the Contracting party and to demand reimbursement of the necessary expenditures, unless a substitute performance is only required instead of rescission or if a reduction with disproportionate costs is possible. In particular, the significance of the defect for the buyer and the impairment of the use of the goods as required by the contract or the normal use of the goods as well as the value of the goods in defect-free condition must be taken into account.

### 11.8

TRATON is entitled, in exceptional cases and without unsuccessful expiration of the appropriate period determined by the Contracting party, to remedy a defect either itself or by a third party at the expense of the Contracting party, if the defect poses a specific risk to life, limb or health or other protected legal interests pursuant to Article 823 BGB and if waiting for a rework on the part of the Contracting party is not reasonable due to this danger. The Contracting party is to be informed as far as possible as to the danger and the imminent rework,



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in order to give it the possibility of an immediate remedy of the defect and the associated hazardous situation.

### **12. Prohibition of assignment**

Claims of the Contracting party against TRATON arising from the contractual relationship may not be assigned to third parties without the prior written consent of TRATON. If the assignment of the claim according to Article 354a HGB [German Commercial Code] is nevertheless effective, the Contracting party must reimburse all additional costs in connection with the assignment.

### **13. Limitation period**

The claims of TRATON due to a defect in the delivered goods according to Article 437 No. 1 and 3 BGB shall expire relating to an item that has been used in accordance with its usual use for a building and whose defectiveness has been caused within five years, moreover, within 3 years from delivery of the goods, or termination of the consulting service. Section 438 Paras. 3-5 remains unaffected.

### **14. Applicable law, jurisdiction**

#### **14.1**

The contracts entered into and the realisation, validity, interpretation and implementation of such contracts as well as all additional legal relationships existing between the parties, in accordance with the following contractual conditions, shall be exclusively governed by the laws of the Federal Republic of Germany. Application of the United Nations Convention on Contracts for the International Sale of Goods, dated 11 April 1980, shall be excluded.

#### **14.2**

The exclusive place of jurisdiction, as far as legally permissible, shall be Braunschweig.

### **15. Other agreements**

#### **15.1**

Any amendments to these General Terms and Conditions for Purchasing shall only be valid in the event that they are agreed in writing. This also applies to the requirement for the written form itself.

#### **15.2**

In the event that one or more of the provisions in these General Terms and Conditions for Purchasing or if one or more of the present contractual clauses in these General Terms and



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Conditions for Purchasing is or becomes invalid, the validity of the remaining clauses and the validity of the contract itself shall not be affected.

### **15.3**

In the event that contractual gaps should become apparent during the realisation of the present contract, these must be remedied with replacement provisions equating as closely as possible to the contract's commercial purpose.