

# General Terms and Conditions of Sale of T.E.L.L. GmbH

## I. General Information

1. All deliveries and services are subject to these terms and conditions as well as any separate contractual agreements. Deviating terms and conditions of purchase of the Purchaser shall not become part of the contract even if the order is accepted.

In the absence of a special agreement, a contract is concluded with the written order confirmation of xxx GmbH (hereinafter referred to as the **supplier**).

2. The Supplier reserves the right of ownership and copyright to samples, cost estimates, drawings and similar informations of a physical and non-physical nature - also in electronic form; they may not be made accessible to third parties. The Supplier undertakes to make information and documents designated as confidential by the Purchaser accessible to third parties only with the Purchaser's consent.
3. The supplier stores, processes and uses the personal data of the customer for the proper performance of services and for its own purposes. To do this, the supplier also uses automatic data processing systems. To fulfill the data backup requirements, the supplier has taken technical and organizational measures to ensure the security of the data stocks and the data processing workflows with regard to Art. 24 GDPR. The employees involved in the processing are obliged to maintain data confidentiality and are required to strictly comply with all data protection regulations. Any processing of personal data is subject to the privacy policy. Our privacy policy can be found on our website at: <https://www.tell.de>. Each customer is also independently responsible for compliance with the data protection laws applicable in their country as the data controller.

## II. Price and payment

1. Unless otherwise agreed, prices are ex works including loading at the factory, but excluding packaging, unloading, assembly, insurance, fees and customs duties. Value added tax at the respective statutory rate shall be added to the prices.
2. In the absence of a special agreement, payment shall be made without any deduction within 10 working days of the invoice date to the Supplier's account.
3. The purchaser shall only be entitled to withhold payments to the extent that his counterclaims are undisputed or have been recognised by declaratory judgement.
4. The Purchaser shall only be entitled to offset counterclaims from other legal relationships to the extent that they are undisputed or have been recognised by declaratory judgement.
5. Insofar as the installation is included in the scope of delivery, the following applies: The costs of installation shall be borne by the customer, as well as for each type of installation: The customer shall, at his own expense and risk, take over and provide in good time the materials or equipment (including auxiliary personnel, lifting platforms, scaffolding, ladders, work platforms, cranes) owed in accordance with the order confirmation.
6. Installation services, freight costs, packaging costs, insurance and all other additional costs of delivery are not discountable.

## III. Delivery time, delivery delays, export control and Supply Chain Sustainability Act (LkSG)

1. The delivery time is based on the agreements between the contracting parties. Compliance with the delivery time by the Supplier is subject to all commercial and technical questions between the contracting parties having been clarified and the Purchaser having fulfilled all obligations incumbent upon it, such as the provision of the necessary official certificates or authorisations or the payment of a deposit. If this is not the case, the delivery time shall be extended accordingly. This shall not apply if the Supplier is responsible for the delay.
2. Compliance with the delivery time is subject to correct and timely delivery to us. The supplier shall inform us as soon as possible of any delays that become apparent.
3. The delivery period shall be deemed to have been met if the delivery item has left the supplier's works or readiness for

dispatch has been notified by the time it expires. If acceptance is to take place, the acceptance date shall be decisive - except in the case of justified refusal of acceptance - or alternatively the notification of readiness for acceptance.

4. If dispatch or acceptance of the delivery item is delayed for reasons for which the Purchaser is responsible, the Purchaser shall be charged with the costs incurred as a result of the delay, starting one month after notification of readiness for dispatch or acceptance.
5. If non-compliance with the delivery time is due to force majeure, labour disputes or other events beyond the Supplier's control, the delivery time shall be extended accordingly. The Supplier shall notify the Purchaser of the beginning and end of such circumstances as soon as possible.
6. The Purchaser may withdraw from the contract without setting a deadline if the entire performance becomes definitively impossible for the Supplier before the transfer of risk. The Purchaser may also withdraw from the contract if, in the case of an order, the fulfilment of part of the delivery becomes impossible and the Purchaser has a justified interest in rejecting the partial delivery. If this is not the case, the Purchaser must pay the contract price for the partial delivery. The same shall apply if the Supplier is unable to fulfil the contract. Otherwise, Section VII.2 shall apply.

If the impossibility or incapacity occurs during the delay in acceptance or if the Purchaser is solely or predominantly responsible for these circumstances, he shall remain obliged to provide consideration.

7. If, in the event of default, the Purchaser sets the Supplier a reasonable deadline for performance after the due date - taking into account the statutory exceptions - and if the deadline is not met, the Purchaser shall be entitled to withdraw from the contract within the framework of the statutory provisions. At the Supplier's request, the Purchaser undertakes to declare within a reasonable period of time whether it will exercise its right of cancellation.  
Further claims arising from delay in delivery shall be determined exclusively in accordance with Section VII.2 of these Terms and Conditions.
8. If parts and materials to be provided by the Purchaser are delivered to the Supplier before the contractually agreed date and if the Supplier is unable to assemble the provided parts and materials with its own delivery item at this time without disadvantages for its own operations, the Supplier shall be deemed authorised by the Purchaser to store the provided parts and materials at the risk and expense of the Purchaser, i.e. against a customary storage fee, until the contractually agreed provision date. If the purchaser requests this in writing, the parts and materials provided shall be returned to the purchaser.
9. When passing on the delivered goods to third parties, the Purchaser shall comply with the applicable provisions of national and international (re-)export control law, including any embargoes, sanctions or other restrictions on the movement of goods. In any case, the Buyer shall comply with the (re-)export control regulations of the Federal Republic of Germany and the European Union when passing on the delivered goods to third parties.

## IV. Assembly and purchaser provisions

1. Assembly, telephone service or services will be charged at the applicable hourly rates. These services will be provided by the supplier if they are specifically agreed by separate contract. The invoice will be based on the hours worked, including preparation and travel hours, as well as kilometer rates, dirt allowances, overtime allowances and travel expenses.  
Telephone service is charged in 15 minute increments.
2. If a flat rate has been agreed for the service and the installation, commissioning or performance of the service is delayed through no fault of the supplier, all associated costs (waiting, travel to and from the site, travel costs, etc.) shall be borne by the customer. If, after completion of the service, the commissioning and acceptance of the system cannot take place immediately for reasons for which the customer is responsible, the subsequent service call must be borne by the customer. The supplier shall charge for any work that deviates

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from the flat-rate service, for which the supplier is not responsible, or for additional orders placed by the customer, against proof of evidence, expenses and the conditions.

3. The services we have been commissioned with exclude the following work: excavation, chiseling, masonry, foundation, concrete, roofing, painting, electrical and water installation work, as well as static testing, documents in connection with the building application, machine-dependent approvals or state-specific certification marks, official acceptance.

The purchaser shall be responsible for securing and insuring the place of performance, for complying with the Technical Instructions on Air Quality Control and dust measurements, sound insulation, soundproofing, pneumatic pressure relief devices, warning, information and prohibition signs, oil/gas supply, compressor system, seals and insulation, electrical installation, Poly-Vinyl-Chlorid products, cable and assembly material, removal of concrete formwork or supplemental costs, unless agreed in the position, quantity and price.

Technical specifications refer to products that are homogeneous in quantity, density and surface and are free-flowing depending on diameter and degree of hardness (breaking load). The stated capacities vary depending on the configuration, products and application and are not designed according to the ATEX product directive 2014/34/EU.

The customer shall ensure that electricity, water, changing rooms, showers and toilets are provided free of charge, as well as free access to the place of performance for the supplier's personnel.

4. Sufficiently large, dry and lockable rooms must be provided for the storage of the system components, materials and tools, as well as for the use of the supplier's personnel. The customer bears the risk for parts lost on the construction site.
5. The customer is obliged to inform himself about the respective state of the constructional conditions, to check and to countersign the performance records before leaving the supplier's personnel at the place of performance. We are not responsible for any kind of damage afterwards.
6. Any changes required by the authorities shall be paid for by the customer in terms of materials and expenses and will be invoiced separately.
7. The setting and programming of control computers by the supplier does not release the customer from the obligation to check the device(s) themselves for proper function and to program them accordingly.
8. The billing of PVC, small and assembly material, of goods sold by the meter, etc. is based on the actual measurements, unless quantities, meters or volumes have been agreed in the offer.
9. The goods will be delivered in parts and reassembled and packed according to our standards. The packaging and pallets are to be disposed of by the customer at their own expense.

### V. Transfer of risk, acceptance

1. The risk shall pass to the Purchaser when the delivery item has left the factory, even if partial deliveries are made or the supplier has assumed other services, e.g. shipping costs or delivery and installation. If acceptance is required, this shall be decisive for the transfer of risk. It must be carried out immediately on the acceptance date, alternatively after the supplier's notification of readiness for acceptance. The Purchaser may not refuse acceptance in the event of a minor defect.
2. If dispatch or acceptance is delayed or does not take place as a result of circumstances for which the supplier is not responsible, the risk shall pass to the Purchaser from the date of notification of readiness for dispatch or acceptance. The Supplier undertakes to take out the insurance policies requested by the Purchaser at the latter's expense.

### VI. Retention of title

1. The Supplier shall retain title to the delivery item until receipt of all payments under the delivery contract, including for any additional ancillary services owed -.
2. The Supplier is entitled to insure the delivery item against theft,

breakage, fire, water and other damage at the Purchaser's expense, unless the Purchaser has demonstrably taken out the insurance himself.

3. The Purchaser may neither sell, pledge nor assign the delivery item as security. In the event of seizure, confiscation or other dispositions by third parties, he must inform the supplier immediately.
4. In the event of breach of contract by the Purchaser, in particular default in payment, the Supplier shall be entitled to take back the delivery item after issuing a reminder and the Purchaser shall be obliged to surrender it.
5. Due to the retention of title, the supplier can only demand the return of the delivery item if he has cancelled the contract.

### VII. Warranty (liability for material defects and defects of title)

The supplier shall be liable for material defects and defects of title in the delivery as well as used machines, excluding further claims - subject to Section VII - as follows:

#### Material defects

1. All parts which prove to be defective as a result of a circumstance occurring before the transfer of risk shall be repaired or replaced free of defects at the Supplier's discretion. The supplier must be notified immediately in writing of the discovery of such defects. Replaced parts shall become the property of the supplier.
2. After consultation with the Supplier, the Purchaser shall give the Supplier the necessary time and opportunity to carry out all repairs and replacement deliveries which the Supplier deems necessary; otherwise the Supplier shall be released from liability for the resulting consequences.  
Only in urgent cases where operational safety is jeopardised or to prevent disproportionately large damage, in which case the Supplier must be notified immediately, shall the Purchaser have the right to remedy the defect itself or have it remedied by third parties and to demand reimbursement of the necessary expenses from the Supplier.
3. If the complaint proves to be justified, the supplier shall bear the expenses necessary for the purpose of subsequent fulfilment, provided that this does not result in a disproportionate burden on the supplier. Insofar as the expenses increase due to the fact that the purchaser has taken the purchased item to a place other than the place of fulfilment after delivery, any additional costs incurred as a result shall be borne by the purchaser. In the case of the sale of a newly manufactured item, the Supplier shall also reimburse the expenses incurred by the Purchaser within the scope of its statutory obligation in the context of recourse claims in the supply chain.
4. Within the framework of the statutory provisions, the Purchaser shall have the right to withdraw from the contract if the Supplier - taking into account the statutory exceptions - allows a reasonable deadline set for the repair or replacement delivery due to a material defect to expire fruitlessly. If there is only an insignificant defect, the Purchaser shall only be entitled to a reduction of the contract price. The right to reduce the contract price is otherwise excluded.
5. Further claims shall be determined exclusively in accordance with Section VII. 2 of these Terms and Conditions.
6. No liability is accepted in the following cases in particular: Unsuitable or improper use, faulty assembly or commissioning by the Purchaser or third parties, natural wear and tear, faulty or negligent handling, improper maintenance, unsuitable operating materials, defective construction work, unsuitable building ground, chemical, electrochemical or electrical influences - unless the supplier is responsible for them.
7. If the purchaser or a third party carries out improper repairs, the supplier shall not be liable for the resulting consequences. The same applies to changes made to the delivery item without the prior consent of the supplier.

#### Defects of title

1. If the use of the delivery item leads to an infringement of industrial property rights or copyrights in Germany, the Supplier shall, at its own expense, procure the right for the

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Purchaser to continue using the delivery item or modify the delivery item in a manner that is reasonable for the Purchaser so that the infringement of property rights no longer exists.

If this is not possible under economically reasonable conditions or within a reasonable period of time, the Buyer shall be entitled to withdraw from the contract. The Supplier shall also be entitled to withdraw from the contract under the aforementioned conditions.

In addition, the Supplier shall indemnify the Purchaser against undisputed or legally established claims of the owners of the industrial property rights concerned.

2. Subject to Section VII.2, the obligations of the Supplier specified in Section VI.8 are conclusive in the event of an infringement of industrial property rights or copyrights.

They only exist if

- the Purchaser informs the supplier immediately of any asserted infringements of industrial property rights or copyrights,
- the Purchaser supports the Supplier to a reasonable extent in the defence of the asserted claims or enables the Supplier to carry out the modification measures in accordance with Section VI. 8,
- the supplier reserves the right to all defence measures including out-of-court settlements,
- the defect of title is not based on an instruction of the Purchaser and
- the infringement was not caused by the fact that the Purchaser modified the delivery item without authorisation or used it in a manner not in accordance with the contract.

## Used machines

Warranty claims for used machines or used equipment are completely excluded.

## **VIII. Liability of the supplier, limitation and exclusion of liability**

1. If the delivery item cannot be used by the Purchaser in accordance with the contract as a result of culpably omitted or faulty suggestions or advice provided by the Supplier before or after conclusion of the contract or as a result of culpable breach of other ancillary contractual obligations - in particular instructions for operation and maintenance of the delivery item - the provisions of Sections VI and VII.2 shall apply to the exclusion of further claims by the Purchaser.
2. The supplier shall only be liable for damage that has not occurred to the delivery item itself - for whatever legal reasons:
  - a. in the event of intent and gross negligence,
  - b. in the event of culpable injury to life, limb or health,
  - c. in the case of defects which he has fraudulently concealed,
  - d. as part of a guarantee commitment,
  - e. in the event of defects in the delivery item, insofar as liability exists under the Product Liability Act for personal injury or property damage to privately used items.

In the event of culpable breach of material contractual obligations, the Supplier shall also be liable for simple negligence, but limited to reasonably foreseeable damage typical of the contract.

Further claims are excluded.

## **IX. Statute of limitations**

All claims of the Purchaser - on whatever legal grounds - shall become time-barred after 12 months; this shall also apply to the limitation period for recourse claims in the supply chain pursuant to Section 445b (1) BGB (German Civil Code), provided that the last contract in this supply chain is not a purchase of consumer goods. The suspension of the limitation period under § 445b para. 2 BGB remains unaffected. The statutory time limits shall apply to claims for damages in accordance with Section VII. 2 a-c and e. They also apply to defects in a building or to delivery items that have been used for a building in accordance with their normal use and have caused its defectiveness.

## **X. Software utilisation**

If software is included in the scope of delivery, the Purchaser shall

be granted a non-exclusive right to use the software supplied, including its documentation. It is provided for use on the delivery item intended for this purpose. Use of the software on more than one system is prohibited.

The Purchaser may only reproduce, revise, translate or convert the software from the object code into the source code to the extent permitted by law (§§ 69 a ff. UrhG (German Copyright Act)). The Purchaser undertakes not to remove manufacturer's details - in particular copyright notices - or to change them without the prior express consent of the Supplier.

All other rights to the software and the documentation, including copies, shall remain with the supplier or the software supplier. The granting of sub-licences is not permitted.

## **XI. Applicable law, place of jurisdiction**

1. All disputes between the Supplier and the Purchaser arising out of or in connection with these Terms and Conditions of Sale and agreements concluded under them shall be governed exclusively by the laws of the Federal Republic of Germany to the exclusion of the United Nations Convention on Contracts for the International Sale of Goods of 11 April 1980 (UN Sales Convention).
2. The place of jurisdiction for all disputes arising from or in connection with these Terms and Conditions of Sale shall be - to the extent permitted by law - the court responsible for the Supplier's registered office. However, the Supplier shall be entitled to bring an action at the Purchaser's head office.
3. The place of fulfilment for all deliveries arising from the contractual relationship is 48691 Vreden (Germany), unless otherwise agreed.
4. Should any provision of these Terms and Conditions of Sale be or become invalid, void or unenforceable, this shall not affect the validity or enforceability of any other provision of these Terms and Conditions of Sale or any other agreement. Ineffective, void or unenforceable provisions of these Terms and Conditions of Sale shall be deemed to be replaced by such effective and enforceable provisions which correspond as far as possible to the economic purpose of the omitted provision.

Vreden, November 2024

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