

General terms and conditions



TROX[®] TECHNIK



The art of handling air

TROX HESCO Schweiz AG
Walderstrasse 125
Postfach 455
CH-8630 Rüti ZH

Tel. +41 55 250 71 11
Fax +41 55 250 73 10
www.troxhesco.ch
info@troxhesco.ch

General terms and conditions

1. General

- 1.1 These terms and conditions apply to all deliveries made by TROX HESCO Schweiz AG to customers abroad. By placing an order, the customer expressly recognises these terms and conditions.
- 1.2 Any variations, specifically the adoption of alternative general terms and conditions, the purchaser's own purchasing terms and conditions, etc. are only effective in law if they are acknowledged in writing by TROX HESCO Schweiz AG.
- 1.3 The individual company terms and conditions of TROX HESCO Schweiz AG shall apply for the acceptance of services, such as commissioning, operating trials, assembly work and the elaboration of complete system diagrams.
- 1.4 Otherwise, the provisions of the Swiss Code of Obligations shall apply.

2. Order acknowledgements, order amendments, cancellations

- 2.1 Our order acknowledgement shall prevail with regard to the scope and execution of the delivery. The specifications stated will be binding as long as no information to the contrary is received within two working days of despatch of the order acknowledgement.
- 2.2 Any materials or services that are not included in the order acknowledgement will be invoiced separately.
- 2.3 Order amendments or cancellations after a period of two working days has expired as per Point 2.1 will only apply if TROX HESCO Schweiz AG has declared in writing that it is in agreement with them. In addition, any resulting costs will be for the customer's account.

3. Prices

- 3.1 The prices specified in the documentation can basically be changed at any time without advance notice.
- 3.2 All prices specified are in Swiss francs (CHF).

4. Illustrations, properties and technical terms and conditions

- 4.1 The technical specifications, illustrations, dimensions, standard diagrams and weights included in brochures that form the foundation of quotations will remain non-binding as long as they are not other applicable documents and part of an order acknowledgement. We reserve the right to modify designs without advance notification. Materials can be replaced by equivalents. In certain special cases, binding sketches showing dimensions are to be requested.
- 4.2 The customer has to instruct TROX HESCO Schweiz AG on the technical operating conditions of the system, if they deviate from the general recommendations.

5. Copyright and ownership of technical drawings and documents

Technical drawings and documents handed over to the customer which do not form an integral part of the material and its application remain the property of TROX HESCO Schweiz AG. Their use and circulation in a modified or unmodified state is only permitted with the written approval of TROX HESCO Schweiz AG.

6. Terms of supply

- 6.1 The delivery date will be specified as precisely as possible according to the latest information available. However, it cannot be guaranteed. If, however, delivery dates are expressly agreed, they are binding (tight deadlines).
- 6.2 TROX HESCO Schweiz AG is authorised to hold back the delivery if the agreed terms of payment are not fulfilled by the customer.
- 6.3 If the goods ordered are not accepted on the agreed delivery date then TROX HESCO Schweiz AG is authorised to invoice the goods. The contractual parties will negotiate an amicable solution regarding any consequential costs due to the goods being put into storage.
- 6.4 In the case of blanket orders for call-off, TROX HESCO Schweiz AG will manufacture the goods ordered only on receipt of the call-off.
- 6.5 If the purchaser cancels his order or refuses to accept the delivery items for reasons for which he is responsible, then the supplier is authorised to claim a cancellation fee of ten percent of the order value without any further proof, instead of his entitlement for the contract to be fulfilled and instead of compensation. Apart from cancellation costs, on request from the supplier, the purchaser has to reimburse him for the stocks of the delivery items specially produced for him which were made available to him in this case on request.
- 6.6 The purchaser is authorised to claim compensation for late deliveries as long as the supplier is verifiably to blame for the delay and the purchaser can provide documentary evidence of the losses caused by this delay. If the purchaser is helped out by means of a replacement delivery, any entitlement to compensation for delay will no longer be valid. The compensation for each full week of delay is a maximum of 0.5%, but no more than 5% in total, calculated based on the contract price of the part of the delivery that has been delayed. The first two weeks of delay do not give an entitlement to compensation. On reaching the maximum compensation amount, the purchaser must arrange a reasonable period of grace with the suppliers in writing. If this period of grace is not complied with for reasons for which the supplier is responsible, the purchaser is authorised to reject acceptance of the delayed part of the delivery. If partial acceptance is economically unacceptable to him, then he is authorised to withdraw from the contract and to demand back payments already made against the return of deliveries already effected. The purchaser has no rights or claims other than those expressly mentioned above because of the delay of deliveries or performances. This limitation does not apply to illegal intent or gross negligence on the part of the supplier, but does apply to the illegal intent or gross negligence of auxiliary persons.

7. Shipping terms/transport terms and conditions

- 7.1 The terms of sale are understood to be ex-works (EXW), and any other terms of sale must be individually agreed (DDP, DDU, CPT, FOB, etc.).
- 7.2 Packaging costs will be invoiced to the customer.
- 7.3 Additional transport costs will be for the customer's account if they are brought about as a result of special requests (express delivery, special arrival times, etc.).
- 7.4 The packaging materials used will be those that TROX HESCO Schweiz AG deems appropriate.

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8. Retention of title

- 8.1 The supplier retains ownership of all his deliveries until he has received payment in full according to the contract.
- 8.2 The purchaser is obliged to co-operate with measures that are necessary for the protection of the supplier's property. In particular, on conclusion of the contract he is to authorise the supplier, at the cost of the purchaser, to undertake the entry or registration of the retention of title in public registers, books or the like, according to the appropriate national laws and to fulfil all relevant formalities.
- 8.3 The purchaser will, at his own cost, keep the items supplied in good order for the duration of the retention of title and insure them in favour of the supplier against theft, damage, fire, water and other risks. Furthermore, he will take all measures necessary to ensure that the property claim of the supplier is neither impaired nor rescinded.

9. Taking goods back

- 9.1 TROX HESCO Schweiz AG is free, after prior written agreement with the customer, to take back goods held in storage, as long as they are still in its product range and in mint condition at the time the agreement is made (max 6 months old, unused, in original packaging). However, there is no obligation to take goods back.
- 9.2 Products not normally held in stock, i.e. those manufactured to order, will not be taken back.
- 9.3 The return shipment is to be made within 30 days of delivery and only with advance notification, with the delivery note, franco domicile to the agreed delivery point. The following will be deducted from any credit note: inspection fee, shipping costs, any repair costs and administration fees. The minimum deduction for administration is 30% of the net invoice value, but with a minimum of CHF 150.–, as long as the goods and packaging are in perfect condition. A credit note cannot be exchanged. It can only be used as credit toward future purchases.

10. Inspection/notification of defects on acceptance of delivery

- 10.1 The customer is obliged to inspect the goods immediately on receipt. Goods that do not correspond to the delivery note or show visible signs of shortcomings are to be notified by the customer in writing within 8 days of receipt. If he fails to do this, deliveries and services will be regarded as having been accepted.
- 10.2 Over and above this, late notification of defects leads to the forfeiture of the guarantee obligation of TROX HESCO Schweiz AG.
- 10.3 If the customer requests acceptance inspections and this is not expressly included in the scope of supply, it must be agreed in writing and will be for the account of the customer. If the acceptance inspections cannot be carried out in the specified time period for reasons beyond the control of TROX HESCO Schweiz AG, then the properties to be established with these inspections remain intact until proven otherwise as per Point 9.1.
- 10.4 Notifications of defects do not cancel the payment deadline.

11. Notification of defects that could not be established on receipt of goods

Shortcomings that cannot be established on receipt without further investigation are to be notified by the customer (same procedure as in Point 9) as soon as they come to light, but at the latest before the guarantee periods expire as per Point 12.

12. Guarantee periods/duration and start

- 12.1 The guarantee for air-conditioning and ventilation components lasts for 12 months from commissioning, however for a maximum of 24 months from the delivery date if commissioning cannot be carried out earlier as a result of construction delays.
- 12.2 The guarantee for all other goods, even if they are built into or onto other equipment, lasts for 12 months from the delivery date. For example, this affects control systems, regulating units, flow monitors, volume flow controls, fire dampers, fans, etc.
- 12.3 For goods delivered later in order to fulfil guarantees as per Point 12, the basic guarantee periods apply again (without any extension) as per Point 11. However, the guarantee period for parts in the original delivery which have no defects will not be extended.

13. Guarantees

- 13.1 The guarantee extends to the services specified in TROX HESCO catalogues, to the confirmed services and the trouble-free condition of the goods.
- 13.2 TROX HESCO Schweiz AG is to fulfil its guarantee obligations, in that it will replace faulty goods or provide spare parts ex-works as it sees fit. Further customer claims are excluded, in particular on reduction or cancellation, for the customer's replacement costs, compensation, costs for the determination of the causes of damage, expert opinions and consequential damages (interruptions to business, water and environmental damage, etc.), amongst other things.
- 13.3 However, if the replacement or repair of faulty parts has to be undertaken by the customer because of mandatory deadlines (emergencies), TROX HESCO Schweiz AG will only accept proven costs as per the standard local billing rates after prior mutual agreement and with written approval.
- 13.4 These guarantee obligations are only valid if TROX HESCO Schweiz AG is informed in good time of any damage that has occurred (see Points 9 and 10).
- 13.5 The guarantee expires if the customer or third parties carry out modifications or repairs without the prior written approval of TROX HESCO Schweiz AG.
- 13.6 It is the responsibility of the customer to ensure that the boundary conditions for the normal execution of the certificate of performance are created.
- 13.7 All cases of infringement of the contract and its legal consequences, as well as all claims by the purchaser, irrespective of on what legal grounds they are made, are regulated exclusively in these terms and conditions. In particular, all claims for compensation that are not expressly nominated, reduction or cancellation of the contract or withdrawal from the contract are excluded. In no case can claims by the purchaser for compensation of damages stand that have not affected the delivery

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item itself, such as loss of production, loss of use, loss of orders, loss of profit, as well as other direct or indirect damages. This exemption from liability does not apply to illegal intent or gross negligence on the part of the supplier, but does apply to the illegal intent or gross negligence of auxiliary persons. Furthermore, this exemption from liability does not apply if overriding laws contradict it.

13.8 In accordance with the VKF (Association of Swiss Canton Fire Insurance Companies) the installer is obliged to install fire protection products in line with the manufacturer's commissioning and installation instructions. Deviating applications are not permitted. Any warranty is invalidated by non-compliant application.

14. Exclusion from guarantee

14.1 Excluded from the guarantee are damages caused by Act of God, system designs and execution that are not technically representative of the state-of-the-art, also non-observance of the technical guidelines of TROX HESCO Schweiz AG with regard to planning, assembly, commissioning, operation and maintenance, as well as the improper work of third parties. Also excluded from the guarantee are faults caused by the non-execution of maintenance, inspection or water damage.

14.2 Also excluded from the guarantee are parts that are subject to natural wear and tear.

14.3 Furthermore the following are excluded: damage caused by the use of improper energy carriers (heat, cold), corrosion damage, especially if water treatment plants, water softening/descaling agents, etc. are connected or inappropriate antifreeze is added, also damage caused by incorrect electrical connections, corrosive water, water pressure that is too high, incorrect decalcification and chemical or electrolytic influences, etc. The guarantee shall not apply in the case of periodical or longer lasting emptying of the system, operation with steam, the addition of substances to heating or cooling water that can have a corrosive effect on steel, copper or sealing materials, excessive sludge deposition in parts of the system and in the event of the temporary or permanent introduction of oxygen into the system.

14.4 Claims are excluded that arise due to application and installation deviating from the manufacturer's commissioning and installation instructions, particularly for fire protection and smoke extraction products. The supplier is not obliged to carry out a free acceptance inspection on site.

15. Product liability

As long as the customer has no responsibility for liability of his own (faulty installation, modification of the product, incorrect design, poor advice, etc.), TROX HESCO Schweiz AG is to compensate directly for damages as per the Product liability law. In such a case, the customer can, if need be, refer the aggrieved parties directly to TROX HESCO Schweiz AG.

16. Terms of payment

16.1 The payment terms are 60 days net from the invoice date. Any alternative terms of payment must be agreed individually.

16.2 The agreed payment deadlines are also to be complied with if any delays occur after the delivery has left the factory. It is not permitted to reduce or hold back payments because of complaints, outstanding credit notes or counter claims not recognised by TROX HESCO Schweiz AG.

16.3 Payments are also still to be made if insignificant parts are missing which do not affect the use of the delivery or if refinishing work to the delivery proves necessary.

16.4 Interest on arrears as per standard banking practice will be charged on late payments.

16.5 TROX HESCO Schweiz AG is entitled to make the despatch of pending orders dependent on the payment of outstanding accounts due or to even cancel the order.

16.6 From a specific order volume, a third of the order amount will be invoiced by way of prepayment immediately on receipt of the order acknowledgement, as long as this is agreed in advance.

17. Special provisions

Raw material shortages, interruptions to operations and cases of Acts of God absolve TROX HESCO Schweiz AG of contracted delivery obligations for the duration of such impediments and their consequences, without compensating the customer affected.

18. Final provisions

18.1 Should one or more provisions of this contract prove ineffective or unenforceable either wholly or in part, or as a result of amendments to the legislation prove ineffective or unenforceable after the contract is concluded, the remaining contractual provisions and the effectiveness of the contract as a whole remain unaffected. An effective and enforceable provision that comes nearest in terms of the sense and purpose to the invalid provision should be inserted in lieu of the ineffective or unenforceable provision. Should the contract contain any loopholes, the provisions will be regarded as agreed that correspond to the sense and purpose of the contract and which have been agreed by the parties at the time the contract was concluded.

18.2 The legal domicile is that of TROX HESCO Schweiz AG, namely CH-8630 Rüti. However, the supplier is authorised to take action at the head office of the purchaser. The contract is subject to Swiss substantive law.