

# GENERAL TERMS AND CONDITIONS OF SALE AND DELIVERY OF TROX HESCO SCHWEIZ AG (GTCSD)

## 1. General

1.1 The following terms and conditions (hereinafter "GTCSD") shall apply to all contractual relationship between TROX HESCO Schweiz AG (hereinafter "TROX HESCO") and its customers (hereinafter "customers" or "customer"). By placing an order, the customer expressly acknowledges these terms and conditions (GTCSD).

1.2 Other terms and conditions, namely the adoption of other general terms and conditions such as the SIA standards, buyer's own terms and conditions of purchase, etc., as well as the customer's general terms and conditions are only effective in law if they are accepted or confirmed expressly and in writing by TROX HESCO. Individual company terms and conditions of TROX HESCO shall apply for the acceptance of services, such as commissioning, operating trials, assembly work and the elaboration of complete system diagrams.

1.3 All documents listed below shall be the basis of the contract between TROX HESCO and the customer. The documents shall be in the order of hierarchy set out below. In the event of contradictions, the preceding shall take precedence over the following. They shall apply one after the other:

- a) the written contract in accordance with the order confirmation of TROX HESCO for the respective order,
- b) the order confirmation,
- c) the written or e-mail offer of TROX HESCO on which the contract is based,
- d) this general terms and conditions (GTCSD),
- e) the data protection declaration available on the TROX HESCO website,
- f) the other documents referred to in this GTCSD, where relevant.

1.4 Insofar as the customer provides materials for further processing (provisions), these shall be delivered free of charge to the works of TROX HESCO and must comply with the specifications required for processing. The parties agree that the customer shall bear all procurement, insurance, transport and unloading costs.

1.5 In the case of several language versions of this GTCSD, the German version shall be the only authoritative one.

1.6 Furthermore, the provisions of the Swiss Code of Obligations shall apply.

## 2. Order acknowledgements, order amendments, cancellations

2.1 The order acknowledgement of TROX HESCO shall prevail with regard to the contract conclusion, the scope and the execution of the delivery. The specifications stated in the order confirmation are binding.

2.2 Any materials or services that are not included in the order acknowledgement will be invoiced separately.

2.3 Order amendments, supplements, specifications or cancellations shall only apply if TROX HESCO has declared its agreement in writing or by e-mail. In addition, the resulting costs will be for the customer's account.

## 3. Prices

3.1 The prices specified in the documentation can be changed unilaterally by TROX HESCO at any time without advance notice.

3.2 Unless otherwise agreed, the prices of TROX HESCO shall be, net, "FCA 8630 Rüti-ZH" (Incoterms® 2020) for deliveries outside Switzerland and "DAP construction site"; for deliveries within Switzerland, without packaging, included transport, without insurance and excluding the statutory turnover tax or value added tax.

## 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 part of an order acknowledgement. TROX HESCO reserves 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 on the technical operating conditions of the system, if they deviate from the general recommendations.

## 5. Deliveries and Services of the Supplier

5.1 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. Their use and circulation in a modified or

unmodified state is only permitted with the written approval of TROX HESCO.

## 6. Terms of supply

6.1 The terms of delivery agreed with the customer are set out in the order confirmation. If no agreement has been made, de-livery shall be "FCA 8630 Rüti-ZH" (Incoterms® 2020) for de-liveries outside Switzerland and "DAP construction site" for deliveries within Switzerland.

6.2 The delivery date will be specified as precisely as possible according to the latest information available. However, it can-not be guaranteed. If, however, delivery dates are expressly agreed, they are binding (tight deadlines).

6.3 Unless otherwise agreed, the delivery period shall be deemed to have been observed if, by the end of the delivery period, the goods have been handed over to the agreed carrier for de-liveries outside Switzerland ("FCA 8630 Rüti-ZH"), Inco-terms® 2020) and, for deliveries within Switzerland, the goods have arrived at the agreed address and are ready for unload-ing ("DAP construction site", Incoterms® 2020).

6.4 TROX HESCO is authorised to hold back the delivery if the customer does not comply with the agreed terms of payment.

6.5 If the goods ordered are not accepted on the agreed delivery date, then TROX HESCO is authorised to invoice the goods. The contractual parties will negotiate an amicable solution re-garding any consequential costs due to the goods being put into storage. Otherwise paragraph 9 applies.

6.6 In the case of blanket orders for call-off, TROX HESCO will manufacture the goods ordered only on receipt of the call-off.

6.7 The customer is authorised to claim compensation for late de-liveries as long as TROX HESCO is verifiably to blame for the delay and the customer can provide documentary evidence of the losses caused by this delay. If the customer is helped out by means of a replacement delivery, any entitlement to com-pensation for delay will no longer be valid.

6.8 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 de-layed. The first two weeks of delay do not give an entitlement to compensation.

6.9 On reaching the maximum compensation amount, the cus-tomer must arrange a reasonable period of grace with TROX HESCO in writing. If this period of grace is not complied with for reasons for which TROX HESCO is responsible, the cus-tomer is authorised to reject acceptance of the delayed part of the delivery. If partial acceptance is economically unac-ceptable 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.

6.10 The customer has no rights or claims other than those ex-pressly 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 TROX HESCO, but does ap-ply to the illegal intent or gross negligence of auxilliary per-sons.

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

## 7. Shipping terms / transport terms and conditions

7.1 TROX HESCO is free to choose the mode of transport for de-liveries within Switzerland ("DAP construction site", Inco-terms® 2020). Deliveries by rail are free of charge to the Swiss valley station, deliveries by lorry are free of charge to the construction site without unloading. If the construction site is not accessible to lorries, the customer shall determine the place of delivery in good time.

7.2 The packaging materials used will be those that TROX HESCO deems appropriate. The packaging of the goods is the responsibility of TROX HESCO. Packaging costs will be invoiced to the customer

7.3 Packaging and means of transport expressly invoiced and specified shall be credited if they are returned to the supplier within one month in perfect condition and carriage paid.

7.4 Additional transport costs will be for the customer 's account if they are brought about as a result of special requests (ex-press delivery, special arrival times, etc.).

7.5 Complaints due to transport damage must be made in writing immediately after they have been discovered by the customer at the railways, the post office or the carrier.

## 8. The transfer of benefits and risks

8.1 Benefit and risk shall pass to the customer upon delivery (cf. paragraph 6.3). If the customer collects the goods at the works, the benefit and risk shall pass to the customer upon dispatch of the delivery ex works.

8.2 If the goods are installed by employees of TROX HESCO, benefit and risk are transferred to the customer upon completion of the installation.

## 9. Default of acceptance and breach of other duties to co-operate

9.1 If the customer is in default of acceptance or violates other obligations to cooperate, TROX HESCO shall be entitled to demand compensation for the damage incurred, including any additional expenses. In this case, the risk of accidental loss or accidental deterioration of the goods shall pass to the customer at the time the customer is in default of acceptance. If the customer violates his obligations to cooperate, TROX HESCO shall also be entitled to adjust the delivery date in pursuant to paragraph 6.2 accordingly.

## 10. Regulations in the country of destination and foreign commercial law

10.1 The customer must draw TROX HESCO's attention to all regulations and standards of the country of destination which relate to the execution of the deliveries and services, the operation as well as the prevention of illness and accidents at the latest when placing the order.

10.2 Should TROX HESCO be prosecuted as a result of the omission of the aforementioned notification obligation, the customer shall undertake to fully indemnify TROX HESCO.

10.3 With regard to the goods purchased from TROX HESCO, the customer shall be obliged to comply with all applicable laws and other regulations of foreign trade law, in particular the regulations on export control as well as the applicable trade embargoes. This concerns both national and foreign regulations, in particular, but not exclusively, the regulations of the US export administration and EU regulations. The products purchased from TROX HESCO may not be directly or indirectly resold, exported, re-exported, distributed, transferred or otherwise disposed of without first observing all restrictions, obtaining all necessary administrative decisions and fulfilling all formalities which are to be observed or required under the aforementioned laws, regulations and other provisions.

## 11. Retention of title

11.1 TROX HESCO retains ownership of all its deliveries until it has received payment in full according to the contract.

11.2 The customer is obliged to co-operate with measures that are necessary for the protection of the property of TROX HESCO. In particular, on conclusion of the contract he is to authorise TROX HESCO, at the cost of the customer, 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.

11.3 The customer will, at his own cost, keep the items supplied in good order for the duration of the retention of title and insure them in favor of TROX HESCO against theft, damage, fire, water and other risks. Furthermore, he will take all measures necessary to ensure that the property claim of TROX HESCO is neither impaired nor rescinded.

## 12. Taking goods back

12.1 TROX HESCO 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.

12.2 Products not normally held in stock, i.e. those manufactured to order, will not be taken back.

12.3 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 place. 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 150.00-, 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.

## 13. Inspection / notification of defects on acceptance of delivery

13.1 The customer is obliged to inspect the goods immediately on receipt. Goods that do not correspond to the delivery note or show ascertainable signs of shortcomings are to be notified by the customer in writing within 8 days of receipt (see paragraph 7.5). If he fails to do this, deliveries and services will be regarded as having been accepted.

13.2 A late notification of defects leads to the forfeiture of the guarantee obligation of TROX HESCO.

13.3 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, then the properties to be established with these inspections remain intact until proven otherwise as per paragraph 13.1.

13.4 Notifications of defects do not cancel the payment deadline.

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

14.1 Shortcomings that cannot be established on receipt are to be notified immediately, i.e. within 8 days after detection by the customer (same procedure as in paragraph 13), but at the latest before the guarantee periods expire as per paragraph 15.

## 15. Guarantee periods / duration and start

15.1 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.

15.2 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.

15.3 For goods delivered later in order to fulfil guarantees as per paragraph 16, the basic guarantee periods apply again (without any extension) as per paragraph 15.1 and 15.2. However, the guarantee period for parts in the original delivery which have no defects will not be extended.

## 16. Guarantee

16.1 The guarantee extends to the services specified in TROX HESCO catalogues, to the confirmed services and the trouble-free condition of the goods.

16.2 TROX HESCO shall 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.

16.3 However, if the replacement or repair of faulty parts has to be undertaken by the customer because of mandatory deadlines (emergencies), TROX HESCO will only accept proven costs as per the standard local billing rates after prior mutual agreement and with written approval.

16.4 These guarantee obligations are only valid if TROX HESCO is informed in good time of any damage that has occurred (see paragraph 13 and 14).

16.5 The guarantee expires if the customer or third parties carry out modifications or repairs without the prior written approval of TROX HESCO.

16.6 It is the responsibility of the customer to ensure that the boundary conditions for the normal execution of the certificate of performance are created.

16.7 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 guarantee is invalidated by non-compliant application.

16.8 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 with regard to planning, assembly, commissioning, operation and maintenance, as well as the improper work of third parties.

16.9 Also excluded from the guarantee are faults caused by the non-execution of maintenance, inspection or water damage.

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

16.11 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 anti-freeze 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.

16.12 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.

16.13 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. TROX HESCO is not obliged to carry out a free acceptance inspection on site.

## 17. Liability

17.1 TROX HESCO shall be liable without limitation in cases of express acceptance of a guarantee. TROX HESCO shall also be liable without limitation for injury to life, limb or health. Subject to intent and gross negligence and subject to liability based on mandatory statutory provisions, in particular the Product Liability Act, any other contractual and non-contractual liability on the part of TROX HESCO is excluded.

17.2 The contractual and non-contractual liability of TROX HESCO for consequential damages (e.g. consequential damages, indirect and incidental damages, loss of profit or claims by third parties of the customer) is excluded, insofar as mandatory legal provisions, in particular product liability provisions, do not

conflict with this. If, in an individual case, TROX HESCO awards compensation for consequential damages as a gesture of goodwill, this shall always occur without any prejudicial effect and without recognition of a legal obligation.

17.3 All cases of breaches of contract and their legal consequences as well as all claims of the customer, irrespective of the legal grounds on which they are based, are conclusively regulated in these terms and conditions. In particular, all claims not expressly mentioned are excluded.

17.4 The foregoing limitations of liability shall also apply to the benefit of the legal representatives, employees or other vicarious agents of TROX HESCO.

## 18. Terms of payment

18.1 The payment terms are 30 days' net from the invoice date. Any alternative terms of payment must be agreed individually.

18.2 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.

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

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

18.5 TROX HESCO is entitled to make the dispatch of pending orders dependent on the payment of outstanding accounts due or to even cancel the order.

18.6 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.

18.7 Claims of the customer, irrespective of whether they arise from the same contract or not, may only be settled with the written consent of TROX HESCO by the customer.

## 19. Data protection

19.1 TROX HESCO uses the personal data provided by the customer for the fulfilment and processing of orders or enquiries, for invoicing, for maintaining ongoing customer relations, for guaranteeing operation and maintaining operational safety, for fulfilling statutory obligations and for marketing purposes. To the extent permitted by law and to the extent deemed appropriate by TROX HESCO, TROX HESCO may disclose the personal data collected by it to third parties both national and abroad (e. g. service providers, suppliers and other contractual partners of TROX HESCO) within the framework of its business activities for the purpose of processing for the purposes of TROX HESCO or for its own purposes. In particular, the data is forwarded to the supplying company commissioned with the delivery (insofar as this is necessary for the delivery of goods), to order data processors called in by TROX HESCO both national and abroad as well as to the group companies of TROX HESCO both national and abroad. As a customer, you expressly agree to this use of your data. In further respects, reference is made to the data protection declaration of TROX HESCO available on the website <<https://www.troxhesco.ch/>>. By placing an order, the customer confirms that he has taken note of this data protection declaration and agrees with the provisions of the data protection declaration.

## 20. Final Provisions

20.1 Should any provision of this Agreement be or become invalid or unenforceable in whole or in part, or become invalid or un-enforceable as a result of changes in legislation after conclusion of the Agreement, the remaining provisions and the validity of the Agreement as a whole shall remain unaffected. The invalid or unenforceable provision shall be replaced by a valid and enforceable provision that comes as close as possible to the meaning and purpose of the invalid provision. If the contract proves to be incomplete, the provisions shall be deemed agreed which correspond to the sense and purpose of the contract and which would have been agreed between the parties at the time of conclusion of the contract.

20.2 All disputes between the supplier and TROX HESCO shall be subject to the jurisdiction of the courts at the seat of TROX HESCO, CH-8630 Rütli-ZH. TROX HESCO shall also be entitled to bring legal action against the supplier at its registered office.

20.3 The present contractual relationship shall be governed by Swiss substantive law. The application of the United Nations Convention on Contracts for the International Sale of Goods of April 11, 1980 ("the Vienna Law on the International Sale of Goods") shall be excluded.

(Last update August 2019)