

TRILUX Terms and Conditions of Delivery

I. Scope of Application:

- The following T&C shall apply to all business relations of TRILUX GmbH & Co. KG, i.e. to all contracts, deliveries and other services. These T&C shall be deemed incorporated into future business relations, even if they have not been expressly referred to again.
- Deviations from these T&C shall only become part of the contract, if the deviations have become content of an express written individual agreement between TRILUX GmbH & Co. KG [hereinafter referred to as „supplier“] and the orderer.
- General Terms and Conditions of the orderer are objected to. They shall only be deemed agreed upon, if the supplier has expressly consented to them in writing.

II. Content of the Contract, Prices:

- The supplier's written acknowledgement of the order shall be authoritative for the content and scope of deliveries and services.
- The written acknowledgement of the order shall also be deemed authoritative for purchase orders in relation to our commercial agents and/or in-field sales representatives.
- All collateral agreements, additions etc. shall only be effective in writing.
- All technical data in our catalogues and other sales documentation, lists and drawings, as well as particulars relating to weights and measures have been diligently created. We reserve the right to subsequently make corrections in the event of obvious mistakes.
- The particulars in our catalogues, price lists and other sales documentation apply to lamps wired ready for connection for the rated operating voltages and frequencies set out in the respective product specifications. The highest rated ambient temperature is $t_a = 25^{\circ}\text{C}$ for interior lamps and $t_a = 15^{\circ}\text{C}$ for exterior lamps, except where deviating particulars are provided in the product specifications. Quotations for lamps for other rated operating voltages, frequencies and ambient temperatures need to be requested separately.
- The prices shall be calculated on the basis of the price lists valid at the time of conclusion of the contract or on the basis of the item-specific offer prices. All prices are understood to be subject to addition of the statutory value-added tax applicable on the day of delivery.
- All prices are understood to be ex works, including packaging customary in the trade.

III. Fixed Periods for Delivery, Default in Delivery:

- The prerequisite for compliance with fixed periods for deliveries is timely receipt of all specifications, documents, essential approvals and clearances to be supplied by the orderer, particularly essential approvals and clearances of plans, as well as compliance with the agreed payment terms and other obligations by the orderer. If these prerequisites are not fulfilled in due time, the fixed periods for delivery shall be reasonably extended, except where a delay is imputable to the supplier.
- Transactions where time is of the essence [section 376 of the German Commercial Code [HGB] (1)] shall require express written acknowledgement.
- If non-compliance with fixed periods for delivery is due to force majeure, e.g. mobilisation, war, insurrection or similar events, e.g. strike, lockout etc., the fixed periods shall be reasonably extended.
- Such a reasonable extension of the fixed periods for delivery shall also occur in the event of default in delivery by the supplier's suppliers.
- If the supplier fails to comply with the fixed date or period for delivery, the orderer shall be obliged to set the supplier in writing a reasonable grace period for delivery. If the supplier culpably fails to deliver within the set grace period, the orderer shall be entitled to rescind the contract.
- In so far as non-compliance with fixed dates which have been bindingly guaranteed is imputable to the supplier, the orderer shall be entitled - in so far as it satisfactorily shows that it has incurred a loss as a result thereof - to demand compensation at the rate of 0.5 % for every full week of default, but in total no more than 5 % of the price for the delivery or service affected by default. The limitation of liability shall not apply, in so far as the supplier is to blame due to intent or gross negligence or in so far as the supplier is mandatorily liable on account of injury to life, body or health.
- The orderer shall be obliged to declare within a reasonable period, at the request of the supplier, whether, on account of the delay in delivery, it rescinds the contract and/or demands compensatory damages in lieu of performance and/or insists on delivery.
- If, at the orderer's request, delivery, dispatch or personal service is deferred beyond the time envisaged in the contract, the supplier shall be entitled to charge the orderer, for every commenced month, a storage charge at the rate of 0.5 % of the invoiced amount, a maximum storage charge of 5 % however, from no earlier than ten weekdays after notification that the goods are ready for dispatch. The parties to the contract shall be free to prove higher or lower storage costs.

IV. Delivery Terms:

- The supplier shall be entitled to deliver by instalments to a reasonably acceptable extent.
- Deviations in respect of the dimensions, weight, technical design, manufacture and scope of the goods to be delivered shall be permissible within the product-specific tolerance limits customary in the trade.
- Beyond the foregoing, the orderer shall approve all deviating alterations which serve to technically improve the goods.

V. Passage of Risk, Delivery:

- Dispatch shall be effected on the orderer's behalf by a carrier of our choosing. Deliveries carriage-paid within Germany shall be effected free of charge to the courtyard, building site, place of receipt. If the order value is below € 1,000,- net, we shall charge a shipping and processing flat rate.
- The supplier shall be entitled, but not obliged, to effect in the name of the orderer, and for the orderer's account, separate insurances for the risks associated with transportation.
- The risk of accidental destruction and/or loss shall pass to the orderer upon dispatch or hand-over to the person carrying out transportation. This shall also apply, if the supplier carries out transportation itself or through its agents in contract.
- Beyond the foregoing, the risk shall pass to the orderer at such time as the orderer defaults on acceptance following receipt of notification from the supplier that the goods are ready for dispatch.

VI. Payment Terms

- The supplier's invoices shall be payable, without any deduction, one month after the invoice date. Payment shall be deemed effected once the amount is at the supplier's disposal. If the orderer fails to pay within the fixed period for payment, i.e. within one month from the invoice date, it shall enter into default, even without a reminder.
- If the time of receipt of the invoice or payment statement is uncertain, or if receipt of the invoice or payment statement itself is uncertain, payment shall fall due no later than 30 days after receipt of the counter-performance. Consequently, default shall occur no later than from the 31st day after receipt of the counter-performance.
- If payment is made within 10 days from the invoice date, the supplier shall allow a 2 % cash discount. A further prerequisite for deduction of such a cash discount is that the orderer must not be culpably in arrears with its other payment obligations and that crediting of the invoiced amount to the supplier's bank account must be effected within the agreed period.
- If the orderer enters into default, the supplier shall be entitled to demand, in relation to an orderer who is not a consumer, default interest at the rate of 8 % p.a. above the respective base interest rate as per section 247 of the German Civil Code [BGB]. The orderer shall not be entitled to object against this on the grounds that the supplier has only incurred a lower interest loss or no interest loss at all. The right to assert losses beyond the foregoing remains unaffected by the foregoing.
- The supplier shall not be obliged to accept bills of exchange. Bill of exchange

shall be accepted in lieu of performance only in individual cases on the basis of special agreements. Payment shall only be deemed effected once the cheque or bill of exchange has been honoured. The discount and collection charges for the bill of exchange shall be chargeable to the drawer of the bill on the due date of the receivable and be immediately payable in cash.

- Notwithstanding payment agreements separately agreed upon in individual cases, receivables to which the supplier is entitled shall fall due immediately upon occurrence of circumstances which relate to the person of the orderer and which render it unreasonable to expect continued adherence to payment agreements made. This shall be the case, if there are reasonable indications of a material deterioration in the orderer's financial position, particularly in the event of cessation of payments, protests against cheques or bills of exchange or default in payment, if this shows that the supplier's entitlement to counter-performance is jeopardised due to inability to perform on the part of the orderer. In those cases, the supplier shall be additionally entitled to demand concurrent performance or provision of further security. Furthermore, the supplier shall be entitled to stipulate a reasonable period within which the orderer must, at the supplier's option, effect counter-performance or provide security concurrently against performance. Upon expiration of the fixed period to no avail, the supplier shall be entitled to rescind the contract.
- Under the warranty for defects, retention of payments by the orderer after having lodged a justified complaint of defects shall only be permitted to an extent reasonably proportionate to the defect in quality which has arisen. A right of retention on the part of the orderer beyond the foregoing is excluded.
- The orderer shall only be entitled to set off with counterclaims which are uncontested or have been determined with legal finality.

VII. Retention of Title:

- The goods delivered [goods under retention of title] shall remain the supplier's property until satisfaction of all claims to which the supplier is entitled against the orderer from the business relationship.
- The orderer shall not be permitted to pledge or to transfer title as security whilst the retention of title is in effect. In the event of attachment, seizure or other forms of disposition or intervention by third parties, the orderer shall notify the supplier without undue delay.
- The orderer shall be entitled to on-sell in the ordinary course of business the goods which are under retention of title, in so far as the orderer receives the agreed remuneration and no restraint on assignment is agreed upon. The orderer assigns here and now to the supplier, as security, the claim to the purchase price accruing from the sale. However, the orderer shall remain authorised to collect the receivables assigned as security, as long as this authorisation is not revoked. The authorisation may be revoked, if the orderer culpably fails to meet, or fails to continue meeting, its contractual obligations. Upon revocation of the authorisation to collect, the supplier shall be entitled to give notice of the assignment effected. The orderer shall, without undue delay, make available the documents necessary for giving notice of assignment and for collecting.
- A sale in the ordinary course of business shall not be present in cases where, contrary to subsection 2, the orderer pledges to a third party the goods which are under retention of title, transfers title thereto to a third party as security or makes the said goods the subject of a factoring and/or sale-and-lease-back procedure.
- If goods under retention of title are reworked and/or processed, this shall be effected on behalf of and for the supplier as the manufacturer within the meaning of sections 950 et seq. of the German Civil Code. In this case, the supplier shall be entitled to [joint] title, in the ratio of the goods under retention of title to the value of the new item at the time of reworking and/or processing, in respect of the item created as a result of reworking and/or processing of the goods which are under retention of title. Likewise, the supplier shall be entitled to pro-rata joint title to the new item, if third-party goods are also processed along with the goods which are under retention of title. In case the orderer on-sells the item newly manufactured by it, the orderer assigns here and now as security, in the sum of the value of the goods under retention of title, the claim to which the orderer is entitled from the sale.
- If the goods under retention of title become damaged or otherwise impaired, the orderer shall notify the supplier without undue delay. In case claims against third parties accrue to the orderer as a result of damage or impairment, the orderer assigns those claims to the supplier here and now as security.
- In so far as the value of all security rights to which the supplier is entitled exceeds by more than 20 % the sum of all claims secured, the supplier shall release a corresponding portion of the security rights at the orderer's request.
- In the event of breach of duty by the orderer, particularly in the event of default in payment, the supplier shall be entitled to rescind the contract and repossess the goods which are under retention of title. The orderer shall be obliged to surrender possession. Repossession of the goods which are under retention of title or assertion of the retention of title shall not, in itself, require rescission of the contract by the supplier. Nor shall such repossession or assertion be deemed to be an implied declaration of rescission of the contract, unless the supplier expressly declares that these acts are to be understood as rescission.

VIII. Taking Receipt:

- Within a reasonable period prior to delivery of the goods, the orderer shall give the supplier the name(s) of one or more persons who is/are authorised to take receipt of the delivery and sign the delivery note. This shall particularly apply, if delivery is to be made to a place other than the orderer's domicile.
- If none of the authorised persons named by the orderer is present, or is ready to take receipt of the goods, at the agreed place of delivery on the agreed date for delivery, the orderer shall enter into default on taking receipt, the consequence being that the risk shall pass to the orderer. Furthermore, the orderer shall bear the extra costs arising as a result of the need to make delivery anew.
- The orderer must not refuse to take receipt of deliveries on account of insubstantial defects.

IX. Warranty:

- There shall be no defect-related claims in the event of merely insubstantial deviation from the agreed properties or in the event of merely insubstantial impairment of usability.
- Nor shall defect-related claims exist in the event of normal wear and tear, in the event of damage or losses arising after the passage of risk due to incorrect or negligent treatment or handling, excessive use, unsuitable operating material, defective building works or unsuitable building foundation or by reason of exceptional external influences which are not a prerequisite under the contract or in the event of software faults which are no longer reproducible.
- If improper alterations or reinstatement works are carried out by the orderer or by third parties, there shall likewise be no defect-related claims in respect thereof or in respect of the consequences ensuing therefrom.
- The consignee shall inspect the goods sent to it and, without undue delay, give written notice of any damage which is externally detectable, as per section 438 of the German Commercial Code [HGB]. The goods shall be deemed to have been delivered in a condition conforming to the contract, unless loss or damage which is not externally detectable is given notice of within 7 days.
- In the event of a justified complaint of defects, i.e. upon the presence of defects in quality which, or whose cause, already existed at the time of passage of risk, the supplier shall be entitled to rectification (elimination of defects) or additional delivery (delivery of a replacement), at its option.
- If the supplier delivers a defect-free item for the purpose of supplementary performance, the orderer shall surrender possession of the defective item.

This shall apply mutatis mutandis to defective components, if these are replaced with defect-free components within the framework of rectification.

- If the supplier is not in a position to rectify or to make an additional delivery, or if the supplier is entitled to refuse to rectify or make an additional delivery under section 439, subsection (3) of the German Civil Code, or if rectification or additional delivery is delayed beyond a reasonable period for reasons imputable to the supplier, or if additional delivery or rectification fails twice, the orderer shall be entitled to rescind the contract or demand a corresponding abatement of the purchase price, at its option.
- The orderer shall only have statutory entitlements to recourse against the supplier in so far as the statutory prerequisites are fulfilled. Therefore, there shall be no entitlements to recourse in so far as the orderer has made with its purchaser, under a guarantee or on a good-will basis, agreements which go beyond the statutory defect-related entitlements.
- In so far as the statutory regulations concerning purchase of consumer goods [sections 474 et seq. of the German Civil Code, particularly in respect of recourse liability [sections 478 et seq. of the German Civil Code], are inapplicable due to non-fulfilment of the statutory prerequisites, a one-year warranty period shall apply. Contrary thereto, the statutory five-year warranty period under section 438, subsection 1, no. 2 of the German Civil Code shall apply to defects in items which are normally used for a building and have caused a building to become defective.
- The statutory consequences of a breach of the commercial duty to inspect the goods and lodge any complaint [as per section 377 of the German Commercial Code] shall remain unaffected by the foregoing.
- Moreover, damage claims shall be governed by section XI. Claims of the orderer against the supplier, or against its agents in contract, beyond or other than the claims provided for in this no. and in no. XI. on account of a defect in quality are excluded.

X. Taking Back Goods:

- Return shipment of defect-free goods shall be subject to the supplier's prior written consent. Failing this, the supplier shall be entitled to refuse to take receipt of the goods.
- For taking back the goods, the supplier shall charge a flat-rate processing fee at the rate of 30 % of the value of the goods. Furthermore, the orderer shall bear all transportation expenses, as well as packaging expenses, outer packaging expenses and any reinstatement expenses.

XI. Compensatory Damages, Liability:

- Damage claims of the orderer, on whatever legal basis, particularly on account of breach of duties arising from the obligational relationship or on the basis of tort, are excluded, except in cases where mandatory liability under the Product Liability Act [Produkthaftungsgesetz] applies, in cases of liability for intentional or grossly negligent misconduct, in cases of liability on account of injury to life, body or health or in cases of liability on account of breach of material contractual duties.
- However, a damage claim for breach of material contractual duties shall be limited to foreseeable losses typical of the contract, except where limitation is excluded on some other basis due to an intentional or grossly negligent act or due to injury to life, body or health.
- In the event of impossibility of performance which is imputable to the supplier, the orderer's entitlement to compensatory damages shall be limited to 10 % of the value of the part of the delivery which, on account of impossibility of delivery, is unable to be put to the intended use, in so far as the supplier is not to blame due to intent or gross negligence and in so far as no mandatory liability on account of injury to life, body or health applies. The orderer's right to rescind the contract remains unaffected by the foregoing.
- If a claim to supplementary performance is made against the orderer by its purchaser or by its purchaser's purchaser, the orderer shall, within a reasonable period, give the supplier the opportunity to carry out supplementary performance itself, before the orderer obtains a „replacement“ elsewhere. The orderer shall correspondingly impose this obligation upon its purchaser. If the orderer breaches these obligations, the supplier shall have the right to reduce the compensation for expenditures to the amount which it would have incurred, had it carried out supplementary performance itself. Section 444 of the German Civil Code remains unaffected.
- Furthermore, compensation for expenditures incurred within the framework of supplementary performance by the orderer in relation to its customer shall be excluded, if, contrary to its duty to minimise losses, the orderer has not made use of its right to refuse this method of supplementary performance, or both methods of supplementary performance, on the grounds of disproportionate cost.
- Claims of the orderer on account of expenditures essential for the purpose of supplementary performance, particularly transportation expenses, transport infrastructures charges, labour costs and costs of materials, are excluded, in so far as the expenditures increase as a result of the subject of the delivery having been subsequently transported to a place other than the consignee address given by the orderer, unless such transportation is in keeping with the intended use of the subject of the delivery. This applies mutatis mutandis to recourse liability.
- Claims to compensatory damages and to compensation for expenditures in connection with defectiveness of the goods shall be governed by the time-bar periods which are binding for those claims [cf. IX. 9.]. Damage claims on account of liability under the Product Liability Act [Produkthaftungsgesetz], on account of intentional or grossly negligent misconduct, on account of injury to life, body or health or on account of breach of material contractual duties shall be governed by the statutory time-bar periods.

XII. Adaptation of the Contract:

In so far as unforeseeable events within the meaning of III. 3., or circumstances within the meaning of section 313 of the German Code, materially change the economic significance or content of the delivery or have a material effect on the supplier's business, the contract shall be reasonably adapted in observance of good faith. In so far as this is not economically justifiable, the supplier shall have the right to rescind the contract. If the supplier intends to make use of this right of rescission, it shall, without undue delay, give the orderer notification thereof upon becoming aware of the implications of the event, even if an extension of the delivery period has initially been agreed upon with the orderer.

XIII. Other Stipulations:

- The supplier reserves, without limitation, its rights of exploitation under property and copyright law in respect of cost estimates, drawings and other documents [hereinafter „documents“]. The documents must only be made accessible to third parties with the supplier's prior consent and shall, if the order is not placed with the supplier, be returned to the supplier on request without undue delay. The sentences 1 and 2 apply mutatis mutandis to documents from the orderer. However, those documents may be made accessible to third parties to whom the supplier has permissibly assigned the task of making the deliveries.
- The legal relationship in connection with this contract shall be governed by German substantive law, excluding the United Nations Convention on Contracts for the International Sale of Goods.
- The place of general jurisdiction in the event of all disputes directly or indirectly ensuing from the contractual relationship is the supplier's domicile.
- If a stipulation in these terms and conditions, or a stipulation under other agreements, is or becomes ineffective, this shall not affect the effectiveness of any of the other stipulations or agreements.