



## 1 INTERPRETATION

In this document the following words shall have the following meanings:

Buyer: the person, firm or company who purchases the Goods from the Company.

Company: TRIAX A/S.

Contract: any contract between the Company and the Buyer for the sale and purchase of the Goods, incorporating these terms and conditions.

Delivery Point: the place where delivery of the Goods is to take place.

Goods: any goods agreed in the Contract to be supplied to the Buyer by the Company (including any part or parts of them).

Contract Price: the sales price as stated in the current TRIAX A/S Price List or the written acknowledged price of an order issued by the Company.

## 2 APPLICATION OF TERMS

2.1 These terms and conditions shall apply to sales of Goods by the Company to the Buyer to exclusion of all other terms and conditions referred to, offered or relied on by the Buyer whether in negotiation or at any stage in the dealings between the parties, including any terms or conditions which the Buyer purports to apply under any purchase order, confirmation of order, specification or other document.

2.2 These conditions apply to all the Company's sales and any variation to these conditions and any representations about the Goods shall have no effect unless expressly agreed in writing and signed by the Company. The Buyer acknowledges that it has not relied on any statement, promise or representation made or given by or on behalf of the Company which is not set out in the Contract.

2.3 Each order or acceptance of a quotation for Goods by the Buyer from the Company shall be deemed to be an offer by the Buyer to buy Goods subject to these conditions.

2.4 No order placed by the Buyer shall be deemed to be accepted by the Company until a written acknowledgement of order is issued by the Company or (if earlier) the Company delivers the Goods to the Buyer.

2.5 The Buyer shall ensure that the terms of its order and any applicable specification are complete and accurate.

2.6 Any quotation is valid for a period of 30 days only from its date, provided that the Company has not previously withdrawn it.

## 3 DESCRIPTION

3.1 The quantity and specification of the Goods shall be as set out in the Company's quotation or acknowledgement of order. The Company reserves the right to amend the specification of the Goods without prior notice to the Buyer.

3.2 All samples, performance figures, drawings, descriptive matter, specifications and advertising issued by the Company and any descriptions or illustrations contained in the Company's catalogues or brochures are issued or published for the sole purpose of giving an approximate idea of the Goods described in them. They shall not form part of the Contract and this is not a sale by sample.

## 4 DELIVERY

4.1 Unless otherwise agreed in writing by the Company, the terms of delivery shall be Ex Works the Company place of business according to ICC's Incoterms 2010. The Buyer is deemed to accept the Goods upon delivery.

4.2 The Buyer shall take delivery of the Goods within 14 days of the Company giving it notice that the Goods are ready for delivery.

4.3 Any dates specified by the Company for delivery of the Goods are intended to be an estimate and time for delivery shall not be made of the essence by notice. If no dates are so specified, delivery shall be within a reasonable time.

4.4 Subject to the other provisions of these conditions the Company shall not be liable for any direct, indirect or consequential loss (all three of which terms include, without limitation, pure economic loss, loss of profits, loss of business, depletion of goodwill and similar loss), costs, damages, charges or expenses caused directly or indirectly by any delay in the delivery of the Goods (even if caused by the Company's negligence), nor shall any delay entitle the Buyer to terminate or rescind the Contract unless such delay exceeds 180 days in which case this shall be considered as a non-delivery in respect of the delayed Goods and the Buyer's sole remedies will be determined in accordance with clause 5 below.

4.5 If for any reason the Buyer fails to accept delivery of any of the Goods when they are ready for delivery, or the Company is unable to deliver the Goods on time because the Buyer has not provided appropriate instructions, documents, licenses or authorisations:

(a) risk in the Goods shall pass to the Buyer (including for loss or damage caused by the Company's negligence);

(b) the Goods shall be deemed to have been delivered; and

(c) the Company may store the Goods until delivery, where upon the Buyer shall be liable for all related costs and expenses (including, without limitation, storage and insurance).

4.6 If the Company delivers to the Buyer a quantity of Goods of up to 5% more or less than the quantity accepted by the Company, the Buyer shall not be entitled to object to or reject the Goods or any of them by reason of the surplus or shortfall and shall pay for such goods at the pro rata Contract rate.

4.7 The Company may deliver the Goods by separate instalments. Each separate instalment shall be invoiced and paid for in accordance with the provisions of the Contract.

4.8 Each instalment shall be a separate Contract and no cancellation or termination of any one Contract relating to an instalment shall entitle the Buyer to repudiate or cancel any other Contract or instalment.

## 5 NON-DELIVERY

5.1 The quantity of any consignment of Goods as recorded by the Company on dispatch from the Company's place of business shall be conclusive evidence of the quantity received by the Buyer on delivery unless the Buyer can provide conclusive evidence proving the contrary.

5.2 The Company shall not be liable for any non-delivery of Goods (even if caused by the Company's negligence) unless the Buyer gives written notice to the Company of the non-delivery within 7 days of the date when the Goods would in the ordinary course of events have been received.

5.3 Any liability of the Company for non-delivery of the Goods shall be limited to replacing the Goods within a reasonable time or issuing a credit note at the pro rata Contract rate against any invoice raised for such Goods.

## 6 RISK/TITLE

6.1 The Goods are at the risk of the Buyer from the time of delivery.

6.2 Ownership of the Goods shall not pass to the Buyer until the Company has received in full (in cash or cleared funds) all sums due to it in respect of:

(a) the Goods; and

(b) all other sums which are or which become due to the Company from the Buyer on any account.

6.3 Until ownership of the Goods has passed to the Buyer, the Buyer shall:

(a) hold the Goods on a fiduciary basis as the Company's bailee;

(b) store the Goods (at no cost to the Company) separately from all other goods of the Buyer or any third party in such a way that they remain readily identifiable as the Company's property;

(c) not destroy, deface or obscure any identifying mark or packaging on or relating to the Goods; and

(d) maintain the Goods in satisfactory condition and keep them insured on the Company's behalf for their full price against all risks to the reasonable satisfaction of the Company. On request the Buyer shall produce the policy of insurance to the Company.

6.4 The Buyer may resell the Goods before ownership has passed to it solely on the following conditions:

(a) any sale shall be effected in the ordinary course of the Buyer's business at full market value and the Buyer shall hold such part of the proceeds of sale as represent the amount owed by the Buyer to the Company on behalf of the Company and the Buyer shall account to the Company accordingly; and

(b) any such sale shall be a sale of the Company's property on the Buyer's own behalf and the Buyer shall deal as principal when making such a sale.

6.5 The Buyer's right to possession of the Goods shall terminate immediately if:

(a) the Buyer has a bankruptcy order made against him or makes an arrangement or composition with his creditors, or otherwise takes the benefit of any statutory provision for the time being in force for the relief of insolvent debtors, or (being a corporate body) convenes a meeting of creditors (whether formal or informal), or enters into liquidation (whether voluntary or compulsory) except a solvent voluntary liquidation for the purpose only of reconstruction or amalgamation, or has a receiver and/or manager, administrator or administrative receiver appointed of its undertaking or any part thereof, or documents are filed with the court for the appointment of an administrator of the Buyer or notice of intention to appoint an administrator is given by the Buyer or its directors or by a qualifying floating charge or a resolution is passed or a petition presented to any court for the winding-up of the Buyer or for the granting of an administration order in respect of the Buyer, or any proceedings are commenced relating to the insolvency or possible insolvency of the Buyer; or

(b) the Buyer suffers or allows any execution, whether legal or equitable, to be levied on his/its property or obtained against him/ it, or fails to observe or perform any of his/its obligations under the Contract or any other contract between the Company and the Buyer, or is unable to pay its dues or the Buyer ceases to trade; or

(c) the Buyer encumbers or in any way charges any of the Goods.

6.6 The Company shall be entitled to recover payment for the Goods notwithstanding that ownership of any of the Goods has not passed from the Company.

6.7 The Buyer grants the Company, its agents and employees an irrevocable license at any time to enter any premises where the Goods are or may be stored (and to use reasonable force to do so if necessary) in order to inspect them, or, where the Buyer's right to possession has terminated, to recover them. The Buyer agrees to indemnify the Company in respect of any claims, costs or damages against or incurred by the Seller as a result of entering such premises.

6.8 Where the Company is unable to determine whether any Goods are the goods in respect of which the Buyer's right to possession has terminated, the Buyer shall be deemed to have sold all goods of the kind sold by the Company to the Buyer in the order in which they were invoiced to the Buyer.

6.9 On termination of the Contract, howsoever caused, the Company's (but not the Buyer's) rights contained in this clause 6 shall remain in effect.

## 7 PRICE

7.1 Unless otherwise agreed by the Company in writing, the price for the Goods shall be the price set out in the Company's price list published on the date of delivery or deemed delivery.

7.2 The price for the Goods may be varied at any time by the Company in the event that the cost incurred by the Company in relation to raw materials, labour, utilities, duties or other import increases.

7.3 The price for the Goods shall be exclusive of any value added tax and all costs or charges in relation to loading, unloading, carriage and insurance, all of which amounts the Buyer shall pay in addition when it is due to pay for the Goods.

7.4 Delivery charges in relation to all orders shall be confirmed by the Company in the written acknowledgement of the order as referred to clause 2.5.

7.5 Unless agreed otherwise in writing, the price for the Goods shall include packaging.

## 8 PAYMENT

8.1 Subject to clause 8.4, payment of the price for the Goods is due in the currency shown on the invoice 30 days after the Goods are delivered or deemed to be delivered, unless agreed otherwise in writing by the Company.

8.2 Time for payment shall be of the essence.

8.3 No payment shall be deemed to have been received until the Company has received cleared funds.

8.4 All payments payable to the Company under the Contract shall become due immediately on its termination despite any other provision.

8.5 The Buyer shall make all payments due under the Contract in full without any deduction whether by way of set-off, counterclaim, discount, abatement or otherwise unless the Buyer has a valid court order requiring an amount equal to such deduction to be paid by the Company to the Buyer.

8.6 If the Buyer fails to pay the Company any sum due pursuant to the Contract, the Buyer shall be liable to pay interest to the Company on such sum from the due date for payment at the monthly rate of 2%, for each new month, whether before or after any judgment.

8.7 Unless otherwise agreed in a signed service level agreement between the Company and the Buyer, remote service and support is chargeable to the Buyer.

## 9 QUALITY

9.1 Where the Company is not the manufacturer of the Goods, the Company shall endeavour to transfer to the Buyer the benefit of any warranty or guarantee given to the Company.

- 9.2 The warranty period for Goods is 24 months from delivery.
- 9.3 The Company shall not be liable for a breach of the warranty in clause 9.2 unless;
- (a) the Buyer gives written notice of the defect to the Company immediately and no later than 5 business days after the Buyer becomes or ought to have become aware of the defect, and, if the defect is as a result of damage in transit to the carrier, within 7 days of the time when the Buyer discovers or ought to have discovered the defect; and
- (b) the Company is given a reasonable opportunity after receiving the notice of examining such Goods and the Buyer (if asked to do so by the Company) returns such Goods to the Company's place of business.
- 9.4 The Company shall not be liable for a breach of the warranty in clause 9.2 if:
- (a) the Buyer makes any further use of such Goods after giving such notice; or
- (b) the defect arises because the Buyer failed to follow the Company's oral or written instructions as to the storage, installation, commissioning, use or maintenance of the Goods or (if there are none) good trade practice; or
- (c) the Buyer alters or repairs such Goods without the written consent of the Company.
- 9.5 Subject to clauses 9.3 and 9.4, if any of the Goods do not conform with the warranty in clause 9.2 the Company shall at its option repair or replace such Goods (or the defective part) or refund the price of such Goods at the pro rata Contract rate provided that, if the Company so requests, the Buyer shall return the Goods or the part of such Goods which is defective to the Company.
- 9.6 If the Company complies with clause 9.5 it shall have no further liability for a breach of the warranty in clause 9.2 in respect of such Goods. If the Company does not comply with clause 9.5 within a reasonable time, the Buyer can claim a proportional reduction of the price for the affected Goods, but not more than 15% of the agreed price. In case of a vital deficiency, the Buyer can alternatively opt to cancel the agreement by a written notice to the Company, at the same time demanding compensation for his documented loss, which can in no event exceed a maximum of 15% of the agreed Contract price.
- 9.7 Any Goods replaced shall belong to the Company and any repaired or replacement Goods shall be guaranteed on these terms for the unexpired portion of the 24 month period.
- 9.8 TRIAX reserves the right to charge fees for any additional support or consultancy not related to a warranty issue.
- 10 SOFTWARE AND VIOLATION OF PATENTS AND OTHER INCORPOREAL RIGHTS**
- 10.1 Notwithstanding clause 9, any software being sold as part of the Goods, is subject to a limited warranty. The Company warrants to the Buyer that (i) the physical medium on which this software is distributed is free from defects in materials and workmanship under normal use, (ii) the software will perform according to its printed documentation, and (iii) to the best of Company's knowledge, the Buyers use of this software according to the printed documentation is not an infringement of any third party's intellectual property rights.
- 10.2 This limited warranty lasts for a period of 60 days after delivery. To the extent permitted by law, THE ABOVE-STATED LIMITED WARRANTY REPLACES ALL OTHER WARRANTIES, EXPRESS OR IMPLIED, AND COMPANY DISCLAIMS ALL IMPLIED WARRANTIES INCLUDING ANY IMPLIED WARRANTY OF TITLE, MERCHANTABILITY, NONINFRINGEMENT, OR OF FITNESS FOR A PARTICULAR PURPOSE. Any action for breach of this limited warranty must be commenced within one year of the expiration of the warranty.
- 10.3 In case of a breach of the Limited Warranty, the Buyer's exclusive remedy is as follows: Buyer will return all copies of the software to Company, at Buyer's cost, along with proof of purchase. At Company's option, Company will either send the Buyer a replacement copy of the software, at Customer's expense, or issue a full refund.
- 10.4 Notwithstanding the foregoing, COMPANY IS NOT LIABLE TO THE BUYER FOR ANY DAMAGES, INCLUDING COMPENSATORY, SPECIAL, INCIDENTAL, EXEMPLARY, PUNITIVE, OR CONSEQUENTIAL DAMAGES, CONNECTED WITH OR RESULTING FROM THESE TERMS AND CONDITIONS.
- 10.5 If there should be a risk, or if it is asserted that the Goods infringes a patent or another incorporeal right, the Buyer accepts that, at its own option, the Company is either allowed by the proper party to continued use or the Company changes or replaces the Goods, so that it no longer gives rise to an infringement. If none of these alternatives can be achieved on terms that the Company finds reasonable, the Company can claim that the Buyer refrains from using the Goods against an allowance from the Company corresponding to the value of the Goods after depreciation with equal amounts every year compared to the technical and economical life of the Goods. The size of such an allowance is not dependent on the question whether the Goods are integrated into another product or a building etc., and it is not influenced by the loss which it and / or discontinuance of use might cause the Buyer.
- 10.6 In case of resale of the Goods, the Buyer is liable to include an identical stipulation in the agreement between Buyer and Buyer's customer, and instruct the customer to include an identical stipulation for the customer's possible resale.
- 11 CONFIDENTIAL INFORMATION**
- 11.1 The Buyer shall not, without the prior written consent of the Company, disclose to any third party any information, technical data, know how or other secret or confidential information which has been supplied or disclosed by the Company to the Buyer. The Buyer shall not copy nor reproduce any such information or material and shall return the same to the Company upon demand.
- 12 TERMINATION**
- 12.1 The Contract may be terminated immediately by the Company upon the occurrence of any of the events listed in clause 6.5.
- 13 LIMITATION OF LIABILITY**
- 13.1 Subject to clauses 4, 5 and 9, the following provisions set out the entire financial liability of the Company (including any liability for the acts or omissions of its employees, agents and sub-contractors) to the Buyer in respect of:
- (a) any breach of these conditions, including any deliberate breach of these conditions by a party, or its employees, agents or subcontractors;
- (b) any use made or resale by the Buyer of any of the Goods, or of any product incorporating any of the Goods; and
- (c) any representation, statement or tortious act or omission including negligence arising under or in connection with the Contract.
- 13.2 All warranties, conditions and other terms implied by statute or common law are, to the fullest extent permitted by law, excluded from the Contract.
- 13.3 Subject to clauses 13.1 and 13.2:
- (a) the Company's total liability in contract, tort (including negligence or breach of statutory

- duty), misrepresentation, restitution or otherwise, arising in connection with the performance or contemplated performance of the Contract shall be limited to the Contract price; and
- (b) the Company shall not be liable to the Buyer for loss of profit, loss of business, or depletion of goodwill in each case whether direct, indirect or consequential, or any claims for consequential compensation whatsoever (howsoever caused) which arise out of or in connection with the Contract.

**14 ASSIGNMENT**

- 14.1 The Company may assign the Contract or any part of it to any person, firm or company.
- 14.2 The Buyer shall not be entitled to assign the Contract or any part of it without the prior written consent of the Company.

**15 FORCE MAJEURE**

- 15.1 The Company reserves the right to defer the date of delivery or to cancel the Contract or reduce the volume of the Goods ordered by the buyer (without liability to the Buyer) if it is prevented from or delayed in the carrying on of its business due to circumstances beyond the reasonable control of the Company including, without limitation, acts of God, governmental actions, war or national emergency, acts of terrorism, protests, riot, civil commotion, fire, explosion, flood, epidemic, lock-outs, strikes or other labour disputes (whether or not relating to either party's workforce), or restraints or delays affecting carriers or inability or delay in obtaining supplies of adequate or suitable materials, provided that, if the event in question continues for a continuous period in excess of 180 days, the Buyer shall be entitled to give notice in writing to the Company to terminate the Contract.

**16 GENERAL**

- 16.1 Each right or remedy of the Company under the Contract is without prejudice to any other right or remedy of the Company whether under the Contract or not.
- 16.2 If any provision of the Contract is found by any court, tribunal or administrative body of competent jurisdiction to be wholly or partly illegal, invalid, void, voidable, unenforceable or unreasonable it shall to the extent of such illegality, invalidity, voidness, voidability, unenforceability or unreasonableness be deemed severable and the remaining provisions of the Contract and the remainder of such provision shall continue in full force and effect.
- 16.3 Failure or delay by the Company in enforcing or partially enforcing any provision of the Contract shall not be construed as a waiver of any of its rights under the Contract.
- 16.4 Any waiver by the Company of any breach of, or any default under, any provision of the Contract by the Buyer shall not be deemed a waiver of any subsequent breach or default and shall in no way affect the other terms of the Contract.
- 16.5 This Contract and any dispute or claim arising out of or in connection with it or its subject matter or formation (including non-contractual disputes or claims) shall be governed by and construed in accordance with laws of Danish law, and the parties submit to the exclusive jurisdiction of the Danish courts.

**17 COMMUNICATIONS**

- 17.1 All communications between the parties about the Contract shall be in writing and delivered by hand or sent by pre-paid first class post or sent by fax or e-mail:
- (a) (in case of communications to the Company) to its registered office or such changed address as shall be notified to the Buyer by the Company or to the e-mail address triax@triax.com; or
- (b) (in the case of the communications to the Buyer) to the registered office of the addressee (if it is a company) or (in any other case) to any address of the Buyer set out in any document which forms part of the Contract or such other address as shall be notified to the Company by the Buyer.
- 17.2 Communications shall be deemed to have been received:
- (a) if sent by pre-paid first class post, two days (excluding Saturdays, Sundays and bank and public holidays) after posting (exclusive of the day of posting); or
- (b) if delivered by hand, on the day of delivery; or
- (c) if sent by fax or e-mail on a working day prior to 4.00 pm, at the time of transmission and otherwise on the next working day.
- 17.3 Communications addressed to the Company shall be marked for the attention of the Managing Director.