

General terms and conditions of sale and delivery

TRIMET Automotive Sömmerda GmbH & Co. KG

§ 1 Scope

- (1) All deliveries, services and offers of TRIMET Automotive Sömmerda GmbH & Co. KG (hereinafter referred to as “TRIMET”) shall be subject exclusively to these General Terms and Conditions of Delivery. These shall form a component part of all contracts concluded by TRIMET with a contracting party (hereinafter also referred to as the “Customer”) for deliveries or services provided by TRIMET and shall also apply to any future deliveries, services or offers to the Customer, even if not specifically agreed again.
- (2) The standard terms and conditions of the Customer or a third party shall not be accepted even if TRIMET fails to object to them specifically in each case. Any reference of TRIMET to correspondence containing the terms and conditions of the Customer or a third party shall not be deemed acceptance of these terms and conditions.

§ 2 Offer and Contract Formation

- (1) All offers of TRIMET shall be subject to change and without obligation, unless expressly indicated as binding or containing a specific date of acceptance. Jobs and orders may be accepted by TRIMET within a fortnight from their receipt.
- (2) All legal relations between TRIMET and Customer shall be governed exclusively by the written purchase contract including these General Terms and Conditions of Delivery. The contract shall fully reflect all agreements made between the contracting parties in regard to the subject matter of the contract. Verbal commitments of TRIMET prior to conclusion of this contract shall not be legally binding; verbal agreements between the contracting parties shall be superseded by the written contract unless these expressly specify in each case that they shall remain in force. Additions and modifications to agreements reached including these General Terms and Conditions shall be required in writing to be legally effective. Transmission using telecommunication by fax or email shall be deemed compliance with the requirement of written form when a copy of the signed declaration will be transmitted..
- (3) Specifics provided by TRIMET in regard to the goods delivered or the service provided (e.g. weights, dimensions, practical values, capacities, tolerances and technical data) and any representations of these (e.g. drawings and illustrations) shall be approximates only unless their usability for the purpose specified in the contract requires exact specifics. They shall not be guaranteed characteristics of state or a guarantee of durability but merely describe or identify the delivery or service. Standard variances and variances due to legal requirements or technical improvements, and the replacement of components with equivalent parts shall be permissible where these do not impair their usability for the purpose specified in the contract. Minor deviations, particularly excess weight or short weight on grounds of foundry practice, shall not entitle the customer to complaints or warranty claims, unless otherwise agreed.

- (4) TRIMET shall retain title to, or copyright in, all offers or quotations submitted by TRIMET and all drawings, illustrations, calculations, brochures, catalogues, models, tools and other documents and aids made available to the Customer. Without prior express consent of TRIMET, the Customer shall not be permitted to make these materials or their content available to third parties, disclose, use or publish them or permit third parties to do so. The Customer shall be obliged to return these materials completely and to destroy potential copies, if these were not needed anymore by him in the ordinary course of business or if negotiations did not lead to a conclusion of a contract.

§ 3 Prices and Payment

- (1) Prices shall be applicable to the scope of services and delivery specified in the order confirmations. Additional or special services shall be charged separately. All prices shall be quoted in EURO and be ex works, Sömmerda, Germany excluding packaging, statutory value added tax and, for exports, excluding duties and charges or any other public levies.
- (2) Payment shall be made according to the agreed payment conditions in the absence of an agreement to the contrary, the amounts invoiced shall be payable within thirty days without deductions. Payment shall be deemed to have been made once the bank of TRIMET has received the payment. Where the Customer fails to make payment by the due date, the amounts outstanding shall bear interest at 5 percent points above the base rate p.a. from their due date. In case of payment default TRIMET shall bear interest at 9 percentage points above the base rate p.a.; TRIMET's right to claim higher interest and further damages where shall remain unaffected..
- (3) Counterclaims of the Customer which are not in a relationship of mutuality with the payment claim of TRIMET may only be offset or payments withheld on account of any such claims where these counterclaims are uncontested or have become res judicata.
- (4) Costs for workpiece-related modell and manufacturing facilities pursuant to § 10 (2) of this terms and conditions of delivery shall always be paid in advance, unless otherwise agreed.
- (5) TRIMET shall be entitled to effect outstanding deliveries or services only after advance payment or the provision of security if after conclusion of the contract it becomes aware of circumstances which may considerably reduce the creditworthiness of the Customer and thus jeopardise the ability of the latter to pay debt due to TRIMET under the relevant contractual relations (including other individual contracts governed by the same framework contract).

§ 4 Delivery and Delivery Period

- (1) All deliveries shall be ex works Sömmerda, Germany.
- (2) All periods and dates put forward by TRIMET for deliveries and services shall be approximates only unless a fixed period or date has been specifically confirmed or agreed. Where shipment has been agreed, the delivery periods and dates shall refer to the time of delivery to the forwarding agent, carrier or any other third party handling the transport.
- (3) Commencement of the time of delivery requires that all details of execution have been clarified and that the customer has performed any of his obligations. Without prejudice to its rights arising from default of the Customer, TRIMET shall be entitled to request that the Customer extend the agreed period of performance or postpone the dates for delivery or provision of services until such time as the Customer has complied with its contractual obligations toward TRIMET.
- (4) In the case of call-off orders without agreement on term, size of production lot and date of taking delivery, TRIMET is entitled, if not otherwise agreed in writing, to request that same are set in a binding form at the latest three months after confirmation of order. If the customer fails to comply with this request within three weeks, TRIMET is entitled to grant an additional period of time of two weeks as well as to rescind the contract after this additional period of time has expired and to claim damages.
- (5) If delivery is to be carried out on the basis of a sample produced by TRIMET, the customer must examine and approve this sample in our factory immediately after being informed of the completion of the sample. If the sample is not approved despite determination of an additional period of time of reasonable length for reasons the customer is responsible for, TRIMET is entitled to dispatch the sample or to store the sample at the customer's expense and risk, in which case the sample is deemed approved.
- (6) TRIMET shall not be held liable for impossibility of delivery or for delays caused by force majeure or any other events that were not foreseeable when the contract was concluded and for which TRIMET cannot be held responsible.
- (7) TRIMET shall be entitled to effect part deliveries only if
 - the part delivery can be used by the Customer for the purpose intended and specified in the contract,
 - delivery of the remaining goods ordered is guaranteed, and
 - if the Customer does not, as a result, incur considerable additional work or cost (unless TRIMET has agreed to assume the cost).
- (8) In the event of a default in delivery or where delivery is impossible irrespective of the reason, the liability of TRIMET shall be limited to the payment of damages in accordance with § 8.

§ 5 Place of Performance, Shipment, Packaging, Passage of risk, Acceptance

- (1) In the absence of an agreement to the contrary, the place of performance for any obligations under the contract shall be Sömmerda, Germany.
- (2) The mode of shipment and the packaging shall be decided by TRIMET after due assessment of the circumstances, unless it is agreed that the packaging should be determined by the Customer.
- (3) The risk shall pass to the Customer at the latest once the goods to be delivered are handed to the forwarding agent, carrier or any other third party handling the shipment (the specific point being the start of loading). The same shall apply to part deliveries or any other services to which TRIMET has agreed (e.g. shipment). Where the shipment or handover is delayed due to circumstances for which the Customer is responsible, the risk shall pass to the Customer on the day on which the goods are ready for shipment and TRIMET has notified the Customer accordingly.
- (4) Any storage costs after the passage of risks shall be borne by the Customer. Where the goods are stored by TRIMET, the storage cost for each full week shall be 0.25% of the amount invoiced for the delivery items to be stored. The parties reserve the right to claim and prove further or lower storage costs.
- (5) The shipment shall be insured against theft, breakage, transport, fire and water damage or any other insurable risk only where expressly requested by the Customer and at its expense.
- (6) Where acceptance is required, the goods shall be deemed accepted if
 - the delivery is completed,
 - TRIMET has notified the Customer accordingly with reference to the deemed acceptance specified under this § 5 (5) and has requested acceptance,
 - twelve working days have passed since the delivery, or the Customer has started using the goods purchased and in this case, six working days have passed since the delivery, and
 - the Customer fails to accept the purchased goods within this period for any reason other than a defect reported to TRIMET which prevents, or significantly impairs, the use of the purchased goods.

§ 6 Warranty

- (1) The warranty period shall be one year from delivery or, where acceptance is required, from acceptance.

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- (2) Promptly after delivery to the Customer or a third party specified by it, the goods delivered shall be carefully examined. They shall be deemed accepted unless TRIMET is notified within 14 working days from delivery of the goods of obvious defects or of any other defect identified during a prompt and careful examination, or within 14 working days from discovery of the defect or the time when the defect was noticed by the Customer during normal use of the goods delivered.
- (3) TRIMET shall be given the opportunity to inspect the defect notified on the site. TRIMET shall be obliged to carry out such an inspection without undue delay, if the customer has an interest in a prompt arrangement.
- (4) In case a customer wrongfully notifies a defect for which TRIMET is not responsible, for reasons that are not attributable to TRIMET, TRIMET shall be entitled to charge to the customer's account reasonable expenses incurred for remedying the delivered items and/or determining the defects.
- (5) TRIMET may charge to the customer's account the additional costs of the expenses necessarily incurred for the purpose of subsequent performance, particularly transport charges, travelling expenses, cost of labor and of materials insofar as the expenses are increased as a result of taking the delivered item to such other place, unless the delivered item is taken to such other place in conformity with the contractual purpose.
- (6) In the event of material defects relating to the goods delivered, TRIMET shall initially be obliged and entitled at its discretion to rectify the defects or provide a replacement within a reasonable period of time. Where unsuccessful, i.e. where rectification or replacement is impossible, unacceptable, refused or causes undue delay, the Customer shall be entitled to withdraw from the contract or reduce the purchase price accordingly.
- (7) Where the TRIMET is responsible for a defect, the Customer shall have the right to demand payment of damages as specified in § 8. By way of derogation from § 6 (1) damage claims based on injuries of life, body and health and in cases where the damage is caused by gross negligence or wilful conduct shall become time barred in accordance with the statutory provisions.
- (8) In the event of defects of components supplied by other manufacturers which TRIMET cannot rectify for licensing or factual reasons, TRIMET shall either assert its warranty claims against the manufacturer and supplier for the account of the Customer or, at its discretion, assign its claims to the Customer. Warranty claims against TRIMET based on such defects shall be permissible subject to the other conditions and these General Terms and Conditions of Delivery only where the enforcement of the above claims against the manufacturer and supplier by legal action was unsuccessful or offers no prospect of success due, for instance, to insolvency. For the duration of the legal action, the statute of limitations for the particular warranty claims of the Customer against TRIMET shall be suspended.
- (9) The warranty shall lapse if the Customer makes changes to the goods delivered or has changes made by third parties without the consent of TRIMET, thus making the

rectification of defects impossible or unreasonably difficult. At all events, the Customer shall bear any additional cost incurred for the rectification of defects.

§ 7 Industrial Property Rights

- (1) Unless otherwise agreed, TRIMET shall only be obliged to effect deliveries free of any rights of third parties in the country of the delivery address.
- (2) Where the goods delivered violate an industrial property right or copyright of a third party, TRIMET shall, at its discretion and expense, change or replace these goods such that they no longer violate any third-party rights but continue to perform the function agreed by contract, or provide the Customer with the right of use through conclusion of a licence agreement. Where TRIMET fails to do so within a specific period, the Customer shall be entitled to withdraw from the contract or reduce the purchase price accordingly.
- (3) Any claims for damages of the Customer shall be subject to the restrictions of § 8 hereunder. § 6 (1) and § 6 (8) Sentence 2 shall apply regarding the statute of limitation of damage claims.
- (4) Where the products of other manufacturers delivered by TRIMET violate any rights, TRIMET shall have the option of asserting its claims against the manufacturer and sub-supplier for the account of the Customer or assign these claims to the Customer. Claims against TRIMET in these cases shall be permissible subject to the other conditions and these General Terms and Conditions only where the enforcement of the above claims against the manufacturer and supplier by legal action was unsuccessful or offers no prospect of success due, for instance, to insolvency.
- (5) If selection samples are sent to the customer for inspection, TRIMET is only liable insofar as delivery is carried out corresponding to the selection sample in consideration of possible corrections.

§ 8 Liability for Damages due to Fault

- (1) The liability of TRIMET for damages irrespective of the cause in law, specifically on grounds of impossibility, default, defective or incorrect delivery, breach of contract, violation of obligations during contract negotiations and tortuous acts, where these are based on fault, shall be limited as specified under this § 8.
- (2) TRIMET shall not be liable for simple negligence of its executive bodies, legal representatives, employees or any other vicarious agents unless it relates to the violation of material contractual obligations. Material contractual obligations shall be obligations whose fulfilment is a prerequisite in the first place for enabling the proper fulfilment of the contract which includes particularly timely, faultless delivery of the delivery item, its lack of defects which impair its functionality and usability not only insignificantly along with the duty to provide advice, to protect and to exercise proper care, in order to enable the

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Customer to use the goods delivered as stipulated and to protect life and limb of employees of the Customer or the property of the Customer from considerable damage.

- (3) Where TRIMET is liable on the merits for payment of damages in accordance with § 8 (2), this liability shall be limited to damage which, on conclusion of the contract, TRIMET foresaw as a potential consequence of a breach of contract or should have foreseen exercising due care and attention. Indirect damage and consequential damage as a result of defects of the goods delivered shall also warrant payment of damages only where such damage can typically be expected if used as intended.
- (4) The above exclusions and limitations of liability shall apply to the same extent to the executive bodies, legal representatives, employees and other vicarious agents of TRIMET.
- (5) The restrictions of this § 8 shall not apply to liability of TRIMET based on wilful conduct, for guaranteed characteristics of state, due to loss of life or injury to body or health, or under the Product Liability Act.

§ 9 Retention of Title

- (1) The retention of title agreed in the following shall serve to secure all currently existing and future claims of TRIMET against the Customer under the delivery agreement between the contracting parties (including balance claims based on an open account relationship restricted to this delivery agreement).
- (2) The goods of TRIMET delivered to the Customer shall remain the property of TRIMET until full payment of all secured claims. These goods and those replacing them under this clause as subject to the retention of title shall hereinafter be referred to as goods subject to retention of title.
- (3) The Customer shall store the goods subject to retention of title without cost to TRIMET.
- (4) The Customer shall be authorised to process or re-sell the goods subject to retention of title in its ordinary course of business until realisation (item 9). Pledging and assignment as security shall not be permitted.
- (5) Where the goods subject to retention of title are processed by the Customer, the parties hereby agree that they shall be processed on behalf and for the account of TRIMET as the manufacturer and that TRIMET shall directly acquire the ownership or – where processed involving materials of several owners or where the value of the processed item exceeds the value of the goods subject to retention of title – the co-ownership (fractional share) in the new item in proportion of the value of the goods subject to retention of title to the value of the new item. Where TRIMET fails to acquire such ownership, the Customer shall hereby transfer its future ownership or – in the aforementioned situation – co-ownership in the new item as collateral to TRIMET. Where the goods subject to retention of title are combined, or inseparably mixed, with other goods to form a unified whole and where any of the other items is considered the main item, TRIMET, where it is the owner

of the main item, shall transfer to the Customer the prorated co-ownership in the unified item in the proportion specified in sentence 1.

- (6) Where the goods subject to retention of title are resold, the Customer shall hereby transfer to TRIMET as collateral all claims arising against the purchasing party. The same shall apply to any other claims which take the place of the goods subject to retention of title or arising in any other way in regard to the goods subject to retention of title, e.g. insurance claims or claims in tort in the event of loss or destruction. Until revoked, TRIMET shall authorise the Customer to collect any claims assigned to TRIMET in its own name for the account of TRIMET. TRIMET shall revoke this collection authorisation only in case of realisation.
- (7) Where the goods subject to retention of title are seized by third parties, specifically through attachment, the Customer shall promptly advise these third parties of the ownership of the TRIMET and notify TRIMET accordingly in order to enable it to exercise its ownership rights. Where the third party is unable to reimburse TRIMET for any judicial and extra-judicial costs incurred in this connection, the Customer shall be held liable vis-à-vis TRIMET.
- (8) On request, TRIMET shall release the goods subject to retention of title and the items or claims taking their place at its option where their value exceeds the amount of secured claims by more than 50%.
- (9) Where TRIMET withdraws from the contract (realisation) due to breach of contract on the part of the Customer – specifically default – it shall be entitled to demand the return of the goods subject to retention of title.

§ 10 Workpiece related Designs and Manufacturing Facilities

- (1) Workpiece related models or manufacturing facilities (e.g. foundry casting moulds) provided by the customer shall be sent to TRIMET without charge. TRIMET may request that the customer collects such facilities at any time; if the customer does not comply with such a request TRIMET is entitled to send such facilities back at the customer's expense. Should work piece related models or manufacturing facilities remain at TRIMET, TRIMAT shall be entitled to charge the customer reasonable storage costs. The customer shall bear the costs required for maintenance and modifications desired. The customer is liable for technical correct construction and the finish of the facilities in accordance with the purpose of the production; however, TRIMET shall be entitled to modify facilities if such modification is required on grounds of foundry practice. Without special agreement TRIMET shall not be obliged to check the conformity between the manufacturing facilities provided and the enclosed drawings and samples.
- (2) As far as TRIMET manufactures or procures workpiece related model or manufacturing facilities at the customer's request, the customer shall reimburse TRIMET for any costs thereby incurred. If costs are not charged in full, the customer shall also bear the residual costs if he does not take delivery of such number of items as held out in prospect by him upon conclusion of the contract. TRIMET reserves title to any model or manufacturing

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facilities manufactured or procured by TRIMET; they will be used exclusively for goods delivered to the customer during the term of contract. In the event that three years have passed since the last delivery, TRIMET shall not be obliged to keep said manufacturing facilities or models any longer. If the contracting parties agreed that the customer would become the owner of the facilities, title shall pass to him upon payment of the purchase price. Delivery of facilities shall be replaced by TRIMET's obligation to keep these items. Unless otherwise agreed the customer may terminate the deposit relationship two years following the passing of title at the earliest.

- (3) TRIMET shall treat the manufacturing facilities with the same care that TRIMET usually applies in its own business matters. Upon request by the customer TRIMET shall be obliged to insure models and manufacturing facilities at his expense.
- (4) If deliveries violating industrial property rights of third parties are affected according to drawings or other information of the customer, the customer shall indemnify TRIMET from any claims of such third parties. TRIMET's drawings and documents as well as proposals for a favourable design and production of the casting shall not be passed to third parties and may be reclaimed by TRIMET at any time. License claims of the customer which are based on industrial property rights in models and manufacturing facilities submitted, or manufactured or procured on his behalf, shall be excluded insofar as TRIMET uses them in conformity with this contract.
- (5) The preceding provisions shall not apply to one-time models. The use of a one-time model (e.g. made from polystyrene foam) is subject to special agreement.

§ 11 Parts to be Poured In

- (1) Parts that are to be poured in are to be delivered free of charge, they must be accurate of size and ready for sprue. Any necessary costs arising in connection with processing are to be borne by the customer.
- (2) The number of sprue parts shall exceed the casting ordered in reasonable proportion.

§ 12 Final Provisions

- (1) The place of jurisdiction for any disputes arising from the business relations between TRIMET and the Customer shall be, at TRIMET's option, Sömmerda, Germany or the seat of the Customer. The exclusive place of jurisdiction for action against TRIMET shall be Sömmerda, Germany. Peremptory provisions of the law relating to exclusive places of jurisdiction shall not be affected by this provision.
- (2) All relations between TRIMET and the Customer shall be governed exclusively by the laws of the Federal Republic of Germany. The United Nations Convention on Contracts for the International Sale of Goods of 11 April 1980 (CISG) shall not apply.

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- (3) Where the contract or these General Terms and Conditions of Delivery contain loopholes, these loopholes shall be deemed filled by legally effective provisions which the contracting parties would have agreed on the basis of the economic objectives of the contract and the spirit and purpose of these General Terms and Conditions of Delivery if the loopholes had been known.
- (4) These General Terms and Conditions of Delivery are drafted in the English and German language. The English version is only a convenience translation of the German version. In case of any discrepancy between the English and the German version, the German version shall prevail.