

# General Conditions of Sale trinamiX GmbH

Hertzstück™ is a brand of trinamiX GmbH

## 1. Scope of Application

All supplies and the services associated with them shall be provided exclusively on the basis of these General Conditions of Sale. References made by Buyer to his general terms and conditions are hereby rejected. These General Conditions of Sale shall also apply to all future business. Deviation from these General Conditions of Sale require the explicit written approval of trinamiX GmbH (hereinafter "trinamiX").

## 2. Offer and Acceptance

trinamiX's quotations are not binding offers but must be seen as invitations to Buyer to submit a binding offer. The contract is concluded by Buyer's order (offer) and by trinamiX's acceptance. In case the acceptance differs from the offer, such acceptance constitutes a new non-binding offer of trinamiX.

## 3. Product quality, specimens and samples; guarantees

### 3.1

Unless otherwise agreed, the quality of the goods is exclusively determined by trinamiX's product specifications.

### 3.2

The properties of specimens and samples are binding only insofar as they have been explicitly agreed to define the quality of the goods.

### 3.3

Quality and shelf-life data as well as other data constitute a guarantee only if they have been agreed and designated as such.

## 4. Advice

Any advice rendered by trinamiX is given to the best of his knowledge. Any advice and information with respect to suitability and application of the goods shall not relieve Buyer from undertaking his own investigations and tests

## 5. Prices

If trinamiX's prices or trinamiX's terms of payment are generally altered between the date of contract and dispatch, trinamiX may apply the price or the terms of payment in effect on the date of dispatch. In the

event of a price increase, Buyer is entitled to withdraw from the contract by giving notice to trinamiX within 14 days after notification of the price increase.

## 6. Delivery

Delivery shall be effected as agreed in the contract. General Commercial Terms shall be interpreted in accordance with the INCOTERMS in force on the date the contract is concluded.

## 7. Damage in Transit

Notice of claims arising out of damage in transit must be lodged by Buyer directly with the carrier within the period specified in the contract of carriage and trinamiX shall be provided with a copy thereof.

## 8. Compliance with legal requirements

### 8.1

Unless specifically agreed otherwise, Buyer is responsible for compliance with all laws and regulations regarding import, transport, storage and use of the goods.

### 8.2

The goods that are supplied under these General Conditions of Sale and related technology may be subject to export and re-export restrictions under European, U.S. and other countries' export control regulations, which may require government approval for any re-export or retransfer ("Export Control Regulations"). Buyer warrants that it (i) will adhere to and comply with (a) all applicable Export Control Regulations and (b) any applicable terms, conditions, procedures and documentation requirements made known to Buyer that may be stipulated by trinamiX from time-to-time to comply with the Export Control Regulations.

### 8.3

In the event that trinamiX reasonably believes that any provision of this Clause 8 has or may have been breached, Buyer shall cooperate fully with trinamiX's investigation to clear the matter and trinamiX shall not be obligated to sell or provide goods or technology while such investigation is pending and such suspension by trinamiX shall not be deemed to

constitute a breach of any obligation in respect of the transaction to which these General Conditions of Sale applies or otherwise.

## 9. Payment Terms and Delay in Payment

### 9.1

Unless expressly agreed in writing, all payments shall be due 30 (thirty) days from the invoice date.

### 9.2

Failure to pay the purchase price by the due date constitutes a fundamental breach of contractual obligations.

### 9.3

In the event of a default in payment by Buyer, trinamiX is entitled to charge interest on the amount outstanding at the rate of 9 percentage points above the base interest rate announced by the German Federal Bank at the time payment is due if the amount is invoiced in euros, or, if invoiced in any other currency, at the rate of 9 percentage points above the discount rate of the main banking institution of the country of the invoiced currency at the time the payment is due.

## 10. Buyer's rights regarding defective goods

### 10.1

trinamiX must be notified of any defects that can be discovered during routine inspection within four weeks of receipt of the goods; other defects must be notified within four weeks after they are discovered. Notification must be in writing and must precisely describe the nature and extent of the defects.

### 10.2

If the goods are defective and Buyer has duly notified trinamiX in accordance with item 10.1, Buyer has its statutory rights, provided that:

- a) trinamiX has the right to choose whether to remedy the defect or supply Buyer with non-defective replacement goods.
- b) trinamiX may make two attempts according to lit. a) above. Should these fail or cause unreasonable inconvenience to Buyer, Buyer may either withdraw from the contract or demand a reduction in the purchase price.

- c) With regard to claims for compensation and reimbursement of expenses on a defect, item 11 applies.

### 10.3

Buyer's claims for defective goods are subject to a period of limitation of one year from receipt of the goods.

In the following cases the legal periods of limitation apply instead of the one-year period:

- d) liability for wilful misconduct,
- e) fraudulent concealment of a defect,
- f) claims against trinamiX relating to the defectiveness of goods that when applied to a building in the ordinary manner caused it to be defective,
- g) claims for damage to life, body and health caused by trinamiX's negligent breach of duty, or by wilful or negligent breach of duty on the part of trinamiX's legal representative or vicarious agent,
- h) claims for other damage caused by trinamiX's grossly negligent breach of duty, or by wilful or grossly negligent breach of duty on the part of trinamiX's legal representative or vicarious agent,
- i) in the event of a Buyer's recourse claim based on consumer goods purchasing regulations.

## 11. Liability

trinamiX shall be generally liable for damages in accordance with the law. In the event of a simple negligent violation of fundamental contractual obligations, however, trinamiX's liability shall be limited to compensation for typical, foreseeable losses. In the event of a simple negligent violation of non-fundamental contractual obligations, trinamiX shall not be liable. The foregoing limitations on liability do not apply to damage to life, body or health.

## 12. Set off

Buyer may only set off claims from trinamiX against an undisputed or adjudicated counterclaim.

## 13. Security

If there are reasonable doubts as to Buyer's ability to pay, especially if Buyer is in default of payment,

trinamiX may, subject to further claims, revoke agreed credit periods and make further deliveries dependent on the provision of sufficient security.

#### **14. Retention of Title**

##### **14.1 Simple Retention of Title**

Title to the goods delivered shall not pass to Buyer before the purchase price has been paid in full.

##### **14.2 Expanded Retention of Title**

In case Buyer has paid the purchase price for the goods delivered but not yet completely fulfilled other debts arising out of his business relationship with trinamiX, trinamiX retains, in addition, title to the goods delivered until all such outstanding debts have been completely paid.

##### **14.3 Retention of Title with processing clause**

In the event Buyer processes the goods delivered by trinamiX, trinamiX shall be considered manufacturer and shall directly acquire sole title to the newly produced goods. If the processing involves other materials, trinamiX shall directly acquire joint title to the newly produced goods in the proportion of the invoice value of the goods delivered by trinamiX to the invoice value of the other materials.

##### **14.4 Retention of Title with combination and blending clause**

If the goods delivered by trinamiX are combined or blended with material owned by Buyer, which has to be considered the main material, it is deemed to be agreed that Buyer transfers to trinamiX the joint title to such main material in the proportion of the invoice value of the goods delivered by trinamiX to the invoice value (or, if the invoice value can not be determined to the market value) of the main material. Buyer holds in custody for trinamiX any sole or joint ownership originating therefrom at no expense for trinamiX.

##### **14.5 Extended Retention of Title with blanket assignment**

Buyer shall have in the ordinary course of business free disposal of the goods owned by trinamiX, provided that Buyer meets its obligations under the business relationship with trinamiX in due time. Buyer already assigns to trinamiX all claims in connection with the sale of goods to which trinamiX reserves the right of retention of title when concluding the sales agreement with trinamiX; should trinamiX have

acquired joint title in case of processing, combination or blending, such assignment to trinamiX takes place in the proportion of the value of the goods delivered by trinamiX with retention of title to the value of the goods of third parties with retention of title. Buyer already assigns to trinamiX any future confirmed balance claims under current account agreements in the amount of the outstanding claims of trinamiX when concluding the sales agreement with trinamiX.

##### **14.6 Right of Access/Disclosure**

At the request of trinamiX, Buyer shall provide all necessary information on the inventory of goods owned by trinamiX and on the claims assigned to trinamiX. Furthermore, at the request of trinamiX, Buyer shall identify on the packaging trinamiX's title to the goods and shall notify its customers of the assignment of the claims to trinamiX.

##### **14.7 Late Payment**

In the event of late payment by Buyer, trinamiX is entitled, without rescinding the sales agreement and without granting a period of grace, to demand the temporary surrender of the goods owned by trinamiX at Buyer's expense.

##### **14.8 Partial Waiver clause**

Should the value of the securities exceed trinamiX's claims by more than 15%, trinamiX waives securities to this extent.

#### **15. Force Majeure**

To the extent any incident or circumstance beyond the trinamiX's control (including natural occurrences, war, strikes, lock-outs, shortages of raw materials and energy, obstruction of transportation, breakdown of manufacturing equipment, fire, explosion, acts of government), reduces the availability of goods from the plant from which the trinamiX receives the goods such that trinamiX can not fulfill its obligations under this contract (taking into account on a pro rata basis other supply obligations), trinamiX shall (i) be relieved from his obligations under this contract to the extent trinamiX is prevented from performing such obligations and (ii) have no obligation to procure goods from other sources. The first sentence does also apply to the extent such incident or circumstance renders the contractual performance commercially useless for trinamiX over a long period or occurs with

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suppliers of trinamiX. If the aforementioned occurrences last for a period of more than 3 months, trinamiX is entitled to withdraw from the contract without the Buyer having any right to compensation.

**16. Place of payment**

Regardless of the place of delivery of goods or documents, the place of payment shall be trinamiX's place of business.

**17. Communication**

Any notice or other communication required to be received by a party is only effective at the moment it reaches this party. If a time limit has to be observed, the notice or other communication has to reach the recipient party within such time limit.

**18. Jurisdiction**

Any dispute arising out of or in connection with this contract shall be heard, at trinamiX's option, at the court having jurisdiction over trinamiX's principal place of business or Buyer's principal place of business.

**19. Applicable law**

The contractual relationship shall be governed by the law applicable at the place of trinamiX's head office, excluding the provisions of the United Nations Convention on Contracts for the International Sale of Goods dated 11 April 1980 (CISG).

**20. Contract Language**

If these General Conditions of Sale are made known to Buyer in another language, in addition to the language in which the sales contract has been concluded (Contract Language), this is merely done for Buyer's convenience. In case of differences of interpretation, the version in the Contract Language shall be binding.

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