

## TOX® General Terms and Conditions

### **General Sale and Delivery Conditions**

#### **1. General, Scope**

##### 1.1 Application

Our services and supplies are exclusively based on these general Sales and Delivery conditions. Contradictory, deviating or completing purchase conditions of the buyer are not accepted unless we expressly confirm them in writing.

1.2 All proprietary rights and copyrights to cost estimates, drawings, patterns, and other documents are reserved. They may not be made available to third parties without our prior agreement and must be returned to us immediately on request.

1.3 Any later modifications of the contract are subject to our agreement in writing.

#### **2. Conclusion of the contract**

2.1 Technical modifications as well as changes of shape, colour and/or weight are reserved within a reasonable scope.

2.2 Should the order be transmitted electronically, we shall confirm the receipt as soon as possible.

#### **3. Prices and Payment**

3.1 Unless otherwise agreed, our prices are calculated ex works (FCA TOX Pune) In case of payment extensions or delayed payments, we are entitled to charge interest fees of 18% above the basis interest rate. We reserve the right to substantiate and enforce higher damages caused by the delay.

3.2 The buyer shall only be entitled to retention rights or counterclaims as far as the counterclaim is legally established or acknowledged by us.

#### **4. Terms of delivery**

4.1 Terms of delivery are only binding if confirmed by us.

The delivery term shall be reasonably extended in case of Force Major or other unforeseeable events that are beyond our control, this includes strikes, lockouts, delays in the supply of energies, transport or traffic problems as far as such events substantially impair the execution of our performances.

4.2 Partial deliveries are allowed to a reasonable extent.

The delivery term is met if the goods are dispatched on expiration of the delivery term, or the readiness for dispatch is signaled to the buyer. If goods need to be accepted, the date of acceptance will apply.

#### **5. Passing of risk, acceptance**

5.1 The risk in the goods shall pass to the buyer when the shipment has left our work; this applies also to partial deliveries.

5.2 The acceptance of the goods is decisive for the passing of risk. The buyer shall not be entitled to refuse the acceptance in case of a slight defect.

5.3 Should the dispatch or the acceptance of the goods be delayed or made impossible due to circumstances for which we are not responsible, the risk shall pass to the buyer at the date of sending the notice of dispatch or readiness. We are entitled and, on request of the buyer, obliged to insure the goods against all reasonable risks at buyer's cost.

#### **6. Retention of title**

6.1 The goods to be delivered shall remain our property up to the full settlement of all claims from a current business relation.

6.2 The buyer shall be entitled to sell and process the objects of our delivery in usual business trade, but shall not be entitled to pledge the goods or to deposit the goods in guarantee. The buyer shall inform us immediately on any seizure of the goods or any other impairment of our rights by third parties. In case of danger, the buyer shall take all necessary steps to protect our rights.

6.3 Should the buyer resell the delivered goods in any form, the buyer shall already now assign to us all its claims against its customers to the amount of our invoice.

6.4 The buyer shall be obliged to take care of the goods under distraint. Should any maintenance work be required, the buyer shall be in charge of the maintenance work at regular intervals. The buyer agrees to inform us immediately on any seizure of the delivered goods by third parties, as, e.g. attachment, damage or destruction.

6.5 The buyer shall inform us immediately on any ownership change of the objects of our delivery or the change of buyer's business place

6.6 The filing of a petition in bankruptcy against the buyer entitles us to withdraw from the agreement and claim the immediate return of the delivered goods.

## **7. Warranties**

7.1 Our warranty covers all redhibitor and title defects of the delivered goods, excluding all supplemental claims and "Liabilities" as per item 8.

At our discretion, we shall repair or replace at no cost for the buyer all parts proving to be defective due to circumstances occurred before the passing of risk. The buyer must immediately inform us when such defects are stated. Replaced parts pass into our property.

At our discretion, the retouch shall take place in our works. On customer's request, the retouch can also take place on site. In this case, the working hours on site and the cost of the faulty parts will not be charged. Travel expenses, travel times and additional travel expenses shall, however, be paid by the customer.

7.2 The buyer must agree with us on the time for making the repairs or replacement deliveries. Only in urgent cases of endangerment of operational safety or to avoid excessive damages, the buyer shall be entitled to repair or have repaired the defects and charge the expenses to our account. In such cases the buyer shall inform us immediately.

7.3 Within the scope of legal regulations, the buyer shall be entitled to withdraw from the agreement in case we shall not meet a deadline reasonably agreed for the repair or replacement of an object showing a redhibitory defect, if this non-compliance is not due to such exceptional circumstances permitted by law. In case of a slight defect, the buyer shall only be entitled to a reduction of payment. For further claims see item 8 "Liability"

7.4 Our warranty does not cover the following cases: non-compliance with our Operating Instructions, inappropriate or inexperienced use, overstressing, wrong assembly or commissioning by the buyer or third parties, normal wear, incorrect or careless handling, irregular maintenance, inappropriate working material, unqualified construction work, unsuitable building ground, chemical, electrochemical or electrical influences, if we are not responsible for them.

7.5 In case of unqualified retouching work or repairs made by the buyer or by third parties, we shall not be responsible for the consequences thereof. The same applies to modifications of the delivered goods or other interventions made without our prior agreement.

7.6 Should the use of the object of the delivery injure industrial rights or copyrights protected in the country, we shall generally, at our cost, acquire the rights for the further use of the object by the buyer or modify the object of the delivery in a manner acceptable for the buyer, avoiding thus the further infringement of the industrial rights. Should this not be possible at economic terms or within a reasonable time, the buyer shall be entitled to withdraw from the agreement. On the above mentioned circumstances we shall also be entitled to withdraw from the agreement. In addition to this, we shall indemnify the buyer in case of uncontested or finally decided claims enforced by the proprietors of the industrial rights.

7.7 Our obligations mentioned in the above paragraph 7.6. are final, subject to item 8. "Liability" with regard to the infringement of industrial rights or copyrights.

Our obligations shall only apply if:

- the buyer informs us immediately on any infringements of claimed industrial or copyrights,
- the buyer assists us sufficiently in defending the claims or agrees to the modification measures according to paragraph 7.6 above,
- we reserve all defensive measures including extra judicial settlements,
- the failure of title is not due to an instruction of the buyer or to a detail drawing submitted by the buyer, and
- the infringement is not caused by an arbitrary modification of the delivered object or by a use which is not in conformity with the contract.

## **8. Liability**

8.1 Should, due to our negligence, the buyer not be able to use the delivered object according to the contract because of the omitted or defective realisation of proposals or advice made or given before or after the signing of the contract, or because of the infringement of other accessory obligations specially instructions for operation and maintenance of the delivered object then the settlements according to paragraph 7.

"Warranty" and 8.2 shall apply excluding any further claim.

8.2 Regardless of the legal consideration, our responsibility for damages not caused to the delivered object itself, shall be limited to

- intention,

- gross negligence of proprietor, institutions or executives,
- constructive injury of life, body, health,
- defects fraudulently concealed by us, or the non-existence of which we have warranted,
- defects of the delivered object as far as the liability for personal and material damage to privately used objects as covered by the product liability law.

In case of constructive infringement of substantial contractual obligations, we shall also be responsible for gross negligence of non-executive employees and slight negligence, in the latter case our liability is limited to damages which are – in consideration of the kind of performance and delivery - typical for the contract and are normally foreseeable.

No further claims shall be admitted.

**9. Statutory limitation**

All claims advanced by the buyer shall be barred after 12 months regardless of their titles. The statutory limitation periods shall apply to damage claims advanced by the buyer due to intention, fraudulent behavior, gross negligence, and constructive injury of life, body, health, and as far as a liability is provided for privately used objects (paragraph 8.2) by the product liability law.

**10. Conclusion, applicable law, competency of court**

10.1 The business relations shall be exclusively ruled, governed and interpreted according to Indian Law to the exclusion of the laws covering the international purchase of movable goods even if the buyer has its business place abroad.

10.2 Place of fulfillment of all obligations of the parties hereunder is Pune, Maharashtra India.

10.3 The competency of court for all contestations arising out of or in connection with the delivery is Pune, India. We shall also be entitled to apply the law being in force at the competent court at the business place of the buyer.

10.4 Should one or more of the provisions of the contract, including these general Terms and Conditions, be or become ineffective, the validity of the remaining provisions shall not be affected. The completely or partly ineffective provision shall be replaced by a provision that accomplishes, to the extent possible, the commercial purpose of the ineffective provision.

Trust you would find our offer competitive.

Yours faithfully,

For **TOX Pressotechnik India Pvt Ltd,**

**Siddharth Pawar**  
**Regional Sales Engineer**