

General Terms and Conditions of Sale of Televic Rail GmbH (hereinafter referred to as “TRA”)

Status: 9th January 2023

Section 1: General, Area of Application

(1) These General Terms and Conditions of Sale (hereinafter also referred to as “GTCSale”) apply exclusively to all our business relationships with our customers (hereinafter “buyers”). Deviating, conflicting or supplementary general terms and conditions of business of the buyer will only become an integral part of the contract if and in so far as we have explicitly consented to their application. This requirement of consent shall apply in all cases, for example even if we execute delivery to the buyer unconditionally despite knowledge of his GTC.

(2) These GTCSale shall apply in particular to contracts for the sale and/or delivery of movable objects (hereinafter also “goods”), irrespective of whether we manufacture the goods ourselves or purchase them from suppliers (Sections 433, 650 BGB (German Civil Code)).

(3) These GTCSale are also applicable in their respective version as framework agreement for all future transactions between the parties involving the sale and/or delivery of movable objects, without the need for us to make renewed reference to them in each individual case and even if we execute delivery of the goods despite knowledge of deviating or conflicting terms and conditions.

(4) These GTCSale apply only with respect to companies (Section 14 BGB), juridical persons under public law or public-law special funds as defined in Section 310 paragraph 1 BGB.

(5) Individual agreements made with the buyer on a case-by-case basis (including subsidiary agreements, extensions and amendments) shall in all cases take priority over these GTCSale. Authoritative for the content of any such agreements is a written contract or our written confirmation.

(6) The following order of validity applies to the contractual elements:

1. Individual agreements;
2. the order confirmation of TRA;
3. these GTCSale.

In the event of contradictions and/or uncertainties, the first-mentioned contractual elements shall always take precedence over the last-mentioned ones. Gaps shall be filled by the respective subordinate contractual elements. In case of documents in chronological order, the more recent document shall take precedence over the older document.

(7) Legally relevant declarations and notifications to be issued to us by the buyer after conclusion of the contract (e.g. setting of deadlines, notification of defects, declaration of withdrawal or reduction in the price) shall only be valid if made in writing. Written form within the meaning of these GTCSale includes written and text form (e.g. letter, e-mail, fax). Legal formal requirements and further evidence, in particular in the event of doubts about the legitimacy of the declaring person, shall remain unaffected.

(8) References to the application of statutory regulations shall be of clarifying significance only. Consequently, the statutory provisions shall apply even without any such clarification, provided they are not directly altered or explicitly excluded in these GTCSale.

Section 2: Contract conclusion

(1) Our offers are subject to confirmation and are non-binding. This shall also apply even if we have provided the buyer with catalogues, technical documentation (e.g. drawings, plans, calculations, references to DIN standards), other product descriptions or documentation – including in electronic form – to which we reserve ownership rights and copyright.

(2) The ordering of goods by the buyer shall apply as a binding offer of contract. In the absence of any provisions to the contrary in the order, we are entitled to accept this offer of contract within a period of ten (10) working days from receipt by us.

(3) Acceptance can be declared either in writing (e.g. through order confirmation) or through delivery of the goods to the buyer.

Section 3: Delivery date and default on delivery

(1) The delivery date will be agreed individually or indicated by us when accepting the order.

(2) If we are unable to adhere to binding delivery dates for reasons for which we are not responsible (non-availability of the performance), we shall inform the buyer of this immediately and, at the same time, shall indicate the foreseeable new delivery date. If the performance is still not available even by the new delivery date, we shall be entitled to withdraw from the contract, either in part or in full; any counter-performance already provided by the buyer will be reimbursed immediately. A case of non-availability of the performance in this context shall be in particular non-punctual delivery to us by our supplier if we have concluded a congruent covering transaction, neither we nor our supplier are at fault or we are not obligated to procure in the individual case. Our statutory rights of withdrawal and termination as well as the statutory regulations concerning the winding up of the contract with exclusion of the obligation to perform (e.g. impossibility or unreasonableness of the performance and/or of subsequent fulfilment) shall remain unaffected. The buyer's rights as per Section 9 of these GTCSale shall also remain unaffected.

(3) The occurrence of default on delivery on our part shall be determined in accordance with the statutory regulations. In all cases, however, a reminder from the buyer is required. If we default on delivery, the buyer is entitled to demand lump-sum compensation for his default damage. The lump-sum damages shall be 0.5% of the net price (delivery value) for each full calendar week of the default, subject, however, to a maximum of 5% of the delivery value of the goods delivered late. We reserve the right to demonstrate that the buyer has suffered no damage or only significantly less damage than the above lump-sum amount.

Section 4: Delivery, passing of risk, acceptance, default on acceptance

(1) Deliveries are made ex works which is also the place of performance and any subsequent performance. In the absence of any rulings to the contrary within the scope of these GTCSale, INCOTERMS® 2010 ex works Berlin shall apply. The goods will be sent to another place of destination (sale by delivery to a place other than the place of performance) at the request and expense of the buyer. In the absence of any agreement to the contrary, we are entitled to determine the form of dispatch (in particular transport company, shipping route, packing) ourselves.

(2) The risk of accidental loss or accidental deterioration of the goods shall pass to the buyer at the latest upon delivery of the goods. Nevertheless, in cases of sale by delivery to a place other than the place of performance, the risk of accidental loss or of accidental deterioration of the goods as well as the risk of delay shall pass upon delivery of the goods to the freight forwarder, the carrier or to other persons or establishments determined for performance of the dispatch. If acceptance has been agreed, this shall be authoritative for the passing of risk. In other respects too, the statutory provisions of the law on contracts for work and services shall apply accordingly for any acceptance agreed. If the buyer is in default on acceptance, handover or acceptance shall apply as having taken place.

(3) In the event of default on acceptance or other culpable violation of obligations to cooperate on the part of the buyer, we shall be entitled to compensation for the resulting damage including any additional expense (e.g. storage costs). We reserve the right of further claims.

Section 5: Prices and Payment Conditions

(1) In the absence of any agreement to the contrary in individual cases, our respective current prices as at the time of conclusion of the contract shall apply ex works plus statutory value added tax.

(2) In cases of sale by delivery to a place other than the place of performance (Section 4 paragraph 1), the buyer shall bear the transport costs ex works and the costs of any transport insurance desired by the buyer. Any customs duties, fees, taxes and other public charges shall be for the account of the buyer. We shall not take back transport and all other packing as per the packing ordinance; it shall become the property of the buyer; pallets are excepted from this ruling.

(3) The purchase price is due within 30 days of invoicing and delivery or acceptance of the goods. The purchase price shall be paid by transfer to our bank account. We are entitled to demand an appropriate down payment against the purchase price. The down payment is due and payable within seven (7) days of invoicing.

(4) The buyer shall be in default upon expiry of the above payment period. During the period of default, interest shall be payable on the purchase price at the respectively applicable rate of default interest. We reserve the right to assert farther-reaching default damage. Our claim to the commercial interest after the due date (Section 353 HGB (German Commercial Code)) shall remain unaffected with respect to merchants.

(5) The buyer shall only be entitled to rights of set-off or retention to the extent that its respective claim is undisputed or has been finally determined by a court of law. In the event of defects in the delivery, the buyer's counter rights shall remain unaffected, in particular pursuant to § 7 para. 6.

(6) If it becomes recognisable subsequent to conclusion of the contract that our claim to the purchase price is endangered through insufficient ability of the buyer to pay (e.g. as a result of an application for the opening of insolvency proceedings), we are entitled under the statutory provisions to refuse performance and – if applicable following the setting of a deadline – to withdraw from the contract (Section 321 BGB). In the case of contracts for the manufacture of unjustifiable objects (individual production), we can declare withdrawal immediately; the statutory rulings on dispensability of the setting of a deadline shall remain unaffected.

Section 6: Retention of title

(1) We shall retain title to the goods sold until such time as full payment is received against all our current and future claims from the contract of sale and any ongoing business relationship (secured claims). In the event of breach of contract on the part of the buyer, including default on payment, we shall be entitled to take back the goods.

(2) The goods subject to retention of title must not be pledged to third parties or transferred by way of security until such time as full payment has been received against the secured claims. The buyer must inform us immediately in writing if and in so far as an application for the opening of insolvency proceedings has been filed, or third parties access (e.g. attachments) the goods belonging to us.

(3) In the event of infringement of the contract on the part of the buyer, in particular non-payment of the due purchase price, we shall be entitled to withdraw from the contract in accordance with the statutory regulations and to demand return of the goods on the basis of the retention of title and the withdrawal. The demand for return does not at the same time include the declaration of withdrawal; we are rather entitled to demand only the return of the goods and to reserve the right of withdrawal. If the buyer fails to pay the due purchase price, we can only assert these rights if we have previously unsuccessfully set the buyer an appropriate deadline for payment or if any such setting of a deadline is dispensable under the statutory regulations.

(4) The buyer is authorised to sell on and/or process the goods subject to retention of title in the ordinary course of business. In this case, the following provisions shall apply in extension.

(a) The retention of title shall cover the full value of the goods created through processing, mixing or joining, whereby we shall apply as manufacturer. If, in the event of processing, mixing or joining with goods of third parties, the ownership rights of these third parties remain applicable, we shall acquire joint ownership in the ratio of the invoice values of the goods processed, mixed or joined. In addition, the same shall also apply for the product created as for the goods delivered subject to retention of title.

(b) The seller hereby assigns henceforth the claims against third parties resulting from the onward sale of the goods or of the product - in their full amount or in the amount of any joint ownership share acquired by us as per the above paragraph – to us as collateral. We accept the assignment. The obligations of the buyer stated in paragraph 2 shall also apply with regard to the claims assigned.

(c) The buyer shall remain authorised to collect the claims in addition to us. We undertake not to collect the claims as long as the buyer fulfils his payment obligations with respect to us, does not default on payment, as long as no application has been made for the opening of insolvency proceedings and no other impairments exist concerning his ability to pay. If this is the case however, we can demand that the buyer informs us of the assigned claims and their debtors, provide all information required for collection, hand over the corresponding documents and notify the debtors (third parties) of the assignment. Furthermore, in this case we shall be entitled to revoke the Buyer's authority to further sell and process the goods subject to retention of title.

(d) If the achievable value of the collateral exceeds our claims by more than 10%, we shall, upon request by the buyer, release collateral at our discretion.

Section 7: Defect claims of the buyer

(1) In the absence of any rulings to the contrary below, the statutory regulations shall apply as regards the buyer's rights in cases of defects of material and title (including wrong and under-delivery as well as incorrect assembly or inadequate instructions). In all cases, the statutory special regulations for reimbursement of expenses covering final delivery of the newly produced goods to a consumer (recourse against supplier as per Sections 478, 445a, 445b resp. Sections 445c, 327 Abs. 5, 327u BGB) shall remain unaffected.

(2) The basis of our liability for defects is above all the agreement made concerning the characteristics and the assumed use of the goods. Agreements concerning the characteristics of the goods are product descriptions marked as such (including from third-party producers and/or a supplier) which were provided to the buyer prior to his order or were included in the contract in the same way as these GTCSale. If no agreement has been made concerning the characteristics, the assessment of whether a defect is present or not must be based on the statutory regulations (Section 434 paragraph 3 BGB).

(3) In the case of goods with digital elements or other digital content, we only owe provision and, if applicable, updating of the digital content insofar as this expressly results from an agreement on quality pursuant to Section 7 para. 2. However, we assume no liability for public statements made by the manufacturer or other third parties.

(4) As a matter of principle, we shall not be liable for defects of which the buyer is aware at the time of conclusion of the contract or is not aware due to gross negligence (§ 442 BGB). Furthermore, the defect claims of the buyer presuppose that he has complied with his statutory obligations to examine and notify (Sections 377, 381 HGB). In the case of goods intended for incorporation or other further processing, an examination must in any case be carried out immediately before processing. If a defect becomes apparent, we must be notified of this immediately and in writing. In any case, obvious defects shall be notified in writing within ten (10) working days from delivery and defects not detectable upon examination within the same period from discovery. If the buyer fails to carry out the correct examination and/or notification of defects, our liability for the defect not notified or not notified in time or not notified properly shall be excluded. In the case of goods intended for incorporation, attachment or installation, this shall also apply if the defect became apparent as a result of the breach of one of these obligations only after the corresponding processing; in this case, in particular, there shall be no claims by the buyer for reimbursement of corresponding costs ("removal and incorporation costs").

(5) If the delivered good is defective, we may initially choose whether to provide subsequent performance by remedying the defect (rectification) or by delivering an item free of defects (replacement). If the type of subsequent performance chosen by us is unreasonable for the buyer in the individual case, the buyer may reject it. Our right to refuse subsequent performance under the statutory conditions shall remain unaffected.

(6) We are entitled to make the subsequent fulfilment owed dependent on payment by the buyer of the due purchase price. The buyer is, however, entitled, to withhold an appropriate part of the purchase price in relation to the defect.

(7) The buyer must grant us the appropriate time and opportunity necessary for the subsequent performance owed, in particular he must hand over the goods subject to complaint for examination purposes. In the event of replacement delivery, the buyer must return the defective item to us in accordance with the statutory regulations; however, the buyer does not have a right of return. Subsequent performance shall not include the removal, disassembly or deinstallation of the defective item or the incorporation, attachment or installation of a non-defective item if we were not originally obligated to perform such services; claims of the buyer for reimbursement of corresponding costs ("removal and incorporation costs") shall remain unaffected.

(8) We shall bear or reimburse the expense necessary for examination and subsequent performance, in particular transport, travel, labour and material costs and, if applicable, removal and incorporation costs, in accordance with the statutory provisions and these GTCSale, if a defect is actually present. Otherwise, we shall be entitled to demand compensation from the buyer for the costs incurred as a result of the unjustified request to remedy the defect if the buyer knew or was negligent in not knowing that no defect actually existed.

(9) In urgent cases, e.g. given a threat to operational safety or for the purpose of avoiding disproportionate damage, the buyer shall be entitled to remove the defect himself and to demand reimbursement by us of the costs objectively necessary for this. We must be informed immediately, if possible in advance, of any such removal of defects by the buyer himself. The buyer's right to remove defects himself shall not apply if we would have been entitled to refuse corresponding subsequent fulfilment under the statutory regulations.

(10) If subsequent fulfilment has failed or a deadline, to be set by the buyer for subsequent fulfilment, has passed unsuccessfully or is dispensable under the statutory regulations, the buyer can withdraw from the contract of sale or reduce the purchase price. However, no right of withdrawal shall apply in cases of irrelevant defects.

(11) Claims of the buyer to damages or to compensation for futile expense shall only apply in accordance with Section 9 and are excluded in other respects.

Section 8: Confidentiality

(1) The illustrations, drawings, calculations, files, software and other documents may not be disclosed to third parties without our explicit written consent. They are to be used exclusively for the execution of the particular project; after completion of the project, they are to be returned to TRA unrequested. A right of lien is excluded so far. The buyer is obliged to keep all illustrations, drawings, calculations, files, software and other documents and information confidential from third parties. They may be disclosed only with the explicit written consent of TRA to third parties. The buyer is obliged to use the documents only in the context of the particular project.

(2) The obligation of confidentiality shall survive the completion of the project; it expires, when contained information of the ceded illustrations, drawings, calculations and other documents are disclosed to the public. The buyer has to oblige its employees and partners accordingly.

Section 9: Liability

(1) In the absence of any rulings to the contrary in these GTCSale, including the provisions below, we shall be liable in accordance with the relevant statutory regulations in cases of violation of contractual and non-contractual obligations.

(2) We shall be liable for damages – irrespective of the legal grounds – within the scope of fault-based liability in cases of intentional conduct or gross negligence. In cases of slight negligence, we shall be liable, subject to statutory limitations of liability (e.g. care in own affairs; insignificant breach of duty), only

a) for damage resulting from injury to life, body or health,

b) for damage resulting from violation of a fundamental contractual obligation (obligation whose fulfilment makes correct execution of the contract possible in the first place and in adherence to which the contracting party can and does regularly trust); in this case, our liability is, however, limited to compensation for foreseeable, typical damage.

(3) The limitations of liability resulting from Section 9 paragraph 2 shall also apply to third parties as well as to breaches of duties by persons (also in their favour) whose fault we are responsible for according to statutory provisions. They shall not apply insofar as we have maliciously concealed a defect or have assumed a guarantee for the characteristics of the goods. The same applies to claims of the buyer under the Product Liability Act.

(4) The buyer can only withdraw from or terminate the contract as a result of a violation of obligations which does not involve a defect if we are responsible for the violation of the obligation. A free right of termination of the buyer (in particular as per Sections 650, 648 BGB) is excluded. The statutory preconditions and legal consequences shall apply in other respects.

(5) The buyer shall be liable solely in accordance with the statutory provisions for all damage caused intentionally or negligently by the buyer itself, its employees or commissioned third parties (vicarious agents and/or assistants).

Section 10: Limitation period

(1) In deviation from Section 438 paragraph 1 no. 3 BGB, the general limitation period for claims based on material and legal defects is one (1) year from delivery. If the contracting parties have agreed to an acceptance procedure the limitation period shall begin upon acceptance.

(2) If, however, the goods are a construction or an item used for a construction in accordance with its common purpose of use and which has caused the defectiveness of the construction (building material), the limitation period shall be five (5) years from delivery in accordance with the statutory regulation (Section 438 paragraph 1 no. 2 BGB). Other special statutory provisions on limitation (in particular Section 438 para. 1 no. 1, para. 3, Sections 444, 445b BGB) shall also remain unaffected.

(3) The above limitation periods under the law of sale shall also apply for contractual and non-contractual claims of the buyer for damages, based on a defect to the goods, unless application of the regular statutory limitation period (Section 195, 199 BGB) would result in a shorter limitation period in individual cases. Claims for damages by the buyer pursuant to Section 9 para. 2 sentence 1 and sentence 2 lit. a) as well as pursuant to the Product Liability Act shall become statute-barred exclusively according to the statutory limitation periods.

Section 11: Final Provisions

(1) German law shall apply to these GTCSale and to all legal relationships between us and the buyer, subject to exclusion of all international and supranational (contract) legal systems, in particular the UN Convention on Contracts for the International Sale of Goods.

(2) If the buyer is a trader as defined in the German Commercial Code, a juridical person under public law or a public-law special fund, the exclusive – including international – place of jurisdiction for all disputes resulting directly or indirectly from the contractual relationship is our registered office. However, we are also entitled to file action against the buyer at his generally applicable place of jurisdiction. Prior statutory provisions, in particular on exclusive jurisdiction, shall remain unaffected.

(3) In the event of a dispute, the parties shall conduct arbitration proceedings in accordance with the Arbitration Rules of the Hamburg Arbitration Board for IT Disputes in the version valid at the time of the initiation of arbitration proceedings before conducting court proceedings (legal action). The arbitration proceedings shall serve to settle the dispute in whole or in part, provisionally or finally. If no agreement is reached before the arbitration board, legal recourse shall be taken to the ordinary courts.

(4) The parties shall not be responsible for the non-performance of an obligation if and to the extent that the non-performance is due to circumstances caused by force majeure. Force majeure covers unforeseeable and uncontrollable events which (a) are beyond the control of the party concerned, (b) could not reasonably have been foreseen at the time of the conclusion of the contract and (c) cannot be prevented or overcome by it, such as wars, terrorist attacks, natural disasters or epidemics.

(5) Companies affiliated with TRA within the meaning of §§ 15 ff. German Companies Act (“Aktengesetz”) are entitled to deliver goods to the buyer under the terms and conditions of these GTCSale. All agreements concluded between the affiliated companies and the buyer establish independent and autonomous contractual relationships. TRA does not assume any liability for these contractual relationships and the fulfilment of the contractual obligations. TRA is entitled to assign all contractual obligations to affiliated companies and/or third parties with discharging effect.

(6) In the event that a provision of the contract is invalid (e.g. unlawful or otherwise unenforceable), such invalidity shall not invalidate the remaining provisions of the contract. An invalid provision shall be replaced by a mutually agreed, legally valid provision that has comparable valid economic and legal effects. The same shall apply to any potential contractual gaps or omissions.

(7) These GTCSale shall be governed by German law and must be interpreted in accordance with German understanding of the law. If the meaning of an English term differs from the corresponding German term, the German term shall take priority.