

General Business Terms and Conditions between the Tragant Handels und Beteiligungs GmbH Company (hereafter, "Tragant GmbH") and its respective contractual partner (hereafter, "Customer"):

I. General

1. The following General Business Terms and Condition shall be valid for all deliveries, services and contractual agreements insofar as no deviating written agreement has been concluded. No additional express agreement shall be required in this regard. These Terms and Conditions shall be considered to have been accepted by no later than when the goods or services are received. Insofar as these General Business Terms and Conditions are also used by Tragant GmbH in other languages, the German version shall be prevailing for interpretation purposes.
2. Any deviating Business Terms and Conditions of the Customer shall not become content of the contractual agreement. It shall not be necessary to also expressly reject these deviating Business Terms and Conditions.
3. The following General Business Terms and Conditions shall be valid for entrepreneurs. They shall be valid for consumers only insofar as this has been regulated in Clause XIV. Insofar as sections of these Business Terms and Conditions should be ruled on by a court to be invalid for the consumer, this shall not affect the other valid provisions. The statutory provisions shall then be valid.

II. Offer and Conclusion of the Contractual Agreement

1. All offers of Tragant GmbH shall be free of obligation and non-binding unless they have been expressly declared to be binding. The Customer shall be bound to his order for 4 weeks. The contractual agreement shall only then be considered to have been concluded when Tragant GmbH has confirmed, in writing or by telex, the acceptance of the order within this timeframe. The confirmation can also be made in the form of an invoice.

2. All contractual agreements as well as amendments and supplements thereto must be confirmed in writing or by telex by Tragant GmbH in order to be valid.
3. Any sketches, illustrations, measurements, weights or other performance data shall be binding only if this has been expressly agreed in writing. Technical data and descriptions in the product information shall constitute no assurances and/or guaranteed features. A warranty shall be considered to have been provided only if this has been confirmed in writing. Tragant GmbH reserves the right to make changes to the contractually-owed service insofar as this is reasonable.

III. Prices

1. Insofar as nothing to the contrary has been prescribed, Tragant GmbH shall be bound to the prices specified on its offers for 20 days; for storage chips, for 4 days after its date. The prices specified on Tragant GmbH's order confirmation shall be prevailing for the conclusion of a contractual agreement. The prices for entrepreneurs are understood to be in addition to the statutory VAT.
2. Packages shall become the Customer's property and shall be billed by Tragant GmbH. Postal charges, packaging expenses as well as transport and insurance costs shall be separately billed ex warehouse or, for direct shipments, from the German border and/or the German import harbour. The right is reserved to make a C.O.D. shipment.
3. For service agreements as well as for purchasing or development agreements—the latter with an agreed completion and/or delivery date of more than six weeks, Tragant GmbH reserves the right to increase the prices based upon any cost increases that have occurred—particularly owing to collective bargaining agreements, materials price increases, customs duty increases, increases in import and export fees and increases in the foreign exchange-controlling costs. If the increase amounts to more than 7.5% of the agreed price, then the Customer shall be entitled to a right of termination.
4. Additional services shall be separately billed. For call-off orders, price changes during the contractual term of the Call-Off Order Agreement shall provide an entitlement to an appropriate price adjustment.

IV. Delivery Timeframe

1. Delivery timeframes or delivery deadlines, which can be agreed in a binding or a non-binding manner, must be in writing. For service and development orders or special orders for Customers, any written deadline or timeframe information shall always be "approx. data" unless the data have been expressly designated as being binding.
2. The beginning of a delivery timeframe shall require the clarification of all technical issues and prompt delivery by our own suppliers. The delivery timeframe shall begin to run upon the sending of the order confirmation, but nonetheless not before the supplying of any documents, permits and approvals which the Customer must provide where applicable as well as the receipt of an agreed down payment. The agreed delivery timeframes shall be considered to have been met when the delivery goods have been surrendered to the carrier on the agreed delivery date.
3. Partial deliveries and partial services are permitted within the prescribed delivery timeframe insofar as no usage-related detriment is created.
4. Tragant GmbH shall not be liable for delivery and service delays as the result of force majeure and events which make it substantially more difficult or impossible for Tragant GmbH to make delivery—this includes particularly strikes, lock-outs, governmental decrees, operational disruptions, etc.—even if they occur at Tragant GmbH's own suppliers or their sub-suppliers—even if deadlines and timeframes have been agreed with binding validity and even if they occur during an already-existing delay. They shall entitle Tragant GmbH to suspend the rendering of the delivery and/or the service for the duration of the hindrance plus an appropriate start-up period or to withdraw from the contractual agreement, in whole or in part, owing to the portion of the delivery or service that has not yet been supplied. The documentation of fault upon the part of Tragant GmbH itself by the contractual partner shall remain unaffected.
5. If the hindrance lasts longer than three months, the Customer shall, after the setting of an appropriate extension period, be entitled to withdraw from the contractual agreement for the portion of the contractual performance that has not yet been fulfilled. If the delivery timeframe and/or service timeframe is extended owing to reasons for which Tragant GmbH is not responsible, or if Tragant GmbH is released from its obligations, then the Customer may derive no damage compensation claims therefrom. Tragant GmbH may avail itself of the defence of the aforementioned circumstances only if it promptly notifies the Customer in this regard.
6. For delivery and/or service delays for which Tragant GmbH is responsible, the Customer shall have a claim to delayed performance compensation in the amount of 0.5% for each full week of the delay, but nonetheless a total of a maximum of 5% of the invoiced amount for the deliveries and services affected by the delay. Tragant GmbH reserves the right to document to the Customer that the Customer has suffered less damages or no damages as the result of the delay.
7. If the Customer enters into delivery acceptance default, then Tragant GmbH shall be entitled to demand compensation for the damages which it has suffered; at the point in time when the Customer enters into delivery acceptance default, the risk of the accidental deterioration and the accidental destruction of the contractual goods shall be transferred to the Customer.

V. Transfer of Risk

The risk shall be transferred to the Customer as soon as the goods have been surrendered to the transporting person or the goods have left Tragant GmbH's warehouse for shipping purposes. If shipping by Tragant GmbH has not been agreed between the contractual parties, the risk shall be transferred to the Customer when the notification of readiness for delivery has been made. Tragant GmbH shall insure the goods at the Customer's expense unless the Customer expressly objects to this. When shipments are made to Tragant GmbH, the shipper shall assume all risk—particularly the transport risk until the goods are received by Tragant GmbH as well as the transport costs.

VI. Cancellations Justifiably

If the Customer unjustifiably cancels an order that has been issued or enters into bankruptcy, Tragant GmbH may, notwithstanding the possibility of asserting a claim for higher actual damages, demand 10% of the sales price for the costs incurred from processing the order and for lost profits. In the event that the Customer enters into bankruptcy, the costs of taking back the goods shall be agreed between the bankruptcy administrator and Tragant GmbH to the benefit of Tragant GmbH. The Customer or the bankruptcy administrator shall be expressly permitted to document that no damages or lesser damages have been suffered.

VII. Liability Restrictions

1. Insofar as they are not based upon defective performance, Tragant GmbH shall be liable for property damage and financial damages only insofar as the damages are based upon intentional wrongdoing or gross negligence or an essential contractual obligation has been culpably violated in a manner which puts the contractual purpose at risk or the damages are attributable to a case of impossibility of performance or delayed performance for which Tragant GmbH is responsible.
2. Insofar as it has not committed intentional wrongdoing or gross negligence, Tragant GmbH shall, in the event of its violation of essential contractual obligations, delayed performance or impossibility of performance, be liable only for the damages which were foreseeable upon the conclusion of the contractual agreement, but nonetheless at most up to two times the value of the delivery or service. In all cases, it shall be liable only up to an amount of 25,000.00 EUR insofar as this is legally permitted.
3. No liability exists for indirect damages, consequential damages owing to defects, or lost profits insofar as the liability was not based upon intentional wrongdoing or gross negligence.
4. The liability stipulated in the German Product Liability Act shall remain unaffected by the aforementioned provisions.
5. Tragant GmbH shall not be liable for the recovery of the data or programmes insofar as it has not caused their loss owing to its intentional wrongdoing or gross negligence. In this case, liability shall be relevant only if the Customer has ensured through suitable measures that the originally-saved data or programmes can be recovered at reasonable expenditures.

VIII. Payment Terms and Conditions

1. In accordance with the respective agreement, the invoices shall be payable by advance payment, by cash payment, by C.O.D. a direct debit, bank transfer, by C.O.D. or by the Customer picking up the goods himself. Partial deliveries and partial services may be separately billed. Independent of any debt settlement policy that the Customer has, all payments shall be credited to the respectively oldest debt insofar as the Customer's grave interests do not oppose this. If costs have already been incurred for debt collection and interest, the payment shall be credited first to the costs, then to the interest and then finally to the main payment claim.
2. The Customer shall be entitled to a right of offset only if the counterclaims have been legally upheld or are undisputed. The Customer shall be exclusively authorised to exercise a right of retention only then if his counterclaim is based upon the same contractual relationship.
3. Tragant GmbH shall be entitled to assign the claims from the business relationships.
4. If the Customer repeatedly fails to fulfil his payment obligations, his payments are unjustifiably discontinued or a bank does not honour a check or a collection attempt owing to a lack of financial coverage, Tragant GmbH shall be entitled to immediately withdraw from the agreement without prior notice. In such cases, Tragant GmbH shall also be entitled to accelerate the remaining amount owed so that it becomes payable immediately. This shall also be valid if Tragant GmbH becomes aware of other sets of circumstances which cast doubt on the Customer's creditworthiness. In these cases, Tragant GmbH shall moreover be entitled to demand the provision of bank guarantees or other security. Tragant GmbH shall be entitled to exclude the Customer who has entered into payment default from any further deliveries. In the event that the Customer enters into payment default, Tragant GmbH may, beginning at the affected point in time, charge interest in the amount of the interest rate charged by commercial banks for overdrafts.
5. SEPA Direct-Debiting Procedure Insofar as the SEPA company direct-debiting procedure has been agreed

(<https://www.sepadeutschland.de/faq>) which has been uniformly valid in the Euro Region since 01 August 2014, then it is agreed that the collection may be made by no earlier than three days after the announcement of the collection (pre-notification).

IX. Warranty

1. In dealings with entrepreneurs, the warranty timeframe for all new products supplied by Tragant GmbH shall be a half year. If second-hand goods are purchased by an entrepreneur, no warranty shall be provided.
2. Liability for normal wear-and-tear shall be excluded. If the operating or maintenance instructions that have been issued by Tragant GmbH are not followed, changes are made to the goods, parts are replaced or consumable goods are used which do not correspond to the original specifications, then no warranty shall be provided if the Customer cannot refute a correspondingly comprehensible assertion that even one of these sets of circumstances caused the defect.
3. In the event that the delivery goods have defects, Tragant GmbH shall, at its own discretion, be entitled to rectify the defective delivery goods or make a new delivery. If the attempt at rectification or the replacement delivery is unsuccessful, the Customer shall be entitled to demand a reduction of the fee (purchase price reduction) or withdraw from the contractual agreement. A rectification attempt shall only then be considered to have been unsuccessful if it has been attempted multiple times and an additional attempt would be unreasonable for the Customer. Tragant GmbH shall assume the expenditures for the rectification attempt up to the amount of the purchase price.
4. The Customer must promptly inspect the goods upon their receipt for completeness and functionality including with regards to the product data and serial numbers provided by Tragant GmbH. Insofar as Tragant GmbH does not receive a written complaint regarding obvious defects within 3 days after receipt of the delivery, the delivery shall be considered to have been approved and accepted in accordance with § 377 Para. 2 of the German Commercial Code. Moreover, the Customer shall be obliged to make prompt notification of hidden defects immediately upon their discovery. Insofar as this related notification of defects is not received by Tragant GmbH within 3 days, the service/product shall likewise be considered to be flawless. Particularly for a resale to a consumer, the Customer must inspect the products regarding their functionalities, have them correspondingly confirmed by the buyer and fix any serial numbers in writing in the purchasing agreements. Upon their part, the resellers shall likewise correspondingly obligate their own customers.
5. Warranty claims shall not be transferable. If the goods are resold to commercial third parties, all warranty obligations of Tragant GmbH shall be rendered invalid. As far as a warranty and claim in the supply chain according to § 445a BGB comes into consideration, this is excluded by individual contract, as far as permissible by these terms and conditions. In all prices of tragant is a lump-sum compensation for the assumption of the guarantee on the part of the buyer in the amount of 1% of the list price included.
6. If the Customer should send back a flawless device to Tragant GmbH for the purpose of asserting warranty claims while failing to fulfil its obligation to exercise due care, then Tragant GmbH may demand compensation for the administrative expenditures in the amount of 50.00 EUR or, against documentation, for a higher amount; e.g. for inspection by the manufacturer, for the cost amount which the manufacturer charges to Tragant GmbH. The Customer shall be expressly permitted to document that lesser damages or no damages have been created.
7. The products of Tragant GmbH are tested. Partially without CE certification, they are sold as components exclusively to dealers or producers. The buyer takes note of this and takes over the CE certification in the final product itself.

X. Reservation of Ownership

1. Until the fulfillment of all payment claims, including all balance payment claims from the current account to which Tragant GmbH is entitled to now, or to which it will be entitled in the future, against the Customer for any legal reason, the following security shall be provided to Tragant GmbH, portions of which shall, upon request, be released of Tragant GmbH's own choosing insofar as the value of the security sustainably exceeds the payment claims by more than 25% which the Customer shall be obliged to document.
2. The goods shall remain Tragant GmbH's property. Any processing or reworking of the goods shall always be done for Tragant GmbH as the manufacturer, but nonetheless without any obligation for Tragant GmbH. If Tragant GmbH's (co-)ownership lapses as the result of the combining or mixing, then it is already now agreed that the Customer's co-ownership to the overall uniform goods shall be transferred upon a proportional value basis (invoiced value) to Tragant GmbH. The Customer shall safeguard Tragant GmbH's (co-)ownership upon a free-of-charge basis and with the corresponding due care. Goods to which Tragant GmbH holds (co-)ownership shall be referred to in the following as "Reserved Goods".
3. The Customer shall be entitled to process and sell the Reserved Goods during ordinary business dealings insofar as he is not in default. Pledgings or assignments by way of security are not permitted. The payment claims created from the resale or any other legal reason (insurance, tortious act) with regards to the Reserved Goods, including all balance payment claims from the current account, shall already now be assigned by the buyer in full scope to Tragant GmbH for security purposes. Tragant GmbH hereby revocably authorises the Customer to collect the payment claims assigned to it for its account in his own name. However, the authorisation to collect the payment claims may be revoked if the Customer does not properly fulfil his payment obligations.
4. If third parties assert legal claims to the Reserved Goods, particularly in the form of attachments, the Customer shall make reference to Tragant GmbH's ownership rights and promptly also notify Tragant GmbH of the assertion of this third-party claim. The Customer must ward off third-party claims. Insofar as the third party is not able to reimburse Tragant GmbH for the court or out-of-court costs incurred in this context, the Customer shall be liable for this.
5. In the event of payment default—particularly after checks fail to be honoured by banks or there are unsuccessful attempts at debt collection, Tragant GmbH shall, after the assertion of the reservation of ownership, be entitled without further add to seize the Reserved Goods while having the Customer's business premises entered by its authorised personnel who have been correspondingly legitimised. The costs of the return transport of the goods shall be assumed by the Customer. If a check is not honoured or debt collection is not made, the Customer shall be obliged, upon Tragant GmbH's request, to send back the goods that he received in the remaining scope at his own expense and his own risk to Tragant GmbH. Where applicable, Tragant GmbH may demand the assignment of the return claims the Customer holds against a third party.
6. If the Reserved Goods are taken back as well as pledged by Tragant GmbH, this shall nonetheless constitute no withdrawal from the contractual agreement.

XI. Software, Licenses, Image Rights and Trademark Rights

1. Insofar as programmes are part of the scope of delivery, the Customer shall be granted a simple, unrestricted right of use to them; that is to say, he may neither copy them nor make them available to other persons for their use. A multiple right of use shall require a special written agreement. In the event that these usage rights are violated, the Customer shall be liable in the full amount for the damages which are created.
2. Insofar as rights are assigned to the Customer for images or trademarks of Tragant GmbH or third parties for which Tragant GmbH holds the rights, then these usage rights shall, subject to an individual agreement, lapse by no later than the passage of three years after the end of the cooperation with Tragant GmbH or if special termination is declared by Tragant GmbH.

XII. Data Protection

Tragant GmbH shall be entitled to process the data about the Customer, regardless of whether they originate from the Customer himself or from a third party, with regards to or in conjunction with the business relationship in accordance with the German Data Protection Act. This notice shall supplement the notification that personal data about the Customer are being saved and further processed via EDIP.

XIII. Export

We wish to point out that the export of the supplied goods may be undertaken only with prior government approval. Binding information about exporting is available from the German Federal Commercial Business Agency in Eschborn/Taunus. The declarations of approval must be obtained by the Customer before shipping the goods.

XIV. Purchase of Consumer Goods

1. If Tragant GmbH's contractual partner is a consumer, these General Business Terms and Conditions shall be valid insofar as this is permitted by the statutory directives and the following provisions contain no deviating provisions.
2. If a purchasing agreement is concluded in accordance with the German Distance Selling Act, the consumer shall have a right of revocation of two weeks, §§ 312d, 305 Para. 2 of the German Civil Code. The supplied goods must then be sent back within one week's time to Tragant GmbH. If the goods are not received by the seller within an additional week, then the buyer shall be considered to be in default without any additional warning letter being required.
3. In business dealings with the consumer, the price list and/or the price indicated on the goods, including the statutory VAT, shall be prevailing for the conclusion of a contractual agreement.
4. In business dealings with the consumer, the provision specified in Clause III. 3 shall be valid with the deviation that more than 4 months must lie between the conclusion of the contractual agreement and the agreed delivery date.
5. In business dealings with the consumer, Tragant GmbH's obligation to pay damage compensation for a late delivery for which it is responsible shall be limited to 50% of the foreseeable damages unless it can be documented that Tragant GmbH has committed intentional wrongdoing or gross negligence.
6. In business dealings with the consumer, the warranty timeframe for all new products supplied by Tragant GmbH shall be two years; for second-hand goods, one year.
7. In the event that delivery goods have defects, the end consumers shall have the choice of either subsequent performance or a new delivery. Tragant GmbH may refuse to render the Customer's selected subsequent performance if this is associated only with disproportionately high costs in accordance with § 439 Para. 2 of the German Civil Code. Tragant GmbH shall assume the costs of the rectification attempt up to the amount of the purchase price.
8. In the event that a purchase of consumer goods is made for the contractual object—both for a direct sale to a consumer as well as also a resale—Tragant GmbH shall reserve the rights specified in § 478 of the German Civil Code vis-à-vis its own supplier.

XV. Applicable Law, Legal Venue, Partial Invalidity, VAT Law:

1. The law of the Federal Republic of Germany shall be valid for these Business Terms and Conditions as well as all legal relationships between Tragant GmbH and the Customer. Other national laws as well as the uniform international purchasing law (EKA, EKAG) shall be excluded.
2. The place of performance and legal venue shall be Berlin for both parties insofar as the Customer is an entrepreneur.
3. If a provision of these Business Terms and Conditions or a provision of some other contractual agreements should be or become invalid, then this shall not affect the validity of all remaining provisions or contractual agreements.
4. Before a credit voucher is issued by Tragant GmbH, the Customer shall, upon the initial request to do so, be obliged to disclose to Tragant GmbH his VAT No.—which is currently valid and was valid at the time of the purchase—and document the correctness thereof by sending a copy of the notification from the competent government tax office. Tragant GmbH shall be entitled to a right of retention to any credit balance the Customer holds until the Customer provides a verifiable VAT No.
5. These Business Terms and Conditions shall be valid as of 01 March 2018 and shall supplant the previous Business Terms and Conditions.