

# General Terms and Conditions of Sale



**TRICERA**  
energy

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# General Terms and Conditions of Sale

## 1. Scope of applicability

- 1.1 These General Terms and Conditions of Sale apply exclusively to transactions of TRICERA energy GmbH (hereinafter referred to as "TRICERA" or "Contractor") with companies, legal entities under public law or special funds under public law (hereinafter referred to as "Client") within the meaning of § 310 (1) of the *Bürgerliches Gesetzbuch* (the Civil Code, "BGB").
- 1.2 Any terms and conditions of the Client that conflict with or deviate from TRICERA's Terms and Conditions of Sale shall only apply if TRICERA expressly consents to their application in writing. As long as no express approval has been given by TRICERA, it shall be assumed that TRICERA disagrees with any terms and conditions of the Client that conflict with or deviate from TRICERA's Terms and Conditions of Sale.
- 1.3 The consent requirement in paragraph 1.2 shall also apply if TRICERA carries out the delivery to the Client without reservation in the knowledge of terms and conditions of the Client which conflict with or deviate from or supplement these General Terms and Conditions of Sale.
- 1.4 These Terms and Conditions of Sale shall also apply to all future transactions with the Client, insofar as legal transactions of a related nature are concerned.
- 1.5 Customised agreements made with the Client in individual cases (including ancillary agreements, supplements and amendments) shall in any case take precedence over these Terms and Conditions of Sale. Subject to proof to the contrary, a written contract or the written confirmation of TRICERA shall be authoritative for the content of such agreements.

## 2. Offers and contract closing

- 2.1 TRICERA shall send the Client a cost draft. This is to be regarded as an *Invitatio ad Offerendum*, i.e. as an

invitation to the contracting party to submit an offer.

- 2.2 The Client then places his order.
- 2.3 The order of the goods and services by the Client is deemed to be a binding offer of contract. Unless otherwise stated in the order, TRICERA shall be entitled to accept this contractual offer within two weeks of its receipt. Acceptance must be made in writing (e.g. by order confirmation).
- 2.4 The subject matter of the contract is the goods and services designated in the order confirmation. The delivery of specific components used for the manufacture of the TRICERA battery storage unit is expressly not guaranteed. The selection of the individual components of the TRICERA battery storage unit is the sole responsibility of TRICERA.
- 2.5 TRICERA is in any case entitled to use subcontractors (third parties) for the performance of the contract. The Client's consent is not required for this.
- 2.6 Without the prior written consent of TRICERA, the Client is not entitled to transfer and/or assign rights or obligations arising from the contractual relationships binding the parties to third parties.

## 3. Documents provided

TRICERA reserves the property rights and copyrights to all documents provided to the Client - also in electronic form - such as operating manuals, drawings, data sheets, etc.. These documents may not be made accessible to third parties unless TRICERA gives its express written consent to this. This applies in particular to documents and data designated as confidential. Upon request by TRICERA, the Client shall return all documents and irrevocably delete all electronic documents.

## 4. Prices and payment

- 4.1 The purchase price is to be understood as the total price of all ordered services according to the order confirmation.
- 4.2 Unless otherwise agreed in writing, TRICERA's prices are ex works plus value added tax at the applicable rate.
- 4.3 If deviating conditions have been agreed in accordance with Incoterms 2020, which can be seen in the order confirmation, these are permissible in deviation from 4.2.
- 4.4 The payment of the purchase price shall be made in euros exclusively to the account stated in the invoice.
- 4.5 Unless expressly stated otherwise in our order confirmation, payment shall be made within 14 days according to the following conditions:
  - a) 60% of the purchase price upon order confirmation by TRICERA
  - b) 30% of the purchase price upon commissioning or 4 weeks after written notification of functional operational readiness.
  - c) 10% of the purchase price on acceptance or 8 weeks after written notification of functional operational readiness.
- 4.6 Default interest shall be charged at a rate of 9% above the respective base interest rate p.a.. TRICERA reserves the right to claim higher damages for default. TRICERA's claim to the commercial due date interest rate (§ 353 HGB) towards merchants remains unaffected. In the event of default in payment, the dates specified in the individual agreements shall be automatically postponed by the duration of the default.
- 4.7 TRICERA is entitled at any time to make a delivery in whole or in part only against advance payment. This is also possible within the framework of an ongoing business relationship. A corresponding reservation shall be declared by TRICERA at the latest with the order confirmation.

- 4.8 If the scope of the service specified in the order confirmation is subsequently changed at the request of the Client, this subsequent change shall be invoiced separately.
- 4.9 Unless a fixed price agreement has been made, TRICERA reserves the right to make reasonable price changes due to changes in wage, material and distribution costs for deliveries made 3 months or more after conclusion of the contract if the cost increase exceeds 5% of the total costs. Proof of this cost increase shall be provided by TRICERA upon request.
- 4.10 Cash discount deductions will not be accepted by TRICERA.

## 5. Rights of retention

The Client is only entitled to exercise a right of retention to the extent that his counterclaim is based on the same contractual relationship and is legally established or undisputed.

## 6. Delivery time

- 6.1 The commencement of the delivery period indicated by TRICERA presupposes the timely and proper fulfilment of the obligations of the Client. The objection of non-performance of the contract remains reserved.
- 6.2 If the Client is in default of acceptance or culpably violates other obligations to cooperate, TRICERA is entitled to demand compensation for the damage caused to it, including any additional expenses. Further claims are reserved. The risk of accidental loss or accidental deterioration of the purchased item shall, if the above conditions are met, pass to the customer at the time when he or she is in default of acceptance or debtor.

## 7. Delivery and transfer of risk

- 7.1 Unless otherwise stated in the order confirmation, the delivery is EXW Freiberg (Incoterms 2020).

# General Terms and Conditions of Sale

- 7.2 If other delivery conditions are individually agreed, the following shall apply:
- 7.2.1 Partial deliveries and corresponding invoices are permissible to a reasonable extent for the client.
  - 7.2.2 At the purchaser's request and expense, the goods are shipped to an individually agreed destination (dispatch purchase). TRICERA is entitled to determine the type of shipping and packaging (transport company, shipping route, packaging). TRICERA may charge the cost of packaging separately to the Client. The costs for the disposal of the packaging materials shall be borne by the Client.
- 7.3 If the goods are dispatched to the customer, the risk of accidental loss or accidental deterioration of the goods passes to the customer upon dispatch, at the latest upon leaving the factory/warehouse. This applies regardless of whether the goods are dispatched from the place of performance or who bears the freight costs.
- 7.4 Force majeure and other events beyond TRICERA's control which are beyond TRICERA's control and which may jeopardize timely delivery, in particular delays in delivery by TRICERA's suppliers, severe weather conditions, site contamination, armed conflicts, terrorist acts or terrorism, epidemics and Pandemics, strikes or other industrial unrest or acts or omissions of a governmental authority entitle TRICERA to extend the delivery period by the period corresponding to the duration of the relevant event, or the duration of the impairment caused by the corresponding event, or to postpone the delivery date accordingly. If such an event seriously jeopardizes or renders impossible the performance of the contract, TRICERA shall be entitled to withdraw from the order in whole or in part, without the customer being entitled to any claims for compensation. However, TRICERA may only rely on this if it notifies the Client in writing immediately within two weeks of the event becoming known.
- 7.5 The future effects of COVID-19 (coronavirus) cannot be precisely determined at this time. These General Terms and Conditions of Sale do not include any possible negative effects of coronavirus on the fulfilment of TRICERA's obligations. In the event of delays and adverse effects resulting from COVID-19:
- 7.5.1 TRICERA is entitled to a fair adjustment of the timetable and prices, from the respective individual agreement;
  - 7.5.2 The Client is entitled to an appropriate adjustment of the schedule for commissioning to compensate for the effects of coronavirus delays. Proof of the incident shall be provided.

## 8. Installation, commissioning and dismantling

- 8.1 Insofar as TRICERA has undertaken in individual cases in addition to supplying the TRICERA battery storage system, by derogation from EXW, also to install and/or commissioning (with or without installation of the connection services) of TRICERA battery storage systems, charging stations or other items of delivery, the following provisions of chapter 8. 2 to 8. 9 shall apply in addition.
- 8.2 According to the agreed scope of services TRICERA will
- 8.2.1 Install the battery energy storage at the individually agreed installation location, and
  - 8.2.2 put the battery storage system into operation.
- 8.3 The Client is obliged to check and create at its own expense the necessary conditions for the installation and/or commissioning of the TRICERA battery

storage system in accordance with the statutory and additional specifications of TRICERA, as well as to take all necessary measures to protect the supply and assembly personnel. This includes in particular:

- 8.3.1 the provision of paved, clear and, where necessary, suitable for use with heavy goods vehicles, as well as the provision of clear and levelled areas for the installation of the TRICERA battery storage system,
  - 8.3.2 the installation or laying of the necessary electrical lines, electrical distributors and electrical supply systems for the building or site,
  - 8.3.3 providing the necessary connections to the building's electrical lines, distributors and electrical supply systems,
  - 8.3.4 the provision of all necessary information on the location of concealed electricity, gas and water pipelines or similar installations, as well as any necessary static information,
  - 8.3.5 the construction of a new connection or the modification and maintenance of the existing connection for the purchase and supply of electricity, if a connection to the general supply electricity network (grid connection) is to exist,
  - 8.3.6 checking the suitability of the customer's electrical system. In the absence of a suitable installation, the suitability of the existing electrical installation for the installation and operation of the TRICERA battery storage system shall be established,
  - 8.3.7 compliance with the applicable health and safety, safety, fire and environmental legislation; and
  - 8.3.8 the provision of sufficiently fast Internet access (in terms of the amount of data to be transferred) at the latest at the start of commissioning.
- 8.4 The Client shall provide the electricity and water required for the installation of the TRICERA battery storage system and

other resources required at its own expense.

- 8.5 The remuneration is based on the flat rate or hourly rate agreed in the contract.
- 8.6 The Client must inform TRICERA of the exact local conditions and draw attention to any particularities prior to the commencement of the service. The agreed remuneration is based on unhindered access to the place of performance and the fulfilment of all cooperation obligations on the part of the Client.
- 8.7 Partial acceptances are possible at each of the specified payment milestones.
  - 8.7.1 Upon completion of each section, the Contractor shall request acceptance of the section from the Client in writing. The Client undertakes to carry out the partial acceptance within 10 working days of receipt of the acceptance request. Otherwise, the Contractor may invoice the payment milestone or partial acceptance 20 days after the declaration of readiness.
  - 8.7.2 A record of the partial acceptance shall be drawn up and signed by both parties. The following must be recorded in the minutes:
    - a) The scope of performance of the accepted section,
    - b) Any defects found,
    - c) The deadline for remedying the defects,
    - d) The declaration of partial acceptance,
    - e) The Legal consequences of partial acceptance.
  - 8.7.3 The remuneration for the accepted section shall become due upon partial acceptance, unless otherwise agreed. However, any warranty periods and transfer of risk for the accepted section shall not commence until the date of final acceptance.
  - 8.7.4 The Contractor is entitled to issue a partial final invoice for the respective section after successful partial acceptance. The partial final invoice shall include the remuneration for the accepted services and shall be

# General Terms and Conditions of Sale

- due for payment within 14 days of receipt by the Client, unless otherwise agreed in the terms of payment.
- 8.7.5 Any defects identified shall be rectified by the Contractor within the period specified in the protocol. The Client must be notified of the rectification in writing. The Client shall inspect the rectification after notification and confirm the rectification in writing. Acceptance cannot be refused by the client without good reason.
- 8.8 Irrespective of the partial acceptances, the Client shall be obliged to accept TRICERA's installation services after the TRICERA battery storage system has been commissioned. Acceptance shall be effected by countersigning TRICERA's commissioning report on the functionality of the TRICERA battery storage system. Acceptance may not be refused if there are only minor defects that do not restrict the functionality or safe operation of the TRICERA battery storage system. The rectification of significant defects shall commence immediately and may lead to a postponement of commercial operation. Non-significant defects must be rectified by the end of the defect rectification process at the latest in accordance with the residual and defect rectification process and will not lead to a postponement of commercial operation.
- 8.9 If the Client refuses to declare acceptance of the installation services, the acceptance shall nevertheless be deemed to have been affected if the Client uses the TRICERA battery storage system in the manner for which it is intended, if the conditions for acceptance according to chapter 8.5 are met. Acceptance under these conditions shall only be deemed to have been completed if TRICERA has set the Customer a reasonable period of time to declare the acceptance as well as informing the Customer in text form of the fictitious validity of the acceptance and its consequences.
- 8.10 It is the sole responsibility of the Client to apply for and procure all permits, approvals and permits required for the connection to the grid of the TRICERA battery storage system.
- 8.11 Any charges or grid connection costs as well as other costs to be paid to the electricity grid operator responsible for the installation site in connection with the grid connection, the commissioning and/or the operation of the TRICERA battery storage system are not included in the purchase price and are to be borne by the customer.
- 8.12 Should the installation, assembly, dismantling or commissioning be delayed by circumstances, in particular on the construction site, for which TRICERA is not responsible, the Client shall, to a reasonable extent, be responsible for the costs of waiting time, any additional expenses, such as storage costs, and any further necessary costs of travel of TRICERA's staff or thirds parties on behalf of TRICERA.
- 8.13 Disposal services arising in connection with the dismantling or return delivery of battery modules are charged by TRICERA at market rates at the time of delivery.
- 8.14 TRICERA does not itself become the operator of the TRICERA battery storage system at any time. The commissioning or trial operation of the TRICERA battery storage system is always carried out by TRICERA on behalf of and for the Client. The customer shall be responsible for all rights and obligations of the operator of a battery storage system in accordance with the applicable legal provisions. This includes, in particular, the exercise of energy and tax obligations in relation to the operation of the battery storage, obligations to pay taxes, charges and levies on the stored electricity, as well as reporting and notification obligations.
- 9. Other services**  
 Insofar as TRICERA provides services or works for the Client in accordance with the order confirmation, the Client shall provide the necessary cooperation for

the execution of the services in a proper and timely manner.

## **10. Industrial property rights and copyrights; defects in title**

- 10.1 TRICERA is obliged to deliver the goods free of industrial property rights and copyrights of third parties (hereinafter referred to as "proprietary rights").
- 10.2 Insofar as a third party makes legitimate claims against the Client due to the infringement of industrial proprietary rights by services provided by TRICERA during the contractual use of the products, TRICERA shall be liable to the Client within the period specified in paragraph 16 as follows:
- 10.2.1 TRICERA will, at its option and at its own expense, either obtain a right of use for the affected products, modify the affected products in such a way as not to infringe the proprietary rights, or exchange them. Should TRICERA not be able to do so under reasonable conditions, the Client shall be entitled to the statutory right of withdrawal or reduction.
- 10.2.2 TRICERA's liability for damages is governed solely by paragraph 15.
- 10.2.3 TRICERA's aforementioned obligations shall only exist insofar as the Client immediately notifies TRICERA in writing of the claims asserted by a third party, does not acknowledge an infringement of the property rights and TRICERA retains the right to all defensive measures and settlement negotiations, unless the infringements of these obligations incumbent on the Client do not lead to a deterioration of TRICERA's legal position. If the Client discontinues the use of the delivery for reasons of mitigation of damages or other important reasons, it shall be obliged to point out to the third party that discontinuation of use does not constitute an acknowledgement of an infringement of property rights. If the Client is responsible for the

infringement of property rights, claims on his part are excluded.

- 10.3 Claims of the Client shall also be excluded if the infringement of the proprietary rights is caused by special specifications of the Client, by an application which was not foreseeable by TRICERA or by the fact that the delivery is modified by the Client without the prior consent of TRICERA or is used by TRICERA in a manner not foreseeable by TRICERA together with products not supplied by it.

## **11. Creditworthiness**

- 11.1 If, after conclusion of the contract, it becomes apparent, for example through an application for the opening of insolvency proceedings, that TRICERA's claim to the purchase price is jeopardised by the Client's inability to perform, TRICERA is entitled in accordance with the statutory provisions to refuse performance and - if necessary after setting a deadline - to withdraw from the contract in accordance with § 321 BGB. TRICERA may declare rescission immediately in the case of contracts for the manufacture of unjustifiable items (custom-made products); the statutory provisions on the dispensability of setting a time limit remain unaffected.
- 11.2 TRICERA is entitled to terminate the contractual relationship without notice if the Client is in default with an obligation arising from the contractual relationships binding the parties and this situation is not remedied within the set period despite a reminder.

## **12. Reservation of proprietary rights**

- 12.1 TRICERA retains title to the delivered item until full payment of all claims arising from the individual agreement. This shall also apply to all future deliveries; TRICERA need not always expressly refer to this. If the Client acts in breach of contract, TRICERA is entitled to reclaim the object of sale.
- 12.2 As long as the ownership has not yet passed to the Client, he is obliged to treat the object of purchase with care. In particular, he shall be obliged to insure it

adequately at replacement value against theft, fire and water damage at his own expense. If maintenance and inspection work has to be carried out, the Client must carry this out in good time at his own expense. As long as ownership has not yet passed to the Client, the Client must inform TRICERA immediately in writing if the delivered item is seized or exposed to other interventions by third parties. Insofar as the third party is not in a position to reimburse TRICERA for the judicial and extrajudicial costs of an action pursuant to § 771 ZPO, the Client shall be liable for the loss incurred by TRICERA.

12.3 The Client is entitled to resell the reserved goods in the normal course of business. The Client hereby assigns to TRICERA the claims against the customer arising from the resale of the goods subject to retention of title in the amount of the final invoice amount agreed with TRICERA (including value added tax). This assignment shall apply irrespective of whether the purchased goods have been resold without or after processing. The Client remains authorised to collect the claim even after the assignment. TRICERA's authority to collect the claim itself shall remain unaffected thereby. However, TRICERA shall not collect the claim as long as the Client meets its payment obligations, is not in default of payment and, in particular, no application for the opening of insolvency proceedings has been filed or payments have not been suspended.

The processing or transformation of the object of sale by the Client shall always be carried out in the name of and on behalf of TRICERA. In this case, the Client's expectant right to the object of sale shall continue to exist in the transformed object. If the object of sale is processed together with other objects which are not the property of TRICERA, TRICERA shall acquire co-ownership of the new object in proportion to the objective value of the object of sale to the other processed objects at the time of processing. The

same shall apply in the event of mixing. If the mixing takes place in such a way that the Client's item is to be regarded as the main item, it is agreed that the Client shall transfer to TRICERA co-ownership in proportion to the objective value of the item delivered by TRICERA in relation to the new item and shall keep the sole ownership or co-ownership thus created in safe custody for TRICERA. TRICERA undertakes to release the securities to which it is entitled at the request of the Client insofar as their value exceeds the claims to be secured by more than 20%.

### **13. Warranty and notice of defects as well as recourse/manufacture recourse**

13.1 Warranty rights of the Client presuppose properly fulfilled inspection and complaint obligations according to § 377 HGB (German Commercial Code).

13.2 The warranty conditions of the individual components of the TRICERA battery storage system are subject to the conditions of the manufacturer. The claims arising from the manufacturer's warranty are transferred to the Client.

13.3 Claims for defects for the TRICERA battery storage system become statute-barred 12 months after the transfer of risk, except for damage caused intentionally or by gross negligence on the part of TRICERA, in the event of injury to life, limb, body and health or in the event of damage that cannot be excluded under the Product Liability Act. The statutory limitation period shall apply to claims for damages in the event of intent and gross negligence, injury to life, limb and health and in the event of damage that cannot be excluded under the Product Liability Act.

13.4 If, despite all due care, the delivered goods show a defect which was already present at the time of the transfer of risk, TRICERA shall, at TRI-CERA's discretion, either repair the goods or deliver replacement goods, provided that a notice of defect has been given in due time. TRICERA shall always be given the opportunity to remedy the defect within



a reasonable period of time. Claims under a right of recourse shall remain unaffected by the above provision without restriction.

- 13.5 The Client may withdraw from the contract or reduce the remuneration if the supplementary performance fails three times.
- 13.6 Claims for defects shall not exist in the case of only insignificant deviation from the agreed quality, in the case of only insignificant impairment of usability, in the case of natural wear and tear and in the case of damage arising after the transfer of risk as a result of incorrect or negligent handling, excessive stress, unsuitable operating materials, defective construction work, unsuitable building ground or due to special external influences which are not assumed under the contract. Furthermore, there shall be no claims for defects for modifications or repair work improperly carried out by the Client or third parties and the resulting consequences.
- 13.7 Claims of the Client for necessary expenses for the purpose of subsequent performance, in particular transport, travel, labour and material costs, including any dismantling and installation costs, are excluded insofar as the expenses increase due to a subsequent transfer of the goods delivered by TRICERA to a place other than the agreed place of installation.
- 13.8 The Client's right of recourse against TRICERA shall only exist insofar as the Client has not entered into any agreements with its customer which go beyond the statutory mandatory claims for defects. Paragraph 6 applies accordingly to the scope of this right of recourse.

## 14. Liability

- 14.1 Unless otherwise provided in these General Terms and Conditions of Sale including the following provisions, TRICERA shall be liable for a breach of contractual and non-contractual obligations in accordance with the statutory provisions.

14.2 TRICERA shall be liable for damages - irrespective of the legal grounds - within the scope of fault-based liability in the event of intent and gross negligence. In the event of simple negligence, TRICERA shall be liable, subject to statutory limitations of liability (e.g. diligence in own affairs; insignificant breach of duty), exclusively

14.2.1 for damages arising from injury to life, limb or health,

14.2.2 for damages arising from the breach of an essential contractual obligation. An essential contractual obligation is an obligation whose fulfilment makes the proper performance of the contract possible in the first place and on the observance of which the contracting party regularly relies and may rely on. In this case, TRICERA's liability is limited to compensation for the foreseeable, typically occurring damage.

14.2.3 for damages that cannot be excluded under the Product Liability Act.

14.3 The limitations of liability resulting from paragraph 13.3 shall also apply to third parties and in the event of breaches of duty by persons (also in their favour) for whose fault TRICERA is responsible in accordance with statutory provisions. However, they shall not apply if a defect was fraudulently concealed or a guarantee for the quality of the goods was assumed and for claims of the Client under the Product Liability Act.

14.4 The Client may only withdraw from or terminate the contract due to a breach of duty which does not consist of a defect if TRICERA is responsible for the breach of duty. A free right of termination of the client, according to §§ 650, 648 BGB, is excluded. In all other respects, the statutory requirements and legal consequences shall apply.

14.5 TRICERA is not responsible for damage resulting from use outside the scope specified in the relevant data sheets, operating manuals and other relevant documents and is accordingly not liable for damage of this kind.

# General Terms and Conditions of Sale

## 15. Statute of limitations

All claims of the Client shall become statute-barred after 12 months. The limitation period begins with the transfer of risk; if acceptance has been agreed, the limitation period begins with acceptance. The statutory limitation periods shall apply to intentional or grossly negligent conduct, to claims under the Product Liability Act and to damages arising from injury to life, limb or health.

## 16. Software usage

16.1 The Client is granted a non-exclusive and non-transferable right of use for the software for the operation and monitoring of the TRICERA battery storage system included in the scope of delivery, including its documentation. The software is provided exclusively for use on the object of purchase intended for this purpose.

16.2 Any further use by the customer or third parties that goes beyond the scope of a backup copy made for their own purposes is not permitted. Prohibited uses are in particular any duplication, revision or translation of the software, as well as a conversion of object code into source code.

## 17. Miscellaneous

17.1 These General Terms and Conditions of Sale and the entire legal relationship between the parties shall be governed by the laws of the Federal Republic of Germany to the exclusion of the UN Convention on Contracts for the International Sale of Goods (CISG).

17.2 The exclusive place of jurisdiction for all disputes arising from this contract is Dresden, unless otherwise stated in the order confirmation.

17.3 All agreements made between the parties are set out in writing in an individual agreement.

17.4 Verbal agreements made before, at and/or after the conclusion of the contract must be confirmed in writing by TRICERA to be valid.

17.5 The product has been manufactured solely for the use for which it is suitable according to the relevant data sheets,

operating manuals and other relevant documents. It may only be operated within the framework of the regulations set out in the relevant data sheets, operating manuals and other relevant documents. The Client is aware of and complies with the recommendations and regulations contained in the relevant operating manuals, data sheets and other relevant documents.

17.6 Should individually provisions of these General Terms and Conditions of Sale be or become invalid or void in whole or in part, the validity of the General Terms and Conditions of Sale as a whole, as well as the validity of the remaining provisions, shall not be affected thereby. Instead of the void or invalid provisions, valid provisions shall be deemed to have been agreed which come as close as possible to the economic intentions of the parties.