

## 1. General Information

**1.1.** These General Terms and Conditions of Sale, Delivery and Service are applicable for all business relations ("Agreement") between TriLite Technologies GmbH, FN 368338 z ("TriLite") and contracting parties ("Client(s)" and, together with TriLite, "Parties"). In particular, TriLite provides – irrespective of whether reference is expressly made to the General Terms and Conditions in a particular case – all sales, services and deliveries to the Client exclusively subject to these General Terms and Conditions.

**1.2.** The Client accepts these General Terms and Conditions at the latest with the submission of their contract declaration to TriLite. Any general terms and conditions of the Client are – irrespective of any reference by or to the Client and of the time that such conditions of the Client may have reached TriLite – not an integral part of the Agreement and shall not be applicable. This applies, in particular, even if TriLite does not contradict the general terms and conditions of the Client or renders a service without any reservation, whilst being aware of the differing, contrary, or supplementary general terms and conditions of the Client.

**1.3.** These General Terms and Conditions are applicable both for sales, deliveries as well as for any other services provided by TriLite.

**1.4.** These General Terms and Conditions of Sale, Delivery and Service are available under <https://www.trilite-tech.com/>.

## 2. Conclusion of Agreement

**2.1.** All offers made by TriLite are subject to change and without obligation for TriLite. Client's orders, which do not specify a deadline, are binding for the Client for 30 days.

**2.2.** Agreements with TriLite are only entered into by means of a written order confirmation or written order acceptance by TriLite ("order confirmation"). However, in the case of core services, TriLite reserves the right, after an incoming inspection of the products supplied by the Client ("incoming goods inspection"), to dissolve the Agreement for the affected products ("rejected products"), if in the opinion of TriLite it is not economically and/or technically feasible to carry out the services. TriLite is entitled to charge the testing and handling expenses associated with such rejected products to the Client. The Client must then collect the rejected product at its own expense within 30 days from receiving notification by TriLite, failing which the component will be stored at the Client's expense.

**2.3.** Deviations in the order confirmation or the documents referenced therein from the written declarations previously issued by the Parties shall be deemed to be approved if the Client does not expressly object in writing to the deviation concerned within a reasonable period of time, at the latest within seven days from receipt of the order confirmation. The Client has no right of objection with regard to the applicability and validity of these General Terms and Conditions.

## 3. Object of the Service/Delivery

**3.1.** The object of the service/delivery ("Object of the Agreement", "Goods", "Product" or "Services") is determined exclusively by the information provided in the order confirmation and the documents referenced therein.

**3.2.** TriLite shall be entitled to make excess or short deliveries of +/- 10% without any liability for TriLite.

**3.3.** TriLite standard procedures include reasonable steps to enable the successful execution of the confirmation order and achieve Client satisfaction. It is however, expressly understood and agreed by the Client, that upon confirmation order, TriLite will not be held liable for loss of, or damage to, Clients specific materials through process, or final product yields. Any deviation from this condition of sale must be agreed in writing by TriLite prior to any agreement. Engineering, design or process changes suggested by TriLite are made in the best interests of the parties involved. TriLite's standard assembly techniques will be used. Any variation required to the agreed build process or specification will be subject to review and TriLite reserves the right to re-quote, if required. All parts will be assembled on a best effort basis, any failures due to Client supplied parts, components or materials will be chargeable. Upon receipt by TriLite, parts and materials will be evaluated for suitability of the above processes. Any discrepancies noted will be highlighted for discussion, and a course of action jointly determined. TriLite reserves the right to re-quote at this stage if the parts and materials are not as expected.

## 4. Use of the Product

**4.1.** The Client shall only use any Product in accordance with the safety regulations, the operating instructions and other specifications of TriLite. Any other use of the Product is expressly prohibited. If damage arises from use contrary to the Agreement, the Client shall indemnify and shall hold TriLite harmless in this regard.

**4.2.** The use of any Product for military, clinical purposes of any kind is strictly prohibited.

**4.3.** The Client knows the Product and knows how dangerous it is. In particular, eyes can be damaged if the Product is used contrary to the Agreement, especially by shining directly into the eyes.

## 5. Intellectual Property Rights and Confidentiality

"Intellectual Property Rights" (IPR) means all patents, trademarks, registered designs (and any applications for any of the foregoing), copyright, semi-conductor topography rights, database right, unregistered design right, rights in and to trade names, business names, domain names, product names and logos, inventions, databases, discoveries, know-how and any other intellectual or industrial property rights in each and every part of the world together with all applications, renewals, revisions and extensions.

"Client Background IPR" means any and all IPR owned by the Client which exists at the commencement date;

"Client Foreground IPR" means any and all IPR owned by the Client which are created, developed or otherwise discovered by the Client after the commencement date;

**5.1.** The work of TriLite may not be passed on or used commercially beyond the purpose laid down by contract or beyond the target project, and in particular it may not be amended or partially published without prior written permission by TriLite.

**5.2.** TriLite retains all of its rights in the Goods and services (including any copies or extracts) delivered under this Agreement and grants no licenses or any other rights to any Goods. Nothing in this Agreement is intended to grant a license to or waive any rights in TriLite's Intellectual Property Rights.

**5.3.** The Client Background IPR and from the date of its creation the Client Foreground IPR is and shall remain the exclusive property of the Client. The Client hereby grants to TriLite at no cost to TriLite whatsoever, a non-exclusive, royalty free licence to use, exploit and otherwise deal with the Client Background IPR and from the date of its creation the Client Foreground IPR, as TriLite may reasonably require in order to perform the Services. The Client undertakes to indemnify TriLite from all costs, actions, or liabilities whatsoever that may arise from TriLite's use of the Client's Foreground IPR and the Client's Background IPR in the performance of the Agreement.

**5.4.** In the context of all business relations between TriLite and the Client, TriLite exclusively and unlimited retains all the IPR to, without limitation, all documents, designs, discoveries, creations, works, models, work in progress, inventions, illustrations, construction plans, drawings, calculations, examples, computer programs, procedures, improvements, developments, derivatives and notes ("IP") made, conceived or developed by TriLite alone, with the Client or with others, which result from or relate to the business relations between the Parties. Even if a delivery or service of TriLite is carried out based on Client specifications or the Client otherwise makes a contribution to it, the exploitation and usage rights are fully and exclusively assigned to TriLite. IP shall at all times be and remain the sole and exclusive property of TriLite.

**5.5.** For the avoidance of doubt all IP rights relating to any deliverables created, developed invented or otherwise resulting from the provision of the Services (including documents, methods of operation, and any systems, procedures or products developed or created or customizations as a result of the Contract) ("Service IPR") shall belong to and upon its creation vest in TriLite and shall become part of TriLite's IPR.

**5.6.** TriLite will have the sole right to determine the treatment of any IP, including the right to keep it as trade secret, execute and file a patent or other protection application on it, to use or disclose it with prior (patent) application, to file registrations for copyright or trademark in its own name or to follow any other procedure that TriLite deems appropriate.

**5.7.** The Client agrees (a) to disclose promptly in writing to TriLite or IP in its possession; (b) to assist TriLite in every reasonable way to secure, perfect, register, apply for, maintain, and defend for TriLite's benefit all copyrights, patent rights, mask work rights and all other proprietary rights or statutory protections in and to the IP in TriLite's name as it deems appropriate; and (c) to otherwise treat all IP confidential. These obligations to disclose, assist, execute and keep confidential survive the termination of the business relationship between the Parties.

**5.8.** TriLite shall not be liable for an IPR breaches or infringements of third parties' rights, including for products, services etc. of third parties included in TriLite's products and/or services. TriLite warrants only that it has no actual knowledge that its Products infringe any Third Party intellectual property rights.

## 6. Payment and Terms of Payment

**6.1.** All prices quoted by TriLite are subject to statutory sales tax. The information given in price lists is provided for general information purposes only.

**6.2.** TriLite's prices are based on the cost structure (comprising the costs for raw materials, development, production and wages, as well as taxes, duties, and other charges) at the time the order is confirmed by TriLite. Should this cost structure change prior to the respective (partial) delivery by at least 10%, then the affected price is to be adjusted in accordance with the change to the cost structure.

**6.3.** Invoices from TriLite are payable within 14 days from the invoice date clear of any charges and deductions.

**6.4.** The Client has no right of retention against TriLite.

**6.5.** The Client is entitled only to offset claims against TriLite, which have been finally legally determined or which have been expressly acknowledged in writing by TriLite.

## 7. Delivery

**7.1.** TriLite delivers FCA (in accordance with Incoterms 2020). In case TriLite receives products or goods, they must be delivered DPU Vienna (Incoterms 2020).

**7.2.** Agreements from TriLite shall only be deemed as having a fixed date of delivery (as set out under § 919 Austrian General Civil Code (ABGB)) if this has been expressly agreed in writing. Incidentally, delivery periods and deadlines are only binding on TriLite if the Client has had this expressly guaranteed in writing.

**7.3.** TriLite shall be entitled to make partial deliveries. Refusal to accept delivery does not release the Client from their obligation to make payment.

**7.4.** Delivery periods shall commence at the earliest with the dispatch of the order confirmation by TriLite. Delivery periods will be frozen if TriLite is not provided with all of the documents and information required for execution of the Agreement, and as long as the Client fails to completely fulfill their obligation to collaborate.

**7.5.** Should delays occur to deliveries or service provisions due to events beyond the sphere of influence of TriLite, in particular due to force majeure, Acts of God, official measures, confiscation, natural disasters, epidemics or pandemics, unrest or war, transport interruptions, operational disruptions, industrial action, or where deliveries to TriLite have failed to occur or occurred in breach of contract, then the delivery deadlines shall be extended accordingly (delivery deadlines for the provision of services also shall be extended). Should a delivery/service provision be delayed due to events such as these by more than the duration of the original delivery period (or the period between the order

confirmation and the delivery deadline), then each Party shall be entitled, within 14 days from the end of this extension period, to withdraw from the part of the delivery affected by the delay by means of an express written statement.

**7.6.** If the Client is entitled to the right of withdrawal on account of legal provisions due to delay by TriLite, this shall, in the case of partial deliveries, be limited to the delayed part of the deliveries.

#### **8. Warranty**

**8.1.** The warranty period shall be 12 months from receipt of the Product by the Client.

This also applies to services provided linked to supplied products.

**8.2.** Any warranty for delivered prototypes, not sellable or not marketable units is excluded in any case. A warranty is generally granted only if a delivered Product has successfully completed a product validation test, regulatory certification, safety testing or validation testing and TriLite has been commissioned with the series production of the Product and has accepted and confirmed it by writing. In any case, certain properties, characteristics, and possible uses of the Object of the Agreement are only confirmed by express written agreement. In particular, TriLite does not undertake any guarantee regarding suitability or possible uses not expressly confirmed in writing. Unless otherwise confirmed by TriLite in writing, no official safety test will be conducted for the Products. Furthermore, the warranty shall be excluded for defects caused due to the material or instructions provided by the Client for manufacturing the Object of the Agreement. Statements and commitments by TriLite, in particular with regard to promised characteristics, do not serve as guarantees or warranties in any legal sense, unless expressly agreed otherwise in writing. TriLite does not undertake any guarantee for defects which are reflected in the supplied product itself and were not subject to the services provided by TriLite. Therefore, TriLite cannot be held liable for the overall condition of the product supplied, rather only for the services provided by TriLite.

**8.3.** In the event of a claim under warranty, TriLite shall provide, according to their discretion, either an improvement or replacement within a reasonable period of time. Replaced objects become the property of TriLite and shall be returned to them. Should TriLite fail to carry out the improvement or replacement within an appropriate period of time or in an aligned period with the Client or should an improvement or replacement prove impossible, then the Client may at their own discretion request a price reduction or, provided it is not simply a minor defect, cancellation of the Agreement. In the case of Agreement where partial deliveries are permitted, the right of cancellation shall be restricted to partial deliveries which have not yet been duly executed. The Client renounces their right of cancellation through the sale, modification, or treatment of the Goods in the knowledge of their defectiveness. If defects should arise in the products supplied once the service has been completed, then TriLite only shall be held liable in the case that the defect is directly related to the services provided and/or the services were defective.

**8.4.** The presumption that a defect exists at the time of transfer is excluded.

**8.5.** The Client shall not be entitled to any right of recourse.

#### **9. Defect Complaints**

**9.1.** The Client must make any defect complaints with regard to the Object of the Agreement without delay, made expressly in writing to TriLite. Obvious defects shall be reported within three working days from receipt of the Goods and concealed defects at the latest within three working days of their discovery. In the case of partial and successive deliveries, a separate complaint is to be made for each delivery subject to a defect. The defect complaint is delayed in any case if TriLite is no longer able to inspect the rejected Goods. From the time of discovery of the defect, any sale, processing, use, or treatment of the affected Goods requires prior written approval of TriLite to avoid losing the entitlement to assert claims.

**9.2.** The Client must ensure that the defect complaint is actually received by TriLite and also bears the burden of proof for this. The mere return of Goods does not constitute a defect complaint.

**9.3.** In the absence of a timely defect complaint, the assertion of claims for warranty, compensation on account of the defect itself and due to an error as to the non-defective nature of the item shall be excluded.

**9.4.** The Client must assemble and remove the components affected by the defect complaint and return them to TriLite at their own expense and risk. If it is not possible to return the components, the Client must give TriLite the opportunity to inspect the components affected by the defect complaint themselves. TriLite shall not waive its right to object to defect complaints which were delayed or defect complaints which were not raised, either on the grounds of this Goods inspection or the unreserved acceptance of the returned Goods. During inspection and correction of the defect subject to the complaint, the Client must make all reasonable efforts to collaborate and, in particular, to provide information. If, after inspection, TriLite does not accept the defect subject to the complaint, then the Client shall be obliged to compensate TriLite for all costs associated with the inspection.

#### **10. Recall; Right of Withdrawal**

**10.1.** TriLite is entitled to recall the Product at any time arising out of, based on, or caused by defects in materials or workmanship, improper manufacture, or failure of the Product. Recall means any correction, field action, or removal of, or customer notification or communication with respect to a Product manufactured, marketed, sold, or distributed by TriLite.

**10.2.** The Client shall work cooperatively with TriLite to manage a Recall of Product, foremost in terms of urgency and safety for the end customer, and secondly for the efficient utilization of resources to accomplish such Recall.

**10.3.** The Client shall promptly notify TriLite in writing of any defect or quality incident which may have a negative impact on the Product, or any situation which may affect a decision to Recall the Product or a device that incorporates the Product.

**10.4.** In the event of a Recall, the Client must, upon request, store or send the Product promptly in accordance with TriLite's instructions.

**10.5.** In case of a Recall, TriLite is entitled to withdraw from the Agreement without this resulting in a claim for the Client.

#### **11. Liability**

TriLite shall only be liable in the case of intent or gross negligence. The burden of proof for the presence of gross negligence rests with the Client. The liability of TriLite for return, assembly, and removal costs, consequential damages, indirect damages, financial losses, in particular loss of profit etc., and claims from third parties against the Client, shall be excluded. TriLite draws attention to the fact that, when the service is commissioned from TriLite, any manufacturer's guarantee may be lost. Any possible liability of TriLite is limited to the annual turnover made by TriLite with the Client in the respective year.

#### **12. Right of Retention**

In the case that the Client already has some invoices which have become due for payment, TriLite shall be entitled to retain the products, work packages, services etc. supplied by the Client, until payment has been made for the due invoices. In accordance with § 369 of the Austrian Commercial Code (UGB), this right of retention relates to all products supplied by the Client and not only those which are the subject of the payable invoice.

#### **13. Reservation of Property Rights**

**13.1.** The provision of this clause (11) is not applicable with regard to core services linked to supplied products.

**13.2.** TriLite reserves the right of ownership of all sold Goods until full payment has been made for all of TriLite's present and future claims resulting from a purchase contract/contract for work and services and/or an ongoing business relationship (secured claims).

**13.3.** Prior to full payment of the secured claims, the Goods subject to the reservation of property rights may not be sold, pledged nor assigned by way of security to third parties. The Client shall notify TriLite immediately in writing if and insofar as any Goods belonging to TriLite are accessed by third parties.

**13.4.** In the event that the Client's behavior is in breach of this Agreement, in particular in the case of non-payment of the due purchase price, TriLite shall be entitled, in accordance with the statutory provisions, to withdraw from this Agreement and to return the Goods on the basis of the reservation of property rights and withdrawal. Should the Client fail to make payment of the purchase price, then TriLite may only assert such rights if TriLite has unsuccessfully set the Client a reasonable deadline for payment in advance, or if the setting of such a period is legally superfluous according to the statutory provisions.

#### **14. Right of Withdrawal by TriLite**

**14.1.** Subsequent to giving an appropriate grace period of no more than 14 working days, TriLite shall be entitled to withdraw from the Agreement if the Client is in default with regard to the fulfillment of material contractual obligations, in particular the obligation to pay the purchase price or to carry out any necessary collaborative actions required by TriLite for performance of the Agreement.

**14.2.** If it becomes expectable, after conclusion of the Agreement, that TriLite's claim for payment is endangered by lack of performance by the Client, in particular due to poor financial circumstances, then TriLite may request a security deposit. If the Client refuses to comply or does not comply within the period set, TriLite shall be entitled to withdraw from this Agreement and seek compensation for damages.

**14.3.** TriLite has the right to withdraw from this Agreement for good cause. Good cause is deemed to exist, in particular, in the case that insolvency proceedings have been opened concerning the assets of the Client or have not been opened due to there being insufficient assets to cover costs.

#### **15. Place of Performance, Jurisdiction, Applicable Law, and Severability Clause**

**15.1.** The place of performance for both parties is Vienna, Austria.

**15.2.** The exclusive place of jurisdiction for any disputes arising from and in connection with this Agreement, including those relating to the conclusion of the Agreement and its validity, is Vienna, Austria.

**15.3.** This Agreement is subject to Austrian substantive law to the exclusion of the reference norms of International Private Law (IPL) and the provisions of the UN Convention on Contracts for the International Sale of Goods (CISG).

**15.4.** TriLite processes the Client's personal data, which Client disclosed to TriLite in the course of entering into the Agreement for the purposes of performance of the Agreement as well as advertising TriLite's products to the Client; the legal basis is Article 6 (1) (b) and (f) of the General Data Protection Regulation. The legitimate interest TriLite pursues is the advertising of its products to the Client. TriLite shall be entitled to use the Client's name as referral.

**15.5.** If any of the provisions of these General Terms and Conditions are ineffective, invalid or unenforceable, this shall not affect the effectiveness, validity or enforceability of the remaining provisions. In cases such as this, the relevant provision shall be replaced by another provision which comes as close as possible to the economic effect of the original provision, but which is neither ineffective, invalid, nor unenforceable.