

## **Standard Terms and Conditions of Delivery**

### **1. Scope**

The following Standard Terms and Conditions of Delivery shall apply to all deliveries, services and offers from W. Müller GmbH, referred to below as Müller.

The Buyer accepts their exclusive application with the conclusion of the contract. The following terms and conditions shall apply to all business relations between Müller and the Buyer, even if their application was not expressly agreed again.

Other contrary terms and conditions from the Buyer or terms and conditions that deviate from these terms and conditions of delivery shall not be a component part of this contract even if Müller does not explicitly reject them and carries out deliveries to the Buyer without reservations in the knowledge of contrary deviating terms and conditions of the Buyer.

Changes or supplements to the following terms and conditions of delivery, including this clause, must be agreed in writing to be valid.

### **2. Contract award**

Offers from Müller are non-binding. They simply represent a request to the Buyer to make an offer. The Buyer remains bound to the offer to do business for two weeks.

### **3. Prices**

3.1 Prices shall be understood ex works (Incoterms 2000) excluding packaging and all taxes, customs duties or charges that are to be paid under the applicable law. The Buyer shall be obliged to pay or reimburse taxes, customs duties or charges that are imposed by Müller or Müller's suppliers.

3.2 In case increases in costs that are beyond Müller's control occur four weeks after confirmation of order and before delivery, for example increases in material or wage costs, public charges or other costs (eg energy costs), Müller shall be entitled to adjust the prices accordingly. Müller shall provide the Buyer on demand with evidence of the price increases.

### **4. Terms of payment**

4.1 The Buyer shall pay Müller 1/3 of the purchase price on award of the contract and the remaining 2/3 of the purchase price as soon as Müller has informed the Buyer that the delivery items are ready for shipping.

- 4.2 If the Buyer is in default with the payment in whole or in part default interest in the amount of 8% above the applicable base rate of the European Central Bank shall be paid on the invoice amount.
- 4.3 If the Buyer fails to comply with its payment obligations Müller shall be entitled to refuse to provide the service wholly or partially until payment of the amounts due or security is provided.
- 4.4 If a material deterioration of the Buyer's assets occurs after the conclusion of the contract that puts payments of the purchase price at risk, in particular if the Buyer suspends payments or a petition for the institution of bankruptcy proceedings is submitted with regard to the Buyer's assets, Müller shall be entitled to refuse to deliver until the purchase price is paid or security is provided. In addition Müller shall be entitled to withdraw from the contract if the Buyer has not paid the purchase price or provided security within a suitable period of time.
- 4.5 The Buyer shall not be entitled to set off or withhold unless its counterclaims have been legally established or are not disputed.

## **5. Delivery**

- 5.1 The written confirmation of order by Müller shall be relevant for the content and scope of deliveries and services by Müller.
- 5.2 Müller's obligation to deliver shall be subject to the provision of correct and timely self-supply. Müller shall inform the Buyer without delay if self-supply does not take place. If self-supply to Müller does not take place Müller shall be entitled to withdraw from the contract.
- 5.3 Part deliveries shall be permissible and Müller may invoice them immediately.
- 5.4 Delivery times indicated by Müller in offers and confirmations of orders shall be non-binding.
- 5.5 However, the following shall apply if binding delivery dates are agreed between Müller and the Buyer:

In cases of force majeure, strikes, fire, machine breakdowns or other circumstances beyond Müller's control the delivery period shall be extended for the duration of these events. If a hindrance to delivery caused by the above-mentioned events lasts for more than 30 days both the Buyer and Müller shall be entitled to withdraw from the contract with regard to services that have not been provided.

- 5.6 If the shipping of the ordered delivery items is delayed by circumstances for which the Buyer is responsible, the risk of accidental loss of the delivery items that are to be delivered shall be transferred to the Buyer at the moment they are put into store by Müller. If the delivery items to be delivered are lost accidentally during the Buyer's default of acceptance, Müller shall be exempted from the obligation to deliver. The Buyer's obligation to provide consideration shall remain in force to the full extent. In

case of default of acceptance the Buyer shall be solely responsible for the costs accruing to Müller as a result of the delay to the delivery (in particular storage costs, expenses).

## **6. Guarantee**

- 6.1 The Buyer shall inspect the shipment immediately after delivery for defects, including any differences in quantities and shall notify Müller without delay in writing of defects. If the Buyer fails to notify the shipment shall be deemed to be approved unless the defect is one which was not detectable at the time of the due inspection. If a defect of this kind is found later, the notification shall be made without delay after detection; if this is not done, the shipment shall be deemed to be approved taking this defect into account as well.
- 6.2 If a defect is found Müller shall be entitled at its own option to eliminate it (reworking) or to supply an item free of defects (subsequent delivery). If the subsequent performance is unsuccessful the Buyer shall be entitled to withdraw from the contract or to reduce the purchase price accordingly.
- 6.3 The guarantee period shall be twelve months from the time the risk is transferred.

## **7. Liability**

- 7.1 Müller shall only be liable for damage if (a) liability is mandatory in accordance with statutory provisions, such as, for example, the German Product Liability Act, or in cases of injury to life or limb or health, (b) Müller has assumed a guarantee, (c) Müller has culpably infringed a material term of the contract, or (d) the damage was caused by grossly negligent or intentional behaviour by Müller.
- 7.2 In all other cases Müller's liability shall be excluded irrespective of the legal situation. Müller shall in particular not be liable for indirect damage, lost profits and other pecuniary damage suffered by the Buyer.
- 7.3 In all cases liability shall be limited to the damage that Müller could reasonably have foreseen or should have been able to foresee at the conclusion of the contract on the basis of the documentation and circumstances known to Müller. This restriction shall not apply in the cases of subsection 1 (a) and (b) of this paragraph.
- 7.4 The exclusion of liability and/or the limitation of liability shall also apply to the personal liability of Müller's employees or vicarious agents.

## **8. Force majeure**

Müller shall not be responsible for the non-fulfilment of contractual obligations if the non-fulfilment is based on events beyond Müller's control, in particular in case of fire, natural disasters, war, requisitioning, general shortages of raw materials, restrictions on the use of energy, strikes, or if breaches of contract by sub-contractors are based on one of these events. If these events should last longer than 30 days, Müller and the Buyer shall have the right to withdraw from the contract with immediate effect, without claims to reimbursement of any damage or loss.

## **9. Proprietary rights of third parties**

9.1 The Buyer shall make only sketches, copyright drawings and records available to Müller which do not infringe third-party proprietary rights (patents, licences, trade marks) and will not infringe third-party proprietary rights (copyrights, patents, licences, trade marks, etc.) when the delivery items are used.

9.2 With regard to the sketches, drawings and records the Buyer shall comply with all laws applicable in this regard, in particular provisions of the criminal law and data protection law.

9.3 Insofar as Müller is sued by a third party because of the illegal use of sketches, drawings or records which the Buyer has made available, the Buyer shall indemnify Müller from claims by third parties on first demand, unless the Buyer proves that it is not at fault.

## **10. Reservation of title**

10.1 Müller reserves title to all delivery items it supplies until full payment of the purchase price and full execution of all claims resulting from the business relationship.

10.2 Processing and working shall always be carried out for Müller as the manufacturer but without any obligations on Müller. If Müller's title expires through the processing and working, Müller shall acquire title to the uniform item in the ratio of the value of the supplied item to the items that were processed as well at the time of the processing. If the Buyer acquires sole title through combining or mixing, it shall transfer joint ownership to Müller in the ratio of the value of the supplied item to the other combined or mixed items at the time of the combining or mixing. The Buyer shall hold the joint ownership for Müller. If the delivery item is located with a third party, the Buyer hereby assigns the right to possession against this third party to Müller. Müller hereby consents to this assignment. (Joint) ownership acquired by Müller in accordance with these provisions shall be transferred to the Buyer under the same conditions as ownership of the delivery items supplied by Müller.

- 10.3 The Buyer shall be entitled to sell the reserved goods in the framework of ordinary business operations. The Buyer hereby assigns all present and future claims to Müller in the amount of the invoice amount to which it is entitled from the resale of these goods. Müller hereby accepts this assignment. The Buyer shall remain entitled to collect these claims even after the assignment. This shall not affect Müller's authority to collect the claims itself. Müller shall be obliged not to collect the claims as long as the Buyer complies with its obligations to make payments from the collected proceedings, is not in default of payment and in particular there is no petition for the institution of bankruptcy proceedings or suspension of payments.
- 10.4 The Buyer is prohibited from making any other use of the reserved goods. It shall in particular not be entitled to assign the reserved goods as security or to pledge them. The claims assigned to Müller may only be pledged or assigned to a third party as security with Müller's prior written consent.

The Buyer shall notify Müller in writing of interference by third parties with the reserved goods or seizure of the reserved goods by third parties. The Buyer shall bear the costs that accrue to protect Müller's rights, insofar as these cannot be demanded from third parties.

- 10.5 If the Buyer is in breach of a material contractual obligation, in particular if it is in default of payment, Müller shall be entitled to take the reserved goods back at the Buyer's expense or to demand assignment of any rights to possession of the Buyer against third parties. In addition, Müller shall be entitled to revoke the Buyer's right to resale and any direct debit authorisation, to collect the claims and to use, realise or resell the reserved goods. Insofar as Müller takes the reserved goods back or sells these goods, this shall not be deemed to be withdrawal from the contract. Müller may set off the proceeds of realisation of the reserved goods against the outstanding claims. The Buyer shall be liable for the loss, if the proceeds of the realisation are less than the purchase price.

If the value of the existing security exceeds the amount of outstanding claims that it secures by more than 20% as a whole, the Buyer shall be entitled to demand the release of securities to the extent of the excess.

- 10.6 Insofar as Müller is entitled to take reserved goods back, the Buyer shall authorise Müller irrevocably to enter its business premises during the usual hours of business and to tolerate the removal.

## **11. Place of performance and legal venue**

- 11.1 The place of performance for all claims arising from the contract concluded between Müller and the Buyer is Müller's registered office in Troisdorf.
- 11.2 The exclusive legal venue for all disputes under or in connection with the contract is Siegburg. Without prejudice to this agreement on the legal venue Müller may also sue the Buyer at the location of its place of business.

- 11.3 The contractual relationship shall be subject to the laws of the Federal Republic of Germany. The uniform UN Sales Convention shall not apply.
- 11.4 If any provisions of the contract are or become invalid in whole or in part the remainder of the contract shall remain valid. This shall also apply if a loophole should be found in the contract. The place of a wholly or partially invalid provision shall be taken, or a loophole in the contract filled, by a suitable provision that, as far as legally possible, most closely approaches what the contract parties wanted or would have wanted in the purport of the contract had they thought of the point.