

General Terms and Conditions of Purchase (as of February 2022)

A. u. K. Müller GmbH & Co. KG., Düsseldorf

§ 1 General Provisions

1. All our orders are exclusively based on these General Terms and Conditions of Purchase. Their validity is hereby also agreed for all future contracts of this kind.
2. Other terms and conditions shall only become effective if we expressly acknowledge them in writing or in text form. They shall therefore not apply even if we remain silent in response to a letter which refers to third-party terms and conditions or otherwise do not object in the individual case.

§ 2 Conclusion of contract/copyrights/ownership of tools

1. The declarations made by us for the conclusion of a contract must be in writing or confirmed in writing in order to be effective. This can also be done by fax or in text form.
2. If our orders are not accepted in writing, by fax or in text form with binding confirmation of the delivery time within one week of receipt, we shall be entitled to revoke the order.
3. The information, data, samples and specimens that we provide to the supplier remain our property and copyright. They may not be reproduced or disclosed to third parties. Unless no longer required by the supplier in the ordinary course of business, in particular for the decision on the acceptance of our orders or their execution, we may demand the return of the information, data, samples and specimens as well as copies thereof at any time.
4. If the supplier demands special remuneration or reimbursement of expenses for the manufacture or acquisition of tools or forms for the fulfilment of his performance obligations, ownership of these tools, forms and the associated technical documents shall pass to us. As soon as the supplier no longer needs them for the fulfilment of his performance obligations, he shall return them to us.

§ 3 Prices/Delivery Conditions

The price stated in the order is binding and is DDP (our place of business in Düsseldorf) Incoterms 2020, unless otherwise agreed.

§ 4 Delivery time/Delay

1. The agreed delivery dates are binding. If the supplier recognises that he cannot meet a delivery date, he shall immediately communicate the reasons and the expected duration of the delay.
2. We shall only be obliged to supply the documents required for the execution of an order if the supplier requests us to do so within a reasonable period of time. Before the expiry of this deadline, the supplier cannot derive any rights from the absence of these documents.
3. If delivery is made earlier than agreed, we reserve the right to return or store the goods at the supplier's expense and risk. In any case, we shall only have to pay on the agreed due date.
4. We only accept partial deliveries if this has been expressly agreed. The remaining quantity must always be stated in the case of partial deliveries. If we agree to a partial delivery by way of exception, we shall be entitled to charge a processing fee of a flat rate of EUR 120.00, but no more than 10% of the purchase price attributable to the partial delivery, for the increased expenditure.
5. If the supplier is in default, he shall be obliged to pay full compensation for the damage caused by the delay. This also includes, among other things, the night and public holiday surcharges to be paid to employees, which were incurred due to the untimely delivery in order to meet our own delivery deadlines.
6. If the supplier culpably fails to meet an agreed delivery deadline, we may demand a penalty of 0.15% per full calendar day of the delay from the part of the purchase price attributable to the delayed part of the performance. The penalty shall be limited to 5% irrespective of the duration of the delay. We reserve the right to assert further damage caused by delay. Section 341 (3) BGB shall apply with the proviso that we may demand the penalty if we reserve the right to do so until final payment.

§ 5 Notification of defects and warranty

1. The notification of deviations and defects is in any case timely to safeguard our rights if it is sent to the supplier within 10 days of receipt, in the case of hidden deviations and defects from the time of their discovery.
2. Within the scope of subsequent performance, we may, at our discretion, demand the rectification of the defect or the delivery of a defect-free item. Section 439 (2) and (3) of the German Civil Code (BGB) shall apply in particular.
3. If, in the case of a quantity of identical items ordered or already handed over, subsequent performance should fail with regard to at least one item from this quantity, we shall be entitled, at our discretion, to withdraw from the contract, reduce the purchase price and claim damages in the case of similar defects in the remaining items, without having to give the supplier the opportunity for subsequent performance beforehand. However, we may also demand subsequent performance. We do not waive warranty claims by unconditionally accepting or accepting samples or specimens.
4. Unless otherwise agreed, the limitation period for claims for defects shall be 36 months from delivery, unless the law provides for a longer period. A new warranty period shall commence for parts that have been subsequently fulfilled unless the subsequent fulfilment was carried out without acknowledging the obligation to remedy the defect.
5. The supplier shall ensure and warrant that its deliveries and services to us as well as their use, processing and sale by us or our customers do not infringe any third-party property rights. We are not obliged to carry out research in this respect. Without further examination of the factual and legal situation, we may stop further acceptance, withdraw from the contract and/or demand compensation if we are prohibited from using, processing or selling a service or delivery of the supplier with reference to such third-party property rights. The supplier shall immediately indemnify us against all claims of such third parties. The supplier shall bear the costs for a licence obtained by us for the use of this delivery or service.
6. If we raise justified notices of defect for which the supplier is culpably responsible, we shall charge a processing fee of EUR 250.00 per justified notice of defect.

§ 6 Liability and retention of title

1. The supplier shall be liable to us in accordance with the statutory provisions. We do not accept any restrictions with regard to the grounds for liability - in particular the degree of fault - and the amount of liability.
2. We exclude any extended retention of title in favour of the supplier, whether as a result of processing and mixing, or by assignment in advance.

§ 7 Quality assurance / Product liability / Provisions

1. The supplier shall carry out a quality assurance which is suitable in terms of type and scope and corresponds to the latest state of the art and shall document this appropriately. We shall be entitled to inspect these measures on site during normal operating and business hours, after prior notification, and to inspect the documentation.
2. The supplier is obliged to insure himself against all risks of product liability with a sum insured appropriate to the respective business.
3. If we provide the supplier with materials, components or tools for processing the order ("Provisions"), these shall remain our unrestricted property. The use is permitted solely for the processing of the respective order. No further rights of use shall be granted. All property rights shall remain with us in full.
4. After complete processing of the order, the remaining provisions shall be returned to us in full, whereby the supplier shall be liable for any losses culpably caused. Section 9 shall apply with regard to the secrets associated with the materials provided.

§ 8 Terms of payment, invoice details

1. We shall pay invoices addressed to us after complete delivery or acceptance within 14 days with a 3% discount or within 30 days net, at our discretion, by sending crossed cheques or by bank transfer. The date of payment is decisive for timely payment.
2. We are entitled to rights of set-off and retention to the extent provided by law. We prohibit the assignment of claims directed against us, also within the framework of factoring.
3. The supplier must quote our order and material numbers in all correspondence with us. Should a delay in allocation and/or processing occur due to their absence, the payment terms shall be extended accordingly.

§ 9 Obligation of secrecy

1. Secrets within the meaning of this § 9 are all information, irrespective of the transport medium, which is expressly marked or designated by us as secret or which is recognisable to the supplier as a trade or business secret.
2. No secrets are information which is or becomes public knowledge or generally known or which is or becomes known to the supplier without the supplier having violated any other obligation to maintain secrecy or having otherwise unlawfully obtained the information.
3. The supplier is obliged to protect the secrets from third parties and not to utilize them himself or on behalf of third parties and not to apply for industrial property rights. This obligation shall continue to apply for a period of 5 years after fulfilment of the supplier's performance obligations under the respective order.
4. The supplier is obliged to pay us a contractual penalty of EUR 5,000.00 for each case of culpable infringement of the obligations under § 9 para. 3. We reserve the right to claim higher damages.

§ 10 Final provisions

1. For merchants within the meaning of the German Commercial Code (HGB), the place of performance for all obligations arising from the business relationship and the place of jurisdiction for all legal disputes shall be Düsseldorf. However, we may also bring an action at the general place of jurisdiction of the supplier.
2. Only German law shall apply to our contracts. The United Nations Convention on Contracts for the International Sale of Goods of 11 April 1980 (CISG) shall not apply.
3. If individual provisions of this set of rules are or become invalid in whole or in part, the provisions that come as close as possible to the purpose pursued by the invalid provision shall be deemed agreed instead. The validity of the remaining provisions shall not be affected.