

# General Terms and Conditions of Sales and Delivery

(version as of 01.04.2019) A. u. K. Müller GmbH & Co. KG, Düsseldorf

## § 1 General provisions

1. We perform all our services exclusively based on these Terms and Conditions of Sales and Delivery ("General Terms"), irrespective of the type of contract to which the business is to be attributed. These shall also apply to future businesses with the Customer even if no express reference has been made to them.
2. We object to all general terms and conditions of the Customer. They shall not become a component of the contract even if the Customer places the purchase order or confirms it with reference to its general terms and conditions and we do not object to that.
3. Our General Terms shall only apply towards companies and legal entities under public law or special assets under public law.

## § 2 Conclusion of contracts

1. Our offers shall be subject to change without notice and without engagement and shall not constitute binding offers to enter into a contract. The declarations made by us regarding the conclusion of a contract must be given in writing, also transmission by fax shall suffice.
2. Our offers can in no case be accepted later than 2 weeks after submission. The period shall commence as of the date of issue stated in the offer.
3. Statements describing or identifying the object of delivery or service, just as characteristics of samples and specimen, shall not be deemed as warranted and shall only be approximately authoritative.

We may delivery or perform services in deviation from the offer, if this is customary in trade, takes place due to legal regulations or constitutes a technical improvement. However, this shall only apply if the use for the purpose as intended by the contract is not impaired.

4. Samples and specimen shall remain our property.
5. In case of call orders, we are entitled to procure the material or personnel resources for the whole order and to produce the total order quantity immediately. Possible requests for changes of the Customer can accordingly no longer be taken into consideration after the order has been placed, unless this was explicitly agreed. Partial deliveries are permitted.

## § 3 Prices/payments

1. Our prices shall only apply to the agreed scope of service and delivery. They are exclusive of the statutory VAT ex works and without packaging and freight, unless otherwise agreed.
2. If the delivery or performance is effected or rendered completely or in parts later than 4 months after conclusions of the contract pursuant to an agreement and if our purchase costs are increased during the manufacturing process without fault on our part, we shall be entitled to adjust the price for the performance not yet rendered. However, this may not lead to an increase of our calculated profit.
3. Our receivables shall be due immediately and without deduction. The right to set-off against our claims is only available to the Customer, if the Customer's counter-claims have been determined legal and binding, are undisputed or have been recognized by us. The exercising of a right to retention or right to refuse service by the Customer is only justified if the Customer's counter-claim is due to the same contractual relationship. We are entitled to the right to offset to an unlimited extent.
4. We reserve the right to charge any additional costs incurred due to change requests by the Customer, even if we have approved the changes.

## § 4 Terms of delivery

1. Unless otherwise agreed, the statement of dates and times of delivery shall only be approximate statements. Furthermore, they depend on the fulfilment by the Customer of its obligations vis-à-vis us in due time, especially the obligation to effect advance payment.
2. We shall be entitled to partial performance to the extent this is not contrary to a recognizable interest of the Customer.
3. We are entitled to withhold our deliveries provided any due claim against the purchaser is outstanding.
4. Insofar as we deliver objects according to drawings, samples, models, forms, equipment or other objects, documents or details (hereinafter collectively: "sample materials"), which were handed over to us by the Customer, the Customer shall be liable for any actual or alleged infringement of property rights of third parties, which are due to this. The same applies if such claims are due to any changes or modifications by the Customer. The Customer is, in such a case, obliged to indemnify us from such claims of third parties immediately.

## § 5 Delivery obstacles/force majeure

1. In the following cases, we shall be entitled to rescind the contract unless the impediment is only of temporary nature.
- a) In cases of force majeure or other unforeseeable disruptive events at our facility beyond our control which make it impossible or significantly more difficult for us to render performance or

- b) if we are not supplied by our suppliers at all or not in good time or not correctly although we took all reasonable steps in order to prevent this.
2. In case of temporary impediments, the delivery periods shall be extended, or the delivery dates shall be postponed by the period of the impediment plus a reasonable ramp-up time. The purchaser may rescind the contract by immediate written declaration if it cannot reasonably be expected to accept the delay.

## § 6 Passing of the risk/storage costs/insurance

1. Upon handover of the goods to the forwarding agent or carrier, however at the latest upon leaving the works or the warehouse, the risk of accidental loss or accidental deterioration, including attachment, shall pass to the Customer. If the shipment or the handover is delayed due to a circumstance caused by the Customer, the risk shall pass to the Customer on the day of readiness for shipment.
2. After passing of the risk, the goods will be stored at the expense and risk of the Customer at our discretion.
3. Insurance for storage and/or transport shall only be taken out upon the express request of our Customer and at its expense.

## § 7 Claims for Defects

1. Any warranty rights (claims for defects) of the Customer are subject to the Customer inspecting the delivered object without delay and properly reporting recognizable defects (duty to examine and give notice of defects in terms of commercial law) to us. Claims for defects not reported in time are excluded. Reports have to be made with the specified details of the defects.
2. Claims for defects do not exist if the quality or usability of the goods for their use is affected only slightly and no limitation of function is given. Customary or technically unavoidable deviations, e.g. from the agreed color, shape as well as the descriptions of the goods in the order confirmation are not considered a defect. Customary or technically unavoidable deviations of physical or chemical quantities are no defect.
3. No warranty is assumed for defects and damages which the Customer is responsible for, in particular where caused by unsuitable or improper use, faulty assembly or putting into operation by the Customer or third parties, natural wear and tear, faulty or negligent treatment, chemical, electro-chemical or electrical influences at the place of delivery. Furthermore, we accept no warranty or liability if defects are caused by incomplete or incorrect information of Customer regarding feed material, technical/local conditions of the site and / or logistical or technical process flows.
4. Our warranty also does not apply as far as defects / damages of any kind are due to the fact that the Customer or a third party makes technical modifications or repair work without our prior approval. Unless otherwise expressly agreed, we do not warrant that the goods or components supplied by us are compatible with third-party supplies or on-site components.
5. If the Customer unjustifiably and for reasons we are not responsible for reports the existence of a defect for which we are not responsible, then we are entitled to charge the Customer for reasonable expenses incurred by us for the remedy or diagnosis of the defect.
6. Claims of the Customer owing to the expenses which are necessary for the purpose of the supplementary performance attributable to our warranty obligations, in particular transport, route, labor and material costs are excluded, insofar as the expenses are increased by a subsequent relocation of the delivered object to another location than the original place of installation. We are entitled to charge the Customer with such additional costs.
7. Claims of the Customer for defects shall become statute-barred in 12 months from delivery or, insofar as such is agreed, from acceptance. However the legal statutes-of-limitations for claims for defects shall apply insofar as these by mandatory law are longer than 24 months from delivery or acceptance, and nothing to the contrary can be derived from these Terms of Delivery, as well as in the event of willful or grossly negligent cause of defects and with malicious non-disclosure of a defect.
8. With respect to repaired or replaced parts provided any possible renewal of a warranty period is restricted to the original one commencing on the date of completion of the repair and/or replacement. However, any warranty (whether for repaired or replaced parts, latent defects or otherwise) shall expire upon 24 months from the initial delivery/acceptance of the goods/services.
9. We undertake, at our discretion and cost, to repair or replace defective goods covered by the warranty, provided that the Customer has notified us in writing of the defects and has given us the opportunity to examine and test the defective goods.
10. Before the Customer can assert further claims or rights (cancellation, reduction, damages, reimbursement of expenses) we are initially to be given the opportunity for supplementary performance within a reasonable deadline insofar as we have not submitted any guarantee to the contrary. Only in urgent cases of the operational safety and to defend disproportionately high damages, whereby we are to be informed immediately, does the Customer have the right to remedy the defect itself or to have this remedied by third parties

and to request reimbursement of the necessary costs from us. If the supplementary performance fails despite at least two attempts at supplementary performance, if the supplementary performance is impossible, is refused or if it is deemed unreasonable for the Customer, then the Customer can cancel the contract or reduce the remuneration. § 8 of these General Terms shall apply to the assertion of claims for damages by the Customer.

11. The following shall apply to defects of title: Insofar as not otherwise agreed we are merely obliged to provide the delivery in the country of the place of delivery free of rights of third parties. In the event of an actual or alleged infringement of property rights of third parties for which we are responsible we can at our choice either at our costs obtain a right of use which is sufficient for the agreed or presumed use and grant these to the Customer, or modify the object of delivery to the extent that the property right is not infringed or exchange the object of delivery insofar as there the agreed or presumed use of the object of delivery is not impaired by the Customer. If this is not possible or deemed unreasonable for us then the Customer shall be entitled to the statutory claims and rights. § 8 shall apply to claims for damages.
12. The sale of used objects is carried out under the exclusion of any warranty. This exclusion does not apply to damages arising from liability for defects that are based on an intentional or grossly negligent breach of our obligations as well as the culpable violation of life, body and health.

#### **§ 8 Liability for Damages**

1. Subject to the regulations in Par. (3) of this § 8 claims for damages, in particular with regard to consequential damages from defects (including but not limited to lost profits, revenues and production) against us are excluded unless (i) we are responsible for gross negligence or wilful intent or (ii) it concerns the breach of an essential contractual obligation (the performance of which is essential for the proper completion of the contract and on whose compliance the contractual partner regularly relies and may rely), in which case we shall also be liable in case of simple negligence.
2. Insofar as we owe damages according to the afore-mentioned section (1), our liability is limited with regard to the amount, however, to net-value of the contractual deliveries and services and, furthermore, to the foreseeable damages which are typical for the contract, unless we are responsible for wilful intent.
3. Notwithstanding the regulations in Par. (1) and (2) of this § 8 we shall be liable for damages according to the statutory regulations with claims for damages (i) according to the Product Liability Act, (ii) owing to the injury to life, body or the health and (iii) after the assumption of a guarantee for the existence of a property (guarantee of condition).
4. A change to the statutory regulations for burden of proof or our liability under Data Protection law or from the Minimum Wage Act is not associated with the regulations in § 8.
5. Insofar as our liability is excluded or limited this shall also apply to the personal liability of our employees, workers, representatives and assisting agents.
6. Possible claims for damages shall become statute-barred according to the statutory provisions, by no later however than after expiry of one year from knowledge or the grossly negligent lack of knowledge of the Customer of the reason for the claim. This restriction shall not apply to the claims described in § 7 (7) and (8).

#### **§ 9 Reservation of ownership**

1. We reserve the right to ownership to the delivered object until the receipt of all payments due from the Customer.
2. In case of a conduct of the Customer which is in breach of the contract, in particular in case of default of payment after setting reasonable deadline, we are entitled to cancel the contract and take back the delivered object. This shall not apply insofar as the Customer has already applied for insolvency proceedings or such were opened, owing to which an immediate taking back of the delivered objects is not permitted. The cancellation of the contract does not exclude claims for damages against the Customer. After the delivered object has been taken back we are authorized to sell it, the sales proceeds are to be offset against the liabilities of the Customer – minus reasonable sales costs. However, the sales regulations of the Bankruptcy Code shall apply after the opening of insolvency proceedings.
3. The Customer undertakes to treat the object of delivery with due care and attention for as long as the reservation of title exists; Customer is in particular obliged to sufficiently insure this at the value as new at Customer's own costs against fire, water and theft damages.
4. In case of seizure claims or other interventions by third parties the Customer has to point out the reservation of title and inform us immediately.
5. The Customer is entitled to resell the object of delivery in the ordinary course of business, however the Customer shall hereby now already assign to us claims in the amount of the final invoice amount (including value added tax) of our claims, to which the Customer is entitled from the resale against the Customer's Customer or third parties irrespective of whether the delivered object has been resold without or after processing. The Customer shall also remain authorized to collect this claim after the assignment.
6. We are authorized to collect the claim ourselves, if the Customer does not satisfy the Customer's payment obligations from the collected proceeds, is in default of payment or has filed for the opening of insolvency proceedings or a third party has filed for. If this is the case, we can request that the Customer announces the assigned claims and their debtors, provides all details which are necessary for the collection, hands over the associated documents and informs the debtors (third parties) of the assignment. A collection by us is however not possible insofar as this is contrary to mandatory provisions of the German Bankruptcy Code.
7. The integration or modification or connection of the delivered object is always required to be carried out to the delivered object by the Customer

or by us. If the delivered object is integrated, modified, connected or inseparably mixed with other objects which do not belong to us, we shall acquire the co-ownership to the new object in the ratio of the value of delivered object to the other integrated, modified, connected or mixed objects at the time of the integration, modification or connection/ mixing. The same shall incidentally apply to the object produced hereby as to the objects of delivery under reservation of title.

8. We undertake to insofar release the securities to which we are entitled at the request of the Customer to the extent that the value of our securities exceeds the claims, which are to be secured, by more than 20 %; we reserve the right to select the amount and type of securities which are to be released.

#### **§ 10 Final provisions**

1. Place of performance for all obligations under the business relationship and place of jurisdiction for merchants shall be Düsseldorf. However, we may choose the general place of jurisdiction of the Customer.
2. German laws shall apply to our contracts under exclusion of the UN convention on the international sale of goods (UNCITRAL/CISG).
3. If individual provisions of these general terms and conditions are or become invalid completely or in parts, such regulations shall be deemed as agreed which are as close as possible to the purpose pursued by the invalid regulation. The effectiveness of the other provisions shall not be affected by that.