

Terms of Purchase

1. General

1.1 These Terms of Purchase shall apply to all orders.

1.2 In the course of ongoing business relationships, these Terms of Sale shall have application even in cases where no appeal or reference to them is made. This term shall apply in particular in relation to release orders made orally or by telephone, and to repeat orders.

1.3 The application of any general Terms of Trade of the Supplier expressing any conditions otherwise is expressly excluded both for any initial and repeat orders. The inclusion of any such terms shall apply only where we have expressly acknowledged the general Terms of Trade of the Supplier as an Addendum to our Terms of Purchase. No absence of any objection or acceptance of a performance shall be interpreted as an acknowledgement of any such terms. This term shall apply even where the Supplier has declared formally that he is willing to deliver or provide services only under his terms and conditions, but nevertheless accepts or carries out our assignment.

2. Orders and conclusion of contract

2.1 Our assignments are always awarded in the form of a permanently readable written declaration. This also applies to modifications or additions to any order. Any arrangements made orally or by telephone that are not confirmed in writing shall not be binding.

2.2 The acceptance of an order must be confirmed in the form of a permanently readable written declaration by the Supplier immediately upon receipt of the order, and must give a clear indication of delivery time. We reserve the right to withdraw any order made without any condition with regard to form up until receipt of confirmation by the Supplier.

2.3 Delivery release orders shall become binding at the latest when two weeks have elapsed after receipt without the Supplier having contested its content.

2.4 Any deviations from the order shall be considered approved only if they have been confirmed by us in the form of a permanently readable written declaration.

2.5 We reserve copyright and other intellectual property rights and over all illustrations, drawings, calculations and other materials. Such materials may not be made available to any third party for any purpose other than contract fulfilment without our express written permission. They may be used exclusively for production purposes in order to complete our order. They must be treated as confidential in relation to any other third party. After processing, they should be returned to us unsolicited. The Supplier must bind any third party employed in order to fulfil the contract to the condition of confidentiality. The duty of confidentiality shall be extinguished when the manufacturing knowledge contained in the documentation has become generally known.

2.6 The supplier agrees to pay a penalty of €10,000.00 (written out in full, ten thousand euros) for each violation of the duty of confidentiality as set out in Point 2.5. Each incident of contravention shall be considered as a separate case. The concept in German law of "Fortsetzungszusammenhang" (under which individual violations may under certain conditions be considered as a single continuous violation) shall not apply. Our other entitlements, including the right to injunctive relief and any entitlement to compensation for damages, shall remain unaffected by this provision, though any contractual penalties may be offset against such entitlements.

3. Samples from the Supplier

3.1 Sample deliveries should be clearly marked as such. Series-production deliveries may begin only once the samples have been approved. On-going deliveries must always conform to the appropriate sample. Any changes may be made only with our approval.

3.2 Our drawings, test instructions and technical delivery instructions form part of contract and will be made available to the Supplier on request.

4. Execution of performance

4.1 The items delivered must render the agreed performance. They must also conform to the latest state of the art in terms of design and materials and to the requirements contained in our order documentation.

4.2 The Supplier agrees to conform to historically applicable laws and regulations, administrative and technical rules (including VOB, VDE, VDMA, UVV, TÜV standards), other international approvals and workplace safety regulations of professional associations and to indemnify us against all third-party claims to which we may become exposed due to the violation of any of the aforementioned rules.

4.3 The commissioning of a third party in order to carry out the contract is permitted only with our express, written approval.

5. Delivery time

5.1 The agreed delivery dates must always be respected by the Supplier. Delivery periods shall begin from the date of order. Where the delivery times are not respected, we shall have the right to terminate the contract after setting a reasonable deadline. There shall be no need to set deadline if the supplier of the service finally refuses to complete the performance or if any special circumstance applies that justifies immediate termination in consideration of the interests of both parties.

5.2 Where circumstances should occur or should become known to the Supplier that are likely to make the punctual delivery impossible, the Supplier must inform us immediately in writing of such circumstances. If the delivery should be delayed by more than one month, even due to circumstances outside the Supplier's control (due to force majeure, strike, shortage of raw materials, administrative order, etc.) we

shall be entitled to terminate the contractual arrangement in relation to the affected parts of the contract. The Supplier will be informed immediately of any such termination

5.3 Where goods are delivered earlier than agreed, we shall be entitled to return the goods to the Supplier at their own expense.

6. Shipping

6.1 Goods shall be shipped at the expense and risk of the Supplier to the delivery address indicated by us. This term shall also apply to the return by ourselves of defective goods.

6.2 The Supplier must conform strictly to the shipping conditions given to them. The shipping method should be agreed with us.

6.3 We shall be entitled to refuse to accept a delivery if the delivery is not accompanied by an orderly delivery note indicating our job number. The Supplier shall be liable for any costs arising from such a refusal to accept delivery. The Supplier agrees to indicate our order number and part number on all shipping documentation and delivery notes. If he or she should neglect to do so then he or she will be liable for any delays in our processing of the delivery.

6.4 The goods shall be packaged at the expense of the Supplier where we have not expressly agreed to take on the cost of packaging. Any return of packaging materials will require a separate agreement.

7. Transfer of risk

7.1 In the case of purchasing agreements, the risk shall be transferred to us as soon as the delivery point specified by us has confirmed receipt of the goods.

7.2 In the case of contracts for services and work and material contracts, transfer of risk shall occur at the earliest after completion of the entire contract and joint acceptance of the work done. A formal acceptance shall be considered agreed. On acceptance there shall be no need to reserve the right to enforce a contractual penalty.

8. Checking for defects

8.1 We agree to check goods within a reasonable time for any deviations in relation to quality or quantity. A complaint shall be considered timely if it is received by the Supplier within a period of two weeks from receipt of goods. (in deutscher Fassung 6 Monaten)

8.2 Where large quantities are involved, our duty to make checks shall be restricted to taking random samples. Any defects that may not have been present in random samples or were not identified in them shall be considered hidden defects. For this reason, any such defects shall not be excluded from warranty entitlements on grounds of violation of our obligation to notify defects.

8.3 If there should be any suspicion that a defect is present and the checking of the goods requires that a further test be made, then notifications of defect shall not be dependent on any time limit. This shall also apply for concealed defects that could not be detected during a check.

8.4 Any costs incurred through the checking of defective goods shall be carried by the Supplier.

8.5 We reserve the right in certain situations to agree a waiver to our duty to check and report defects.

8.6 For numbers of units, weights and dimensions, the values obtained by our incoming goods inspection process shall be applicable.

9. Performance not in accordance with contract

9.1 If the Supplier should fail to his contractually incurred duty as set out in the relevant agreements, we shall be entitled to terminate the contract after the expiry of a reasonable respite period. There shall be no need to set deadline if the supplier of the service finally refuses to complete the performance or if any special circumstance applies that justifies immediate termination in consideration of the interests of both parties.

9.2 The fact of our payment shall have no effect on the Supplier's warranty. The same shall apply to any issue of a confirmation of receipt by us.

9.3 If the Supplier should not fulfil his or her contractual duty of performance as required, we shall be entitled to make a replacement purchase at the expense of the Supplier.

9.4 If the Supplier should be delayed, then, without prejudice to our rights as set out in Point 9.1, we shall be entitled to demand 0.5% of the price of the goods for each full week of delay up to a maximum of 10% of the goods price in order to indemnify ourselves for the damages caused to us by the delay, without any proof of damages being necessary. This compensation for damages may be claimed even after acceptance of the goods without the need for any reservation of rights being declared upon acceptance.

It shall be the responsibility of the supplier to prove that a lower level of damages has been incurred. Our right to be claim compensation for any damages actually suffered shall not be prejudiced.

9.5 Where an assignment contains more than one partial delivery, we shall be entitled to terminate the entire contract if the Supplier should fail to fulfil his contractual duties in an orderly manner, even if the failure involves only a partial delivery.

9.6 If the delivery of a Supplier is defective, we shall be entitled, where necessary and after previous notification of the Supplier, to make good the defect at the cost of the Supplier, in order to prevent or minimize any interruptions in our operations.

10. Product liability

10.1 Insofar as the Supplier is responsible for any defect in a product, he or she shall agree to indemnify us from claims for compensation by third parties upon first request to the extent that the cause falls within his or her domain and organization and he or she is externally liable for that damage.

10.2 In this regard the Supplier is also obliged to reimburse us in accordance with Articles 683 and 670 of the German Civil Code (BGB) for any expenses that may result from or in connection with any recall action carried out by us, insofar as the claim does not follow from Articles 830 and 840 BGB in combination with Articles 426 and 254 BGB. We will – as far as reasonable and possible – report to the Supplier on the content and scope of the recall action to be conducted, and will provide him with an opportunity to declare a position on the matter.

11. Intellectual property rights of third parties

11.1 The Supplier takes full responsibility, indemnifying us, for ensuring that no intellectual property or other rights of any third party are violated in connection with his or her provision, our approved usage, further processing or resale of the goods that he or she has supplied.

11.2 If we should be subject to a claim from a third party on grounds of violation or impairment of any such rights, the Supplier shall agree to indemnify us from all such claims or actions taken by third parties. This commitment shall also include defence against any threatened claims or actions by third parties against us.

11.3 The liability of the Supplier includes all consequential damages that may be incurred by us, in particular any losses as a consequence of delivery bottlenecks and disruptions to production.

12. Provision

12.1 Any material or parts provided by us for processing or transformation by the Supplier, as well as any production or auxiliary material shall remain our property. The Supplier accepts responsibility for any loss or damage of such articles. The Supplier must store such material with the care expected of a prudent businessperson and agrees to inform us immediately if any property of ours should be distrained or threatened with distraintment. The Supplier shall be liable for any intervention costs.

12.2 The transformation and alteration by the Supplier of materials thus provided shall be conducted for us. If goods provided by us under retention of title are transformed **together with** other objects not belonging to us, we acquire the co-ownership of the new object in proportion to its value as compared with the other processed objects at the time of processing.

12.3 If one of the objects provided by us under retention of title is mixed with objects not belonging to us in such a way as they can no longer be separated again, we acquire the co-ownership of the new object in proportion to the value of the article under retention of title as compared with the object with which it was mixed at the time of the mixing. If this mixing is done in a manner in which the Supplier's material should be considered the main material in the mix, it shall be deemed agreed that the Supplier grants us proportionate co-ownership; and that the Supplier shall be responsible for the safekeeping of sole ownership or co-ownership on our behalf.

13. Delivery with retention of title

13.1 We recognise any retention title by the Supplier in relation to unprocessed goods being stored by us. However, we shall not recognise any retention of title by the Supplier after transformation, binding or mixing its goods with other objects. Also excluded is any subrogation of our claims through the resale of such goods to the Supplier.

13.2 Upon payment, all objects become our sole property without any restrictions.

14. Prices

14.1 Fixed prices and agreed prices. Price increases shall only apply to us if they have been confirmed in writing. In the absence of any written agreement otherwise, the price shall always include delivery free to domicile, including packaging, duty-paid, insurance and assembly.

15. Conditions of payment

15.1 Invoices should be presented to us separately for goods. Each invoice should indicate our job number, as otherwise we will send the invoice back to the Supplier unprocessed.

15.2 We make our payments by bank transfer or online banking.

15.3 Where not otherwise agreed in writing, we will settle invoiced amounts within 30 days from delivery and receipt of invoice with a % cash discount, or net within 90 days of receipt of invoice. If the Supplier should provide performance before the agreed date, the agreed date shall alone be applicable, even where we have accepted the early delivery date.

15.4 Payments will always be made under conditional acceptance subject to invoice verification.

15.5 Any accounts that have been agreed in terms of time and quantity may only be submitted on the basis of temporal and material proof or of estimations confirmed by us in advance. The relevant proofs or estimations must be attached to such accounts.

15.6 We shall be entitled to account retention and set-off rights in accordance with Law.

15.7 Interest charges for late payment may be applied by the Supplier only where this has been expressly agreed.

16. Termination rights

If either of the parties should cease payment or if an insolvency process over its assets has been petitioned, then the other party shall be entitled to terminate the portion of the contract not yet fulfilled.

17. Other terms

17.1 All contracts between ourselves and the Supplier shall be governed by German Law with the exception of the Vienna UN Convention on the International Sale of Goods (CISG).

17.2 The place of performance for all duties of the Supplier arising from the business relationship is Metzingen.

17.3 The place of jurisdiction in relation to disputes arising from the supplier relationship is the local court of our principal place of business or, where we should so choose, the place of jurisdiction of the Supplier.

17.4 The Supplier shall not be entitled to relinquish any claim against us in favour of any third party without our agreement.

17.5 Where any declarations are required in writing by these contractual conditions, delivery by telefax shall be sufficient. Delivery of such declarations by e-mail shall not be sufficient.

17.6 The Supplier agrees to treat all non-evident business and technical details made known to it through this business relationship as a business secret and to bind any subcontractor in a similar manner.

17.7 If any of the terms of a contract between us and the Supplier should be inapplicable, that circumstance will not affect the applicability of the remainder of the contract. Any gap left by an inapplicable term shall be replaced by an alternative arrangement through which the economic purpose of the inapplicable term will be achieved.

MÜLLER & BAUER GmbH & Co. KG
D-72555 Metzingen 12.19