

General Terms and Conditions of Sale and Delivery

General Provisions

- (1) These General Terms and Conditions of Business (T&Cs) alone shall apply for all contracts – including future contracts - which we enter into with businesses, legal entities created under public law and public-law special funds. This shall apply for on-going business relationships even in the event that contracts are entered into by means of e-mail, fax messages or over the telephone. If the Buyer's purchasing terms differ from, or are contrary to, or are more extensive than these T&Cs, they shall only apply if we have expressly consented to them applying in writing. The fulfilment of a contract by us shall not replace this written confirmation.
- (2) The contract shall only materialise upon the receipt of our written order confirmation. Prior to order confirmation all offers shall be subject to change without notice and non-binding.
- (3) Side agreements, amendments or supplements to the contract shall be subject to our written confirmation. This shall also apply for an amendment to this agreement.
- (4) The documents belonging to the offer and order confirmation such as drawings and illustrations, as well as other information and performance data, shall only be binding if they have been expressly marked as being binding. Otherwise, information about the goods to be supplied and goods to be rendered is only to be regarded as being approximations. In particular, they do not constitute any guarantees, but instead only descriptions and designations of the goods. The same shall apply for references to technical specifications and regulations standards such as DIN norms and similar.
- (5) We shall reserve the right to modify and improve our items provided that the Buyer can be expected to accept them taking our interests into account.
- (6) We shall reserve the title and copyright to documents such as illustrations, drawings and such like constituting part of the offer. Third parties must not be allowed access to them and they are to be returned to us upon request.
- (7) The Buyer's rights under the contract may only be transferred subject to our prior consent.
- (8) We shall be entitled for technical production reasons to supply within quantity tolerances of plus / minus 10 %.

Prices and Terms and Conditions of Payment

- (1) Our prices are for terms of delivery ex stores or works straight net plus the statutory rate of VAT in force plus packing as well as transport costs.
- (2) The prices quoted in the order confirmation shall be binding for a delivery within four months from the date on which the contract is signed. If the delivery date is after this four-month period and has expired we shall be entitled to increase prices, if conditions change following the contract being signed, in particular if there is an increase in the price of raw materials and wages or transport costs. In such circumstances, the changes in the prices we charge shall only be what is required to cover the increases in the prices and costs named above.
- (3) Any particular packing requirements the Buyer may have are to be agreed in writing when the contract is signed.
- (4) We shall be prepared to insure a consignment against theft, breakage, transport damage, fire damage and water damage as well as against other insurable risks at the Buyer's express written request and at his expense.
- (5) Insofar as no agreement is made otherwise in our offer or in a written order confirmation, payments are to be paid straight net cash within 30 days of the date of invoice in full or within ten days from the date of invoice in order to qualify for a prompt payment discount of 2 %. Part payments shall not qualify for prompt payment discounts.
- (6) The retention of payments by the Buyer is not allowed, insofar as the counter-claims are based upon another contract. If a counter-claim is based upon the same contract payments may only be retained if they are not contested or if it has been adjudicated.
- (7) The Buyer may only offset with counter-claims if such counter-claims are uncontested or if they have been adjudicated.
- (8) In the event of default with the payment of an account, we shall be entitled to retain goods and/or other services from all

contracts until all the accounts to which we are entitled against the Buyer have been settled in full. The Buyer may avert our right of retention by furnishing a directly liable and unlimited guarantee from a bank licensed as a customs or tax guarantor for the amount of all outstanding accounts. After a period of time allowed for payment set to the Buyer has expired without him having made the payment required we shall also be entitled to withdraw from all contracts not yet executed. We shall reserve the right to assert additional default damages.

(9) The Buyer declares his consent to us being able to offset against the Buyer's claims even if the due dates of the counter claims has lapsed.

The basis for credit

(1) The precondition for supplying goods to a Buyer is that he is creditworthy. If, after entering into a contract, we receive information giving rise to reservations on our part as to whether a loan should be granted for the amount shown in the contract or if facts come to light giving rise to doubts with regard to this, in particular there is a considerable deterioration in the Buyer's financial status (Enforcement measures, the Buyer stops making his payments, becomes insolvent, closes down or transfers his business, etc.), we shall be entitled to demand payment in advance or the furnishing of a security or payment in cash without taking into account earlier agreements made to the contrary.

(2) Under the same preconditions we shall be entitled after supplying the Buyer to inspect his stores and to secure goods subject to our reservation of title on a provisional basis regardless of earlier agreements made to the contrary until payment is made for them in cash. Transport and storage costs shall be borne by the Buyer.

Delivery times and Delivery periods

(1) Insofar as the order confirmation does not specifically state otherwise, the delivery dates stated shall be approximations, and no guarantee shall be furnished for compliance with them.

(2) The delivery period shall commence on the date of the final order confirmation, but not, however, before all details concerning how the order is to be carried out have been clarified in full, in particular the receipt of any documents which may have to be supplied by the Buyer as well as the receipt of an agreed down payment payable when the contract is signed. Compliance with the delivery period shall, moreover, depend on the Buyer having fulfilled all his contractual obligations.

(3) Regardless of our rights created by default on the part of the Buyer, the agreed delivery period shall be extended by the period of time during which the Buyer is in default with the payment of his obligations under this or another contract with us.

(4) Compliance with the delivery period will have been achieved if, by the time the delivery period expires, the item to be supplied has left our works, or if it to be collected by the Buyer, the consignment is ready for despatch and the Buyer has been notified thereof. Part-deliveries may not be rejected by the Buyer, unless the Buyer cannot be expected to accept them.

(5) The delivery period shall be extended as appropriate following measures taken in response to lawful labour disputes, in particular strikes and lock-outs in our own firm as well as in third party businesses, regardless of whether the measures taken in labour disputes are legal or not, provided that we are not responsible for failing to take delivery of materials, take precautions or to avert supply difficulties. Furthermore, in the event that unforeseen events arise such as mobilisation, war, blockade, import and export prohibitions, specific statutory or official regulations, shortages of raw materials or fuels or force majeure. Insofar as it can be proven that such hindrances affect the manufacture or delivery of the item to be supplied and affect us, one of our suppliers or sub-suppliers or transport firm, and for which we are not to blame, whereby our liability shall only be excluded for ordinary negligence. If the aforementioned circumstances result in it being impossible for us to render the performance, we shall also be entitled to withdraw from the contract.

(6) The Buyer shall be entitled to his statutory rights if we are in default. The Buyer may, however, only demand compensation for damages if we, our legal representatives or assistants have acted with intent or gross negligence, or for damages arising from death, personal injury and physical harm or if our liability is compulsory on account of a breach of important contractual obligations. The compensation to be paid for damages arising from the breach of important contractual obligations shall, however, be limited to foreseeable damages typical for such contracts, unless we have been guilty of intent or gross negligence, or such damages concern those attributable to us for death, personal injury or physical harm.

At our request the Buyer shall be obliged to state within a reasonable period of time whether he is demanding fulfilment of the contract in spite of default on our part or if he is rejecting fulfilment on account of the delay.

(7) If despatch is delayed at the Buyer's request or for reasons for which the Buyer is responsible, we shall invoice the Buyer for the costs incurred from storing his goods beginning on the date one month after he was notified that his goods were ready for despatch, or if his goods are stored in-house in our works we shall invoice him at least ½% of the amount of the invoice for each new month. Our right to assert additional rights based upon default shall not be affected by the above.

(8) In addition to this, we shall be entitled, following the expiry of a reasonable period of time set by us for the Buyer to take delivery of his goods, to dispose elsewhere of the goods to be supplied to him and to supply the Buyer with new goods within a reasonable period of time again or else to withdraw from the contract and/or to demand compensation for damages.

Reservation of title

(1) We shall reserve the title to goods supplied by us, as well as right to any things which may possibly have been created by processing and finishing our goods, until all the claims to which we are entitled from the Buyer under our business relationship with him now and in the future, including conditional and limited claims, regardless of whatever legal reason upon which they are based, have been fulfilled.

If the Buyer is in default with payment, we shall be entitled to assert our rights under reservation of title even if we do not withdraw from the contract.

(2) The Buyer shall be obliged to store the goods subject to reservation of title separately from his other goods and to mark them as such. Should the buyer possibly process or finish the goods subject to reservation of title, he shall do so for us, without this placing us under any obligations as a result thereof. If the Buyer processes our goods subject to reservation of title with other items which he owns, we alone shall consequently be entitled to the title to the new thing. If the Buyer processes our goods subject to reservation of title with other items which he does not own, we shall consequently be entitled to co-ownership of the new things in proportion to the value of the processed goods subject to reservation of title to the other items at the time the processing and finishing took place. The Buyer shall assign any co-ownership share created by the connection, combination or mixing of the goods supplied by us with other things he may have to us here and now. The Buyer shall keep the things as custodian. He shall be liable for his own intent and negligent conduct and likewise for that of his legal representative and persons whose services he avails himself of to fulfil his obligations. The Buyer may only sell the goods supplied by us and the things created by processing and finishing them, connecting, combining or mixing them with other things not owned by us in a proper commercial transaction in return for payment in cash or subject to reservation of title. Assignments by bill of sale as a security, pledging, and other disposals jeopardising our rights are not allowed.

(3) The Buyer shall assign to us here and now and in full the claims to which he is entitled from the resale or from another legal reason concerning the goods subject to reservation of title, also including those resulting from compensation for damages on account of the goods subject to reservation of title being damaged or destroyed, regardless of whether they are contractual or statutory rights against the damaging party, insurance company or other third party and for compensation for benefits enjoyed.

(4) If the goods subject to reservation of title are sold by the Buyer together with his own goods or other third party goods in an unprocessed condition, the Buyer shall assign the account created by the resale to us for the full value of the goods subject to reservation of title. If the part of the purchase price attributable to the sale of our goods subject to reservation of title is higher than the value of our goods subject to reservation of title, we shall consequently be entitled to the additional amount as well.

(5) If, as a result of the goods subject to reservation of title being processed or finished together with goods from other suppliers we acquire co-ownership of the new thing, the assignment upon resale of a part of the subsequent account shall be equal to our co-ownership share, provided that this can be worked out. Otherwise the value of the invoice of our processed goods subject to reservation of title shall be payable to us.

(6) If processing or finishing takes place as part of a contract for services or contract for work done and materials supplied, the Buyer shall assign a proportion of his claim for wages, likewise in advance, to us, equal to the value of the goods subject to reservation of title processed.

(7) If the above-named accounts are entered into a current account arrangement by the Buyer, the current account receivables shall consequently be assigned to us in full. After striking a balance it shall be replaced by the balance regarded as having been assigned up to the amount of the sum equal to the original current account receivables. This shall also apply accordingly for the final balance when the current account arrangement is closed.

(8) As long as the Buyer fulfils his obligations the assignment shall be treated as an undisclosed assignment and the Buyer shall be authorised to collect the account. The Buyer shall have to enter the sums received towards the assigned account separately and to keep them in safekeeping separately.

(9) In the event that the contracts entered into by the Buyer in the course of selling on the goods subject to reservation of title are invalid or void, the Buyer shall assign here and now the statutory claims to which he is entitled instead of the contractual claims assigned to him, in particular unjustified enrichment claims, for the same amount.

(10) Insofar as and provided that the registration and/or fulfilment of other requirements should be a precondition for the validity of the reservation of title, the Buyer shall be obliged to take all steps necessary for this straight away and to make all necessary notifications.

- (11) If the value of the securities exceeds the value of our accounts by more than 20 %, the Buyer shall, given this, consequently be entitled to request the release of securities.
- (12) The Buyer must inform us immediately of third party seizures of the goods subject to reservation of title or of the assigned accounts and hand over to us the documents we need to intervene. The costs of invention shall be borne by the Buyer.
- (13) The costs of return transportation for the goods subject to reservation of title shall be for the Buyer's account.
- (14) In the event that the Buyer's liabilities are settled by him agreeing to pay by direct debit, all our rights created by the reservation of title regulated above shall continue to exist for as long as it is no longer possible to revoke the direct debit, provided that our rights do not continue to exist anyway on the basis of the above arrangements.

Passing of risk

The risk of accidental loss or accidental deterioration of the goods shall pass over to the Buyer when the supplied item is handed over to the haulier or freight forwarder.

This shall also apply if goods are supplied carriage-free, CIF, FOB and similar terms of delivery. If the goods supplied are carried by our own vehicles and employees, all risks shall pass over to the Buyer when the loading procedure has been completed. If there are delays in delivery for which we are not responsible, all risk shall pass over to the Buyer on the day on which the Buyer receives notification that the goods are ready for dispatch.

Damage in transit

The driver is to be notified in writing of manifest or visible damage which has occurred in transit straight after delivery and the driver must acknowledge receipt thereof in writing. In addition to this, adequate notes must be made of any damage in transit there may be – if necessary by taking photographs – and recorded. The Buyer shall, moreover, be obliged to inform us straight away of any damage in transit there may be by forwarding us the appropriate documents. A breach of this obligation shall result in any claims there may be based upon damage in transit being forfeit.

Liability for quality defects and compensation claims for damages

- (1) The regulations of the German Commercial Code [HGB] shall apply for the inspection of goods and notification of defects subject to the following proviso:
- a) The Buyer shall be obliged to inspect the goods straight away following delivery for manifest defects in the features crucial for their respective use and inform us in writing of manifest and/or identified defects and stop processing and finishing work immediately. In the event that the intention is that the said goods are to be installed or mounted the features which are crucial for installation or mounting shall also include the internal features of the goods and given this function tests or trial installation are to be conducted on a random basis prior to installation or mounting .
- b) The breach on the part of the Buyer of the obligation to inspect the goods and notify us of defects constitutes a particularly serious disregard of the duty of care required in use and consequently gross negligence rendering claims under warranty invalid. This shall only not apply in the event that we have maliciously concealed the defect and/or we have furnished a product warranty for the quality of the thing.
- (2) Initially the Buyer shall be entitled to have a cure carried out under warranty. Given this, we shall, as we choose, render performance either by means of carrying out a repair or supplying a replacement. If both forms of cure entail disproportionate costs within the meaning of Section 439 Para 4 of the German Civil Code [BGB], we shall be entitled to refuse to carry out either type of cure.
- (3) If the cure is unsuccessful or if it is refused by us with justification, the Buyer may rescind the contract (withdrawal) or demand a reduction in the remuneration (reduction). If a breach of contract is no more than minor, in particular if defects are minor, the Buyer shall not be entitled to withdraw from the contract.
- (4) If the Buyer has installed the defective thing into another thing in accordance with what it is and the intended use, or mounted it on another thing, the Buyer may demand compensation for expenditure necessarily incurred for removing the defective thing and installing or mounting the repaired or fault-free replacement supplied. Consequential damages caused incurred by the Buyer such as, for example, lost profit, costs of operational downtime or additional costs for the procurement of replacements are not assembly or disassembly costs and therefore will not qualify for compensation as reimbursement of expenses incurred as in accordance with Section 439 Para 3 of the German Civil Code [BGB].

(5) The Buyer's compensation claims for damages shall not be admitted, regardless of whatever legal reason upon which they are based. This shall not apply insofar as we, our legal representatives or assistants have acted with intent or gross negligence or if under the German Product Liability Act our liability is compulsory on account of damages attributable to us from death, personal injury and physical harm or from the breach of important contractual obligations. Compensation for damages for a breach of important contractual obligations shall, however, be limited to foreseeable damages and damages typical for such a contract, unless we are guilty of intent or gross negligence or our liability is compulsory on account of damages attributable to us from death, personal injury and physical harm.

(6) It is within the responsibility of the Buyer alone to ensure that the goods are suitable for his specific intended use in terms of quality and features. Should the goods not be suitable for his intended use, this shall not substantiate any type of claims whatsoever, unless we have expressly stated in writing that the goods are suitable for the intended purpose.

Information supplied by us about quality does not constitute product warranties within the legal sense. Any manufacturer's guarantees there may be shall not be affected by this.

(7) The Buyer's warranty claims shall become time-barred one year after the delivery of the goods.

Another arrangement shall only apply if we have maliciously concealed the defect or the law in accordance with Section 438 Para 2 No 2 German Civil Code [BGB] (Structures and things for structures), and Section 445b German Civil Code [BGB] (Right of recourse) prescribes longer periods of time as being compulsory.

(8) The Buyer's compensation claims for damages on account of a defect shall become time-barred one year after delivery. This shall not apply if the defect is attributable to intent or gross negligence or failure to comply with warranties as well as in cases of damages attributable to us from death, personal injury or physical harm.

(9) Negotiations between the Parties will not result in the period of limitation being suspended in accordance with Section 203 of the German Civil Code [BGB].

(10) In cases in which a cure is effected, the period of limitation shall not start all over again.

(11) Advice passed over by our employees shall not constitute either a contractual legal relationship or an ancillary obligation under the contract, so that we cannot be held liable for such advice subject to express written agreements otherwise.

(12) The Buyer shall only be entitled to a right of recourse against us in accordance with Section 445a of the German Civil Code [BGB] to the extent that he has not entered into any agreements with his customers over and above the statutory warranties.

Data Protection Clause

The Buyer is hereby informed that personal data – insofar as this is legal – will be collected, saved and processed. Further details may be found in the internet at www.moeller-profilsysteme.de. They may also be requested from the data protection officer at Möller GmbH & Co. KG.

Final Provisions

(1) The place of fulfilment and place of jurisdiction for all disputes arising from each business transaction covered by these T&Cs shall be our principal place of business not only for legal action taken by us but also for legal action taken against us. This provision shall not apply for business transactions with buyers who are neither registered businesses within the meaning of the German Commercial Code or special assets under public law or legal entities established under public law or for business transactions with a businessman not entered into by him in his normal course of business.

(2) The relationships between us and the Buyer shall only be governed by the law of the Federal Republic of Germany, excluding however, the conflict of laws law, the Hague Uniform Law on the International Sale of Goods and the Convention on Contracts for the International Sale of Goods (CISG).

(3) If individual provisions of these general T&C should be or become invalid, the validity of the remaining provisions shall not be affected as a result. That valid arrangement coming closest to the objective of the invalid provision shall apply instead of the invalid provision.