

# General Terms and Conditions

(valid from July 2020)

## 1. General provisions, validity, conclusion of contract

**1.1** The following terms and conditions apply to all business transactions between Müller Apparatebau GmbH (Müller) and the customer (Buyer) even if they are not mentioned in subsequent contracts. The following terms and conditions also apply to agreed services, such as service and maintenance work (services). The General Terms and Conditions apply exclusively and shall be recognised as determinative by the Buyer by placing an order. Conflicting or additional terms and conditions or terms and conditions differing from these General Terms and Conditions shall not become part of the contract unless Müller has expressly agreed to their validity. Individual agreements entered into with the Buyer in individual cases shall have priority.

**1.2** Offers by Müller are non-binding and subject to change unless expressly marked as binding. Orders of the Buyer are binding once they are sent to Müller and may be accepted by Müller within 15 working days after their receipt. The receipt of the order confirmation by the Buyer or, in case of immediate execution of the order, the delivery of the ordered goods shall be decisive for the time of conclusion of the contract.

## 2. Product descriptions

Information about products (e.g. weights, dimensions, utility values, load capacity, tolerances, software versions and other technical data) as well as their representations (e.g. documentation, drawings and illustrations), especially in brochures, type lists, catalogues, price lists, data sheets, advertising brochures, specifications and descriptions, technical specifications and other technical delivery conditions, do not constitute a quality or durability guarantee of Müller.

## 3. Delivery of goods, provision of services, passing of risk, dispatch

**3.1** Delivery and service periods and delivery and service deadlines are only binding on Müller if they have been expressly designated or confirmed as binding. An agreed delivery time is adhered to if the goods have left the factory of Müller by the deadline upon delivery without installation. If the delivery is delayed for reasons for which the Buyer is responsible, the delivery shall be deemed to have been adhered to within the agreed delivery period upon notification of the readiness for shipment or acceptance.

**3.2** Agreed delivery and service periods shall commence with the dispatch of the order confirmation by Müller, but not before the complete procurement of the Buyer's documentation, the necessary permissions and approvals, the timely clarification and approval of the plans, compliance with the agreed terms of payments and other obligations.

**3.3** Partial deliveries and services are permissible if they are usable by the Buyer within the scope of the contractual purposes, the delivery of the remaining ordered goods is ensured and the Buyer thereby incurs no significant additional expenses or additional costs.

**3.4** The risk of accidental loss and accidental deterioration of the goods shall pass to the Buyer at the latest upon delivery of the goods to the Buyer, in case of an agreed dispatch already with the handover of the goods to the freight forwarder, carrier or the person otherwise intended to carry out the shipment. This also applies if partial deliveries are made or if a freight and charges prepaid consignment has been agreed with the Buyer. Müller shall select the carrier and the transport route at its discretion, exercising all due care and diligence, provided the Buyer has not submitted any written specifications. At the request and expense of the Buyer, a transport insurance policy shall be taken out for the goods against the risks to be designated by the Buyer. Insofar as an acceptance has been agreed, this is decisive for the passing of risk. In addition, the statutory provisions set forth in German labour and transport contracts law shall apply *mutatis mutandis* to an agreed acceptance.

**3.5** If the handover or dispatch is delayed as a result of circumstances for which the Buyer is responsible, the risk shall pass to the Buyer from the day on which the goods are ready for dispatch and this was notified to the Buyer.

## 4. Force majeure

**4.1** If Müller is prevented from performing its contractual duties, in particular the delivery of the goods, due to force majeure, industrial disputes such as strikes or lock-outs, as well as other unforeseeable events at Müller or its suppliers, Müller shall be released from the performance obligation for the duration of the obstacle and a reasonable start-up period without being obliged to pay damages to the Buyer. If such an event lasts more than four months, Müller shall be entitled to rescind the contract. At the request of the Buyer, Müller shall declare after expiry of the period whether the right of rescission is exercised or the goods are delivered within a reasonable period of time.

**4.2** Insofar as the Buyer is unable to accept the delivery or service as a result of the delay, he or she may rescind the contract vis-à-vis Müller.

## 5. Warranty, liability

**5.1** Buyer's rights arising from product defects presuppose that he or she has complied with his or her statutory examination and notification obligations (sections 377, 381 of the German Commercial Code (*Handelsgesetzbuch*)), in particular that the delivered goods were inspected upon receipt and has notified Müller in writing of obvious defects and defects that were identifiable in such an inspection, without delay after receiving the goods. The Buyer must report hidden defects to Müller in writing immediately after their detection. The notification shall be deemed to be without delay if it is effected within two weeks, in the case of obvious defects and defects that were identifiable in the case of a proper inspection, after delivery or, in the case of hidden defects, after their detection, whereby the submission of the notification or complaint complies with the deadline. If the Buyer fails to properly inspect and/or notify defects, Müller's liability for the defect shall be excluded.

**5.2** An insignificant deviation of the delivered goods from the agreed condition or an insignificant impairment of merchantability do not represent a defect. Defects due to non-compliance with the supplied technical instructions, improper use, incorrect assembly or putting into service by the Buyer or by third parties commissioned by the Buyer, natural resources, replacement materials, wearing parts defective construction, lack of structural requirements, unsuitable subsoil, chemical, electrochemical or electrical influences are excluded from warranty unless they are due to a fault attributable to Müller.

**5.3** Warranty is excluded for used delivery items.

**5.4** In case of defects of the goods, Müller is entitled to supplementary performance by rectifying the defect or delivering faultless goods, subjects to its own choice to be made within a reasonable period. The right to refuse supplementary performance under the statutory prerequisites remains unaffected.

**5.5** Upon request, the Buyer is obliged to return the goods to Müller for examination of defects at his or her own expense. The expenses necessary for the purpose of examination and supplementary performance, in particular transport, travel, labour and material costs within the meaning of section 439 (2) of the German Civil Code (*Bürgerliches Gesetzbuch, BGB*) as well as any customs duties, shall only be refunded by Müller if the examination reveals that a defect actually exists and to the extent that such expenses are not increased by the goods being moved by the Buyer to a location other than the delivery address. If the Buyer refrains from or refuses to cooperate, Müller shall be entitled to refuse supplementary performance for the period of non-cooperation and to demand compensation for any damage resulting therefrom.

**5.6** Remedial work or subsequent deliveries shall be made within Müller's business hours (regular working hours Monday to Friday from 8 a.m. to 5 p.m., but not on public holidays). If warranties are provided outside of these standard working hours at the request of the Buyer, the additional costs shall be invoiced separately to the Buyer.

**5.7** If Müller is not willing or able to remedy the defect after a reasonable period, the Buyer may choose to rescind the contract or reduce the purchase price. The same shall apply if the supplementary performances fail or are unreasonable for Müller.

**5.8** The Buyer's right of rescission shall be excluded if he or she is unable to return the rendered performance and this is not based on the fact that the return is impossible according to the nature of the rendered performance, Müller is liable herefor or the defect did not show until the processing or transformation of the goods. The right of rescission shall be further excluded if Müller is not responsible for the defect or has delivered custom-made products.

**5.9** Warranty claims of the Buyer become void if the Buyer attempts to repair or modify the goods himself or herself or to have them repaired or modified by third parties without the consent of Müller, if the removal of the defect hereby becomes impossible or unreasonably difficult.

**5.10** Claims by the Buyer for reimbursement of expenses instead of damages in lieu of performance are excluded unless a reasonable third party would have incurred the expenses.

**5.11** If the defect is due to Müller's fault, the Buyer may demand damages or reimbursement of wasted expenditure only on the conditions set forth in clauses 5.12 and 5.13; otherwise it shall be excluded.

**5.12** Müller is liable for damage claims – for whatever legal reason – in the context of fault liability based on intentional or grossly negligent acts. In the event of slight negligence, Müller shall be liable subject to a milder standard of liability in accordance with the statutory regulations (e.g. for due care in its own affairs) only

- a) for damage resulting from injury to life, limb or health,
- b) for damage resulting from the significant breach of a material contractual obligation (obligation the fulfilment of which actually enables the proper performance of the contract and on compliance with which the contractual counterparty normally trusts and may trust); in this case, however, liability of Müller is limited to compensation for damage that is foreseeable and which typically arises.

**5.13** The disclaimers and limitations of liability stated in clause 5.12 shall apply to the same extent in favour of the bodies, legal representatives, employees and vicarious agents of Müller. However, they shall not apply if Müller fraudulently concealed a defect or assumed a guarantee for the quality of the goods and for claims of the Buyer under the Product Liability Act (*Produkthaftungsgesetz, ProdHaftG*).

**5.14** Notwithstanding section 438 (1) no. 3 BGB and section 634a (1) no. 1 BGB, the limitation period for warranty claims of the Buyer is one year. The limitation period commences with the delivery of the goods or the provision of services upon completion of the execution work. As far as acceptance is agreed, the limitation period commences with the acceptance.

**5.15** However, if the goods are a building or an object that, in conformity with its customary manner of utilisation, has been used for a building and has caused its defectiveness (building material), the limitation period is five years from delivery pursuant to the statutory regulation (section 438 (1) no. 2 BGB/section 634a (1) no. 2 BGB). Further statutory special provisions pertaining to the statute of limitations remain unaffected (in particular section 438 (1) no. 1, (3), sections 444, 445b BGB).

**5.16** The above-mentioned limitation periods under sales law shall also apply to contractual and non-contractual damage claims of the Buyer that are based on a defect of the goods unless the application of the regular statutory limitation period (sections 195, 199 BGB) would lead to a shorter limitation period in individual cases. However, damage claims of the Buyer according to clause 5.12 sentences 1 and 2a) as well as the Product Liability Act become statute-barred exclusively in accordance with the statutory limitation periods.

**5.17** In case of claims for damages or reimbursement of wasted expenditure not based on material or legal defects, the limitation period is otherwise two years; the period begins at the time at which the customer became aware of the circumstances that gave rise to the claim or would have become aware had it not been for gross negligence on his or her part.

**5.18** An opinion of Müller on a claim asserted by the Buyer does not constitute acknowledgement or entry into negotiations concerning the claim or the circumstances giving rise to the claim.

## 6. Retention of title

**6.1** Müller retains title to the delivered goods until the complete fulfilment of all current claims from the business relationship against the Buyer (reserved goods). The Buyer is obliged to treat the reserved goods with care during the retention of title. In particular, he or she shall be obliged to adequately insure the reserved goods at his or her own expense against damage caused by fire, water and theft at replacement value. As a precaution, the Buyer assigns any compensation claims from this insurance to Müller. Müller hereby accepts the assignment. If an assignment is not permitted, the Buyer hereby irrevocably instructs the insurance company to make payments only to Müller. Further claims of Müller remain unaffected. Pledges or transfers by way of security – as well as any other disposition – of or over reserved goods are inadmissible.

**6.2** The reserved goods shall always be processed or transformed for Müller as manufacturer. If, by combining, Müller's ownership expires, it is hereby agreed that the Buyer's (co-)ownership of the new object will pass to Müller in proportion to the value (invoice value). The Buyer then stores the new objects for Müller free of charge.

**6.3** The Buyer is entitled to sell the delivered goods and the objects resulting from their processing in the ordinary course of business, as long as he or she is not in default. He or she hereby assigns to Müller for security purposes all debts owed to him or her from the resale of the reserved goods. The Buyer is revocably authorised to collect the claims assigned to Müller in his or her own name.

**6.4** If the value of the claims assigned in advance for security purposes exceeds the claims of Müller by more than 10%, the claims assigned for security shall be released at Müller's option at the request of the Buyer.

**6.5** In the event of breach of contract by the Buyer, in particular default of payment or if insolvency proceedings are opened against his or her assets or the opening of insolvency proceedings is rejected for insufficiency of assets, the entire residual debt shall be due even if there are bills of exchange with a later maturity date. In this case, the Buyer must provide Müller with a list of all reserved goods still in his or her possession and a list of the claims assigned to Müller indicating the name and address of the debtor and the amount of the respective claim. Without prejudice to any other rights, Müller is entitled in the event of default of payment of the Buyer to rescind the contract in accordance with the statutory regulations or/and to demand the return of the goods on the basis of the retention of title.

The Buyer has to grant Müller immediate access to the reserved goods, to surrender them and to inform Müller of their location. After timely threat, Müller may otherwise utilise the reserved goods to satisfy the claims due against the Buyer. A demand to return the delivered goods or their realisation (e.g. seizure) does not at the same time include a declaration of rescission. Müller is entitled to demand only the return of the goods and to reserve the right of rescission.

**6.6** In the case of third-party access to the reserved goods, the Buyer must refer to the ownership of Müller and notify Müller immediately. The Buyer shall bear all costs for which he or she is responsible and which have to be expended to prevent access and to recover the goods unless they can be collected by a third party.

## 7. Prices

**7.1** The net prices, valid at the time of delivery, excluding VAT ex works (EXW according to Incoterms® 2020) Kranzberg, shall be applicable. Value-added tax will be shown separately in the invoice in the legal amount, applicable on the day of invoicing.

**7.2** Müller shall be entitled to perform or render outstanding deliveries or services only against advance payment or provision of security or to withdraw from the contract if circumstances become known after conclusion of the contract which are capable of significantly reducing the Buyer's standing and by which the payment of accounts receivable from the Buyer from the respective contractual relationship is endangered.

## 8. Terms of payment, set-off, retention, assignment

**8.1** Invoices are to be paid immediately without deductions.

**8.2** If the Buyer does not accept purchased goods after expiry of a deadline set by Müller (default of acceptance), Müller may demand from this date a one-off expense allowance for storage costs which, without separate proof, amounts to 1% of the purchase price per week or part thereof and is limited to 5% of the purchase price. The Buyer is at liberty to prove that no or less storage costs have arisen in connection with the non-acceptance of the goods.

**8.3** In case of default, the Buyer owes default interest to the statutory amount of currently nine percentage points above the base interest rate of the European Central Bank. Other claims remain unaffected. If the Buyer does not pay or is late in payment, Müller is entitled to rescind the contract if the legal requirements are met.

**8.4** Payments by the Buyer can first be credited towards his or her oldest debt. If costs and interest have already arisen, Müller is entitled to offset the payment first against the costs, then against the interest and finally against the principal claim.

**8.5** Counterclaims of the Buyer entitle him or her to offset and assert rights of retention only if they have been legally established or are undisputed.

**8.6** The assignment of any claim of the Buyer against Müller requires written consent to take effect, which can be refused only for legitimate interest.

## 9. Place of performance, venue

Place of performance shall be Kranzberg; this shall also apply to supplementary performance or subsequent improvements by Müller. Venue shall be Munich. Müller is also entitled to bring an action at the Buyer's domicile and at any other admissible venue.

## 10. Applicable law

The legal relationship between Müller and the Buyer shall exclusively be governed by German law. To the extent that the United Nations Convention on Contracts for the International Sale of Goods (CISG) is applicable, it shall only apply in the event that there exist claims for damages and reimbursement of expenses vis-à-vis Müller on grounds of defective goods or other non-performance only through the fault of Müller's legal representatives or vicarious agents and only within the limits of the "Warranty, liability" section.

## 11. Contract Language

Contracts can be concluded in German or English language. These General Terms and Conditions are valid only in their German language version. The English language version of these General Terms and Conditions is not legally binding and only serves information purposes without Müller vouching for the translation.

Kranzberg, 01.07.2020

Müller Apparatebau GmbH