

Emil Müller GmbH

Standard Terms of Sale and Delivery

1. Application scope, contract

1.1 The Terms of Sale and Delivery as outlined below apply to all legal relations with companies and natural/legal entities under private and public law, as part of which we deliver goods and render services. We do not accept any General Terms and Conditions or internal guidelines etc. of the client/purchaser (hereafter "purchaser") that are contrary or do not conform to our Terms of Sale and Delivery, even if we have not expressly objected to them in an individual case and/or effect unreserved delivery with knowledge of them. The same applies to any references to the internet on the part of the purchaser. The applicable version of our Terms of Sale and Delivery shall also apply to all future deliveries and services (hereafter "delivery") for the purchaser.

1.2 Individual agreements with the purchaser, which deviate from these Terms of Sale and Delivery, shall take precedence over these Terms of Sale and Delivery.

1.3 Our offers are subject to change with respect to price, quantity, lead time and delivery options.

1.4 By placing a purchase order, the purchaser confirms with binding effect that he wishes to purchase the goods that have been ordered. We are entitled to accept the contract offer contained in the purchase order within two weeks of receipt. Acceptance may be declared either in writing, which also includes notifications by fax or data transmission, or by delivery of the goods to the purchaser.

1.5 Acceptance shall always be issued with the caveat that there are no legal obstacles (e.g. export control provisions) that would oppose such a delivery.

2. Prices, payment terms

2.1 Agreed prices are ex works (EXW pursuant to Incoterms® 2010, ICC) plus packaging and statutory value-added tax (VAT).

2.2 The purchaser is not entitled to withhold payments or offset them against existing counterclaims unless we have recognized the same or they have been legally established.

2.3 We are entitled to offset the purchaser's payments against the oldest outstanding claim.

2.4 Unless agreed otherwise, the purchaser commits to pay the purchase price within 30 days of the invoice date, regardless of the date on which the goods were received. After this time period, the purchaser is deemed to be in payment default, whereby no reminder shall be issued. As of the due date, we are entitled to charge interest in the amount of 9 % over the respective base rate of the European Central Bank. We also reserve the right to assert further damages.

2.5 In the event that it becomes apparent, after the contract has been concluded, that our payment claim is at risk on account of the purchaser's lack of performance, we shall be entitled to set due all outstanding claims and demand that the purchaser submits payment or security concurrently against delivery. In the event that the purchaser fails to concur with such a request within a reasonable time period, we shall be entitled to demand damage compensation and withdraw from the contract.

2.6 Payments are only deemed received once the amount is fully available in one of the accounts that we have indicated.

3. Special productions, tools

3.1 In the case of goods that have not yet been produced at the time of the purchase order, production-related delivery shortfalls or excess

deliveries equivalent to a maximum of 10% of the ordered quantity shall be acceptable without notifying the purchaser. In the case of special productions and orders for new models, we reserve the right to charge the purchaser for proportionate development costs as well as costs for matrices, tools, engravings, molds and other production equipment; this shall not establish any claims on the part of the purchaser. Costs related to the purchase or manufacture of production equipment, particularly as a result of wear and tear, will be charged to the purchaser.

3.2 Regardless of the ownership situation and/or expenses for the purchase/manufacture, we shall retain irrevocable ownership over the tools that contain our know-how. Agreements regarding a subsequent course of action (purchase, scrapping etc.) may be arranged with the purchaser.

4. Retention of title

4.1 The goods will remain our property until such time as all claims from the business relationships with the purchaser have been satisfied.

4.2 The purchaser is required to ensure the separate storage and identification of goods owned by us (retained goods). The purchaser must immediately notify us if third parties assert a right to the retained goods.

4.3 The purchaser shall process or convert the retained goods on our behalf, without establishing any obligations on our part. In the event the purchaser combines, mixes or processes the retained goods with other goods, or if he converts them together with other goods, we shall retain co-ownership in the resulting new goods at the proportion of the invoice value of the retained goods to the other goods. The new goods shall be considered retained goods within the meaning of these terms.

4.4 The purchaser is authorized, subject to revocation, to sell the retained goods. This authorization only extends to sales within the scope of proper course of business. The retained goods may only be sold as part of normal business operations. Any other disposals, particularly pledges and assignments of the retained goods by way of collateral are not permitted. The purchaser hereby assigns to us all of the claims to which he is entitled with regard to the retained goods from the resale of the same or for other legal reasons; in the case of co-ownership, the assignment shall only apply to the portion of the claim that corresponds with our co-ownership. We hereby accept the assignment. Any resale may only be conducted under the condition that this assignment can be secured.

4.5 The purchaser is hereby revocably authorized to collect the assigned claims as part of normal business operations at any time. He must notify his creditors of the assignment at our request. Similarly, we may also issue such notifications and reserve the right to collect the claims ourselves as soon as the purchaser is in default of payment.

4.6 In the event the purchaser has suspended payments, he shall be required to promptly send us a list of the remaining retained goods, including goods that have been processed, and also forward a schedule of receivables to the third-party creditors. An application to commence insolvency proceedings against the assets of the purchaser shall entitle us to withdraw from the contract and demand the immediate return of retained goods that have not yet been processed.

4.7 In the event the purchaser acts contrary to the contract, we shall be entitled to withdraw from the contract and demand the return of the retained goods, particularly in the case of payment default or breach of an obligation pursuant to 4.2 or 4.4. Enforcement of this retention of title does not, however, necessitate withdrawal from the contract, unless the purchaser is a consumer.

5. Delivery and delay

5.1 Our deliveries shall be made "ex works" (EXW pursuant to Incoterms® 2010, ICC), at the purchaser's cost and risk. Delivery or shipment delays that are caused by the purchaser shall entitle us to the replacement of storage costs that have been incurred.

5.2 We are entitled to postpone and/or cancel our delivery obligation in the case of force majeure events, strikes, lock-outs, lack of correct or timely self-deliveries or other operational disturbances of any kind, or in the case of subsequent difficulties regarding the procurement of raw materials and operating materials, the delivery or transport of the goods.

5.3 In the event a delivery delay exceeds six months in such cases, and we have not exercised our right to cancel our delivery obligation, the purchaser shall be entitled, following the expiry of a suitable notice period and in exclusion of any further claims, to refuse acceptance of the relevant ordered goods, unless we have proposed a suitable replacement solution.

5.4 Lead times and delivery dates are not binding, but will be adhered to as much as possible. Even in instances where a fixed lead time or fixed delivery date has been arranged, the purchaser shall set a reasonable extension of usually four weeks in the case of a delay on our part. Following the unsuccessful expiry of such a period, the purchaser shall be required to declare, within a reasonable time period, whether he wishes to withdraw from the contract on account of the delayed delivery of the goods, demands damage compensation instead of performance, or insists on delivery. Section 9 shall apply to the purchaser's damage compensation claims due to delivery delays.

5.5 Partial deliveries and corresponding billing are permitted unless they cannot be reasonably expected from the purchaser. In the case of an agreed delivery on call, we are entitled to send and invoice deliveries if the deliveries have not been called by the purchaser and shipped within two months of the date of order confirmation.

6. Shipping and packaging

Shipping instructions must always be included with the purchase order. However, the shipping type and route shall always be at our discretion, whereby the most rapid form of transportation cannot be guaranteed. Additional costs for express and courier shipments undertaken at the request of the purchaser will be charged to the latter. Deliveries are made with packaging. Packaging that is provided on loan must be promptly returned to us by the purchaser free of charge after the items have been removed from the packaging.

7. Measurements, weights and delivery weights

The measurements, weights and quantities indicated in the shipping/accompanying documentation shall be authoritative for billing purposes. Complaints regarding the delivery measurements, delivery weights and delivery quantities must be submitted in writing no later than three working days after receipt of the goods at the destination.

8. Condition of goods, guarantees

8.1 In general, only the condition described in our product descriptions, specifications and identifications shall be deemed to describe the condition of the goods. Public statements, promotions or advertisements do not represent information regarding the condition of the goods.

8.2 Guarantees are subject to separate agreements and must be confirmed by us in writing. Any reference to DIN standards or similar standards is only made for the purpose of describing the goods, and does not represent a guarantee.

9. Incoming goods inspection, defects

9.1 Defects do not refer to (i) condition of the goods or damages that occur after the transfer of risk as a result of improper handling, storage or non-compliance with handling provisions; or (ii) condition of the goods or damages due to force majeure events, special external influences that have not been provided for as per the contract, or as a result of using the goods outside of the normal range of use or the range of use provided for in the contract.

9.2 There shall be no claims for defects if the goods are modified by the purchaser or another party, unless the defect is not causally related to the modification.

9.3 The purchaser must inspect the goods upon receipt with regard to identity, quantity, transport damages and visible damages. The purchaser shall be required to promptly report in writing any instances of non-conformance with the existing agreement, no later than ten days after the receipt of the goods at the destination. Hidden defects must be reported immediately after their discovery. The purchaser shall bear the burden of proof for all qualifying conditions, particularly with respect to the defect itself, the time the defect was identified and the timeliness of the claim for defects.

9.4 Defects that only cause a minimal reduction in the value or usability of the goods shall not be considered defects within the meaning of these terms.

9.5 The purchaser is required to grant us an opportunity to verify the reported defect within reasonable time period, otherwise his warranty claims shall be forfeited.

9.6 In the case of verified defects, we shall, at our discretion, repair the defects at no charge or shall deliver a free replacement against the return of the disputed goods. Costs will be charged to the extent that expenses required for supplementary performance, particularly transport, travel, labor and material costs are increased because the delivery item has subsequently been moved to a location that is different from the purchaser's registered office or branch office. Where the removal complies with the intended use, supplementary performance shall be free of charge for the purchaser.

9.7 Warranty claims in excess of those outlined in 9.6 are hereby excluded, unless the repair of the defect has been unsuccessful or we have refused the repair or replacement delivery without justification, or a reasonable time period set by the purchaser for the purpose of repair or replacement delivery expires without success. In such cases, the purchaser may withdraw from the contract or reduce the purchase price.

9.8 In the event the purchaser decides to withdraw from the contract due to a legal or material defect following an unsuccessful supplementary performance, he shall not also be entitled to a damage compensation on account of the defect. If the purchaser decides on damage compensation following an unsuccessful supplementary performance, then the goods shall remain with the purchaser, if that can be reasonably expected from him. Damage compensation shall be limited to the difference between the purchase price and the value of the defective item. This does not apply if we have caused the breach of contract in a malicious manner. For the remainder, our duty to provide damage compensation shall be governed by Section 10 below.

9.9 Recourse claims against us by the purchaser pursuant to sec. 478 BGB (German Civil Code) shall only apply to the extent that the purchaser has not entered into any agreements with his customer, which go above and beyond the statutory defect claims.

9.10 Claims from warranty may no longer be asserted twelve months after delivery. The period of limitation in accordance with sec. 479 para. 2 BGB (German Civil Code) shall remain unaffected.

10. Exclusion of liability, liability restriction

10.1 Except in cases of claims due to injury to body, life or health, or pursuant to the product liability law, we shall only assume liability for intentional and grossly negligent action. The same applies to breaches of duty on the part of our vicarious agents.

10.2 However, damage compensation shall be limited to the foreseeable direct damages that are typical for the contract, insofar as there is no assumption of liability due to injury to health, body or life, or the assumption of a guarantee or a procurement risk. The aforementioned provisions are not associated with any change to the burden of proof to the disadvantage of the purchaser.

10.3 Contractual damage compensation claims shall lapse after a year. Excluded from this are claims for damages resulting from injury caused to one's life, body or health and/or claims for damages based on an intentional or grossly negligent breach of obligation on our part. In such cases, the statutory periods of limitation shall apply.

11. Entry Certificate

11.1 In accordance with sec. 17a UstDV (Turnover Tax Act) with respect to intra-Community deliveries to another EU member state, we must request that the purchaser provide proof of confirmation that the delivered item was received in the rest of the European Community area. The purchaser shall, at our request, submit an Entry Certificate and will be required to complete the attached form sent by us via email. The purchaser shall complete the form truthfully and to the best of his knowledge:

- Date of the receipt of the goods (month/year)
- Location in the EU country where the goods were received
- Date of issue of the acknowledgement of receipt
- Signature

11.2 The relevant completed Entry Certificate must be scanned by the purchaser and returned to us via email.

11.3 Should the purchaser use his own Entry Certificate form instead of our form, it will only be accepted if it complies with the stipulations of sec. 17 a UStDV in its currently valid version.

11.4 Should the purchaser fail to send us the relevant written Entry Certificate in accordance with above within a period of four weeks from the receipt of the request, we reserve the right to issue the corresponding retrospective invoice for the VAT on the invoice amount.

12. Confidentiality, proprietary rights

12.1 The purchaser will treat all technical and business information that has been obtained as part of the order in the strictest confidence, regardless of whether a contract is established; this obligation shall also survive the end or termination of a contract. The above shall not apply if the purchaser provides proof that he is entitled to use trade secrets and confidential information.

12.2 Upon our request, all of our information (including copies, records etc.) and items on loan must be returned to us immediately and in full, or they must be destroyed.

12.3 Drawings, specifications, business documents, samples and models, matrices, molds, tools and other production tools, as well as other documents that have been submitted by us, shall remain our property and may not - insofar as this is not required for the purpose of the business relationship - be forwarded or copied, either in whole or in part, without our written permission, and their contents (or parts thereof) may not be utilized, electronically processed or made accessible to third parties or the public, or otherwise utilized similar to a business purpose. Any editing or processing of the aforementioned items shall be done on our behalf. We retain all copyright and other proprietary rights to the aforementioned items.

13. Violation of third-party rights

Where deliveries are made in accordance with the plans, drawings, models, analytical specifications or other information provided by the purchaser, and this causes the violation of third-party rights, particularly proprietary rights, the purchaser shall indemnify us against such claims at first request.

14. Ethical behavior

14.1 The purchaser shall comply with the laws of the respective applicable jurisdiction(s). The purchaser shall also comply with the UN Global Compact Principles (<https://www.unglobalcompact.org/what-is-gc/mission/principles>) and our Code of Conduct, which can be provided upon request, and shall also impose these principles on its customers, suppliers and/or subcontractors.

14.2 In the event the purchaser culpably breaches these principles, we shall be entitled to withdraw from or terminate the contract with immediate effect, without prejudice to any other claims. Insofar as the correction of such a breach is possible, this right may only be exercised after unsuccessful expiration of a reasonable period for the breach to be remedied.

15. General provisions

15.1 Wilhermsdorf shall be the place of fulfilment with respect to our deliveries and payments by the purchaser.

15.2 The purchaser may only offset any claims against us with a claim of his own insofar as we have expressly acknowledged such claims or they have been established as legal binding. The same shall apply to rights of retention and any other counter-rights.

15.3 We are entitled to assign the claims arising from the business relationship with the purchaser and to pass on the associated information to the assignee, provided that the latter is under obligation to maintain the same degree of confidentiality as we.

15.4 Insofar as a provision of these Terms of Sale and Delivery or another agreement is found to be invalid, it shall not affect the validity of the remaining provisions. The contract partners are required to replace the invalid provision with a provision that most closely corresponds with the economic success of the invalid provision.

15.5 This contractual relationship is exclusively subject to the laws of the Federal Republic of Germany, with the exclusion of the conflict of laws and the UN Convention on Contracts for the International Sale of Goods (CISG).

15.6 Fürth shall be the place of jurisdiction for all legal disputes regarding the contracts which are based on these Terms of Sale and Delivery; at our discretion, the place of jurisdiction may also be the court with jurisdiction over the purchaser's registered office or branch office, or the court for the place of fulfilment.