

## Terms and Conditions of International Sale and Supply

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### I. Scope and general conditions

(1) These Terms and Conditions of International Sale and Supply shall form the sole basis for all quotations and the supply of goods and services of any description by Müller GmbH – at the present time or in the future – to Purchasers as defined in § 2 hereof. Any counteroffers made by Purchasers invoking their own terms and conditions of purchase shall not apply. Variations to these Terms and Conditions or any inconsistent terms and conditions of purchase purported to apply by the Purchaser shall only be incorporated in the Contract if they have been expressly varied in writing by ourselves.

(2) Our Terms and Conditions of International Sale and Supply shall only apply to Purchasers domiciled abroad (in countries other than the Federal Republic of Germany) that are carrying out their professional or business activities when entering into the Contract.

### II. Content and formation of Contract

(1) The data and information contained in product catalogues and price lists shall not be deemed to be legally binding terms of the Contract save to the extent that they are by reference expressly included in the Contract.

(2) Orders shall become legally binding on receipt of our written acknowledgement of order, the contents of which shall alone govern the contractual relationship and the scope of goods and services supplied. Collateral agreements, oral representations by employees or representatives or amendments to acknowledged orders (including alterations to the goods to be supplied) shall not be binding unless made in writing and signed by a duly authorized officer of Müller GmbH.

### III. Object of Contract, modifications

(1) The object of the Contract is specified definitively by the product description set out in our quotation or in our acknowledgement of order, the latter document taking precedence in the event of any inconsistency.

(2) We expressly reserve the right to make design modifications and change materials of construction from those set out in the contractually agreed product description, provided that such changes do not substantially or negatively affect the normal use of the goods for their purpose as specified in the Contract and the Purchaser can be reasonably expected to accept such changes.

### IV. Prices, charges for tooling

(1) Unless otherwise agreed, all prices stated are ex works (EXW) prices exclusive of packaging, shipping, insurance or any taxes or other fiscal charges associated with the supply of the goods. All payments must be made in the currency specified in our quotation or in our acknowledgement of order, the latter document taking precedence in the event of any inconsistency.

(2) In the case of contracts having an agreed delivery period exceeding six weeks, both parties to the Contract shall be entitled to require an amendment to the prices by an amount corresponding to the changes that occur in price-governing factors that cannot be avoided by either of the contracting parties after entering into the Contract, such as decreases or increases in costs due to wage settlements or changes in the price of materials. The price change must be limited to the extent necessary to compensate for the reduction or increase in costs that has occurred. This right to adjust prices shall also be accorded to a contracting party even if an actual delivery period of more than six weeks should result due to delays beyond the control of that party.

(3) The Purchaser is only invoiced for a proportion of the costs of manufacturing templates and other tooling, if at all. These items shall nevertheless remain our property after payment of the appropriate charges.

### V. Payment

(1) Unless otherwise agreed in writing, all payments shall be made within thirty days from the date of invoice net, free of charges to us and without deductions into the account specified on the invoice. Regardless of the means of settlement employed, payment shall not

be deemed to have been made until the full amount invoiced has been irrevocably credited to our account and is completely at our disposal (receipt of payment). All additional costs incurred through the means of payment selected shall be borne by the Purchaser.

(2) In the event that the Purchaser should fail to pay the price due under the Contract within thirty days from the date of invoice as set out in § 1 hereof, we shall be entitled, without prejudice to any other rights or remedies available to us, to charge interest on the sum outstanding at the rate of 8 % per annum above the European Central Bank's prevailing interest rate for main refinancing operations. This shall not exclude our right to furnish proof of actual financial losses at a higher rate.

(3) Counterbalancing, offsetting or the execution of a right of retention shall only be admissible against legal claims by the Purchaser that are acknowledged or undisputed by us or against which no legal recourse is possible, or when a court decision is pending.

### VI. Delivery period, creditworthiness, acceptance of delivery

(1) If a delivery period has been agreed upon, this period shall commence with the date of our acknowledgement of order, but not before the Purchaser has submitted all the documentation to be provided, completely clarified any technical queries to be answered and specified the details of the desired execution.

(2) The delivery period shall be deemed to have been observed if the conditions set out in Clause VII § 2 to effect the passing of risk have been met before the expiry of the delivery period.

(3) The delivery period shall be extended appropriately in the event that we cannot meet our delivery obligations by the due date owing to circumstances beyond our control and not reasonably foreseeable by us when entering into the Contract, including in particular the late or incorrect delivery of materials by our suppliers. We will inform the Purchaser as soon as possible about the beginning and end of any such circumstances causing delayed delivery. Should the cause for the delay continue for more than three months, or if it is clear that it will last longer than three months, both the Purchaser and ourselves shall be entitled to rescind the Contract.

(4) Should circumstances become known to us after our entering into the Contract that justify reasonable doubts as to the Purchaser's solvency or creditworthiness and as a result of which the payments due to us under the Contract entered into would be jeopardized, we shall be entitled to withhold performance of the Contract until such as time as payment under the Contract entered into has been effected or security for the payment has been furnished and the Purchaser has settled any other accounts payable arising from the business relationship and relating to the Contract entered into.

(5) Unless agreed otherwise, the Purchaser shall be obliged to take delivery of the goods within ten days after receipt of our notification that they are ready for collection from our works at D-79618 Rheinfelden, Germany. If this period is exceeded by more than three days, this shall be deemed to be a fundamental breach of contract which shall entitle us, without prejudice to any other rights or remedies, to arrange for the goods to be shipped to the Purchaser and the associated formalities completed, with all costs thus incurred being borne by the Purchaser. Failure to take delivery of the goods shall not affect the obligation of the Purchaser to effect payment of the purchase price.

(6) Should we supply a larger quantity of goods than the quantity agreed, the Purchaser can accept delivery of the excess quantity or can refuse to accept it. If the Purchaser accepts the excess quantity delivered, or part thereof, the Purchaser is obliged to pay for the additional goods pro rata at the appropriate contractual price. If the quantity of goods supplied exceeds the agreed quantity by a maximum of 5 %, the first sentence of this paragraph shall not apply and the Purchaser shall be obliged to accept the quantity supplied and make appropriately adjusted payment.

### VII. Supply, shipping and passing of risk

(1) The point of delivery is specified in the delivery clauses agreed between the Purchaser and ourselves, which shall be set out in accordance with Incoterms 2000. If no special delivery clause has been agreed, the default point of delivery shall always be ex works (EXW) at our site at D-79618 Rheinfelden, Germany, regardless of

which party bears the transportation costs. If the goods are shipped to the Purchaser, this shall be at the sole risk of the Purchaser.

(2) Unless agreed otherwise, the risk in respect of all goods supplied under the Contract shall pass to the Purchaser at such time as the goods are made available to the Purchaser. If the goods are shipped to the Purchaser, the risk shall pass to the Purchaser at the latest at that point in time when the first carrier takes possession of the goods. If the transportation of the goods is delayed due to circumstances for which we are not responsible, the risk shall pass to the Purchaser upon our notification of readiness for dispatch.

(3) If desired by the Purchaser, transportation insurance for all consignments from the passing of risk onwards can be procured on behalf of the Purchaser and at the Purchaser's expense. In the event of a loss we shall assign the insurance claims to the Purchaser contemporaneously with the payments made by the Purchaser under the Contract (including reimbursement of the insurance premium).

#### **VIII. Goods or documentation not conforming with the Contract, complaints, warranty**

(1) On taking delivery of the goods, the Purchaser must notify us promptly in writing, at the latest within one week of taking delivery, of any identifiable nonconformity of the goods and/or documentation with the Contract, giving a precise description of the nature of this lack of conformity. The Purchaser shall furthermore inspect the goods and/or documentation without delay, at the latest within one week of taking delivery of them. If the Purchaser neglects to notify us in writing of the nonconformity within one week of that point in time at which the nonconformity was, or should have been, detected, stating the precise nature of the lack of conformity, the Purchaser shall forfeit the right to claim for nonconformity with the Contract, regardless of the reasons put forward by the Purchaser for not complying with these requirements. The written notification of nonconformity by the Purchaser must have been mailed by the Purchaser within the period of one week after taking delivery of the goods or detecting the nonconformity with the Contract. It is furthermore also necessary that the notification of nonconformity mailed within the time stipulated is also actually received by us.

(2) If, following an allegation of nonconformity by the Purchaser, no lack of conformity of the goods with the Contract can be established, the Purchaser shall be obliged to reimburse us for the costs incurred in inspecting the goods.

(3) In the event of goods or documentation not conforming with the Contract, we shall be entitled to remedy this even after the agreed delivery period by repair or replacement, at our option. Unless otherwise governed by the Contract or the circumstances on formation of the Contract – in particular the prior negotiations – it shall not be deemed to constitute nonconformity with the Contract solely because the goods do not comply with the current technical and other standards in force in the country of destination (Purchaser's domicile) or because the goods supplied are not suitable for purposes for which comparable goods are commonly used. Any minor deviations in the color of the goods normally encountered in this industrial sector shall also not constitute a lack of conformity with the Contract.

(4) Should the lack of conformity of the goods or documentation with the Contract not have been remedied within a reasonable period of time by repair or replacement, the Purchaser shall be entitled to claim for an appropriate reduction in the purchase price corresponding to the reduced value of the goods.

(5) In the event of the goods or documentation not conforming with the Contract, the Purchaser shall not have the right to have the

Contract rescinded instead of having an appropriate reduction made in the purchase price, unless the nonconformity represents a fundamental breach of contract. It shall not be deemed to be a fundamental breach of contract if we remedy the lack of conformity with the Contract within a reasonable period of time stipulated by the Purchaser, which must amount to at least six weeks.

(6) The right of the Purchaser to claims under the warranty shall expire twelve months after the Purchaser has taken delivery of the goods supplied.

#### **X. Liability, damages**

(1) We shall not be liable to the Purchaser for any loss or damage, in particular for consequential economic losses caused by late delivery or nonconformity of the goods or documentation with the Contract, unless such losses are due at least to gross negligence or a willful act or omission.

(2) Our statutory product liability under applicable legislation that cannot be modified by the Contract shall not be affected by the foregoing paragraph.

#### **X. Retention of title**

(1) The goods supplied shall remain our property until payment of the purchase price in full as set out in Clause V § 1 to the extent that such retention of title is permitted under the governing law.

(2) The Purchaser shall be obliged to take all necessary measures to maintain this retention of title or a security interest with an equivalent function that is recognized in the country of destination (domicile of the Purchaser). Any violation of this obligation by the Purchaser shall be deemed to constitute a fundamental breach of contract.

(3) The foregoing stipulations on retention of title shall not affect the provisions on passing of risk as set out in Clause VII § 2.

#### **XI. Place of jurisdiction, governing law**

(1) Any dispute or difference in relation to or in connection with the Contract shall be subject to the exclusive jurisdiction of the courts at our domicile at D-79618 Rheinfelden, Germany. Notwithstanding the foregoing sentence we reserve the right, at our discretion, to institute legal actions in the courts at the Purchaser's domicile.

(2) The Contract shall be governed by the United Nations Convention on Contracts for the International Sale of Goods (CISG) of April 11, 1980. Questions of law not covered by this convention or that cannot be resolved on the basis of its fundamental principles shall be governed by Swiss material law.

#### **XII. Severability, good faith**

(1) If any individual provision of these Terms and Conditions of International Sale and Supply, or any stipulation of a Contract entered into on the basis of these Terms and Conditions of International Sale and Supply, is held by any competent authority to be invalid or unenforceable in whole or in part, the validity of the other provisions or stipulations and the remainder of the provision or stipulation in question shall not be affected thereby. In the event of a provision or stipulation being deemed invalid or unenforceable in whole or in part, the contracting parties shall act in good faith to replace the said provision or stipulation by one that is valid or enforceable and to the extent permitted serves the same commercial purpose intended by the invalid or unenforceable provision or stipulation.

(2) The parties to the Contract shall be under a mutual obligation to take all reasonable measures necessary to achieve the objectives set out in the Contract, and to refrain from all actions that would impair the performance and maintenance of the Contract.