

General Conditions of Purchase of the MöllerWerke GmbH

Status 1.1.2007

1. Scope of applicability; general; consumers

The legal relationships between the supplier and us are defined exclusively by the following General Conditions of Purchase. Acceptance of deviating conditions must be made in writing. These conditions also apply to all future business relationships, even if they are not explicitly agreed again or if we do not refer to them again explicitly. They also apply if we have not, in the individual case, contradicted deviating conditions of the supplier, which we herewith explicitly reject. Our purchasing conditions also apply if we accept the delivery without reservation, although aware of conflicting or deviating conditions of the supplier. These General Conditions of Purchase do not apply with respect to consumers (§ 13 German Civil Code).

2. Agreements for deliveries and performances; offers; orders

2.1 Inquiries/offers; checking obligations; orders; inquiry documents; form

All documents submitted for compiling offers and for executing deliveries and performances must be treated strictly confidentially by the supplier. Utilisation for purposes other than compiling of offers for us, as well as forwarding to third parties without our explicit consent, are forbidden. On first request the supplier must return them to us complete together with the offer, and any copies made must be destroyed. The supplier is obliged to check the feasibility of the desired results specified in our order and to inform us immediately in writing if the expected results communicated to him are not or only partly realisable. Delivery agreements and delivery calls as well as their modifications and supplements must be made in writing (including electronic transmission).

2.2 Documents to be included with the delivery; information obligations

The supplier is obliged to submit to us with delivery or performance all documents concerning the deliveries and performances (e.g. guarantee certificates, origin and test certificates, instructions for use, mounting instructions, material and product data sheets), these become our property without additional payment. The supplier must inform us regarding the required government authority approvals and reporting obligations for importing, operating and disposing of the delivery objects.

2.3 Prices; value added tax; prices for replacement parts

The prices specified in the order are binding and include, if no other agreement has been made, all performances and subsidiary performances of the supplier as well as the costs for packing and delivery and the statutory value added tax. Deliveries of replacement parts are charged with the serial price.

2.4 Cancellation of orders; delivery calls becoming binding

Orders and delivery calls are binding only if made by our purchasing department. If the supplier does not accept an order within 2 weeks, we are entitled to cancel the order. Dispatch of the goods constitutes acceptance of the order. Delivery schedules become binding if the supplier does not contradict them within two weeks after receiving them.

2.5 Order modification, reduction and postponement

We are entitled, within reasonable limits for the supplier, to demand constructional and design modifications of the delivery object. The consequences, in particular with regard to increased or decreased cost, and with regard to the delivery dates, must be adjusted by negotiation. In this respect the supplier must inform us in writing immediately after receiving the modification request, not later than after 2 weeks, if he cannot fulfil the delivery deadlines or if increased costs arise.

In the case of contract volume decrease or scheduled date shift by our customers, we are entitled to reduce contract volume with respect to the supplier accordingly, or to shift the scheduled delivery dates. The supplier is not entitled to make alternative or compensation claims for this.

2.6 Reservation of rights; property ('Eigentum')

We reserve all rights, in particular property, proprietary, inventor and utilisation rights, for all information, drawings, samples, documents and know-how submitted to the supplier. Without our permission the supplier must not use any knowledge obtained from us for his own purposes or for third parties, except for fulfilling our orders.

Objects in possession ('Besitz') of the supplier that are our property ('Eigentum') must be designated as such.

3. Delivery and performance dates and deadlines; costs and invoices

3.1 Scheduled dates and deadlines; notification; delays

Agreed scheduled dates and periods are binding. Early deliveries and performances are permitted only by special agreement. The arrival of the goods on our premises is decisive for compliance with the scheduled delivery date or period. The supplier is responsible for delays according to the statutory regulations. He must notify us immediately on becoming aware that the agreed delivery date cannot be fulfilled even if it is ascribed to force majeure. In agreement with us, the supplier will take all reasonable steps to keep the delay as short as possible. The supplier can claim causes of the delay for which he is not responsible only if he has fulfilled the obligation of notification.

3.2 Delivery and dispatch; costs and expenses; risk responsibility; Incoterms

Delivery and dispatch must be made free from all expenses at the cost and risk of the supplier, to the delivery point specified by us; in as far as no other agreements have been made, the delivery condition Delivered Duty Paid (DDP) according to the Incoterms of the International Chamber of Commerce in Paris applies.

3.3 Part deliveries, excess and short delivery

The supplier is entitled to make part, excess or short deliveries only with our

explicit consent in writing. In the case of part deliveries, the remaining quantity still to be delivered must be stated on the delivery note.

4. Dispatch and packing, designation

Unless otherwise agreed, the goods to be delivered must be packed properly in customary commercial manner. We are entitled to demand a special packing and a special designation or code marking. Settlement of any additional costs which this entails will be negotiated between us and the supplier. The supplier is liable for damage resulting from inadequate packing, in as far as the damage cannot be traced to an incorrect specification by us and the consequences of which were not recognisable for the supplier. The supplier is obliged to accept returned packing material. The costs and risk for returning reusable packing material (e.g. load carriers) shall be borne by the supplier; he is responsible for its cleanliness.

5. Work performance; time documentation

Invoicing of performed work is accepted only on the basis of working time records signed by us or by persons commissioned by us.

6. Invoices; payments

6.1 Invoices

Invoices must be sent to us in triplicate. Each invoice must refer to only one delivery note and must specify the supplier's number, the number and date of the order, in the case of trans-frontier deliveries in the European Union the VAT identification number ('Umsatzsteueridentifikationsnummer') - in Germany also the VAT number ('Umsatzsteuernummer') - of the supplier, the unloading place, the number and date of the delivery note and the quantity of the invoiced performances, also work hours. Incomplete invoices count as not having been sent. The same applies analogously to delivery notes and dispatch notes.

6.2 Payments

Payments will be made after receiving the goods in accordance with the contract and arrival of the invoice under the term of the contract No. 6.1 in proper form capable of being checked, by the 25th day of the next month after invoice arrival with 3% discount or, according to our choice, after 60 days without deduction. For accepted early deliveries, the date when payment of the selling price becomes due is determined according to the agreed delivery date. Payment will be made according to our choice by bank draft or by cheque. The supplier declares himself as willing, in response to our request, to participate in a credit note procedure. In the case of imperfect delivery we are entitled to withhold value-proportional payment until proper fulfilment. By making payment we do not waive rights. Offsetting is permissible only according to our liquidation condition.

7. Condition; defect claims ('Mängelansprüche')

The supplier is responsible according to the statutory regulations for ensuring that his deliveries and performances are free from defects ('Mängeln'), in as far as nothing contrary is stipulated below.

7.1 Condition of the object of delivery and performance; modifications

The supplier must observe for his deliveries and performances the state of technology, the applicable safety regulations and he must comply with the agreed specifications. In particular, the deliveries and performances must comply with the applicable accident prevention regulations and the safety recommendations of the professional associations as well as they must be suitable for our utilisation purpose that is known to the supplier. Where reference is made to standards, these standards apply as minimum requirements, like the statutory regulations. Deliveries and performances must be carried out in keeping with environmental compatibility and possibilities for recycling. The object of delivery must be rendered free from third party rights. In particular, its utilisation must not infringe any protection or proprietary rights of third parties. This does not apply if the infringement is traceable to our specification and the infringement was not obviously evident to the supplier. The supplier must inform us in good time of the use of published and unpublished own and by him licensed protection rights and applications for protection rights with respect to the object of delivery or performance, and he must grant us the required rights for utilisation of the object of delivery without separate payment. The supplier must provide us with documentary evidence of his rights, in particular his licenses and authorisation to grant sub-licenses. Modifications of the delivery object require our prior consent in writing, which we will not refuse unreasonably. The supplier must notify us of intended modifications in good time.

7.2 Dispatch checks; goods arrival checks; notice of defect ('Mängelrüge')

Before delivery to us the supplier must carry out suitable goods dispatch checks in order to ensure freedom from defects ('Mängeln'). We will examine deliveries on arrival with regard to recognisable damage, in particular transport damage, and with regard to identity and quantity deviations; we are not obliged to make goods arrival checks in other respects. We will notify the supplier of defects ('Mängeln') in writing without delay, as soon as they have been determined under the circumstances of proper handling of business transactions, not later than in the course of four weeks after delivery (inspection period). To this extent the supplier waives complaint of delayed notice of defect ('Mängelrüge'). When parts of the delivery have been found to be defective, the supplier is also obliged to make compensation for the expenditure for a goods arrival check of the entire delivery and subsequent delivery ('Ersatzlieferung') exceeding the scope of the normal goods arrival check. In response to our complaint the supplier must revise his goods dispatch checks and adapt or intensify them accordingly.

7.3 Suspected defects ('Mängel'), return of defective deliveries

If a defect ('Mangel') of the purchased object becomes apparent within 6 months after transfer of risk, it is assumed subject to successful contradiction that this defect already existed at the time of transfer of risk, unless this presumption is contrary to the nature of the object or defect. 14 days after sending off the defect claim we are entitled to return the deliveries to the address of the supplier at his expense and risk, if by then we have not been notified in writing of any other return address and the delivery has not been collected for take back.

7.4 Own action for defect remedy

If the supplier is in default ('Verzug') for subsequent remedying ('Nacherfüllung') of a defect, if he contests the existence of a defect, and also in the case of special urgency to prevent or mitigate imminent greater damage or danger, we are entitled to take remedial action ourselves or to commission third parties therewith, if the supplier does not take remedial action immediately, within 24 hours after notification of such a case. The supplier must bear the resulting costs, unless he proves that he is not liable.

7.5 Time limitations and deadlines; recourse rights

The time limit for defect claims is 36 months as from the date of delivery by us to our customers, but not exceeding 42 months as from delivery by the supplier or, if an acceptance test accomplished by us is necessary, as from that acceptance test. Our justified defect claim pauses the time limitation; the pause terminates two months after either subsequent fulfilment ('Nacherfüllung') has been made or after the supplier has finally rejected remedial measures or other warranty claims with respect to us in writing. A time limitation of 5 years applies for construction contracts, even if they have been based on VOB/B (contracting rules for award of public works contracts, part B). For parts that cannot remain in operation during the investigation of a defect and/or for remedying the defect ('Mangel'), a pending time limitation is prolonged by the time of the interruption of operation. Our rights under §§ 478, 479 Civil Code (BGB) remain unaffected.

8. Acceptance of work services and work delivery services

Work services and delivery objects that do not reasonably fall under § 91 Civil Code (BGB) require a formal acceptance test. Corresponding regulations apply for special operating facilities and production machines. Acceptance without reservation is prerequisite for the start of the warranty claim time limitations.

9. Force majeure

Strikes, commotion, government authority action that is not the responsibility of one contract partner, and other unforeseeable and inevitable events release the supplier and us for the duration of their influence from the performance obligations. The contract partners must inform each other immediately regarding the appearance and disappearance of such disturbances. If disturbances persist for a period longer than one month, we are entitled to cancel the contract and demand return of payments already made. If part deliveries have already been made and we are interested to retain them, the right of contract cancellation is restricted to the part services that have not yet been rendered. The supplier is obliged to take all reasonable steps to make best possible alternative rendering of the deliveries and performances feasible, in particular by granting emergency production rights.

10. Quality assurance; initial sample testing; documentation; filing periods; Suppliers Handbook

Unless otherwise agreed, the supplier must continuously apply an adequate quality management system, e.g. corresponding to DIN EN ISO 9000 ff., VDA document 6.1, ISO TS 16949, and provide us with documentary evidence thereof on demand. We reserve the right to inspect the quality management system on site and to audit the supplier. If first sample testing has been agreed, serial production may be commenced only after we have released the samples. Independently thereof the supplier is obliged to continually check the quality of the delivery objects, thereby comprehensively making use of his current knowledge and experience. He must inform us of the utilised methods, testing facilities and applied standards. In his quality control records the supplier must specify for all products, when, in what manner and by whom the faultless production of the deliveries was ensured. This documentary evidence must be filed for 15 years and submitted to us when required. Unless otherwise agreed, our Suppliers' Handbook applies to all deliveries. If we do not refer to this handbook our Quality Guidelines QSR 1 and QSR 2 apply to all deliveries, even when explicit reference is not made to them in each individual case.

11. Care; liability; insurance

11.1 Care and liability measure

The supplier must exercise the care of a proper businessman. The statutory conditions of liability apply, unless otherwise determined below.

11.2. Product risks, information obligations

The supplier must inform us immediately on becoming aware of risks concerning the delivery object or if corresponding claims are made against him. The supplier must oblige sub-suppliers to the same extent within the scope of the statutory possibilities.

11.3 Product liability insurance and automotive recall costs insurance

The supplier pledges to maintain a product liability insurance – and for delivery of automotive components also a recall costs insurance policy – with adequate coverage, and to provide us with documentary evidence of this on demand.

11.4 Product liability

If the supplier is responsible for a defect ('Fehler') he has to indemnify us from our product liability, unless the defect ('Fehler') is our default.

12. Notice of termination and withdrawal; proportional payment

If notice of termination is issued for a contract for services, the supplier can claim payment only for the services rendered according to the agreement up to that time. This also applies if we terminate the contract for important reasons or withdraw from the contract. Further claims are ruled out. If the supplier discontinues his services, or court proceedings for insolvency against his assets are applied for and not rejected within two weeks as unjustified, we are entitled according to our option to withdraw from the contract partly or completely, or to terminate the contract with immediate effect.

13. Award of sub-contracts; obligation of sub-suppliers; assistance for production conversion/relocation

Award of sub-contracts to third parties, in as far as the deliveries and performances concern components or production facilities, is forbidden without our prior consent in writing and entitles us to withdraw from the contract partly or completely or to claim compensation for damages. In every case corresponding permission is required in the case of deliveries of automotive components and when documentation obligations with respect to our customers and known to the supplier exist. Sub-suppliers must be obliged according to these conditions, in particular with regard to confidential treatment and for observing quality assurance. The supplier remains responsible to us even when award of sub-contracts has been permitted by us. In the case of production conversion and/or relocation, the supplier will provide us with reasonable assistance to ensure smooth conversion and/or relocation and to dependably avoid production stoppages on our premises and on the premises of our customers.

14. Provision of materials or production facilities; insurance; combination; processing; mixing

Materials that we have provided the contract partner with for making deliveries and rendering services remain our property ('Eigentum'). All combination, processing and mixing of the materials is made for us, with the consequence that we acquire shared property ('Miteigentum') rights for the new object in proportion to the value of our material with respect to the value of the other materials at the time of combination, processing or mixing. When material is provided by us or procured from third parties, the supplier is obliged to check the provided or procured material before utilisation, to ascertain its suitability and freedom from defects ('Mängeln') provided production facilities must be checked with regard to suitability for utilisation and safety. If we provide the supplier with materials or production facilities that we procure by agreement from a third party, the supplier must make warranty claims – which we will assign in this respect – primarily against the third party. Provided production facilities and materials must be used exclusively for the production on the basis of our order and must not be made accessible to third parties without our prior written consent. They must be returned to us without separate demand after completion of the order. The supplier must treat the materials and production facilities which we have provided with care, and he must at his own expense provide new value insurance coverage against fire, water and storm damage as well as burglary and theft. He already now cedes to us all compensation claims under this insurance policy. We herewith accept the cession. The supplier is obliged to carry out at his own expense any necessary servicing, maintenance and inspection tasks for the provided production facilities.

15. Transfer of property rights ('Eigentumsübergang')

Unless a different agreement has been made explicitly, the property rights ('Eigentum') for the delivered objects are transferred at the latest when handing over the objects to us. If the delivery is made with reservation of property rights ('Eigentumsvorbehalt'), or if we have made payment already before delivery, the supplier and we already now agree that the property rights ('Eigentum') are transferred to us in proportion to the payment made, already before delivery. In this respect the transfer is replaced by the keeping of the objects in custody for us by the supplier.

If the supplier treats goods, that are our title, we are producer of the manufactured product and therefore acquire the title of it.

16. Rights of retention and lien

We are entitled to fend off any rights of retention and lien of the supplier and his sub-suppliers by providing collateral sureties.

17. Cession of claims; prohibition of offsetting

Without our prior consent in writing, which we will not refuse unreasonably, the supplier is not entitled to cede his claims against us or to collect payment through third parties. Consent counts as given in the case of agreement of an extended reservation of property rights ('verlängerter Eigentumsvorbehalt'). The ruling of § 354a HGB (Commercial Code) remains unaffected by this. We do not accept offsetting prohibitions.

18. Confidentiality/business secrets; utilisation; novelty-damaging behaviour

The supplier commits confidential treatment of all non self-evident business and technical information becoming known to him through his business relationship. Drawings, models, templates, samples and other such objects must not be passed to unauthorised third parties or made accessible in any other way; they may be used by the supplier exclusively for rendering the deliveries and services to us. The supplier must refrain from every novelty-damaging behaviour and all behaviour that could impair our application for proprietary rights.

19. Behaviour on our premises; photography and film recording

Our business premises may be entered only for carrying out commissioned services in the areas necessary for this purpose. Employees and other persons commissioned by the supplier must comply with our factory regulations and instructions on our business premises. Visitor identity cards must be worn clearly visible throughout the visit. Photography and film recording as well as other kinds of picture- and audiorecordings are permitted only with our prior consent in writing.

20. Place of fulfilment; place of jurisdiction (legal venue)

The place of fulfilment and exclusive place of jurisdiction is the legal venue (court) of our registered head office, unless legally compulsory stipulated elsewhere in mandatory form. However, we are also entitled to start legal proceedings against the supplier, according to our choice, at his general place of jurisdiction or via the court that is competent for his headquarters.

21. Applicable law

Exclusively the law of the Federal Republic of Germany is applicable. Application of the Convention of Contracts for the International Sale of Goods (CISG) of the United Nations dated 11.04.1980 is ruled out.

22. Severability clause

If individual conditions of these general conditions of purchase are ineffective, this does not affect the effectiveness of the other conditions; instead the statutory regulations apply, including the principles of supplementary contract interpretation ('ergänzende Vertragsauslegung').