

## **1. Definitions**

"Deliveries" shall mean deliveries of goods and equipment.

"Deliveries and Performances" shall mean all kinds of delivery of goods and equipment as well as services and other performances.

"Equipment" shall mean machines, tooling, installation and other production equipment.

"Goods" means all production materials, parts and components (including any instalment of the goods, semi-finished goods or any part or portion of them) as well as any rights as described in the Purchase Order.

"Incoterms" means Incoterms 2010 of the International Chamber of Commerce in Paris, France.

"Möller" means the entity placing the Order.

"Order" means Moller's Purchase Order for Deliveries and Performances asking for delivery of a specified amount at a specified delivery time.

"Performances" shall mean services, work, contract processing and performances in the widest sense.

"Specifications" means the description/specifications of the Goods (and related Services (if any) as set out in or attached to the Order.

"Supplier" means the entity accepting the Order.

"Terms" means the International General Terms and Conditions of Purchase in its most recent form.

## **2. Scope of applicability; general**

The legal relationship between the Supplier and Möller are defined exclusively by these Terms.

Within this context, these Terms shall apply to all Deliveries and Performances to MöllerWerke GmbH (D- Bielefeld);

However, if both the Supplier and Möller have their registered office within the Federal Republic of Germany, these Terms shall not apply, but instead the General Purchasing Conditions AD. 033 / AD 034 shall apply in its most recent form.

Acceptance of deviating conditions must be made in writing. These Terms also apply to all future business relationships, even if they are not explicitly agreed again or if Möller does not refer to them again explicitly. They also apply if Möller has not, in the individual case, contradicted deviating conditions of the Supplier, which are herewith explicitly rejected. These Terms also apply if Möller accepts the Deliveries and Performances without reservation, although aware of conflicting or deviating conditions of the Supplier, regardless if Möller has explicitly objected to such terms.

Further documents are also applicable. In case of discrepancies and gaps, these Terms shall prevail over these documents.

## **3. Agreements for Deliveries and Performances; offers; Orders**

### **3.1 Inquiries/offers; checking obligations; Orders; inquiry documents; form**

All documents being submitted for compiling offers and for executing Deliveries and Performances must be treated strictly confidential by the Supplier. The Supplier is obliged to check the feasibility of the desired results specified in Möller's Order and to inform Möller immediately in writing if the expected results communicated to him are not or only partly realisable or cannot be realised for the purpose made known to him. Delivery agreements and delivery calls as well as their modifications and supplements must be made in writing. Transmissions via electronic means shall be sufficient within this context.

### **3.2 Documents to be included with the Delivery; information obligations**

The Supplier is obliged to submit to Möller with delivery or performance all documents concerning the Deliveries and Performances (e.g. guarantee certificates, origin and test certificates, instructions for use, mounting instructions, materials and product data sheets), these become property of Möller without additional payment. The Supplier must inform Möller regarding the required government authority approvals and reporting obligations for importing, operating and disposing of the Equipment and Goods.

### **3.3 Prices; value added tax; prices for replacement parts; After – Sales Period**

Prices specified in the Order are binding and shall include, if no deviating agreement has been made, any and all Performances of the Supplier as well as the costs for packing, delivery and the statutory value added tax, including any accessory expenses, in particular customs duties, taxes and charges regarding export and import.

Replacement parts requirements and associated documentation must be fulfilled after the end of serial production for a period of at least fifteen (15) years.

### **3.4 Cancellation of Orders; delivery calls becoming binding**

Orders and Delivery calls are only binding if they have been issued and/ or approved by the Purchasing department of Möller. This shall conclude all the terms of the Agreement and brings it into effect, even if the Supplier's offers and further connected documents should deviate in any way. If the Supplier does not accept an Order within two (2) weeks, Möller is entitled to cancel the Order. Dispatch of the Goods or Equipment constitutes acceptance of the Order and its Terms. Delivery schedules become binding if the Supplier does not contradict them within five (5) working days after having received them. Supplier's order confirmations are ineffective in this respect, without the necessity of an objection hereto by Möller.

### **3.5 Order modification, reduction and postponement**

Möller is entitled to demand constructional and design modifications of the Equipment, Goods and Performances within a reasonable scope for the Supplier. The consequences, in particular with regard to increased or decreased costs, and with regard to the delivery dates, must be adjusted by negotiation. In this respect,

the Supplier must inform Möller in writing immediately after receiving such a modification request, but no later than two (2) weeks starting from the receipt of the request, if he cannot fulfil the delivery dates or if increased costs arise.

In the case volumes decrease or scheduled dates are shifted by Möller's customers, Möller is entitled to reduce the Supplier's corresponding contract volume accordingly, or to shift the scheduled delivery dates. The Supplier is not entitled to claim compensation.

### **3.6 Passing of Title and Risk, Incoterms**

Risk of loss or damage to the Goods or the Equipment shall pass in accordance with the agreed delivery term (Incoterms) in as far as no other agreements have been made. The Supplier shall deliver Delivered Duty Paid (DDP) Incoterms with named place, unless otherwise agreed.

Title shall pass upon Delivery unless payment for the Goods is made prior to Delivery, in which case it shall pass to Möller once payment has been made. This shall not be altered by agreements about partly payments. The ownership shall pass to Möller pro rata according to the payment, also if the Goods and Equipment have not been handed over physically at that point in time. In this case the Supplier shall store the Goods and Equipment for Möller.

## **4. Delivery and Performance dates and deadlines; costs and invoices**

### **4.1 Scheduled dates and deadlines; notification; delays**

Deliveries and Performances shall be delivered on the date(s) and to the place specified in the Order. Time shall be of the essence. Early Deliveries and Performances are permitted only by special agreement. The arrival of the Goods and / or Equipment on the premises of Möller is decisive for compliance with the scheduled delivery date or period. The Supplier is responsible for delays. He must notify Möller immediately on becoming aware that the agreed delivery date cannot or might not be fulfilled even if it is ascribed to an event of force majeure. In agreement with Möller, 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.

### **4.2 Delivery and dispatch; costs and expenses; risk responsibility;**

Delivery and dispatch must be made free from all expenses at the cost and risk of the Supplier, to the delivery point specified by Möller.

### **4.3 Partial Deliveries, excess and short Delivery**

The Supplier is entitled to make part, excess or short Deliveries only after prior written consent by Möller. In the case of part deliveries, the delivery of the remaining quantity has to be delivered nevertheless and this must be stated on the delivery note. The Supplier has to reimburse Möller for any additional costs arising out of partial, excess or short Deliveries.

## **5. Dispatch and packing, designation**

Unless otherwise agreed, the Goods and / or Equipment to be delivered must be packed properly in customary commercial manner and suitable for transport. Möller is entitled to demand a special packing and a special designation or code marking. Settlement of any connected additional costs will be negotiated between Möller and the Supplier. The Supplier is liable for damage resulting from inadequate packing, unless the damage cannot be proved to be the result of an incorrect Specification by Möller 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.

## **6. Customs and Import Regulations**

The Supplier warrants and represents compliance with customs and import regulations applying to Delivery of Goods and / or Equipment at the agreed place of delivery. Any Export licenses or authorizations necessary for the export of Goods and Equipment shall be the responsibility of the Supplier unless otherwise agreed in writing by the Parties.

The Supplier guarantees that he will obtain all necessary licences, authorizations, certificates of origin, of movement and/ or preference, other certificates and other documents necessary for the free export, transit or import of the Goods as well as receiving tax relief in the country of delivery. Möller has to be informed immediately about any change of origin of the Goods.

## **7. Performance; time documentation**

Invoicing of Performances is only accepted if being based upon working time records signed by Möller or by persons commissioned by Möller. Performances 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.

## **8. Invoices; payments**

### **8.1 Invoices**

Invoices must be sent to Möller in accordance with the formal requirements of the receiving production plant. Generally, an 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 and Performances within the European Union the VAT identification number of the Supplier, the unloading place, the number and date of the delivery note and the quantity of the invoiced Deliveries and Performances, also work hours. Incomplete invoices are deemed as not having been sent. The same applies analogously to incomplete delivery notes and incomplete dispatch notes.

### **8.2 Payments**

Payments will be made after receiving the Deliveries and Performances in accordance with the contract and arrival of the invoice subject to the Terms of 8.1

in proper form capable of being checked, by the 25th day of the next month after invoice arrival with 3% discount or, according to Möller's choice, after 60 days without deduction. For accepted early Deliveries and Performances, the date when payment of the selling price becomes due is determined according to the originally agreed delivery date. Payment may be made according to Möller's choice by wire transfer or bank draft. The Supplier declares himself as willing, in response to Möller's request, to participate in a credit note procedure. In the case of incorrect Deliveries Möller is entitled to withhold value-proportional payment until proper fulfillment. Möller does not waive any rights by payment of its obligations.

### **8.3 Set off Rights**

Nothing in this section and / or these Terms shall preclude Möller's right to set off against the price or reduce the price or to suspend performance of its obligation and/or to raise defences or counterclaims. Without any notice to the Supplier being necessary, Möller is entitled to suspend its obligations, so long as there is a reasonable concern that the Supplier might not wholly or partly perform in accordance with the duties under these Terms or any other subsequent Agreement.

## **9. Condition; defect claims**

### **9.1 Conformity of Goods**

The Supplier represents and warrants that his Deliveries and Performances are in compliance with the stipulations of the Order, including but not limited to quantity, quality and Specifications as far as nothing contrary has been agreed beforehand. The Deliveries and Performances of the Supplier have to meet the required local standard of Möller. All stipulations about quality and fitness for its purpose shall be essential requirements.

### **9.2 Condition of Delivery and Performance; modifications**

The Supplier represents and warrants that Deliveries and Performances have to observe the state of technology, the applicable local safety regulations and must comply with the agreed Specifications. In particular, the Deliveries and Performances must comply with the applicable local accident prevention regulations and the safety recommendations of professional associations as well as they must be suitable for Möller's utilisation purpose that is known to the Supplier. Where reference is made to standards, these standards apply as minimum requirements like statutory regulations. Deliveries and Performances must be carried out by having due regard to environmental compatibility and possibilities for recycling. The Deliveries and Performances must be rendered free from third party rights. In particular, its utilisation must not infringe any protection or proprietary rights of third parties. If the infringement can be proven to be based upon the Specifications and this was not obviously evident to the Supplier, the Supplier shall not be liable. The Supplier must inform Möller immediately of the use of published and unpublished, owned and protection rights that the Supplier has or will be licensed and possible applications for protection rights with respect to the Deliveries and Performance. The Supplier must grant Möller the required rights and / or license for utilisation of the Deliveries and Performances without separate payment. The Supplier must provide Möller with documentary evidence of his rights, in particular his licenses and authorisation to grant sub-licenses. The Supplier must notify Möller of any intended modifications within a reasonable timeframe. Modifications of Equipment, Goods and Performances require prior written consent of Möller, which Möller will not refuse unreasonably.

### **9.3 Dispatch checks; goods arrival checks; notice of defect**

Before the delivery of Goods, Equipment and Performances to Möller, the Supplier must carry out suitable dispatch checks in order to ensure conformance with the Order with regard to quantity, quality and Specifications, particularly type and packaging as well as a possible use within a Just in Sequence Delivery.

Möller will examine Deliveries only when they are being processed or used, besides very obvious non-conformities such as transport damage, identity and quantity deviations being apparent upon arrival of the Delivery. Möller is not obliged to make arrival checks of the Delivery.

However, this shall be no later than four (4) weeks after the Delivery has arrived at the agreed place.

When parts of the Delivery have been found to be defective, the Supplier is also obliged to compensate the expenditure for a goods arrival check of the entire Delivery and subsequent Deliveries, exceeding the scope of the normal goods arrival check. In response to complaint by Möller the Supplier must revise his goods dispatch checks and adapt or intensify them accordingly.

Möller is entitled to carry out a 100 % check of incoming Suppliers' Deliveries in case of prior defective Deliveries have been found. The Supplier has to reimburse Möller for any costs arising out of this inspection.

### **9.4 Suspected defects**

If a defect of the Goods and / or Equipment becomes apparent within six (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 Goods and / or Equipment or defect.

### **9.5 Own action for defect remedy**

If the Supplier is in default for subsequent remedying 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, Möller is entitled to initiate remedial action or to commission third parties therewith, if the Supplier does not take remedial action immediately, within twenty-four (24) hours after notification of such a case. The Supplier must bear the resulting costs, unless he proves that he is not liable.

### **9.6 Limitation Period and deadlines; recourse rights**

The limitation Period for defect claims is thirty-six (36) months for Deliveries of Goods as from the date of delivery by Möller to Möllers' customers, but not exceeding sixty (60) months as from delivery by the Supplier or, if there is the necessity for an acceptance test by Möller, as from that acceptance test. A justified defect claim of Möller disrupt the time limitation; this disruption terminates two (2) months after either subsequent fulfilment has been made or after the Supplier has finally rejected remedial measures or other warranty claims with respect to Möller in writing. The limitation periods for defect claims for Equipment and Performances is five (5) years beginning with the date of the formal acceptance. For Goods that cannot remain in operation during the investigation of a defect and/or for remedying the defect, a pending time limitation is prolonged by the time of the interruption of operation.

## **10. Force majeure**

Strikes, commotion, government authority action that is not the responsibility of a Party and other unforeseeable and inevitable events release the Supplier and Möller for the duration of their influence from the performance obligations. The partners must inform each other immediately regarding the appearance and disappearance of such disturbances. If disturbances persist for a period longer than one (1) month, Möller is entitled to cancel the Order and demand return of payments already made. If part Deliveries have already been made and Möller is interested to retain them, the right of cancellation is restricted to these parts of performance 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.

## **11. Quality assurance; initial sample testing; documentation; filing periods; Suppliers Manual**

Unless otherwise agreed, the Supplier must continuously apply an adequate quality management system, such as ISO/TS 16949 "Quality Management systems, particular requirements for the application of ISO 9001:2000 for automotive production and relevant service parts organizations" and provide Möller with documentary evidence thereof on demand. Möller reserves 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 Möller has released the samples. Independently thereof the Supplier is obliged to continually check the quality of the Goods, thereby comprehensively making use of his current knowledge and experience. He must inform Möller of the utilised methods, testing facilities and applied standards. In his quality control records the Supplier must store Specifications for all products containing when, in what manner and by whom a faultless production of the Deliveries was ensured. This documentary evidence must be filed for at least fifteen (15) years beginning from the date of the end of Serial Production and submitted to Möller when required. Unless otherwise agreed, Möller's Suppliers Manual applies to all Deliveries and Performances.

## **12. Product Liability; Insurance**

### **12.1 Product risks, information obligations**

The Supplier must inform Möller immediately when he becomes aware of any possible risks to the safety of the Goods and / or Equipment or if corresponding claims are made against him. The Supplier has to oblige sub-suppliers to the same extent within the scope of the statutory possibilities.

### **12.2 Product liability insurance and automotive recall costs insurance**

The Supplier is obliged to maintain a product liability insurance with adequate coverage, being not less than five (5) Million EURO for each event of damage, and to provide Möller with documentary evidence of this on demand. The supplier has to maintain such insurance during the lifetime of the business relationship with Möller.

### **12.3 Product liability**

Without prejudice to any other rights of Möller, the Supplier has to indemnify Möller from any and all claims being attributable to the Suppliers' products and arising out of product liability law or product law by customers and/or other third parties, unless the defect is proven to be attributable to Möller. This includes compensation for all expenses, damages and costs incurred by Möller.

## **13. Notice of termination and withdrawal; proportional payment**

If a notice of termination is issued for an Order, Delivery, delivery Schedules and/ or Performances, the Supplier can claim payment only for the services rendered according to the agreement up to that time. This also applies if Möller terminates the Order, Delivery, Delivery Schedules and/ or Performances for important reasons or withdraws from the contract. Further claims are excluded. If the Supplier discontinues his services and/or Deliveries and Performances, or court proceedings for insolvency have been initiated against his assets and not rejected within two (2) weeks as unjustified, Möller is entitled at its option to withdraw from the contract partly or completely, or to terminate the contract with immediate effect.

## **14. Award of sub-contracts; obligation of sub-suppliers; assistance for production conversion/relocation**

Award of sub-contracts to third parties is forbidden for Goods without prior consent in writing by Möller. In such a case, Möller is entitled to withdraw from the Order and /or Delivery and Performances partly or completely or to claim compensation for damages, immediately. In every case corresponding permission is required in the case of deliveries of components and when documentation obligations with respect to customers of Möller and known to the Supplier exist. Sub-suppliers must be obliged according to these Terms, in particular with regard to confidential treatment and for observing quality assurance. The Supplier remains responsible

to Möller even when award of sub-contracts has been permitted by Möller. In the case of production conversion and/or relocation from the Supplier to a third party, the Supplier will provide Möller with reasonable assistance to ensure smooth conversion and/or relocation and to dependably avoid production stoppages on the premises of Möller and on the premises of customers of Möller.

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

If Möller has provided the Supplier with materials to be used for making Deliveries and/or rendering Performances, these shall remain the property of Möller. Any combination, processing and mixing of these materials is made for Möller exclusively. As a result, Möller acquires shared property rights in the new object in proportion to the value of Möller's material with respect to the value of the other materials at the time of combination, processing or mixing. When material is provided by Möller 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, and production facilities must be checked with regard to suitability for utilisation and safety. If Möller provides the Supplier with materials or production facilities that Möller procures by agreement from a third party, the Supplier must make warranty claims – which Möller will assign in this respect – primarily against the third party. Production facilities and materials provided by or on behalf of Möller must be used exclusively for the production on the basis of Möller's Order and must not be made accessible to third parties without prior written consent by Möller. They must be returned to Möller after completion of the Order or upon request. The Supplier must treat the materials and production facilities which Möller has 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 Möller all compensation claims under this insurance policy. Möller herewith accepts 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.

**16. Rights of retention and lien; Securities**

Möller is entitled to fend off any rights of retention and lien of the Supplier and his sub-suppliers by way of providing collateral securities.

**17. Assignment of claims; prohibition of offsetting and subcontracting**

Without prior consent in writing by Möller, which Möller will not refuse unreasonably, the Supplier is not entitled to cede his claims against Möller or to collect payment through third parties or to assign any rights and obligations under these Terms to third parties. Consent is deemed to be given in the case of an agreement on an extended reservation of property rights. Möller does not accept prohibitions with regard to the right to offset.

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

The Supplier is obliged to treat non self-evident business and technical information which might become known to him through his business relationship with Möller as confidential. 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 Performances to Möller. Utilizations for purposes other than compiling of offers for Möller, as well as forwarding to third parties without explicit consent by Möller are forbidden. Upon first request the Supplier must return them to Möller together with the offer, and any copies made must be destroyed.

**19. Social Responsibility**

Möller has committed itself to take account of its social responsibility to its employees and society within its corporate activities and has committed itself to support the principles of the United Nations Global Compact. Möller expects Suppliers to be committed likewise. Therefore, the Supplier has to comply with the ten fundamental principles and rights laid down in the "UN Global Compact (Davos 01/99)" in the fields of human rights, labor standards, environmental protection, and anti-corruption and the Principles laid down by the International Labour Organization (ILO) in its "Declaration on fundamental principles and rights at work (Geneva 06/98)" at a minimum level.

**20. REACH**

The Supplier has to confirm that the Goods, Equipment and its production as well as sub-suppliers' Goods and Equipment being used to produce the Goods and Equipment, are compliant to Regulation (EC) No 1907/2006 (REACH) and its subsequent amendments and have properly been registered.

The Supplier has to provide Möller with a separate declaration of conformity according to Regulation (EC) No 1907/2006 (REACH) of any Goods, Equipment, their production or their parts upon request by Möller.

Therefore, Deliveries have to comply with REACH and its subsequent conformity has to be proved by the Supplier in case of doubt.

**21. Data protection**

Applicable Data Protection Laws of Germany and the European Union (including but not limited to Data Protection Directive 95/46/EC) have to be obeyed with regard to the use and protection of personal data made available or disclosed. Personal data has to be treated as confidential and especially, it has to be ensured that the use, process and handling of entrusted personal data shall only happen within the context of their collaboration.

**22. Language**

The prevailing language shall be English. All correspondences and communications shall be made in the English language. Any further

correspondences and communications in other languages than English are merely for translational and /or explanatory purposes.

**23. Place of Performance; place of jurisdiction (legal venue); Applicable Law and Forum**

**23.1** Place of Performance for both parties for delivery, performance and payment shall be the seat of Möller's registered office.

**23.2** The Laws of the Federal Republic of Germany shall apply exclusively.

**23.3** All disputes in connection shall be heard at the competent authority of the courts of Dusseldorf, Germany, or at Möller's option, at the court having jurisdiction over the Supplier's principal place of business or Möller's principal place of business.

**24. Arbitration**

**24.1** All disputes arising out of or in connection with these Terms shall be finally settled under the Rules of Arbitration of the International Chamber of Commerce by one or more arbitrators appointed in accordance with the said rules. This only applies to cases where the Supplier does not have his registered office within a Member State of the European Union or a Member State of the European Free Trade Area (EFTA).

**24.2** Place of arbitration shall be Frankfurt, Germany.

**24.3** Language of the arbitration is English. It is a requirement that the arbitrators are fluent in English.

**25. Severability clause**

In the event that one or more provisions of these Terms should be or become invalid or unenforceable, neither the validity of the remaining provisions nor the validity of these Terms itself shall be affected thereby. The invalid or unenforceable provision shall be deemed to be automatically amended and replaced by a legally permissible provision under the applicable law, which accomplishes as closely as possible the economic purpose which was originally intended by the invalid or unenforceable provision.