



## **General Terms and Conditions of Business**

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## **§ 1 General / Scope of Applicability**

**(1)** These Terms and Conditions of Business apply for all current and future business relationships.

**(2)** Unless their validity has been expressly agreed in writing, any deviating, contradictory or supplementary general terms and conditions of business of the Buyer shall not constitute part of the contract even if we are aware of them.

**(3)** These General Terms and Conditions of müller co-ax shall also apply even if müller co-ax executes delivery to the Buyer without reservation in knowledge of contrary or deviating general terms and conditions of the Buyer.

## **§ 2 Offer / Offer Documents**

**(1)** Offers are subject to change without notice.

**(2)** Insofar as there are essential increases in the prices for raw materials, wages, taxes, public duties and / or difficulties from laws and / or legally binding regulations of another kind until execution of the order, which as proven have an essential influence on the offer calculation of müller co-ax then müller co-ax is entitled to charge a reasonable surcharge. Essential within the meaning of this provision are changes of at least 10 %.

**(3)** Technical changes and changes in form, color and / or weight are reserved as far as reasonable.

The observance of technical data or other information / details from catalogues, printed matter, BOMs and / or drawings / sketches, etc. is only insofar confirmed if expressly individual data, dimensions or details thereof are included in the technical description of the offer. With global reference to documents or drawings only the function is deemed as confirmed.

**(4)** If the order qualifies as an offer within the meaning of § 145 of the German Civil Code (BGB), müller co-ax shall assume this within 4 weeks.

Acceptance can either be declared in writing or by providing the service and notification thereof to the buyer or by delivery of the goods to the buyer. Even then, the confirmation letter does not state any binding acceptance of the order.

**(5)** Obviously visible errors in the offer or the written order confirmation entitle müller co-ax to cancel the contract irrespective other rights. The orderer accordingly has no entitlement to damages.

**(6)** The contract shall be deemed to have been concluded if müller co-ax has done everything necessary in the aforesaid respect subject to delivery by the supplier of müller co-ax. This shall only apply if non-delivery is not attributable to müller co-ax, especially in the event of congruent covering or hedging transactions being concluded with the supplier by müller co-ax.

If müller co-ax nonetheless fails to perform, the Buyer shall be immediately informed of the relevant non-availability. The counter-performance by the Buyer shall be reimbursed without delay.

**(7)** müller co-ax shall reserve the property rights and copyrights to illustrations, drawings, calculations and any other documents; they may not be made available to any third parties. This shall particularly apply in the case of written documents which are marked as “confidential”. Any onward transmission to third parties shall require the express written consent of müller co-ax.

These documents are to be returned to müller co-ax free of charge without request as soon as they are no longer required. The buyer shall be liable for loss and damages. Upon request these objects / documents are to be handed over at all times. The buyer is not entitled to a right of retention thereto. Documents / objects are to be stored safely and may not be reproduced without the prior written consent of müller co-ax.

In case of objects / documents, to which property rights exist for the benefit of müller co-ax and / or which are owed as business / trade secrets the buyer is only permitted the use explicitly allowed by müller co-ax insofar as certain types of use are not also permitted to all third parties.

### **§ 3 Scope of Deliveries**

**(1)** The Buyer is obliged to state the individual specification of the delivery product in question in its order, based on the specific type of use which is envisaged together with all technically relevant matters and considerations.

If such details are not transmitted by the Buyer or if the relevant details are incomplete, the general product information of co-ax shall apply in addition.

**(2)** The written order confirmation by müller co-ax shall be authoritative for the contents and scope of delivery. If a contract is concluded based on an offer of müller co-ax with a corresponding time limit, the contents of the offer of müller co-ax shall be authoritative for the contents of the contract.

Ancillary agreements and amendments shall require a written confirmation by müller co-ax.

**(3)** The purchaser is to arrange for the disposal of the packaging at his own expense. In addition, the regulations of the Packaging Ordinance (VerpackV) also apply.

**(4)** During the delivery deadline, the construction or form may be amended in the interests of technical improvement required by law, unless such amendments constitute a significant alteration of the item to be delivered or the delivery agreed upon and providing it is reasonable to expect the Customer to accept them.

#### **§ 4 Prices / Payment Conditions**

(1) In the absence of a special agreement, prices shall apply “ex works”, including loading in the works but excluding packaging and value-added tax at the statutory rate.

(2) Any deduction of cash-discounts shall require specific written agreement.

(3) Unless otherwise indicated in the order confirmation / offer, the purchase price shall be payable net (with no deductions) within 30 days from the invoice date. If the Buyer is in payment arrears, müller co-ax shall be entitled to charge default interest at 9% p.a. above the base rate of the European Central Bank. If a higher delay damage can be proved, müller co-ax shall be entitled to enforce the aforesaid. The Buyer shall be in turn entitled to submit proof of a lower level of damages.

(4) Offsetting rights or retention rights shall only accrue to the Buyer if its counterclaims have been established by declaratory judgement, if they are undisputed or recognized by müller co-ax. In order to exercise a retention right, the Buyer shall only be entitled to do so if its counterclaims are based on the same contractual relationship.

müller co-ax reserves the right to invoice for charges on the earliest due demand even in cases of conflicting transfer receipts from the buyer.

(5) If the asset circumstances of the buyer deteriorate substantially after conclusion of the contract or if müller co-ax becomes aware of a previously occurred deterioration in the asset circumstances after conclusion of the contract, which gives cause to serious doubts about the creditworthiness of the buyer, müller co-ax is entitled, at its choice, to request advance payment or provision of security. müller co-ax is entitled to cancel the contract insofar as the buyer does not satisfy this request.

(6) The prices shall apply exclusively to a delivery and service within the Federal Republic of Germany.

#### **§ 5 Release orders**

Release orders are to be accepted within the stipulated periods of time or on the agreed dates.

#### **§ 6 Delivery Period / Delay in Delivery / Cancellation costs**

(1) The commencement of the delivery period specified by müller co-ax shall presuppose clarification of all technical matters together with a timely and orderly performance of the obligations of the Buyer.

This includes in particular also possible documents to be procured or created by the buyer, such as drawings, descriptions, permits, releases to be submitted by the buyer and the credit of agreed down payments on the part of the buyer on the account of müller co-ax.

If one of these pre-requisites is missing or in case of non-clarified points for which the buyer is responsible, the delivery time stated by müller co-ax is inhibited until remedy of the impediment by the buyer.

**(2)** The delivery period is deemed as observed if the object of delivery has left the plant by the expiry of the agreed delivery date or delivery date stated by müller co-ax, no longer however than with the expiry of the calendar week which follows this date or in case of an obligation to collect the buyer has been informed that the goods are ready for shipment by the expiry of the calendar week stated on the order confirmation.

**(3)** The delivery period shall be commensurately extended in the event of an occurrence of unforeseeable events not attributable to müller co-ax and if such impediments demonstrably have an effect on the production or delivery of the subject matter of the contract. This shall also apply if the aforesaid circumstances occur with a sub-contractor of müller co-ax.

This shall particularly apply in the event of impediments and hindrances which occur as a result of labour disputes, especially strikes and lockouts.

Delivery delays from the aforesaid circumstances shall not be attributable to müller co-ax even if they occur during an existing period of delay. The commencement and end of any such impediments or hindrances as shall be notified by müller co-ax to the Buyer as soon as possible.

**(4)** müller co-ax shall only be in default with a delivery if the buyer has set a final deadline of two weeks in writing and müller co-ax allows this final deadline to pass unsuccessfully.

**(5)** If the Buyer is in acceptance delay or if it breaches any other collaboration agreements, müller co-ax shall be entitled to demand compensation of the damage incurred by müller co-ax, including any additional expenses incurred. In the aforesaid case, the risk of fortuitous loss or fortuitous deterioration of the purchased goods shall also pass the Buyer on the date on which it is in acceptance delay.

**(6)** If delivery of the subject matter of the contract is delayed at the request of the Buyer, the latter shall be charged with the storage costs incurred as from the commencement of the month in which readiness to despatch was notified and, in the event of storage in another production works of müller co-ax, at a minimum rate of 0.5% of the invoice amount for each month and fraction of a month.

müller co-ax reserves the right to prove higher damages, the buyer to prove less damages.

In addition, müller co-ax shall be entitled to withdraw from the contract at the end of a reasonable period which has been notified to the Buyer or shall be entitled to dispose of the subject matter of the delivery elsewhere after the end of a reasonable period notified to the Buyer and also to supply the Buyer in accordance with the contract within a reasonable extended period of grace.

**(7)** If the Buyer unjustifiably withdraws from a firm order, müller co-ax shall, notwithstanding the possibility of demanding a higher level of damages, be entitled to demand 10% of the selling price for the execution of the order and for lost profits if the Buyer was set a reasonable period of grace for its subsequent performance of the contract.

The Buyer shall be entitled to prove a lower level of damages.

**(8)** If müller co-ax is in default of delivery then claims for damages owing to delay of the service are excluded irrespective of other rights of the buyer in the event of slight negligence.

Otherwise the buyer can assert a flat rate compensation in the amount of 3% of the delivery value for each complete week of the delay, a maximum however of no more than 15% of the delivery value. müller co-ax reserves the right to assert less, the buyer higher damages. In any case claims for damages owing to delay in delivery are limited to the foreseeable typically occurring damages.

§ 11 applies accordingly.

### **§ 7 Place of performance**

müller co-ax would like to explicitly point out that **Forchtenberg** applies as place of performance for the contractual relationship for each delivery which is agreed “ex works”, irrespective of the fact to which location the delivery is made in the end.

### **§ 8 Transfer of Risk**

(1) Unless otherwise agreed in the contract documents, delivery is agreed “ex works”.

(2) Delivery shall be deemed to have been made if the Buyer is in acceptance delay.

(3) The aforesaid clauses shall also apply for agreed part-deliveries.

(4) If müller co-ax has incurred costs for the despatch, delivery or assembly of the subject matter of the contract based on an appropriate contractual agreement, the aforesaid clauses on the transfer of risks shall not be affected thereby.

(5) If despatch of the subject matter of the contract is delayed for reasons which are attributable to the Buyer, the risk shall pass to the Buyer with effect from the date of readiness to deliver; müller co-ax is, however, obliged to arrange the insurances at the request and cost of the Buyer.

(6) Notwithstanding the rights under § 9, delivered goods shall be accepted by the Buyer even in the event of immaterial defects.

Part-deliveries are permitted.

### **§ 9 Warranty**

(1) The limitation period for warranty claims is 12 months - except for fraudulent intent and subject to § 11 Para. 8. Any claims for damages, including those for infringement of a requirement for subsequent performance in accordance with Para. 4, are subject to the provisions of § 11.

(2) In all other cases, the warranty provided by müller co-ax shall be limited initially to supplementary performance and, according to the discretion of müller co-ax, to repair or replacement delivery. In the case of removal of defects, müller co-ax shall bear the necessary costs, insofar as these do not increase due to the object to the contract being situated at a location other than the place of performance.

Costs for any subsequent legally or commercially necessary improvements to the finished product made within the scope of a supplementary performance when connecting, mixing, processing or making any other repair will not be replaced by müller co-ax in the ratio in which the product delivered relates to the sale price of the finished product. This also applies to subsequent improvements of finished products when no mixing, connecting or processing with other products takes place beforehand or with products which are further adapted and upon which further processing is carried out.

If the use of the delivered object leads to an infringement of industrial property rights or copyrights in Germany müller co-ax shall procure the right to the further use for the orderer or remedy the infringement of property right in another manner. If this cannot be done at economically reasonable terms or within a reasonable amount of time, the purchaser shall be within his or her rights to withdraw from the contract. müller co-ax shall also be within its rights to withdraw from the contract under the prerequisites mentioned above. This obligation for infringement of property right and copyright is conclusive subject to the regulations in § 11. This presumes that the orderer informs müller co-ax immediately about asserted infringements and supports müller co-ax in defending the asserted claims or makes it possible for the modification measures to be carried out. The pre-requisite is further that müller co-ax reserves the right to all defense measures, the defects of title are not due to an instruction of the orderer and the infringement of right was not caused by the fact that the orderer autonomously changes the delivered object or has used it in a way which is in breach of the contract. Insofar as müller co-ax is not liable in accordance with this section, the buy shall indemnify müller co-ax from all third party claims. Insofar as müller co-ax is not liable according to this section, the purchaser shall release müller co-ax from all claims of third parties.

**(3)** If the post-performance is abortive, the Buyer shall have the right to withdraw from the contract. In the event of just a slight non-contractual compliance, especially in the event of immaterial defects, the Buyer shall not be entitled to withdraw from the contract. The right of the Buyer to a reduction in the purchase price is excluded.

The subsequent remedy will be deemed as having failed upon the second fruitless attempt, unless given the nature of the contracted item, other attempts at remedy are appropriate and providing the Customer may be reasonably expected to agree.

**(4)** If after a failed supplementary performance the customer requests damage compensation, the goods shall remain with the customer, if this is reasonable for the customer.

Compensation shall be limited – subject to the provisions of § 11 – to the difference between the purchase price and the value of the defective goods after an abortive post-performance, after provision of the failed service or if the service of a third party was provided with whom less service costs were incurred regarding this matter. This shall not apply if müller co-ax caused the contract infringement with wilful intent. In the case of defects with items which occurred through connecting, mixing or processing as well as in the further adaptation or processing of a defect product, müller co-ax does not replace losses in the ratio in which the product delivered relates to the price of the finished product which would otherwise have been expected with a perfect delivery of the finished product.



**(5)** The product specifications of müller co-ax are only to be regarded as quality descriptions. Public comments, quality claims or advertising by the manufacturer shall constitute no contractual product descriptions either.

The product descriptions of a manufacturer which is used by müller co-ax shall only be regarded as quality descriptions. Public comments, quality claims or advertising by the manufacturer shall constitute no contractual product descriptions of the goods either.

**(6)** If the Buyer receives defective assembly instructions, müller co-ax shall only be obliged to deliver defect-free assembly instructions and this only if the defect in the assembly instructions was not in line with an orderly and proper assembly.

**(7)** The Buyer shall only be entitled to enforce compensation claims on account of non-performance or to withdraw from the contract if müller co-ax fails to rectify the defect despite a period of grace having been set, or fails to make a replacement delivery or if the Buyer cannot be reasonably expected to accept a replacement delivery or rectification.

**(8)** Warranty claims in accordance with paras. 1-7 shall presuppose that the Buyer notified müller co-ax of apparent defects in writing within 2 weeks with effect from the receipt of goods, and hidden defects within 2 weeks after establishing the relevant defect.

**(9)** The buyer shall be responsible for proving the immediate notification of a defect. The buyer is also responsible for proving that he did not personally take any measures for correcting the defect.

**(10)** Guarantees in the legal sense are not given to the Buyer by müller co-ax.

Production guarantees of third parties shall be affected by the above.

### **§ 10 Warranty with the exchange of single parts**

If a single part of a product is exchanged/replaced within the warranty periods this does not involve any extension / new start of warranty periods for the whole product. Rather the extension / the new start of warranty periods refer exclusively to the replaced single part.

### **§ 11 Liability Limitations**

**(1)** Liability of müller co-ax shall be limited to typical contractual and direct average damages foreseeable on the basis of the type of goods concerned. This shall also apply in the event of negligent breaches of duty by employees, workers, co-workers, representatives and vicarious agents of müller co-ax.

Liability is excluded in the event of a slightly negligent breach of immaterial contractual obligations.

**(2)** Unless stated otherwise below, any additional claims of the Buyer shall be excluded - regardless of their legal cause.

müller co-ax shall not be liable for damages which were not sustained directly by the delivered goods; müller co-ax shall, in particular, not be liable for lost profits or damages to



other assets of the Buyer or a third party this also applies to objects, which have been created through connecting, mixing, processing and / or further adaptation and processing.

**(3)** The exclusion of liability and the liability restriction in Subclauses (1) and (2) above shall not apply in case of damages from the injury to life, body or health, with loss of life or with wilful intent or gross negligence. Neither shall the exclusion of liability apply if müller co-ax breaches culpably an essential duty (cardinal duty) from the contract; in this case however the liability is limited in line with Subclause (1) to the foreseeable, typical, direct average damages as per contract.

Material contractual obligations (cardinal obligations) are those obligations which guarantee the achievement of the purpose of the contract and are deemed prerequisite for the proper performance of the contract and upon the observance of which the customer should be able to rely.

**(4)** Insofar as müller co-ax breaches an essential contractual duty, the indemnification obligation of müller co-ax is limited to the sum insured of the Comprehensive General Liability Insurance of müller co-ax insofar as not at least due to gross negligence in case of property damages. Upon request müller co-ax shall grant permission to view the insurance policy.

Insofar as the liability of müller co-ax is excluded or limited, this shall also apply for the personal liability of the employees, workers, representatives and vicarious agents of müller co-ax.

**(5)** Generally a liability of müller co-ax is excluded for the event that at the request of the buyer other parts than those produced or stipulated by müller co-ax are installed in the delivered object. The buyer shall be responsible for proving that such a deviation is not the cause for a possible deficiency of the delivered object.

**(6)** müller co-ax shall not be liable for installation work carried out by the buyer personally. The buyer is responsible for proving the faultless installation.

**(7)** The above limitations of liability shall not affect the claims of the customer arising from guarantees and/or product liability.

**(8)** Claims for damages in accordance with the preceding paragraphs 1-7 shall expire within the statutory limitation periods.

## **§ 12 Reservation of Title**

**(1)** müller co-ax shall reserve the right to the subject matter of the contract pending receipt of all payments in connection with the current business relationship.

In the event of non-contractual conduct on the part of the Buyer, especially in the event of payment arrears, müller co-ax shall be entitled to reclaim the subject matter of the contract. Taking back the subject matter of the contract shall not constitute a withdrawal from the contract unless müller co-ax specifically states this in writing.

A pledge of the subject matter of the contract by müller co-ax shall always constitute a withdrawal from the contract. müller co-ax shall be entitled to dispose of the subject matter of

the contractual after having taken it back. The income from the proceeds shall be set off against the liabilities of the Buyer - less any reasonable selling costs.

**(2)** The Buyer is obliged to treat the goods with care; it is, in particular, obliged to insure them adequately at their current values, namely against fire, water and theft damages at its own cost. If maintenance and inspection work is necessary, the Buyer shall carry the aforesaid out at its cost on a timely and regular basis.

**(3)** In the event of pledges or any other seizures by third parties, müller co-ax shall be informed by the Buyer immediately in writing. If the third party is not in a position to refund müller co-ax with the judicial and out-of-court costs of a legal action in accordance with § 771 of the German Code of Civil Procedure (ZPO), the Buyer shall be liable to müller co-ax for the loss incurred, such costs shall be borne by the Buyer.

The Buyer shall also be obliged to notify müller co-ax of any damages or destruction of goods immediately. Any change of ownership of the goods and a transfer of the domicile of the company shall be reported to müller co-ax by the Buyer immediately.

**(4)** The Buyer shall be entitled to sell the goods in the ordinary course of business. It hereby assigns all claims to müller co-ax equivalent to the value of the reserved goods (including value-added tax) which are attributable to the Buyer and which are due by its customers or third parties regardless of whether the goods were sold with or without processing. müller co-ax hereby accepts the aforesaid assignment.

The Buyer shall remain entitled to collect claims after the aforesaid assignment. This shall not affect the power of authority of müller co-ax to collect claims itself. müller co-ax is, however, obliged not to collect claims itself as long as the Buyer is complying with payment obligations with the collected proceeds, as long as it is not in payment arrears and, in particular, as long as no petition has been submitted for the opening of insolvency proceedings and as long as there is no case of bankruptcy. If this is the case, müller co-ax shall be entitled to insist that the Buyer notifies müller co-ax of the assigned claims and the respective debtors, also that it provides all the necessary information and details for collecting the assigned claims, that it makes the relevant documents available and notified the liable parties (third parties) of the assignment.

**(5)** The processing or conversion of goods by the Buyer shall always be carried out in the name and on behalf of müller co-ax. If the goods are processed with other goods not belonging to müller co-ax, müller co-ax shall acquire the co-ownership in the new goods in the ratio of the value of the goods to the other processed goods at the time of processing.

For the goods created by the aforesaid processing, the same shall apply as for the goods delivered as reserved goods.

**(6)** If the goods are intermingled with other goods not belonging to müller co-ax, müller co-ax shall acquire the co-ownership in the new goods in the ratio of the value of the goods to the other intermingled goods at the time of intermingling.

If the intermingling is carried out in such a way that the goods of the Buyer are to be regarded as the main goods, it is hereby agreed that the Buyer assigns proportionate co-

ownership to müller co-ax. The Buyer shall keep the exclusive ownership so acquired in safe custody, together with the ownership for müller co-ax.

**(7)** The Buyer hereby also assigns claims equal in value to the retained goods (including VAT) as security for the amounts due to müller co-ax by the Buyer which accrue to third parties as a result of the combination of goods with a piece of property.

**(8)** müller co-ax shall, at the request of the Buyer, undertake to release all securities attributable to müller co-ax to the extent that the value of the securities given to müller co-ax exceeds the claims to be secured by more than 20%; müller co-ax shall be responsible for selecting the securities to be released.

### **§ 13 Special right of termination / embargo regulations / EU anti-terror regulations**

**(1)** Insofar as contractual conclusions between müller co-ax and the buyer respectively delivery obligations resulting from these for müller co-ax and/or payment obligations of the buyer violate national as well as international binding regulations (e.g: foreign trade regulations of the Federal Republic of Germany, export and embargo regulations of the European Union, other states, in particular the USA including the EU anti-terror regulations) müller co-ax is entitled to terminate the contractual relationship extraordinarily and / or cancel the contract.

**(2)** The buyer is not entitled to a claim for damages in this special case.

**(3)** The buyer undertakes to inform itself about corresponding statutory regulations, which make the satisfaction of the contract impossible for müller co-ax.

### **§ 14 Confidentiality**

The purchaser shall undertake to handle all information, know-how and other trade secrets related to the execution of the relevant order in the strictest confidence, and shall not disclose any information, documents, or any other documentation to third parties without the express consent of müller co-ax. müller co-ax shall also handle the purchaser's documents in strict confidence.

### **§ 15 Final Provisions**

**(1)** The laws of the Federal Republic of Germany shall apply. The provisions of the UN Convention on Contracts for the International Sale of Goods shall not apply.

**(2)** If the Buyer is a registered trader, a legal entity under public law or a public fund, the exclusive legal venue for all disputes in connection with the present contract is the legal domicile of müller co-ax. The same applies if the Buyer has no general legal venue in Germany or if its place of residence or normal place of residence is not known when legal action is brought.

müller co-ax is also entitled to file legal action at the business headquarters of the orderer.

**(3)** If individual provisions of the present contract with the Buyer, including these General Terms and Conditions of Business, are or become wholly or partially invalid, the validity of the other provisions shall remain in full force and effect.

The wholly or partially invalid provision shall be replaced by a provision which comes closest to the original economic intention of the invalid provision.