



# General Terms and Conditions

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## **§ 1 General information / scope**

(1) The terms and conditions apply to all current and future business relationships between müller co-ax and the purchaser. They apply only to entrepreneurs in the exercise of their commercial or independent professional activity and to legal persons under public law.

(2) Deviating, conflicting or supplementary general terms and conditions of the purchaser, even if müller co-ax is aware of them, do not become part of the contract, unless their application is expressly agreed in writing.

(3) The general terms and conditions of müller co-ax also apply if müller co-ax, with the knowledge of conflicting or deviating general terms and conditions of the purchaser, carries out the delivery to the purchaser without reservation.

## **§ 2 Offer / Offer documents / Unavailability of service**

(1) Offers are subject to change.

Information from müller co-ax which refers to goods and prices as part of the ordering process is non-binding.

On the order form from müller co-ax, the purchaser declares the binding application for the conclusion of a purchase contract. müller co-ax confirms receipt of the order immediately by e-mail. The confirmation of receipt does not yet constitute a binding acceptance of the order. However, müller co-ax can combine the acceptance of the order with the confirmation of receipt. Acceptance by müller co-ax is deemed to have taken place with the delivery of the ordered goods by müller co-ax at the latest. An express declaration of acceptance by müller co-ax to the purchaser is not required.

(2) Agreements deviating from the order are only valid if they are confirmed by müller co-ax in writing or by e-mail.

(3) If, before the order is executed, there are substantial increases in raw material prices, wages, taxes, public levies and/or difficulties arising from laws and/or legally binding regulations of another kind which have a demonstrably significant influence on the quotation by müller co-ax, müller co-ax is entitled to charge a reasonable price premium. Changes of at least 10% are essential for the purposes of this provision.

(4) The right to make technical changes as well as changes in shape, color and/or weight within reasonable limits is reserved.

The compliance of technical data or other information/details from catalogues, printed works, parts lists and/or drawings/sketches, etc. is only confirmed to the extent that individual data, dimensions or details thereof are expressly included in the technical description of the offer. In the case of a general reference to documents or drawings, only the function shall be deemed to have been confirmed.

**(5)** Obviously recognizable errors in the offer or the written order confirmation entitle müller co-ax to withdraw from the contract without prejudice to other rights. The purchaser is not entitled to compensation in this respect.

**(6)** If the order qualifies as an offer in accordance with § 145 BGB (German Civil Code), müller co-ax can accept it within 4 weeks.

Acceptance can be declared either in writing or by providing the service and notification thereof to the purchaser or by delivery of the goods to the purchaser.

**(7)** The conclusion of the contract is subject to contractual and timely delivery by the suppliers of müller co-ax. This only applies in the event that müller co-ax is not responsible for the non-delivery, in particular when concluding a congruent hedging transaction with the supplier of müller co-ax. In addition to unforeseen, inevitable events caused through no fault of its own, müller co-ax is not responsible for the lack of delivery due to an epidemic, pandemic (e.g. the corona pandemic), plague or official measures such as quarantine.

If müller co-ax is nevertheless unable to perform, müller co-ax is entitled to release itself from the fulfilment obligation. The purchaser must be informed immediately about the unavailability of the service. The payment by the purchaser will be refunded immediately.

**(8)** Müller co-ax reserves ownership and copyrights to illustrations, drawings, calculations and other documents; they may not be made available to third parties. This applies to written documents that are marked with the word "confidential" in particular. Disclosure to third parties requires the express and written consent of müller co-ax.

These documents must be returned free of charge to müller co-ax without being requested as soon as they are no longer needed. The purchaser is liable for their loss and damage. These items/documents must be surrendered at any time on request. The purchaser is not entitled to a right of retention. Documents/items must be kept safe and may not be reproduced without the prior written consent of müller co-ax.

In the case of objects/documents to which property rights exist in favor of müller co-ax and/or which are owed as business/trade secrets, the purchaser is only permitted to use them as expressly permitted by müller co-ax, provided certain types of use are not also permitted for any third party.

### **§ 3 Scope of delivery**

**(1)** The purchaser is obliged to indicate in his or her order the individual specification of the respective delivery item according to the individual type of use intended, taking into account all technically relevant factors.

If such information from the purchaser is missing or if it is incomplete, the general product information provided by müller co-ax may apply in addition.

**(2)** The written order confirmation by müller co-ax is decisive for the scope of delivery. If the contract is concluded with the acceptance of a temporary offer from müller co-ax, the content of the offer from müller co-ax is decisive for the content of the contract.

Ancillary agreements and changes require written confirmation by müller co-ax.

**(3)** If packaging is accumulated by the purchaser, he or she confirms to müller co-ax by accepting the goods that he or she can recycle it in accordance with the Packaging Act and undertakes to dispose of the packaging in compliance with the provisions of the Packaging Act. At the request of müller co-ax, the purchaser must provide information about the type and quantity of packaging disposed of in accordance with the Packaging Act. If the purchaser does not want to dispose of the packaging him or herself in accordance with the above regulation, he or she must explain this to müller co-ax immediately after accepting the goods in writing or in text form. In this case, müller co-ax gives the purchaser the option of returning this packaging to müller co-ax in accordance with the obligations under the Packaging Act. The purchaser bears the costs of the return transport of the packaging.

**(4)** Design or form changes that are due to technical improvements or legal requirements are reserved during the delivery period, provided that the delivery item or the agreed delivery is not significantly changed, and the changes are reasonable for the customer.

#### **§ 4 Prices/terms of payment**

**(1)** Unless otherwise agreed, the prices apply “ex works” in addition to the applicable statutory value added tax.

**(2)** The purchase price is due for payment within 30 days of the invoice date. If the purchaser defaults on payment, müller co-ax is entitled to charge default interest of 9% above the base rate per year. Insofar as higher damages caused by default can be proven, müller co-ax is entitled to assert this. For his or her part, the purchaser is entitled to provide evidence of lower damages.

**(3)** The purchaser is only entitled to offset rights or rights of retention if his or her counterclaims have been legally established, are undisputed, or have been acknowledged by müller co-ax. The purchaser is only authorized to exercise a right of retention if his or her counterclaim is based on the same contractual relationship. müller co-ax is entitled to offset payments against the oldest receivable due, even if the purchaser has conflicting repayment terms.

**(4)** If there is a significant deterioration in the purchaser's financial situation after the conclusion of the contract, or if müller co-ax becomes aware of a deterioration in the financial situation after the conclusion of the contract which gives rise to serious doubts about the purchaser's creditworthiness, müller co-ax is entitled to request advance payment or a security deposit at its own discretion. müller co-ax is entitled to withdraw from the contract if the purchaser does not comply with this request.

## § 5 Call orders

Call orders are to be accepted within the specified periods or on the agreed dates.

## § 6 Delivery time/delay in delivery/cancellation costs

**(1)** The start of the delivery time specified by müller co-ax requires the clarification of all technical questions and the timely and proper fulfillment of the purchaser's obligations.

This includes in particular any documents to be procured or created by the purchaser, such as drawings, descriptions, permits and approvals to be submitted by the purchaser, and the crediting of agreed down payments by the purchaser to the account of müller co-ax.

If one of these prerequisites is missing, or if there are uncertainties which the purchaser is responsible for, the delivery time specified by müller co-ax is suspended until the hindrance has been rectified by the purchaser.

**(2)** The delivery period is complied with if the delivery item has left the factory by the end of the agreed delivery date or the delivery date specified by müller co-ax, but no later than the end of the calendar week following this date, or if the readiness for shipping has been communicated to the purchaser by the end of the calendar week specified on the order confirmation in case of unfulfilled delivery obligations.

**(3)** The delivery period is extended appropriately in the event of unforeseen events for which müller co-ax is not responsible, insofar as such hindrances can be proven to affect the completion or delivery of the contractual item. This also applies if these circumstances occur with the sub-suppliers of müller co-ax.

This applies in particular to hindrances that arise in the course of industrial action, in particular strikes and lockouts, as well as epidemics, pandemics (including the corona pandemic), plagues and official measures (e.g. quarantine orders, etc.)

müller co-ax is also not responsible for delays in delivery due to the aforementioned circumstances if they occur during an already existing delay. Müller co-ax must notify the purchaser as soon as possible of the beginning and end of such hindrances.

If unforeseeable circumstances which müller co-ax is not responsible for or the aforementioned obstacles jeopardize the fulfillment of the contract for an indefinite period, and the hindrance to performance for müller co-ax cannot be overcome with reasonable effort, müller co-ax has the right to withdraw from the contract. In this case, müller co-ax is obliged to inform the purchaser immediately of the circumstances that are hampering the performance and to reimburse the purchaser immediately after the right of withdrawal has been exercised. Further claims by the purchaser in this case are excluded.

**(4)** müller co-ax is only in default with a delivery if the purchaser has set a grace period of two weeks in writing, and müller co-ax allows this grace period to pass without making the delivery.

**(5)** If the purchaser is in default of acceptance, or if he or she breaches other obligations to cooperate, müller co-ax is entitled to claim the damages incurred by müller co-ax, including any additional expenses. In this case, the risk of accidental loss or accidental deterioration of the purchased item is also transferred to the purchaser at the point at which the purchaser falls into default of acceptance.

**(6)** If the delivery of the object of the contract is delayed at the request of the purchaser, then at the beginning of the month following the notification of readiness for shipping, the costs arising from storage - but at least 0.5% of the invoice amount if stored in one of the plants of müller co-ax - will be charged for each month or part thereof.

müller co-ax reserves the right to provide evidence of higher damages, and the purchaser reserves the right to provide evidence of lower damages.

In addition, müller co-ax is entitled to withdraw from the contract after a reasonable deadline has been communicated to the purchaser or to otherwise dispose of the delivery item after a reasonable deadline has been communicated to the purchaser and to grant the purchaser a reasonable, extended deadline in accordance with the contract.

**(7)** If the purchaser unjustifiably withdraws from an order placed, and the purchaser has been given a reasonable deadline for subsequent performance, müller co-ax is entitled to claim 10% of the sales price for the costs incurred in processing the order and for lost profit, without prejudice to the possibility of claiming higher actual damages.

The purchaser reserves the right to provide evidence of lower damages.

**(8)** If müller co-ax is in default of delivery, claims for compensation due to delay in performance, regardless of other rights of the purchaser in the event of slight negligence, are excluded.

Otherwise, the purchaser can claim flat-rate compensation of 3% of the delivery value for each full week of delay, but not more than 15% of the delivery value. müller co-ax reserves the right to claim lower damages, and the purchaser reserves the right to claim higher damages. In any case, claims for damages due to a delay in delivery are limited to the foreseeable, typically occurring damages.

§ 11 applies accordingly.

## **§ 7 Place of performance**

müller co-ax expressly points out that Forchtenberg is the place of performance for the contractual relationship for every delivery that is agreed "ex works", regardless of where the delivery is ultimately made.

## **§ 8 Transfer of risk**

- (1) The delivery takes place "ex works" in Forchtenberg.
- (2) The transfer is the same if the purchaser is in default of acceptance.
- (3) The above clauses also apply to agreed partial deliveries.
- (4) Insofar as müller co-ax has assumed shipping costs, delivery or installation of the object of the contract in accordance with the contractual agreement, the above clauses on the assumption of risk remain unaffected.
- (5) If the shipping of the object of the contract is delayed due to circumstances which the purchaser is responsible for, the risk shall pass to the purchaser on the day of readiness for shipping; however, müller co-ax is obliged, at the request and expense of the purchaser, to obtain the insurance requested by the purchaser.
- (6) Delivered items are to be accepted by the purchaser, even if they have minor defects, without prejudice to the rights under § 9.

Partial deliveries are permissible.

## **§ 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 event of the elimination of defects, müller co-ax bears the necessary expenses for the removal of the defective item and the installation of the reworked or delivered item free of defects, provided that these do not increase because the contractual item is located at a location other than the place of performance. müller co-ax does not reimburse the costs of additional legally and economically necessary repair of the end product as part of subsequent performance in case of incorporation, blending or processing or any other damage repair in the proportion of the remuneration for the delivered product to the sales price of the end product. This also applies to subsequent performance in the case of end

products without any blending, incorporation or processing with other products having taken place beforehand or for products which have been further machined and processed.

If the use of the delivery item leads to the infringement of industrial property rights or copyrights in Germany, müller co-ax will grant the purchaser the right to continue using it or otherwise remedy the infringement of property rights. 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. Under the conditions specified, müller co-ax is also entitled to withdraw from the contract. This obligation is conclusive for property rights and copyright infringement, subject to the provisions in § 11. This presupposes that the purchaser informs müller co-ax immediately about asserted violations and supports müller co-ax in defending against the asserted claims or enables the modification measures to be carried out. Further prerequisites are that müller co-ax reserves the right to take all defense measures, that the legal deficiency is not based on an instruction from the purchaser, and that the legal violation was not caused by the fact that the purchaser altered the delivery item without authorization or used it in a manner that was not in accordance with the contract. If müller co-ax is not liable under this section, the purchaser releases müller co-ax from all third-party claims.

**(3)** If the subsequent performance fails, or if the subsequent performance is not performed for other reasons or is delayed beyond a reasonable period, the purchaser has the right to withdraw from the contract. In case of only minor breaches of contract, in particular minor defects, the purchaser has no right of withdrawal. The purchaser's right to a price reduction is excluded.

The repair shall be deemed to have failed if it has been attempted twice without success, unless further attempts are appropriate and reasonable for the purchaser given the object of the contract.

**(4)** If the purchaser demands compensation for damages after subsequent performance has failed, the goods shall remain with the purchaser insofar as this is reasonable for them.

Compensation for damages is limited - subject to the regulations in § 11 - to the difference between the purchase price and the value of the defective item after the failed service has been performed or, if the service is provided by a third party, to the relevant service price minus expenses not incurred. This does not apply if müller co-ax fraudulently caused the breach of contract. In the event of defects in items that result from incorporation, blending or processing as well as further machining or processing a defective product, müller co-ax will not compensate for damages in the proportion of the remuneration for the delivered product to the sales price that would have been expected for the end product if the delivery was free of defects.

**(5)** The product descriptions from müller co-ax are only valid as quality specifications. Public statements, claims or advertising do not constitute contractual quality specifications.

The product descriptions of a manufacturer that müller co-ax uses are also only considered quality specifications. Public statements, claims or advertising by the manufacturer do not constitute contractual quality specifications of the goods.

(6) If the purchaser receives inadequate assembly instructions, müller co-ax is only obliged to deliver non-deficient assembly instructions if the deficiency in the assembly instructions prevents proper assembly.

(7) The purchaser can only claim damages for non-performance or withdraw from the contract if müller co-ax has neither repaired the item nor made a replacement delivery despite setting a reasonable deadline, or if a replacement delivery or repair is not reasonable for the purchaser.

(8) Warranty claims according to paragraphs 1-7 require that the purchaser report obvious defects to müller co-ax within a period of 2 weeks from receipt of the goods and hidden defects within 2 weeks from the discovery of the defect in writing.

(9) The purchaser bears the burden of proof for the immediate notification of a defect. Likewise, the purchaser bears the burden of proving that he or she has not taken measures him or herself to remedy the defect.

(10) The purchaser does not receive any guarantees in the legal sense from müller co-ax. Manufacturer guarantees hereby remain unaffected.

### **§ 10 Warranty for replacement of individual parts**

If the exchange/replacement of an individual component of a product takes place within the warranty periods, this does not involve an extension/restarting of warranty periods for the entire product. Rather, the extension/restarting of warranty periods refers exclusively to the replaced individual part, provided that müller co-ax has unreservedly acknowledged the subsequent performance obligation.

### **§ 11 Limitations of Liability**

(1) The liability of müller co-ax is limited in the event of negligent breaches of duty to the foreseeable, contract-typical, direct, average damages according to the type of goods. This also applies to negligent breaches of duty by staff members, workers, employees, representatives and vicarious agents of müller co-ax.

In the event of a slightly negligent breach of insignificant contractual obligations, liability is excluded.

(2) Unless otherwise stated below, further claims by the purchaser - regardless of the legal grounds - are excluded.

müller co-ax is therefore not liable for damages that have not arisen directly to the delivery item itself; in particular, müller co-ax is not liable for loss of profit or damages to other assets of the purchaser or a third party, including damages to those items that have arisen through incorporation, blending, processing and/or further machining and processing.

**(3)** The release from liability and the limitation of liability in the preceding Sections (1) and (2) do not apply to damages resulting from injury to life, body or health, intent or gross negligence. The release from liability also does not apply if müller co-ax culpably violates an essential obligation (cardinal obligation) in the contract or fraudulently conceals a defect. In this case, however, the liability is limited in accordance with Section (1) to the foreseeable, contract-typical, direct, average damages.

Material contractual obligations (cardinal obligations) are those which guarantee the achievement of the purpose of the contract and whose fulfillment make the proper execution of the contract possible in the first place and which the purchaser may rely on to be fulfilled.

**(4)** If müller co-ax violates a material contractual obligation, müller co-ax's obligation to pay compensation is limited to the amount covered by müller co-ax's business liability insurance, unless nothing less than gross negligence is the basis for property damage. On request, müller co-ax shall provide an overview of the insurance policy.

Insofar as the liability of müller co-ax is excluded or limited, this also applies to the personal liability of the staff members, workers, employees, representatives and vicarious agents of müller co-ax.

**(5)** In general, a liability of müller co-ax is excluded in the event that, at the request of the purchaser, parts other than those manufactured or specified by müller co-ax are installed in the delivery item. The purchaser bears the burden of proving that such a deviation is not the cause of any deficiency of the delivery item.

**(6)** müller co-ax is not liable for installation work carried out by the purchaser him or herself. The burden of proof for the non-deficient installation lies with the purchaser.

**(7)** The above limitations of liability do not concern the claims of the purchaser 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 Retention of ownership**

**(1)** müller co-ax retains ownership of the object of the contract until all payments from an ongoing business relationship have been received.

In the event of non-contractual conduct by the purchaser, in particular in the event of late payment, müller co-ax is entitled to recover the object of the contract. The recovery of the object of the contract does not constitute a withdrawal from the contract, unless müller co-ax expressly declares this in writing.

The seizure of the object of the contract by müller co-ax always means a withdrawal from the contract. müller co-ax is authorized to dispose of the object of the contract after it has been returned. The proceeds from disposal are to be credited against the liabilities of the purchaser - less reasonable disposal costs.

**(2)** The purchaser is obliged to handle the goods with caution; he or she is obliged in particular to appropriately insure the goods according to their original value against fire, water and theft at his or her own expense. Any necessary maintenance and inspection work must be carried out by the purchaser in a timely manner and at his or her own expense.

**(3)** In the event of seizures or other interventions by third parties, müller co-ax must be notified immediately in writing by the purchaser. If the third party is unable to reimburse müller co-ax for the judicial and extrajudicial costs of an action pursuant to § 771 ZPO (German Code of Civil Procedure), the purchaser is liable for the loss incurred by müller co-ax.

The purchaser is also obliged to inform müller co-ax of any damage or destruction of the goods immediately. A change of ownership of the goods as well as the relocation of the company headquarters must be reported to müller co-ax immediately by the purchaser.

**(4)** The purchaser is entitled to resell the goods in the ordinary course of business. However, he or she shall immediately assign to müller co-ax all receivables in the amount of the agreed price of the reserved goods (including VAT) that arise from the resale against the purchaser or third party, regardless of whether the goods have been resold without or after processing. müller co-ax accepts this assignment.

The purchaser is authorized to collect these receivables even after they have been assigned. The authority of müller co-ax to collect the receivable itself remains unaffected by this. However, müller co-ax undertakes not to collect the receivable as long as the purchaser fulfills his or her payment obligations from the proceeds received, is not in default of payment, and in particular has not filed for insolvency proceedings or suspended payments. However, if this is the case, müller co-ax may demand that the purchaser inform müller co-ax of the assigned receivables and their debtors, as well as provide all information required for the collection of receivables, hand over the associated documents and inform the debtors (third parties) of the assignment.

**(5)** The processing or transformation of the goods by the purchaser always takes place in the name and on behalf of müller co-ax. If the goods are processed with other objects not

belonging to müller co-ax, müller co-ax acquires co-ownership of the new item in the proportion of the value of the goods to the other processed objects at the time of processing.

The same applies to the item resulting from processing as to the goods delivered under reservation.

**(6)** If the goods are blended with other objects not belonging to müller co-ax, müller co-ax acquires co-ownership of the new item in the proportion of the value of the goods to the other blended objects at the time of blending.

If the blending is done in such a way that the purchaser's item is to be regarded as the main item, it is agreed that the purchaser shall transfer proportional co-ownership to müller co-ax. The purchaser retains the resulting sole ownership or co-ownership for müller co-ax.

**(7)** The purchaser also assigns to müller co-ax the receivables in the amount of the price of the goods subject to retention of title (including VAT) to secure the receivables of müller co-ax against them that arise from the incorporation of the goods with a property against a third party.

**(8)** müller co-ax undertakes to release the securities to which müller co-ax is entitled at the request of the purchaser to the extent that the value of the securities given to müller co-ax exceeds the receivables to be secured by more than 20%; müller co-ax is responsible for selecting the securities to be released.

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

**(1)** Insofar as the conclusion of contracts between müller co-ax and the purchaser or the delivery obligations and/or payment obligations of the purchaser resulting therefrom for müller co-ax violate nationally and internationally binding regulations (e. g. foreign trade regulations of the Federal Republic of Germany, export regulations and embargo regulations of the European Union, other countries, in particular the USA, including the EU anti-terror regulations), müller co-ax is entitled to extraordinary termination of the contractual relationship and/or to withdraw from the contract.

**(2)** The purchaser is not entitled to compensation for damages in this special case.

**(3)** The purchaser is obliged to inform him or herself about relevant legal regulations that make it impossible for müller co-ax to fulfill the contract.

### **§ 14 Data protection**

The parties mutually undertake to observe the statutory provisions on data protection, in particular the EU General Data Protection Regulation (GDPR), in the execution of the contract and to impose compliance with these provisions on their employees. You can find more information on the subject of data protection on our website at [www.co-ax.com](http://www.co-ax.com).

## § 15 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 data to third parties without the express consent of müller co-ax. müller co-ax shall also handle the purchaser's documents in strict confidence.

## § 16 Provider identification

Comprehensive information about müller co-ax, such as the complete company name, address, commercial register number, VAT ID number and more, can be found in the imprint of our website at [www.co-ax.com](http://www.co-ax.com).

## § 17 Final provisions

(1) The law of the Federal Republic of Germany applies. The provisions of the UN sales law and the provisions of German international private law do not apply.

(2) The transfer of rights and obligations of the purchaser to third parties is only possible with the prior written consent of müller co-ax.

(3) If the purchaser is a merchant, legal entity under public law or special fund under public law, the exclusive place of jurisdiction for all disputes arising from this contract is the registered office of müller co-ax. The same applies if the purchaser does not have a general place of jurisdiction in Germany or if the place of residence or common domicile is not known at the time the action is brought.

müller co-ax is also entitled to take legal action at the purchaser's commercial headquarters.

(4) Should individual provisions of the contract with the purchaser, including these general terms and conditions, be or become ineffective in whole or in part, this shall not affect the validity of the remaining provisions.

The entirely or partially invalid provision shall then be replaced by a provision whose economic purpose comes as close as possible to that of the invalid provision.