

General Terms of Sale and Delivery

MULAG Fahrzeugwerk Heinz Wössner GmbH u. Co. KG



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1. General

1.1. The following Terms shall apply exclusively to all goods and services supplied, also at any future date (referred to hereinafter as "Deliveries"), unless otherwise agreed in writing. Customer's terms and conditions shall only apply insofar as we expressly agree to them in writing.

1.2. Our quotations are without obligation. A delivery contract shall not be brought about until we issue written confirmation or actually make delivery. In particular, our employees are under obligation to issue written confirmation of verbal supplementary agreements or commitments.

1.3. Drawings, plans, illustrations, calculations, samples and any other confidential technical or business information provided by us remain our property. The customer may only pass them on to third parties with our express prior written permission. The customer shall keep any of the aforementioned documents and information confidential. It shall do so with due diligence and care required in business, and at the very least it shall take the measures which it employs in order to protect its own confidential information. Passing the documents and information on to employees is only permitted if they have been obligated beforehand in writing to observe secrecy. The customer shall not use the information for its own or for third parties' purposes beyond those laid down in the contract.

2. Measurements

The measurements and operating costs given in our advertising materials are to be regarded as approximate unless they are expressly termed binding; the same applies to drawings and illustrations.

3. Delivery Periods, Terms of Delivery

3.1. The delivery period shall commence on the confirmation of order being issued, but not before the customer has provided the information, documents and official approvals having to be obtained by it. Subsequent change requests made by the customer shall extend the delivery period until we have reviewed their feasibility, and by the period required for implementing the new specifications in production. If production already underway is interrupted by a change request, then we may give priority to and complete other orders. We are under no obligation to reserve production capacity during the delay.

3.2. Timely delivery is subject to the condition precedent of timely and accurate delivery by our suppliers.

3.3. In the event of default in delivery, our liability shall be limited in cases of simple negligence to damages of 0.5% per full week of the value of the order delivered late, or a total maximum amount of 5% of said value. Claims for damages in lieu of performance pursuant to Section 7 shall remain unaffected. The customer must inform us on conclusion of the contract at the latest about any contractual penalties applying vis-à-vis its own customers.

3.4. If consignment is delayed for reasons beyond our responsibility, then our own storage costs shall be charged to the customer. If we are unable to effect storage at our premises, the customer shall be under obligation to make arrangements for storage elsewhere. If we are not given proof of a storage possibility within one week, then we shall be entitled to put the items ordered in storage elsewhere at the customer's expense.

3.5. Unforeseen and unavoidable events beyond our responsibility (e.g. force majeure, war, riot, strikes and lockouts, operational breakdowns, difficulties in obtaining materials and energy, transport delays, labour shortages, government measures, and difficulties in obtaining permits, in particular import and export licenses) shall extend the delivery period by the duration of the disruption and its effects. This shall also apply if the obstacles occur at one of our own suppliers or during a delay already prevailing. If the obstacle is not only of a temporary nature, then both parties shall be entitled to withdraw from the contract. In all these cases, compensatory claims are excluded.

3.6. Risk shall pass to the customer as soon as we hand the goods over to the carrier or – if consignment is delayed through no fault of our own – as soon as we have notified the customer that they are ready for dispatch, even if we have also assumed further obligations, e.g. carriage costs, or delivery and assembly by our own transport staff.

3.7. Partial deliveries shall be permitted to a reasonable extent.

4. Terms of Payment

4.1. The purchase price shall become due for payment to our paying agent without deduction and free of charges 10 days after the date of invoice. Discounts may only be deducted if confirmed by us in advance.

4.2. Payments shall only be deemed effected to the extent to which we can freely dispose over them at our bank. We are under no obligation to accept bills of exchange. We accept bills of exchange and cheques on account of payment only; any bank charges are to be borne by the customer and shall fall due immediately. If the liquidity of a party obligated under a bill of exchange deteriorates, then we are entitled to demand payment in cash. If the customer defaults in performance of its payment obligations, or if its bills or cheques are protested, or if attachments are effected, or if a substantial deterioration in its financial circumstances occurs, then on expiry of a reasonable deadline set by us we shall be entitled to withdraw from the delivery contract insofar as performance is still outstanding, or to demand advance payment for further deliveries. Moreover, we shall be entitled to immediately withdraw all and any bills of acceptance, bills of exchange and cheques in circulation. Any costs thus incurred shall be paid by the customer.

4.3. If the customer defaults in payment of our demands, then we may demand default interest at a rate of 9 (nine) percentage points over and above the base rate. Claims for further damages shall not be excluded.

4.4. If the customer fails to accept bought items within eight days of notification that they are ready to ship, or if it fails to perform its payment obligations, or if bills of exchange or cheques given in payment are protested, or if agreed securities are not provided before the set deadline, then, after a reasonable period of grace granted by us has expired, we shall be entitled to withdraw from the contract and/or to demand damages for non-performance. On asserting compensation claims, we may demand 20% of the sales price by way of lost profits without further proof, notwithstanding the possibility of claiming any actual higher losses. The customer is at liberty to prove that we have suffered only smaller losses. If we take back the items, the customer shall be under obligation to pay a reasonable compensation for their use.

4.5. Our prices are ex works, excluding packaging and turnover tax at the applicable rate. In the case of delivery periods of over two months, we shall be entitled to increase or reduce the agreed prices accordingly, insofar as wage and salary costs or the costs of materials and raw materials substantially alter and we are not responsible for such increases. If a price increase is more than 5%, then the customer shall have the right to withdraw from the contract within two weeks of being notified about the price increase.

4.6. Consignment shall be at the customer's expense and risk.

4.7. If the price for the goods ordered exceeds EUR 5,000, then we shall be entitled to demand an advance payment to be agreed on a case by case basis.

4.8. Holding back payment or offsetting counterclaims shall only be permitted insofar as the counterclaims are undisputed or have been awarded with final and binding effect.

5. Claims for Defects

5.1. In respect of an item any material defect or defect of title emerges within the limitation period that is due to a cause already existing at the

time when risk passed, then the customer shall be entitled to supplementary performance in the form of rectification of defects or replacement, at our option. We shall pay any expenses required to this end e.g. for wages, materials, transport or travel, provided these expenses are not increased due to the purchased item subsequently having been moved to some place other than the customer's place of business, unless such removal accords with the item's designated use.

5.2. If supplementary performance fails or if a grace period for supplementary performance granted to us by the customer expires unsuccessfully, then the customer – notwithstanding any claims for damages – may withdraw from the contract or reduce the payment. Withdrawal is excluded in the event of only a minor deviation from the agreed quality characteristics, or only a minor impairment of the purchased item's usability.

5.3. Unless a longer limitation period is compulsory under the recourse claims laid down in Sect. 479 (I) of the Civil Code (BGB), claims for defects shall become statute-barred twelve months after the passing of risk, provided we did not breach our obligations due to intent or gross negligence and did not fraudulently conceal the defect.

5.4. The customer shall inspect the item immediately on delivery; defects must be reported in writing within eight days of inspection, hidden defects within eight days of their discovery (Sect. 377 Commercial Code/HGB). If the customer fails to give timely notice, the goods shall be deemed to have been accepted.

5.5. For used goods, liability for defects shall be excluded, provided we did not breach our obligations due to intent or gross negligence and did not fraudulently conceal the defect.

5.6. We shall only be liable for the infringement on third party rights due to the use of the supplied products outside Germany, if such use had been agreed with the customer or was foreseeable based on the situation that existed at the time of contract conclusion. In the event that liability claims are asserted, we shall only be liable for the fact that at the time of contract conclusion no rights existed abroad that conflict with this use that were known to us by that date or should have been known to us in the absence of gross negligence.

5.7. If the defect has occurred due to an essential third-party component, then we shall be entitled to initially limit our liability to assigning our rights and claims that are based on liability for defects and to which we are entitled vis-à-vis the third-party supplier, unless the assigned claim or right is not satisfied or cannot be asserted for other reasons. In any such case, entitlement to the rights under Sections 5.1 and 5.2 above shall be restored to the customer.

5.8. The customer shall only be entitled to have recourse to us insofar as it has not reached any agreement with its own customer going beyond its statutory rights in the event of defects.

6. Reservation of Title

6.1. We reserve title to all the items we supply until the customer has settled all claims resulting from the business relationship, and in particular paid any current account balance. As long as our reservation of title applies, the customer may neither pledge the items delivered nor assign them to third parties by way of security. Any interference by third parties affecting our rights, such as attachment, execution or other court measures, must be reported to us immediately.

6.2. If any items to which our reservation of title still applies are resold, then this may only be done for our account and in return for immediate payment. The sales proceeds are to be kept for us separately. Any receivables created by resale shall be deemed assigned to us on their creation. If the customer grants its own customers a deferral for payment, then vis-à-vis these customers it must reserve title to the items sold, prescribing

the same conditions on which we reserve title to the items we deliver. The customer is entitled to collect the receivables assigned to us as long as it performs its payment obligations out of the proceeds collected.

6.3. If the customer works or processes the supplied items in the context of routine business operations, then this working or processing by the customer shall be deemed done on our instructions but at no expense to us. The customer shall keep the item for us free of charge. If in the context of routine business operations the reserved items are combined with or incorporated into other goods not belonging to us, then we shall acquire co-ownership in the new goods at a rate of the invoiced net value of the reserved items as a ratio of the other materials. Delivery shall be substituted by customer's custody of the item on our behalf.

6.4. If the customer is in delay with the performance of its payment obligations, then we may revoke permission for further processing and demand that the customer disclose to us the assigned receivables and the respective debtors, provide us with all the particulars required for collection, hand over to us the appurtenant documents, and notify its debtors about the assignment. Taking back reserved items shall not be deemed withdrawal from the contract. If we declare withdrawal, we shall be entitled to sell the items in the open market.

6.5. We are willing to release at our own option the securities to which we are entitled under the above terms, insofar as the total value of the unsold reserved items and the assigned receivables exceeds our claims by 10%, subject to the provision however that such release shall only be effected for those deliveries or substitute values which have themselves been paid for in full.

6.6. The customer shall adequately insure the items against all the usual risks, in particular fire, burglary and water, and shall handle them with due care.

7. Claims to Damages & Reimbursement of Costs

7.1. Claims for damages of whatsoever nature against us shall be excluded, if the damages are due to simple negligence on our part or on the part of our legal representatives or vicarious agents. This exclusion of liability does not apply in cases of bodily harm, or of the assumption of a contractual guarantee, or of a breach of cardinal contractual obligation posing a threat to attainment of the contractual purpose, whereby our liability shall be limited to foreseeable damage typical for the contract. Claims under statutory product liability law shall remain unaffected.

7.2. Apart from claims based on liability for defects, under product liability law and for mortal injury, bodily harm or health damage, claims to damages shall become statute-barred one year after the customer gained knowledge of the damage and the entitlement to compensation for it, or should have gained knowledge thereof without gross negligence.

8. Governing Law, Venue

8.1. This contract shall be governed by German law on exclusion of the UN Convention on Contracts for the International Sale of Goods (CISG).

8.2. Exclusive venue and place of performance shall be Oppenau-Löcherberg. However, we are also entitled to sue at the location of the customer's place of business.