

# **Standard Terms and Conditions of Sale and Delivery**

As of 29.06.2023

## **I. General**

1. The following Standard Terms and Conditions shall apply for all quotations and contracts for the delivery of goods and services (hereinafter: deliverables) by August Müller GmbH & Co. KG (hereinafter: August Müller) to its customers (hereinafter: the Buyer) insofar the Buyer is a business owner, legal entity under public law or separate estate of public law.
2. August Müller's Standard Terms and Conditions of Sale and Delivery of August Müller shall apply exclusively. Deviating, contrary or supplementary general terms and conditions of business of the Buyer shall only be incorporated in the contract insofar August Müller has expressly consented to their application in writing. The unconditional execution of a delivery or service in the knowledge of the Buyer's terms and conditions of business does not constitute consent. Even if August Müller references a document from the Buyer that contains or refers to the terms and conditions of business of the Buyer or the terms and conditions of business of a third party, this does not constitute the consent of August Müller to the application of these terms and conditions of business.
3. The Standard Terms and Conditions of Sale and Delivery shall apply in their respective version as a framework agreement for all future quotations and contracts concerning deliveries and services to the Buyer.
4. August Müller reserves all property rights and copyrights to samples, cost estimates, drawings and similar information of tangible and intangible nature – including in electronic form; these may not be made accessible to third parties. August Müller shall undertake to make any information and documents designated as confidential by the Buyer accessible to a third party only with the consent of the Buyer.

## **II. Quotations and Conclusion of Contract**

1. Quotations issued by August Müller are without obligation and non-binding. Only the order issued by the Buyer shall be deemed as a binding offer to enter into a contract. Unless otherwise specified in the order of the Buyer, August Müller can accept the contractual offer within four weeks of receipt.
2. Unless otherwise agreed, a contract shall not come into effect until August Müller confirms the Buyer's order in text form or offers the Buyer the ordered delivery or service as this can be effected.
3. Insofar that a contract concluded in writing between August Müller and the Buyer exists, this contract including these Standard Terms and Conditions of Sale and Delivery shall be applicable to the legal relations between August Müller and the Buyer. This shall contain all agreements between the contractual partners regarding the subject of the contract in their entirety. Verbal commitments by August Müller prior

to the conclusion of this contract are not legally binding and verbal arrangements between the contractual parties shall be replaced by the written contract, unless expressly agreed otherwise by the contractual parties. For the purposes of Clause 3, a written contract shall be deemed also a contract insofar as it complies with the electronic form pursuant to § 126a of the German Civil Code, a qualified electronic signature taking the place of the signature.

4. If the Buyer demands an individual cost estimate, this shall always be subject to remuneration. If an order is placed, the remuneration for the cost estimate shall be offset in the remuneration for the delivery and service.

5. Drawings, images, dimensions, weights and other descriptions of the execution on the quotation or in brochures do not constitute a quality agreement. August Müller is entitled to deviate from previous descriptions providing the deviation is not significant and the suitability for the use specified in the contract is not impaired.

6. Subsequent changes to the order by the Buyer shall only be effective if August Müller confirms these to the Buyer in text form or executes the change. Additional expense incurred because of the change to the order can be additionally charged to the Buyer insofar no other agreement has been made.

### **III. Prices and Terms of Payment**

1. Unless otherwise agreed, agreed prices are ex-works including loading in the factory, however, excluding packaging, intermediate setting up and unloading. The prices are subject to statutory sales tax.

2. For the delivery and services included in the price, the order confirmation in text form is determinative. Ancillary services that are not specified in the order confirmation are not included in the price and shall be charged separately.

3. Unless otherwise agreed, payments are to be settled by transfer to a bank account of August Müller or in cash at the registered office of August Müller, without any deduction, as follows:

- 40 % advance payment on receipt of the order confirmation,
- 50 % as soon as the Buyer is advised that the principal parts are ready for dispatch,
- 10 % within one further month from the transfer of risk.

4. Unless otherwise agreed, invoices issued by August Müller are payable without deduction ten days after receipt by the Buyer and therefore determined by the calendar in compliance with § 286 Paragraph 2 Clause 1 of the German Civil Code (Bürgerliches Gesetzbuch – BGB), such that on expiry of the payment period, the Buyer shall be in default. During the default period, interest at an annual rate of nine percentage points above the basic interest rate will be charged on the due invoice.

5. In the case of several outstanding claims, notwithstanding deviating repayment provisions of the Buyer, August Müller is entitled to settle incoming payments first against those claims that offer the lower security for August Müller, and, in the case of claims offering equally security, against the oldest respective claim. If interest and costs have already been accrued, August Müller is entitled to settle incoming

payments first against the costs, then against the interest and finally against the principal claim.

6. A payment shall only be deemed to have been made when August Müller has disposal over the amount due. Payment by cheque shall only be deemed to have been made when the cheque has been irrevocably cashed by the drawee.

7. The Buyer shall only be entitled to offset payment if the counterclaim has been recognized by August Müller or legally acknowledged. The right of the Buyer to withhold payment is restricted to counterclaims arising from the same contractual relationship.

#### **IV. Retention of Title**

1. August Müller shall retain property and any rights to the deliverables until all claims against the Buyer from the supply contract and the business relationship have been settled (secured claims). This also applies if individual or all claims have been incorporated in a current invoice and the balance has been determined and acknowledged.

2. The Buyer is not entitled to dispose over August Müller's reservation of property rights. The Buyer is not allowed to sell, pledge or cede the deliverables for security. In the event of the deliverables being impounded, seizure or disposed over by third parties, the Buyer must notify August Müller without delay.

3. August Müller shall release security rights according to Clause 1 insofar

a) the realizable value of these security rights, in particular of the deliverables delivered under reservation of the title, exceeds the value of the secured claims in accordance with Clause 1 by more than 10 %

or

b) the estimated value of the security rights, in particular of the deliverables delivered under reservation of the title, exceeds the secured claims in accordance with Clause 1 by more than 50 %.

The selection of the deliverables to be released accordingly rests with the seller.

4. In the event of conduct on the part of the Buyer in breach of contract, in particular default of payment, August Müller is entitled to take back the delivered goods after issuing a payment reminder and the Buyer is obliged to surrender the goods.

5. On the basis of the retention of title, August Müller can only demand surrender of the deliverables if August Müller has rescinded the contract.

6. On application for the opening of insolvency proceedings as well as in the case of the provision of information on financial status and assets according to § 807 of the German Code of Civil Procedure (Zivilprozessordnung – ZPO), August Müller is entitled to rescind the contract and demand immediate surrender of the deliverables.

7. August Müller is entitled to insure the deliverables against theft, breakage, fire, water and other damage at the Buyer's cost if the Buyer has not themselves demonstrably taken out insurance.

## **V. Delivery Time, Default on Delivery**

1. The delivery period shall result from the agreements between the contractual parties. Fulfilment by August Müller shall be contingent upon all commercial and technical issues having been clarified between August Müller and the Buyer and the Buyer fulfilling all obligations incumbent on them, e.g. provision of the necessary official approvals or certifications or making an advance payment. If this not the case, the delivery period can be reasonably extended. This does not apply if the delay is attributable to August Müller.

2. Fulfilment of the delivery time is also contingent upon the correct and timely delivery of goods and services to August Müller by its suppliers. August Müller shall inform the Buyer of impending delays as soon as possible.

3. The delivery time shall be deemed as fulfilled when the deliverables have left the works by its expiry or the Buyer has been notified that the deliverables are ready for dispatch. In as much that an acceptance is necessary, except in the case of justified refusal to accept, the acceptance date or alternatively notification of readiness of acceptance is authoritative.

4. If the dispatch or the acceptance of the deliverables is delayed for reasons attributable to the Buyer, the costs incurred because of the delay shall be charged to the Buyer starting one month after notification of the readiness for dispatch or acceptance.

5. If non-fulfilment of the delivery obligation in the agreed time is attributable to a force majeure, labour disputes or other events that lie outside of the control of August Müller, the delivery time can be reasonably extended. The Buyer shall be notified of the beginning and end of such circumstances as soon as possible.

6. The Buyer can rescind the contract without granting a period of grace if it becomes definitively impossible for August Müller to fulfil its obligation prior to the transfer of risk. Moreover, the Buyer can rescind the contract if execution of part of the delivery for an order becomes impossible and the Buyer has justified interest to refusal a partial delivery. If this is not the case the Buyer is obligated to pay the price stipulated in the contract for the partial delivery. The same applies in the case of incapacity of August Müller. Otherwise Section VIII.2 applies.

7. In the event that the impossibility or incapacity occurs during the acceptance default or if the Buyer is solely or predominantly responsible for these circumstances, they remain obligated to effect payment.

8. If – taking account of statutory exceptions – the Buyer grants August Müller a reasonable period of grace after the due date to fulfil the contractual obligations and this time limit is not observed, the Buyer is entitled to rescind the contract in

accordance with the statutory provisions. Further claims arising from default of delivery shall be governed exclusively by Section VIII.2 of these terms and conditions.

## **VI. Transfer of Risk, Acceptance**

1. Risk shall be transferred to the Buyer when the deliverables have left the factory, and, even if and when partial deliveries are made or August Müller has assumed other obligations, e.g. the transport costs or delivery and installation. As far as an acceptance is required, this is authoritative for the transfer of risk. Acceptance must be carried out immediately on the acceptance date, or alternatively after notification of the deliverables being ready for acceptance. The Buyer may not refuse acceptance on grounds of an immaterial defect.

2. If the dispatch or the acceptance is delayed or prevented as a consequence of circumstances beyond the control of August Müller, the risk shall be transferred to the Buyer from the date of notification of readiness for dispatch or acceptance. August Müller undertakes to take out any insurance that the Buyer requests at the Buyer's expense.

3. Partial deliveries are permissible insofar that these are reasonably acceptable for the Buyer.

## **VII. Warranty Claims (Claims for Defects)**

August Müller provides warranty against material defects and defects of title in the delivery under exclusion of any other claims by the Buyer – subject to section VIII. – as follows:

### Material defects

1. All the deliveries and services (hereinafter: deliverables) that prove to be defective prior to the transfer of risk must be rectified or replaced free of charge at the discretion of August Müller insofar the Buyer has fulfilled their statutory obligation to immediately examine the deliverables and registered a complaint. Any replaced parts shall become the property of August Müller.

2. To allow August Müller to undertake any repairs or replacement deliveries it considers necessary, the Buyer has, on consultation with August Müller, to give August Müller the opportunity and time required; otherwise August Müller is exempt from liability for consequences arising therefrom. Only in urgent cases where there is a risk to operational safety and to avert disproportionate further damage does the Buyer – after written consultation (by letter, fax, email or similar) with August Müller – have the right to rectify the defect themselves or by a third party and demand reimbursement for the necessary expenditure.

3. Of the direct costs incurred as a result of the repairs or replacement delivery, provided that the complaint is proven justified, August Müller shall bear the costs of the replacement part including shipment. August Müller shall also bear the costs for

dismantling and installation as well as the costs for any required any required appointment of fitters and auxiliary personnel that might be necessary including travel expenses, insofar as no disproportionate burden for August Müller arises thereby.

4. Within the scope of the statutory provisions the Buyer has the right to rescind the contract if August Müller – taking account of statutory exceptions – fails to effect the repair work or replacement delivery due to a material defect within a reasonably set time period. If the defect is only insubstantial, the Buyer shall only have the right to reduce the contractual price. The right to reduce the contractual price shall otherwise remain excluded. Further claims shall be governed by Section VIII.2 of these standard terms and conditions.

5. No warranty shall be assumed in particular in the following cases: unsuitable or improper use, faulty installation or commissioning by the Buyer or third parties, natural wear and tear, incorrect or negligent handling, maintenance, unsuitable operating materials; defective construction work, unsuitable foundations, chemical, electrochemical or electrical influences provided that August Müller is not responsible for these.

6. If the Buyer or a third party effects the repairs improperly, August Müller is not liable for the consequences. The same applies to any changes made to the deliverables without the prior consent of August Müller.

#### Defects of title:

7. If the use of the deliverables results in an infringement of industrial property rights or copyrights within Germany, August Müller shall, at its expense, grant the Buyer free of charge the right of further use or modify said deliverables in a manner acceptable to the Buyer in such a way that the property rights are no longer infringed. If this is not possible under economically reasonable conditions or within a reasonable period, the Buyer shall be entitled to rescind the contract. Subject to the afore-mentioned conditions, August Müller shall also be entitled to rescind the contract. Furthermore, August Müller shall indemnify the Buyer against undisputed claims or legally enforceable claims of the holders of the property rights.

8. August Müller's obligations as stipulated in Section VII.7 shall be final, subject to Section VIII.2 in the event of an infringement of a property rights or copyrights They shall only exist if

- the Buyer notifies August Müller without delay of any claimed property right or copyright infringement,
- the Buyer assists August Müller to a reasonable extent in defending against the claims asserted or permits August Müller to effect modifications in accordance with Section VII.7
- August Müller reserves the right to take all defensive action including out-of-court settlements,
- the defect in title is not based on an instruction of the Buyer and

- the infringement of a right was not caused by the fact that the Buyer changed the deliverables arbitrarily or used them in a non-contractual manner.

### **VIII. Liability**

1. If, due to August Müller's fault, the goods delivered cannot be used by the Buyer in accordance with the contract as a result of the omitted or deficient implementation of proposals and advice given prior to or after the conclusion of the contract or due to the infringement of other contractual ancillary obligations, including instructions on the operation and maintenance of the goods delivered, the provisions of Sections VII and VIII.2 shall apply accordingly, to the exclusion of any and all further claims of the Buyer.

2. August Müller shall only be liable for damage which has not occurred on the deliverables themselves – regardless of whatever legal grounds – arising from

- a. wilful intent,
- b. gross negligence by the owner, bodies or executive staff,
- c. culpable injury to life, limb, health,
- d. defects that have been fraudulently concealed or the absence of which has been guaranteed,
- e. defects in the goods delivered insofar as liability is assumed in accordance with the German Product Liability Law for personal injury or property damage to privately used goods

In the case of culpable infringement of essential contractual obligations August Müller shall also be liable for gross negligence by non-executive staff and for slight negligence, in the latter case limited to compensation for any contract-typical damage that can be reasonably foreseen. Any and all other claims shall be excluded.

### **IX. Limitation**

Any and all claims of the Buyer – for whatever legal grounds – shall become statute-barred after 12 months. The statutory periods of limitation shall apply for compensation claims for damages under VIII.2.a – e. The statutory periods of limitation also apply to defects in a building structure or to delivery items that have been used according to their customary use for a building structure and that have caused its defectiveness.

### **X. Applicable Law, Jurisdiction**

1. The law of the Federal Republic of Germany governing the legal relationships of domestic parties shall apply exclusively to all legal relationships between August Müller and the Buyer. The United Nations Convention on Contracts for the International Sale of Goods (CISG) of 11 April 1980 does not apply.

2. Unless individually agreed, the contract language is German. For contracts in multiple languages, unless agreed otherwise, the German version is legally binding.

3. Exclusive court of jurisdiction for all disputes arising directly or indirectly out of this contractual relationship is Rottweil a. N. We shall also be entitled to file suit at the location of the Buyer's registered office.

#### **XI. Final Provision**

In as far as the contract or these Standard Terms and Conditions contain regulation gaps or invalid regulations, those legal regulations deemed to be valid upon consideration of the economic objectives of the contract and the purpose of these Standard Terms of Sale and Delivery – which the contracting parties would have agreed upon if they had recognized the regulation gaps or invalid regulations – shall be deemed as agreed upon.