

MÜCHER DICHTUNGEN GmbH & Co. KG

TERMS OF PURCHASE

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MÜCHER DICHTUNGEN GmbH & Co. KG, Europaallee 43, D-50226 Frechen



1. Scope of application

The following Terms of Purchase shall govern all business transactions and contractual relationships undertaken or entered into by Mücher with entrepreneurs, merchants, legal entities under public law, or separate property under public law.

2. Written form

The written form, in the sense of these Terms of Purchase, shall also be ensured by fax and e-mail.

3. Exclusion of contradicting provisions/Statement of completeness

3.1 Exclusivity clause

These Terms of Purchase shall apply exclusively; any conditions on the part of the Supplier which are contradicting to, or deviating from, these Terms of Purchase will not be recognised by Mücher, unless such deviating provisions are expressly confirmed in writing by Mücher. These Terms of Purchase shall also apply, if Mücher, with knowledge of any contradicting or deviating conditions on the part of the Supplier, accepts delivery from the Supplier without reservation.

3.2 Statement of completeness

All agreements concluded between Mücher and the Supplier for execution of the order are laid down in writing in this Contract.

4. Offer and bindingness of information

4.1 Term of offer

The Supplier shall be obliged to take Mücher's order within a period of two weeks.

4.2 Bindingness of information

The documentation, e.g. illustrations, drawings, weights and dimensions, included in a Supplier's offer shall be binding, unless the data in the Supplier's offer or the Supplier's offer itself have expressly been specified as non-binding in writing.

5. Proprietary rights and copyrights, confidentiality

5.1 Proprietary rights

All illustrations, drawings, calculations, and other business-related information in conjunction with the business relationship – also in the electronic form – shall remain the property of Mücher.

5.2 Copyrights and industrial property rights

All copyrights and other industrial property rights in the documentation and information mentioned in clause 5.1 shall also remain the property of Mücher.

5.3 Confidentiality clause

The documentation and information mentioned in clause 5.1 shall be treated confidentially. They shall not be divulged to third parties, irrespective of whether or not an order has been placed. Any third-party access to such documentation or information shall require the prior written consent of Mücher.

5.4 Obligation to return documentation

After the order has been executed, the documentation mentioned in clause 5.1 shall be returned to Mücher without request.

6. Indication of prices

6.1 Bindingness

The price indicated in the order shall be binding.

6.2 Sales tax

The statutory sales tax is included in the price.

6.3 Prices “free domicile”

Unless agreed otherwise in writing, the price indicated in the order shall include delivery free domicile including packaging.

7. Price alterations/Price adjustments

Mücher will accept price alterations and price adjustments only within the scope of § 315 BGB.

8. Packing and packaging material

8.1 Cost of packaging material

The price indicated in the order includes the cost of packing, packaging material and loading.

8.2 Return of packaging material

The return of packing and packaging material requires a separate agreement. The Supplier shall bear the transport cost.

9. Terms of payment/Rights of set-off and retention

9.1 Indication of order number

Invoices can only be processed by Mücher if they state the order number indicated in the order; the Supplier shall be responsible for any consequences resulting from non-observance of this obligation, unless he presents evidence that he cannot be held responsible for them.

9.2 Maturity

Unless agreed otherwise in writing, Mücher shall pay the purchase price with deduction of 2 % cash discount within 14 days after delivery and receipt of invoice, or the net price within 30 days after receipt of invoice.

9.3 Rights of set-off and retention

Mücher shall be entitled to the statutory rights of set-off and retention.

10. Delivery period

10.1 Bindingness of indicated delivery periods

The delivery period indicated in the order shall be binding.

10.2 Obligation to inform if delivery period is exceeded

The Supplier shall be obliged to inform Mücher in writing without any delay, should any circumstances occur or become apparent to him, which may cause a delay in the agreed delivery period.

10.3 Supplier's default

In the event of a default in delivery Mücher shall be entitled to the statutory claims. In particular, Mücher shall be entitled, upon fruitless expiry of a reasonable deadline, to claim damages in lieu of performance and withdraw from the contract. In case Mücher claims damages, the Supplier shall have the right to present evidence that he has not violated his obligations.

11. Passing of risk

11.1 Delivery "free domicile"

Unless agreed otherwise in writing, delivery shall be free domicile.

11.2 Assumption of risk with acceptance requirement

If an acceptance inspection is required, this shall be decisive for the passing of risk.

11.3 Documents

The Supplier shall be obliged to indicate the precise order number assigned by Mücher on all shipping documents and delivery notes; if he fails to do so, Mücher shall not be responsible for any delays in the processing of such documents.

11.4 Insurance of delivery item

Unless agreed otherwise in writing, the Supplier shall insure the shipment against theft, breakage, damages resulting from transport, fire and water, and other risks to be covered by insurance.

12. Reservation of title

12.1 Reservation of title in the event of provision of items

If Mücher provides the Supplier with items to be included in the delivery, Mücher shall retain title to them. Any processing or transformation of the items shall occur on behalf of Mücher. If such items subject to reservation of title are processed with other items not owned by Mücher, Mücher will acquire co-ownership of the new items in proportion of the value of the items subject to reservation of title (purchase price plus VAT) to the other items being processed, at the time of processing.

12.2 Reservation of title in the event of intermixture

If the item provided by Mücher is inseparably intermixed with other items not owned by Mücher, Mücher will acquire co-ownership of the new item in proportion of the value of the item subject to reservation of title (purchase price plus VAT) to the other items being mixed with it, at the time of intermixture. If the items are mixed in a way that the Supplier's item is to be regarded the main item, it is agreed that the Supplier shall transfer proportional co-ownership to Mücher. The Supplier shall take care of the sole ownership or co-ownership of Mücher resulting from this.

12.3 Pledge of secrecy

The Supplier commits to maintain strict secrecy about all illustrations, drawings, calculations and other documentation and information received from Mücher. They may only be divulged to third parties with Mücher's express consent. This pledge of secrecy shall also be effective after termination of this Contract; it shall expire, when and in so far as the manufacturing know-how included in the illustrations, drawings, calculations and other documentation made available by Mücher has become common knowledge.

12.4 Release of securities

In so far as the securities Mücher is entitled to acc. to clause 12.1 and/or clause 12.2 exceed the purchase price of all items subject to reservation of title and not yet paid by Mücher by more than 10 %, Mücher shall be obliged to release the securities upon the Suppliers' request; Mücher may decide which securities will be released.

13. Liability for defects

13.1 Obligation to give notice of defects

Mücher commits to inspect the goods for variations in quality or quantity within an adequate period of time; the notice of defects shall be deemed in time, if it is received by the Supplier within a period of five workdays from receipt of goods or, in case of hidden defects, from detection of such defects.

13.2 Statutory warranty claims

Mücher shall be entitled to full statutory warranty claims; in any case, Mücher shall be entitled to claim, at his choice, that the Supplier rectify the defect(s) or supply a new item. Mücher expressly retains the right to claim damages, in particular, the right to claim compensation of damages in lieu of performance.

13.3 Rectification of defects by Mücher

Mücher shall be entitled to rectify the defect(s) themselves, at the Supplier's expense, in the event of imminent danger or particular urgency.

13.4 Limitation period for warranty claims

The limitation period shall be 36 months from passing of risk.

14. Product liability/Indemnity/Liability insurance

14.1 Indemnification against third-party damage claims

If the Supplier is responsible for a product damage, he shall be obliged to indemnify Mücher against any damage claims asserted by third parties on Mücher's first request, in so far as the cause originated in the Supplier's sphere of control and organisation and the Supplier himself is liable against third parties.

14.2 Liability for reimbursement of expenses

As part of his liability for damages in the sense of clause 14.1 the Supplier shall also be obliged to reimburse any expenses acc. to §§ 683, 670 BGB or acc. to 830, 840, 426 BGB arising out of or relating to a recall undertaken by Mücher. Mücher shall inform the Supplier about the contents and extent of the recall measures to be undertaken – in so far as this is possible and reasonable – and give him the opportunity to state his position. Any other statutory claims shall remain unaffected.

14.3 Supplier's product liability insurance

The Supplier commits to maintain a blanket product liability insurance with an insured sum of € 10 million per personal injury/property damage; any further damage claims Mücher is entitled to shall remain unaffected.

15. Industrial property rights

15.1 Liability for violation of third-party rights

The Supplier shall ensure that, in conjunction with his delivery, there will be no violation of any third-party rights within the territory of the Federal Republic of Germany.

15.2 Supplier's obligation to indemnification

In case any third parties hold Mücher liable for violation of their rights, the Supplier commits to indemnify Mücher against these claims upon Mücher's first written request; Mücher shall not be entitled to make any agreements with a third party without the Supplier's consent, in particular, to agree to a compromise.

15.3 Extent of obligation to indemnification

The Supplier's obligation to indemnify Mücher shall relate to all expenses necessarily incurred by Mücher in conjunction with claims asserted by third parties.

15.4 Limitation period

The limitation period shall be ten years from conclusion of the contract.

16. Place of fulfilment and performance

The place of fulfilment and performance regarding delivery of the subject matters of the contract as well as all other obligations arising out of or relating to the respective supplier relationship and contractual relationship shall be the domicile of Mücher, Frechen.

17. Applicable law

17.1 Law of the Federal Republic of Germany/Exclusion of private international law

All legal relationships arising out of or relating to the preparation, conclusion, execution, termination and handling of the (respective) contractual relationships shall exclusively be governed by and construed in accordance with the law of the Federal Republic of Germany, to the exclusion of private international law.

17.2 Exclusion of CISG

Application of the United Nations Convention on Contracts for the International Sale of Goods (CISG) of 11 April 1980 shall be excluded.

18. International venue of jurisdiction, EU venue of jurisdiction, national venue of jurisdiction, agreement to refrain from legal proceedings outside the Federal Republic of Germany

18.1 International venue of jurisdiction

The exclusive international venue of jurisdiction for any controversy arising out of or relating to the legal relationships between Mücher and the Supplier, also as part of a procedure for enforcement of a bill of exchange or cheque, shall be the domicile of Mücher, Frechen.

18.2 EU venue of jurisdiction

The exclusive international venue of jurisdiction for any controversy arising out of or relating to the legal relationships between Mücher and the Supplier in the scope of application of EUGVVO, also as part of a procedure for enforcement of a bill of exchange or cheque, shall be the domicile of Mücher, Frechen.

18.3 Venue of jurisdiction in the Federal Republic of Germany

The exclusive national venue of jurisdiction for any controversy arising out of or relating to the legal relationships between Mücher and the Supplier from the Federal Republic of Germany, also as part of a procedure for enforcement of a bill of exchange or cheque, shall be the domicile of Mücher, Frechen.

18.4 Waiver

The Supplier waives the right to take proceedings against Mücher outside the Federal Republic of Germany.

19. Language of contract

The parties hereto agree that the German language shall be the legally binding language. If a contract exists in a German and an English version, the German version shall prevail in case of doubt.